



Roberto Horacio Crouzel

## market intelligence

Area: Mergers & Acquisitions

Jurisdiction: Argentina

Published: November 2014

### *M&A IN ARGENTINA*

An interview with Roberto Horacio Crouzel, Ramón Ignacio Moyano and María Shakespear

---

**Roberto Horacio Crouzel** and **Ramón Ignacio Moyano** are partners at Estudio Beccar Varela and are members of its executive committee.

Roberto's practice is focused on M&A, providing general advice to companies, banks and financial institutions, debt restructuring and project financing. He has also been heavily involved in promoting pro bono services related to micro-finances in Argentina.

Ramón specialises in giving general advice to companies, M&A and private clients. He recently advised Finlays (Swire Group) on the acquisition of Casa Fuentes, an Argentine company dedicated to the growing, processing and exportation of tea and yerba mate.

**María Shakespear** is a senior associate who specialises in M&A and corporate law. She recently advised sellers on the sale of FN Semillas (a seed company) to Bayer.

---

*GTDT: What trends are you seeing in overall activity levels for mergers and acquisitions in your country during the last year or so?*

**Roberto Horacio Crouzel, Ramón Moyano & María**

**Shakespear:** If mergers and acquisitions come in waves, we can say that we are getting ready to ride them. We are lawyers, not surfers, but taking the analogy presented by Schumpeter (in 'Riding the wave' in the 5 October 2013 edition of *The Economist*) and according to our experience, the Argentine economy has cycles and so do M&A transactions even if there are no scientific explanations for that.

*"If mergers and acquisitions come in waves, we can say that we are getting ready to ride them."*

Image: DC\_Colombia\iStock/Thinkstock

The last major crisis faced by Argentina was in 2001. Though the 2008 financial crisis had a negative effect, the most relevant signs of stagnation affecting M&A transactions are from 2011. Indeed, many investors mention that nowadays there is a constant feeling of crisis in Argentina, not only for the number of governmental regulations and restrictions in place but also for the macroeconomic situation and the high rate of inflation that provides for an uncertain scenario for M&A transactions.

During the past year we have noticed an increase in the number of prospective deals in areas such as natural resources. The number of deals in the pipeline has started to increase thanks to certain decisions by the government which have fostered a more 'foreign investor

friendly' environment. Among those decisions were the settlement of the claim with the Spanish oil company Repsol SA as a result of the nationalisation of YPF, ending a two-year dispute with the issuance of US\$5 billion in compensation bonds, and the decision made in May 2014 to settle payments of nearly US\$10 billion with the Paris Club. Nonetheless, a number of M&A transactions that were in the pipeline failed or were dropped after the Argentine government's recent default on its foreign debt in the bondholders' claim that is being decided under US law by US District Judge Thomas Griesa.

Investors in Argentina are used to economic cycles by now and they are expectant as times of crisis can create opportunities. In that regard the most tangible effect is that assets are already cheaper in Argentina than in many other Latin American countries, and that may be in part the reason why we have recently received a number of enquiries from foreign and local investors about the legal environment during the last year.

*GTDT: Which sectors have been particularly active or stagnant? What are the underlying reasons for these activity levels? What size are typical transactions?*

**RHC, RM & MS:** The energy and natural resources sectors have been particularly active. The reasons for this can be attributed to the fact that Argentina needs to foster investments in this sector to substitute the import of natural resources (eg, gas) to achieve energy self-sufficiency and improve exports. Also, the discovery of Vaca Muerta shale oil and gas field in Neuquén, which has been estimated to be one of the largest shale oil reserves in the world, required YPF to partner with private parties to explore and develop these unconventional oil and gas resources. In addition, most investors in energy and natural resources are sophisticated, long-term investors that are experienced in making deals in countries where legal and economic certainty cannot be taken for granted.

For instance, we have just closed a transaction involving Medanito oil and gas areas. We have also advised Medanito SA (an Argentine company with over 20 years in the field of energy, especially in upstream hydrocarbons and mid-stream gas) on the acquisition of the oil and gas exploration business Chañares Herrados Empresa de Trabajos Petroleros (CHASA) in June 2014. This acquisition will enable the company to increase its reserves and the production of hydrocarbons, as well as being at the helm of Cuenca Cuyana, through the hydrocarbon concessions of CHASA.

Another relevant case we participated in is the investment of local company Ciminás in Minera IRL Patagonia (the local subsidiary of Peru's Minera IRL) in 2013, in order to develop its gold mining project Don Nicolás, located in the Argentine province of Santa Cruz (gold production in Don Nicolás is estimated at 50,000 ounces per annum). The fact that Argentine funds provide financial facilities to large-scale mining projects is a significant aspect of this transaction. Ciminás is a company formed by a group of Argentine private capital investors with a mission to invest in projects in Argentina with high medium and long-term growth potential, and with a main focus on generating export revenue and import substitution. In July 2014, Ciminás finally acquired all shares of Minera IRL Patagonia, and changed its name to Don Nicolás.

The financial services sector has also been active. Beccar Varela acted as deal adviser for the merger between Visa Argentina (a credit card company that in Argentina is owned by the banks) with Banelco (ATM business) and two other companies. Also, agribusiness (despite the enactment of the Rural Land Law, which restricts the acquisition of rural land by foreign parties) represented a relevant sector in M&A as will be mentioned afterwards. In that field Beccar Varela advised the sellers on the sale of FN Semillas, a seed company, to Bayer, and also Finlays in the acquisition of Casa Fuentes, which required approvals from two Argentine federal authorities, the Rural Lands Registry and the Border Security Zone Authorities.

*"A typical transaction in Argentina is done for less than US\$100 million. In most of the cases the numbers are kept confidential so the amounts involved are not published or disclosed."*

On the other hand, and mainly due to import and foreign exchange restrictions in force in Argentina, most of the businesses related to import of goods or supplies have been particularly stagnant. As an example, the automotive parts and components industry - which needs to import products on a regular basis - has suffered import restrictions. In addition, the Central Bank of Argentina (BCRA) has established an informal procedure, not written in any regulation, known as 'scheduling' of transactions (in Spanish, *calendarización*) that has particularly affected this sector. This scheduling procedure implies that all transfers of funds exceeding a certain amount need to have the BCRA's informal authorisation. On these matters we have

worked closely with clients such as Chrysler, Mercedes Benz, Affinia and Delphi, among others.

A typical transaction in Argentina is done for less than US\$100 million. In most of the cases the numbers are kept confidential so the amounts involved are not published or disclosed.

*GTDT: What were the recent keynote deals? What made them so significant?*

**RHC, RM & MS:** The most significant and recent deals that put Argentina on the Latin American map of M&A transactions are in the oil and gas field. First there was the YPF SA/Repsol SA case, which started in 2012 with the Argentine government's decision to expropriate Repsol's shareholding in YPF. Then came the intervention of YPF SA and the appointment of the Minister of Planning as administrator of the company (the same measure was taken with regard to Repsol YPF Gas SA). This year the Argentine government and Repsol have signed an amicable agreement and expropriation settlement that recognised Repsol's right to receive approximately US\$5 billion as compensation for the expropriation of the shares of YPF.

Another relevant case is *YPF SA/Apache*, by means of which YPF acquired Apache's local assets for US\$800 million. Consequently, YPF became Argentina's main operator of gas (being already Argentina's main operator of oil). The main assets involved in the transaction were located in the provinces of Neuquén, Tierra del Fuego and Río Negro.

There is also the case of the Brazilian Energy Company Petrobras, which has decided to leave Argentina. This transaction is still under way and will probably be one of the most significant M&A transactions of this cycle.

*GTDT: In your experience, what consideration do shareholders in a target tend to prefer? Are mergers and acquisitions in your country primarily cash or share transactions? Are shareholders generally willing to accept shares issued by a foreign acquirer?*

**RHC, RM & MS:** Mergers and acquisitions in Argentina are primarily cash transactions. Nevertheless, shares do sometimes play a part in transactions. One example would be the case of CSAV, the Chilean shipping company (the largest in Latin America) that merged with

Hapag-Lloyd (German company), exchanging its container shipping business for a stake of 34 per cent in the latter company. CSAV is now expected to make an additional capital injection in Hapag-Lloyd, through a capital increase worth US\$509 million, in order to finance refurbishment and maintenance works on the merged company's fleet. Our firm advised CSAV's subsidiary in Argentina on the due diligence process and other Argentine law related matters.

A local example would be the restructuring of Tarjetas Regionales, in which shares were accepted as consideration in view of a future IPO of the company.

*GTDT: How has the legal and regulatory landscape for mergers and acquisitions changed during the past few years in your country?*

**RHC, RM & MS:** During the past few years the Argentine government has enacted profuse and complex regulatory frameworks that have had a profound impact on mergers and acquisitions. These have shaped M&A transactions to make them compatible with regulations on foreign exchange control, commerce and trade, rural land law, price control and supply law, tax on dividends and transfer of shares, among other things.



Ramón Ignacio Moyano

As an example, regarding the foreign exchange regime, the BCRA has established strict foreign exchange control, and has limited the acquisition of foreign currency. Funds transferred to Argentina must be registered with the BCRA through a local bank, and liquidated (converted into Argentine pesos) through the local foreign exchange market. Said funds, unless permitted by the regulations or previously authorised by the BCRA, must remain in the country for at least 365 days as from their registration and if no exception applies, during such period 30 per cent of the funds must be retained in a US dollar denominated, non-transferable, non-withdrawable and non-interest-bearing time deposit that cannot be used as collateral for any kind of debt (known locally as the 'Encaje'). In many transactions loans were substituted by capital contributions that had a chance to be completed without Encaje. In addition to this, in order to transfer funds abroad from Argentina, it is necessary to convert local currency into foreign currency. That means that foreign currency deposited in Argentine

bank accounts cannot be transferred directly abroad. Furthermore, several limitations on the payment of dividends and royalties or services payable abroad have been established, limiting the chances of foreign investors recovering their investments. It is important to highlight that the original reason behind the foreign exchange regulations was to avoid an outflow of US dollars, but it turned out to be a disincentive to foreign investments.

Regarding trade and commerce regulations, limitations on import of goods are very restrictive and bureaucratic and there are some informal requirements and measures in place that end up delaying or even frustrating the deal and import of goods. These regulations were issued allegedly to protect national industry but ended up being detrimental for industries that depended on the import of goods.

Regarding tax matters, new legislation imposed taxes on the transfer of shares and the payment of dividends. As a result of the enactment of Law No. 26,893 in September 2013, taxes are imposed on the transfer of shares (including physical persons and foreign shareholders).

In the case of non-resident and Argentine-resident individual sellers, income tax is imposed on the sale of shares and equity interests (at a rate of around 15 per cent - depending on whether the seller is resident or not - on the transfer price or on the net income obtained). If the buyer is an Argentine resident, the buyer must assess, withhold and pay the income tax to the Argentine tax authorities. If the seller is an Argentine legal entity or an enterprise, the applicable income tax rate is 35 per cent on its net income.

As to the distribution of dividends in corporations and limited partnerships (SLRs), those are subject to income tax at a 10 per cent if the stockholder is a local individual or a foreign resident.

Furthermore, as regards merger control, Law 25,156 has been in place since 1999 but the process has slowed down in the recent years and it can take more than a year to obtain a formal decision from the authorities, which gives uncertainty to the parties, who will not be able to definitively close the deal until a final decision is issued.

It is worth noting that the increase in regulation is an international trend. Nonetheless, in Argentina it is exacerbated and is perceived by investors as very unwelcoming.

*GTDT: Describe recent developments in the commercial landscape. Are buyers from outside your country common?*

**RHC, RM & MS:** Foreign buyers are very common in Argentina. As mentioned before, the regulatory constraints and the macroeconomic situation of Argentina have been perceived as unfriendly mainly by foreign investors. Consequently, some of them have left the country. We have lately seen many cases of local players acquiring businesses or companies that were once owned by foreign investors. As an example we can mention the recent acquisition of AECSA (concessionaire of the motorway Ricchieri-Ezeiza-Cañuelas), the acquisition by Pampa of EDF assets in Argentina and the already-mentioned *Ciminas* case.

*GTDT: Are shareholder activists part of the corporate scene? How have they influenced M&A?*

**RHC, RM & MS:** In general terms, shareholder activists are not relevant in the M&A scene as in Argentina it is typical to have only a few shareholders per company (usually the majority of shareholdings are concentrated in one or two groups). In addition, there are few listed companies in Argentina. Nonetheless, the active participation of the government as shareholder of listed companies after the expropriation of the pension funds has been considered a kind of activism.

By the end of 2012 the current Capital Markets Law 26,831 (the CNV Law) was enacted, and with respect to the minority shareholders several changes in corporate governance were introduced in order to achieve a greater recognition of minority shareholders' rights as well as to provide them the possibility to actively participate in the companies they have a stake in.

Many of the new provisions of the CNV Law are not convenient for major shareholders and in that sense such law may discourage companies from going public. For example, minority shareholders now have the opportunity to challenge the purchase price of its shares, guidelines for determining an equitable purchase price have been settled, and the control of the company cannot be acquired without giving notice to minority shareholders. The control of the Argentine Stock Exchange Commission (CNV) in listed companies has increased under the CNC Law as well, and small investors can request the CNV to intervene on their behalf, under certain circumstances.

*GTDT: Take us through the typical stages of a transaction in your jurisdiction.*

**RHC, RM & MS:** A transaction in Argentina can start in different ways according to the needs and characteristics of the particular case. There is no mandatory proceeding to be followed albeit the path is more regulated when the target company is a listed company.

It is standard for the selling party to prepare the target company for the sale. The seller may hire an adviser to prepare a valuation of the company, define the strategy of the transaction and assist the seller throughout the deal.

Once the valuation of the company is completed, depending on the structure of the deal prospect buyers are contacted - a one-to-one approach should be made so as not to be considered as a public offering of the shares - usually through the advisers hired.

The first step is usually to execute a confidentiality agreement to protect the target and any of the information to be provided as well as to keep the deal itself under confidentiality conditions. Then a teaser or 'book' of the target company is sent to prospective buyers including its history, chart with shareholders, products and services, brands, projections, etc.

After the seller has decided to engage with a buyer or a shortlist of determined prospective buyers it may execute a memorandum of understanding, a letter of intent or a term sheet. Sometimes prior to the execution of any of the mentioned documents the purchaser is allowed to make a preliminary or limited due diligence or sometimes seller provides sell-side due diligence.

Once the preliminary agreement is executed, the parties agree on the extension and scope of a due diligence (if such was not agreed under the memorandum of understanding). It is usually carried out through virtual data rooms or by putting at the prospective buyer's disposal the requested information in a defined location. It involves teams of lawyers, accountants, finance experts, operational, technical and human resources teams from the buyer side. The due diligence stage is critical for the success of the transaction, mainly in the determination of the price (including the possibility of retaining a portion of the price in an escrow) and in determining the existence of deal breaker contingencies (which in Argentina are usually related to labour, foreign exchange and environmental matters). The due

diligence ends within the time frame agreed upon and with the delivery to the buyer of a report prepared by the buyer's lawyers and accounts team.



María Shakespear

Conducting management meetings has proven to have a relevant added value to transactions, providing buyers and sellers not only the chance to meet face-to-face but to gain guidance on aspects of the target company that do not appear clear from the documentation provided in the data room.

If the due diligence outcome is positive, meaning that no deal breakers were found, a negotiation process of the key findings may be started along with the negotiation of the transaction documents.

The closing of the transaction is reached with the execution of the sale and purchase agreement, which may also involve the execution of an escrow agreement (to cover contingencies) and a shareholders'

agreement (if the sale does not involve 100 per cent of the shareholding). Subject to the characteristics of the transaction a filing requesting antitrust authorities' approval (or other regulatory approvals as applicable) may be mandatory. In addition, post-closing tasks contemplated in the transaction documents are carried out.

*GTDT: Are there any legal or commercial changes anticipated in the near future that will materially affect practice or activity in your country?*

**RHC, RM & MS:** One very relevant legal change worth noting is that a law approving the Commercial and Civil Code has been recently enacted and the new Code will be valid from 2016. Even though this law has been enacted very recently and is too new (and long) to be commented on, a relevant provision to bear in mind because it may impact on M&A transactions is the provision stating that any payment obligations stated in US dollars might be validly cancelled in Argentine pesos. It is yet to be determined whether this provision will be kept or whether a clarification will be provided and how it will be construed (eg, if private agreements between the parties stating that the obligations shall be paid in the agreed currency will be valid and prevail over the Code's provision).

In addition, the new Civil and Commercial Code introduced some changes in the Companies Law, the most relevant being the provision stating that companies of a single member or shareholder can be validly incorporated, which was not previously permitted. This will allow single entrepreneurs to limit their liability regarding a given business.

*"A typical transaction in Argentina is done for less than US\$100 million. In most of the cases the numbers are kept confidential so the amounts involved are not published or disclosed."*

*GTDT: What does the future hold? What activity levels do you expect for the next year? Which sectors will be the most active?*

**RHC, RM & MS:** Beyond the macroeconomic context there have been new opportunities and changes are expected in the near future after the 2015 presidential election. There are businesses that have

grown in Argentina and are seen as very attractive, such as those in the agribusiness, mining and energy sectors. These kinds of businesses require capital and investment to continue to grow in the future and compared with similar business in the rest of Latin America, prices in Argentina are six to seven times cheaper. As long as the context becomes friendlier for investors, M&A transactions will undoubtedly take a leading role.

## THE INSIDE TRACK

*What factors make mergers and acquisitions practice in your jurisdiction unique?*

Transactions are over-regulated because of the vast amount of regulation in different areas involved in most mergers and acquisitions. For instance, foreign exchange, trade and commerce, antitrust, rural land law, anti-money laundering, among other regulations. This particular situation and the existence of complex legislation that may be applicable, or at least has to be considered, makes it necessary to consult with experienced lawyers and sometimes a vast team of lawyers with expertise in such areas.

*What three things should a client consider when choosing counsel for a complex transaction in your jurisdiction?*

First, counsel should inspire clients' confidence and trust, making them feel supported. Second, in Argentina clients have to make sure that the lawyer has a high standard of ethics in addition to a high level of professionalism. Third, the lawyer should consult with a fully integrated team with the ability to cover different legal areas required in such a complex transaction.

*What is the most interesting or unusual matter you have recently worked on, and why?*

The most interesting or unusual matter we have recently worked on was a merger between Visa (the credit card company) and Banelco (the ATM company) and two other companies (Monedero and Prisma), where Estudio Beccar

Varela acted as deal counsel of the transaction. It was a very interesting transaction because it involved a stock purchase agreement and a merger apart from the fact that Beccar Varela acted as a deal counsel for all of the different parties involved, including 15 shareholders for Visa that happen to be the major financial institutions of Argentina.

Roberto Horacio Crouzel, Ramón Ignacio Moyano & María Shakespear

Estudio Beccar Varela

Buenos Aires

[www.ebv.com.ar](http://www.ebv.com.ar)