



Banking Regulation

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Argentina

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Introduction

The year 2016 brought several important transformations to the Argentine financial regulatory framework, in the context of the newly elected National Government's first anniversary. The most relevant changes in the economy included the liberalisation of the foreign exchange market, the return to the international capital markets (after the resolution of a long dispute with sovereign bondholders), and the adjustment of tariffs for public services.

After those first milestones were achieved, the macroeconomic programme of the government for 2017 still has the fight against inflation and the public deficit as its priorities, though, at the same time, it is being urged to sustain and foster incipient economic growth and to include social needs, in a year that will face a mid-term election.

Notwithstanding the existing tension among the different challenges, and while certain foreign institutions decided to leave the country due to global strategic decisions, foreign investors are showing an increased interest in the local financial market and international credit agencies are already supporting new aggressive investment projects, mainly in infrastructure and energy areas. Certain movements in the controlling shareholdings of certain local banks are expected to happen in the short term.

Regulatory architecture: overview of banking regulators and key regulations

The head of the Argentine banking regulatory sector is the Argentine Central Bank, which is an autonomous body within the National Government. As that implies, the Argentine Central Bank has (or should have) the highest degree of independence from the executive branch.

The Argentine Central Bank was created, and its powers are set forth, by its Organic Chart (Law No. 24,144). Pursuant to the Organic Chart, the main functions of the Argentine Central Bank comprise the following: (i) to regulate the Argentine financial system and enforce the financial entities regulations; (ii) to regulate the quantity of currency and level of interest rates in the market, in order to orientate credit; (iii) to act as an agent of the country with international financial organisations; (iv) to collect and manage reserves in foreign assets; (v) to help the smooth functioning of the capital market; (vi) to enforce the foreign exchange policy; (vii) to regulate payment systems; and (viii) to protect the rights of users of financial services and antitrust principles.

As was mentioned above, one of the main functions of the Argentine Central Bank is to regulate the Argentine financial system and enforce the financial entities' regulations. In that sense, the Argentine Central Bank is the enforcement authority of the Argentine

Financial Entities' Act (Law No. 21,526), which regulates financial intermediation, sets forth the types of financial entities that can operate within the local market, establishes the requirements for banks to obtain authorisations, and regulates insolvency measures for financial crises.

One of the other main functions of the Argentine Central Bank is the enforcement of foreign exchange politics. The Argentine Central Bank is the enforcement authority for the local foreign exchange market, which is globally regulated by the Money Exchange Houses Act (Law No. 18,924) and by Decree No. 616/2005. Up to the end of 2015, this decree justified the imposition by the Argentine Central Bank of tough restrictions (some of them not written) to the inflow and outflow of foreign monies. However, as it was pointed out in the introduction to this chapter, the current National Government derogated the toughest restrictions, so that now the local foreign exchange market is deregulated.

The framework of the local financial legal system is complemented by notices that the Argentine Central Bank issues day by day in the form of “communications”, by means of which it regulates every aspect of the financial system (including the creation, merger and transformation of financial entities, the foreign exchange market, currency and interest rates, accountancy requirements, liquidity and solvency ratios, governance, payment systems, reporting duties, etc.).

Other key regulations, which are not exclusive to the financial system but which have a relevant impact in the sector, include the Capital Market Act (Law No. 26,831), the Anti-Money Laundering Act (Law No. 25,246), the Credit Cards Act (Law No. 25,065), the Data Protection Act (Law No. 25,326), Antitrust Act (Law No. 25,156) and Consumer Defence Act (Law No. 24,240). Even though all these specific regimes have their own enforcement authorities, the Argentine Central Bank has legal competence in order to regulate the effect of those regimes within the banking system and to coordinate their enforcement with the relevant authorities.

Recent regulatory themes and key regulatory developments

The most recent regulations in the area can be identified in the foreign exchange market and the promotion of bankarisation through the incentive of electronic and digital banking.

As mentioned above, by the end of 2015 the local foreign exchange market was strongly regulated. Restrictions were imposed on the inflow of monies to the country (in order to discourage speculative investments) by means of subjecting 30% of any foreign investment and financing (except in certain specific cases – i.e. direct investments, imports financings, etc.) to a mandatory non-remuneratory deposit for a one-year period (called “*encaje*”). Apart from that, repatriation of foreign funds was required in certain cases (export of goods and services) and payments abroad were restricted, depending on whether an import, an investment, or a transfer of dividends was involved (in particular, companies and banks were informally limited to transfer dividends to their foreign shareholders).

During 2016, much of these restrictions disappeared, so that now no mandatory deposits are required for foreign investments, purchase of foreign currency is unlimited, and subsidiary companies are again allowed to transfer dividends to their foreign headquarters.

Something similar happened with certain regulations that used to impose restrictions on banks for setting interest rates and prices to retail banking products. By the end of 2015, banks were induced by the Argentine Central Bank to facilitate subsidised-rate loans to small and medium-sized companies, and were obliged to keep consumer products at capped interest rates and commissions. Now, in 2017, banks are again entitled to freely agree their

interest rates and commissions with their clients, except in the case of credit cards, which has always been a price-capped product in Argentina and where government is negotiating the reduction of costs to the system.

In a kind of exchange for this liberalisation of banking prices, and as an attempt to promote a wider bankarisation of society, the Argentine Central Bank eradicated certain costs for opening banking accounts to consumers, and for transferring funds through home banking and other electronic systems. During 2016 (and so far in 2017) the Argentine Central Bank took actions so as to develop and incentivise the adoption of electronic and digital banking, including platforms for mobile and online payments, electronic wallets, digital procedures for opening accounts, and simplified tokenisations for transfers, among others. Additionally, recent regulations allow children to open and operate accounts on their own (for educational purposes) and certain indexation instruments have been approved in order to stimulate the mortgage credit market.

Setting aside these recent regulatory themes, the Argentine financial system has been making significant progress in recent years by increasing minimum capital requirements and strengthening compliance regulations (mainly in the anti-money laundering field) in order to comply with international standards. It is expected that these matters (capital requirements and compliance policies) will continue to be closely monitored and developed in the future. Furthermore, certain legal reforms to prevent anti-corruption practices and to amend the existing capital market regulation are expected to be enacted in the coming months.

Bank governance and internal controls

Directors and top-level managers of banks in Argentina must be appointed and exercise their functions in accordance with specific communications given by the Argentine Central Bank, which evaluates their capacity, experience, reputation and ability in the financial field and must approve their appointment for it to be effective.

Apart from the above, the Argentine Central Bank recently set forth certain guidelines for the corporate governance of banks, which constitute a mix of mandatory rules and soft law recommendations that are considered by the Argentine Central Bank as good practice.

As a consequence of this, banks must adopt and approve an internal corporate governance code regarding the management of the risks of their activity, taking into account the guidelines of the Argentine Central Bank.

The main targets towards which the corporate governance code must aim are: (i) establishing politics in order to comply with the corporate objectives of the bank; (ii) guaranteeing that the activities of the bank comply with the necessary levels of security and solvency, in full compliance with applicable laws and regulations; (iii) defining the risks to be assumed by the bank; (iv) protecting the interests of the depositors of the bank; (v) assuming liabilities *vis-à-vis* the shareholders of the bank, but also with other third interested parties; and (vi) effecting the daily transactions of the bank.

In summary, the following guidelines are considered good practice by the Argentine Central Bank and should be covered in the corporate governance codes of banks:

- (i) the different responsibilities of the board of directors and managers in approving and conducting the business and politics of the bank should not be mixed up;
- (ii) directors should be the real and ultimate responsible persons for actions taken by the bank, and should supervise the managers in their activity;
- (iii) the board of directors should have a relevant number of independent members (specifically in the audit committee);

- (iv) the bank should have different committees to advise the board of directors, depending on the relevance of the activities in which the bank is involved;
- (v) the board of directors and the managers should encourage and regard the opinions of internal auditors, and should request the monitoring of independent external auditors;
- (vi) the bank should avoid granting incentives to its personnel that could encourage the latter to take decisions beyond the acceptable risks of the activity;
- (vii) the bank should promote transparency at every level; and
- (viii) the bank should adopt risk management policies in accordance with applicable regulations, among others.

Pursuant to these new recent policies, banks must implement adequate internal control procedures for monitoring compliance with corporate governance, compliance with applicable laws and regulations, and for reporting any deviation to the managers or the board of directors, as the case may be.

In connection with this internal control, the Argentine Central Bank has been developing certain minimum requirements that the internal control of financial entities must regard. The internal control should be focused on three different categories: (i) measuring the effectiveness and efficiency of transactions; (ii) testing the reliability of accounting information; and (iii) monitoring compliance with applicable laws and regulations.

For the Argentine Central Bank, all members of the financial entity are responsible for compliance with internal controls. However, such responsibility is specially assigned to the board of directors, the managers, the audit committee and the internal auditor.

Pursuant to recent regulations, banks must have an audit committee composed of at least two members of the board of directors and by the internal auditor. The internal auditor must have functional independency, and its duties can be assigned to an independent professional.

The Argentine Central Bank establishes the guidelines and methodology that the internal control should follow in the design, instrumentation, evaluation and reporting strategy.

Bank capital requirements

In accordance with section 32 of the Argentine Financial Entities Act (Law No. 21,526), banks must comply with the minimum capital requirements that the Argentine Central Bank may establish from time to time.

In recent years, the Argentine Central Bank has implemented policies in order to comply with the guidelines of Basel III in terms of minimum capital requirements and risk management, and it has designed a roadmap that plans to have the programme completed by 2019.

The minimum capital that banks must comply with is the higher of the basic exigency (Ar\$26m for categories 1 and 2) and the sum of other exigencies determined by credit risk, interest rate, market risk and operational risk. In case the bank acts as a custody or registry agent, exigencies are higher, depending on the volume of securities in custody and/or registry.

As mentioned above, the Argentine Central Bank has been very active in this field, so it is expected that further regulations in terms of capital requirements will be approved in the forthcoming years.

Rules governing banks' relationships with their customers and other third parties

Only financial entities duly authorised by the Argentine Central Bank are admitted to perform "financial intermediation" activities within the country. Offering banking services within

the country to the general public without the prior authorisation of the Argentine Central Bank can be subject not only to administrative sanctions but also to criminal prosecution.

Financial intermediation activities include deposit-lending services, as well as certain other activities typically and traditionally performed by banks (including private banking/investment banking activities). Even though Argentine law contemplates different types of financial entities (financial companies, saving/housing banks, investment banks, etc.), most adopt the form of “commercial” banks, which are allowed to perform all such activities without limitations.

Pursuant to local regulations, banks can only perform financial intermediation activities and cannot conduct any other type of businesses. However, the Argentine Central Bank allows banks to carry on (either directly or through subsidiaries) certain specific activities which are considered to be “complementary” to the typical financial intermediation services (i.e. issuance of credit cards, trading, agencies, advisory services, clearing house, venture capital, microfinancing, among others). Some of these activities require the prior authorisation of the Argentine Central Bank.

As for relationships with customers, in January 2013 the Argentine Central Bank issued a new regulation for the protection of financial service users, which grants broad rights to banking consumers and sets forth detailed procedures for the management of consumer claims.

Apart from that, it is worth mentioning that in 2009 the Supreme Court of Argentina ruled on the *Halabi* case, which admitted the possibility of individuals to initiate class actions in order to defend their rights. Even though class actions are not still regulated in Argentina, this court precedent opened the door for many new cases in which financial entities are currently involved.

It is also worth mentioning that in August 2015, the new Argentine Civil and Commercial Code entered into force, setting forth certain provisions regarding contracts that banks enter into with their customers, which reflect some of the latest regulations that have been promoted by the Argentine Central Bank and principles arising from case law in recent years.

Anti-money laundering and data protection communications have implemented additional requirements for the way in which banks deal day by day with their clients, mainly in terms of “know your customer” policies and in terms of handling and processing client information. Most of these communications follow international standard practices. It should also be noted that a bill on Corporate Criminal Liability for Cases of Corruption is being promoted by the government, and regulations in that respect are expected to be put in place soon.

For dealing with banking insolvency, the Argentine legal system has specific procedures (which involve the intervention of the Argentine Central Bank) in order to protect customers and creditors. Section 35*bis* of Law No. 21,526 establishes an exceptional restructuring procedure for banks which differs from the ordinary bankruptcy laws that private corporations are subject to. The Argentine Central Bank is empowered to authorise the reorganisation of financial entities and is entitled to adopt different types of measures to reach that end, including, among others, the possibility to exclude certain assets and liabilities from the troubled banks and transfer them to third parties.

Argentina has also an Insurance Deposit System (called “*SEDESA*”) for protecting the rights of depositors in crisis scenarios. This Insurance Deposit System is funded with periodic mandatory contributions made by banks and currently guarantees up to Ar\$450,000 per person, account and deposit.

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