

Public mergers and acquisitions in Argentina: overview

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A Q&A guide to public mergers and acquisitions law in Argentina.

The country-specific Q&A looks at current market activity; the regulation of recommended and hostile bids; pre-bid formalities, including due diligence, stakebuilding and agreements; procedures for announcing and making an offer (including documentation and mandatory offers); consideration; post-bid considerations (including squeeze-out and de-listing procedures); defending hostile bids; tax issues; other regulatory requirements and restrictions; as well as any proposals for reform.

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Contents

- M&A activity
- Hostile bids
- Regulation and regulatory bodies
- Pre-bid
 - Due diligence
 - Secrecy
 - Agreements with shareholders
 - Stakebuilding
 - Agreements in recommended bids
 - Break fees
 - Committed funding
- Announcing and making the offer
 - Making the bid public
 - Offer conditions
 - Bid documents
 - Employee consultation
 - Mandatory offers
- Consideration
- Post-bid
 - Compulsory purchase of minority shareholdings
 - Restrictions on new offers
 - De-listing

- Target's response
 - Tax
 - Other regulatory restrictions
 - Reform
 - The regulatory authorities
 - National Securities Commission (La Comisión Nacional de Valores) (CNV)
 - Online resources
 - INFOLEG
 - Judicial Information Centre (Centro de Información Judicial) (CIJ)
 - Contributor profiles
 - María Fernanda Mierez, Partner
 - Luciana Denegri, Junior Partner
 - Felipe Videla, Semi Senior Associate
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M&A activity

1. What is the current status of the M&A market in your jurisdiction?

There is currently a lot of uncertainty in the M&A market. Argentina's investors are analysing the political and economic landscape to assess how the market will react to the next presidential elections of 2015.

A new Civil and Commercial Code will enter into force on 1 August 2015 and will unify civil and commercial regulations. Civil and commercial laws had previously been governed by separate codes. Argentina's legal system, like the rest of Latin American countries, is a continental, codified system. The New Civil and Commercial Code will therefore apply to any civil and commercial matter arising among private parties. Although the new code is not in force yet, the authors foresee that it will have a significant impact on civil and commercial private law.

The following sectors and companies are likely to be active in 2015:

- Energy.
- Service companies in the oil and gas industry.
- Banks.
- Agri-business.
- Automobile suppliers.
- Consumer-oriented companies.
- Network and software solutions.

During the past two years, M&A transactions were mainly carried out by small and medium-sized companies. Because of difficulties in obtaining loans, these companies have had to find other sources of finance to address reductions in sales or to expand their businesses. Many companies are also reorganising their corporate structures to optimise their business and reduce costs.

The following transactions were completed during the last years:

- Compañía Financiera Argentina was sold to Banco de Galicia y Buenos Aires.
- Huhtamaki Argentina was sold to American Plast y Dixie Toga.

- Chevron sold its facilities in the province of Santa Cruz to Roch.
- Loma Negra was sold to Grupo Camargo Correa.
- Banco Patagonia was sold to Banco do Brasil.
- Visa Argentina's merger with Banelco, Monedero and Prisma.
- Casa Fuentes was sold to Finlays.
- CSAV's merger with Hapag-Lloyd.

2. What are the main means of obtaining control of a public company?

The mandatory tender offer regime is the main means by which control over a public company can be obtained in Argentina.

For details of the mandatory tender offer regime, see *Question 16*.

Hostile bids

3. Are hostile bids allowed? If so, are they common?

Hostile bids are allowed. Under the rules issued by the National Securities Commission (*Comisión Nacional de Valores*)(CNV)(CNV Rules), when a bidder makes a takeover offer, the target's board of directors must issue a report on the tender offer which includes the following (*section 3(c), 39 and 40, Chapter II, Title III, CNV Rules*):

- An outline of the board's views in favour or against the bid (especially on whether the proposed price is "fair" (*see Question 18*)). The board can expressly give an opinion against the bid.
- The opinions on the bid of two independent specialised appraisers appointed by the bidder to determine the price is fair.
- Technical recommendations to the owners of the securities owners about accepting or rejecting the offer.
- For directors and/or managers who are also shareholders, an announcement of their decision to accept or reject the proposed offer.
- An express statement on whether there is any agreement between the target and the bidder, or between the bidder and the board.

Regulation and regulatory bodies

4. How are public takeovers and mergers regulated, and by whom?

The main regulations applicable to public takeovers and mergers are the:

- Securities Law No. 26,831.
- Decree No. 1023/13.
- Chapter II, Title III of the rules issued by the National Securities Commission (CNV) (CNV Rules) (General Resolution 622/2013).
- Companies Law No. 19.550.

Public takeovers and mergers are regulated by the CNV. It may also be necessary to obtain approval from additional governmental entities (for example, the Argentine Central Bank (ACB) and the Anti-trust Authority), depending on the circumstances and business activities of the company (see *Question 25*).

Pre-bid

Due diligence

5. What due diligence enquiries does a bidder generally make before making a recommended bid and a hostile bid? What information is in the public domain?

Recommended bid

The information that is usually required in a recommended bid is similar to that required when undertaking due diligence for the acquisition of a private company. This includes:

- The economic circumstances of the company (including annual and quarterly financial statements, loans and general debt pending, tax payments).
- Adherence to the laws and rules governing the company's activities (for example, the verification of published information, any ongoing procedures from governmental agencies and so on).
- Any current material contracts.
- Main corporate matters affecting the company (for example, verification of records and shareholders' registry).

The legal audit should be completed at the same time as the due diligence carried out by other professionals, such as notaries public, and accounting and financial advisors.

Hostile bid

The information that is usually required in a hostile bid is similar to that required in a recommended bid (see *above, Recommended bid*).

Public domain

The Rules issued by the National Securities Commission (CNV)(CNV Rules) regulate the main information that public companies must disclose to the capital markets. The information is published on the CNV's website, and is open to investors and the public in general. The CNV has introduced an easy and accessible way of searching public companies' information online, known as *Autopista de la Información Financiera* (AIF).

Information that public companies must publish includes (*CNV Rules*):

- Updated bye-laws.
- Annual and quarterly financial statements.
- Records of boards of directors and shareholders' meetings.
- Information on any outstanding notes.
- If the company has issued notes, the documents involved in the deal (for example, the prospectus, pricing supplement, offering memorandum and so on).
- Any material fact that could affect the negotiation of the company's securities.

However, the parties can apply to the CNV to be exempt from the requirement to disclose material information for a limited period of time (not specified by law), provided that the disclosure of such information may affect the company's interests (*section 101, Argentine Securities Law (ASL)*).

Secrecy

6. Are there any rules on maintaining secrecy until the bid is made?

The following persons, among others, must maintain secrecy (on the price, time of the transaction and other conditions of the bid) the bid is disclosed (*section 102, Argentine Securities Law (ASL) and section 1 and 2, Chapter II, Title XII, CNV Rules*):

- Directors, managers, controlling shareholders and professionals involved in the target.
- Persons making a bid to purchase or swap the target's securities.
- Professionals of the specialised appraisers involved in the transaction (*see Question 3*).
- Employees of the National Securities Commission (CNV).
- Generally, persons who can access material non-public information that may affect the parties' negotiations or the underwriting, because of their coincidental or temporary connection with the transaction, the company, or the company's directors.

Agreements with shareholders

7. Is it common to obtain a memorandum of understanding or undertaking from key shareholders to sell their shares? If so, are there any disclosure requirements or other restrictions on the nature or terms of the agreement?

Before making a tender offer, it is common to obtain various agreements from the target's key shareholders (for example, management agreements). The terms of these agreements must comply with the target company's bye-laws and applicable regulations.

The parties must inform the National Securities Commission (CNV) of the main terms of the agreement immediately after it is concluded (*section 99, Argentine Securities Law (ASL) and section 2 and 3, Chapter I, Title XII, CNV Rules*).

Stakebuilding

8. If the bidder decides to build a stake in the target (either through a direct shareholding or by using derivatives) before announcing the bid, what disclosure requirements, restrictions or timetables apply?

There are no specific disclosure requirements or restrictions on stakebuilding.

However, general disclosure requirements may apply, including:

- Informing the National Securities Commission (CNV) of every transaction involving:
 - more than 5% of the company's votes; or
 - an alteration in the company's control.
- Filing monthly reports with the CNV on the changes in the shareholdings above a specified percentage.

Agreements in recommended bids

9. If the board of the target company recommends a bid, is it common to have a formal agreement between the bidder and target? If so, what are the main issues that are likely to be covered in the agreement? To what extent can a target board agree not to solicit or recommend other offers?

It is not common to have a formal agreement between the bidder and the target in recommended bids.

Break fees

10. Is it common on a recommended bid for the target, or the bidder, to agree to pay a break fee if the bid is not successful?

It is not common for the target, or the bidder, to agree to pay a break fee in any type of bid.

Committed funding

11. Is committed funding required before announcing an offer?

A bidder must give certain guarantees for its offer (for example, cash, securities or any guarantee issued by a financial entity) and provide evidence of their existence and adequacy to the National Securities Commission (CNV) (*CNV Rules*). The law does not specify the form the evidence must take.

Announcing and making the offer

Making the bid public

12. How (and when) is a bid made public? Is the timetable altered if there is a competing bid?

Applicable requirements

A public offer (including recommended and hostile bids) requires the bidder to:

- Announce its intention to make an offer (*see below*).
- Prepare a prospectus.
- File an application for authorisation with the National Securities Commission (CNV).

Once it has decided to make the offer, the bidder must (*Section 3, Chapter II, Title III, CNV Rules*):

- Immediately notify the target company and the CNV of its intention and attach the announcement (*see below*).
- Publish the announcement from the date of filing with the CNV. The announcement must include the following information (*CNV Rules*):
 - the material conditions of the public offering, including the minimum and maximum quantities to be acquired, the mechanisms to settle disputes in the case of offerings below or above the minimum, and priorities among the offerings to be made;
 - the identity of the bidder and its registered office;
 - information on any interest in the target company's shares held by the bidder (or any concurring person), or shares in respect of which these persons have a purchase option or an irrevocable sale commitment, and the conditions for exercising any such rights;
 - a declaration by the bidder's management that it has available economic resources to satisfy the offer; and

- a standard declaration that an application for authorisation of the offer will be filed before the CNV within ten days following publication of the announcement, and that the information included in the announcement is therefore subject to changes and cannot be considered final.
- File the public offer application with the CNV within ten days from the publication of the announcement. The application must include certain additional information (for example, details on guarantees, other regulator's authorisations to be obtained) and a public offer prospectus (*CNV Rules*).

The CNV must consider the application within 15 business days of filing. This period can be extended if the CNV requires additional information. The authorisation is automatically granted if the CNV does not raise objections or ask for further information during this period.

The public offer must be open for not less than 20 and not more than 30 days from the date of the CNV's authorisation. Shareholders benefit from an additional term of at least five days and up to ten days from the general closing date of the public offer, even where they have accepted the offer within the general term for acceptance. The same conditions will apply as in the original period.

Competing bids

If a competing bid is launched within 15 days of the authorisation of the CNV, the initial bidder:

- Has seven working days to confirm its offer conditions, or to improve them.
- Must raise the price or the value of the consideration previously offered by at least 5%, or extend the offer to an additional 5% interest.
- Must obtain authorisation from the CNV and publish the new conditions of the offer for at least:
 - one business day in the *Gazettes* of the stock exchanges on which the shares are listed; and
 - three days in a widely read newspaper.

The initial bidder can also withdraw its offer. If not, the terms of acceptance of the original offer are extended until the expiration of the term of acceptance of the competing bid.

A competing bid must:

- Comply with certain requirements. For example, they must be filed within a specified period, target the same amount of shares as the original bid, improve the conditions of the original bid (*section 82, Chapter II, Title III, CNV Rules*).
- Not be issued by certain persons such as members of the same economic group (*section 79, Chapter II, Title III, CNV Rules*),

Offer conditions

13. What conditions are usually attached to a takeover offer? Can an offer be made subject to the satisfaction of pre-conditions (and, if so, are there any restrictions on the content of these pre-conditions)?

A takeover offer usually includes the following, among other things:

- Terms and conditions of the offer.
- Maximum and minimum percentages or quantities of shares which the bidder undertakes to acquire.
- The identity and registered office of the bidder.
- The means of payment and the terms on which payment will be available.
- The period of time during which the offer will be binding, and the ways to accept the offer.
- Guarantees, if any, that will secure the payments of the shares.

A takeover offer cannot generally be subject to the satisfaction of pre-conditions and must contain an irrevocable purchase agreement (*section 3 and 42, Chapter II, Title III, CNV Rules*). However, the bidder can make the offer conditional on the acquisition of a minimum amount of shares (*section 56, Chapter II, Title III, CNV Rules*).

Bid documents

14. What documents do the target's shareholders receive on a recommended and hostile bid?

The target's shareholders commonly receive a copy of the relevant offer documents including:

- Prospectus or offering memorandum describing the main terms and conditions of the offer (*see Question 13*).
- Copy of the announcement of the offer (*see Question 12*).
- Any document certifying the existence of a guarantee.
- Annual and quarterly financial statements.
- Any documents filed with the National Securities Commission (CNV) (for example, information regarding the consideration offered).

Employee consultation

15. Are there any requirements for a target's board to inform or consult its employees about the offer?

There are no requirements for a target's board to inform or consult its employees about the offer.

Mandatory offers

16. Is there a requirement to make a mandatory offer?

Under Argentine Securities Law (Law No. 26831) (ASL), and the rules issued by the National Securities Commission (*Comisión Nacional de Valores*) (CNV) (CNV Rules), all companies authorised to publicly offer their shares are subject to the mandatory tender offer regime, even when they expressly opted out of it in their bye-laws (*section 90, ASL*).

Under this regime, anyone seeking to obtain direct or indirect control of a public company by acquiring a "significant interest" (*see below*) in the voting shares, pre-emptive rights, options, convertible notes or any similar securities that can give the right to own or buy, or can be turned into, shares, must file a public offering or a securities exchange addressed to the holders of these securities. The regime applies whether a person seeks to obtain control:

- Individually or by previous agreement with other investors.
- Through a unique transaction or a number of successive purchases within a 90-day period.

The regime also applies where the acquisition takes place in a process of internal reorganisation, merger or demerger (*sections 87 and 88, ASL*).

A "significant interest" is an interest equal to 15% or 51% or more of a company's shares and votes, depending on the circumstances. The mandatory tender offer regime applies as follows (*sections 9 to 12, Chapter II, Title III, CNV Rules*):

- If a bidder (whether or not a shareholder) intends to obtain an interest of 15% or over, it must launch an offer to acquire at least 50% of the target's shares.
- If a shareholder already holds at least a 15% interest, but less than 51%, and seeks to obtain a 6% or more additional interest within a 12-month period, it must make an offer to acquire at least 10% of the target's shares.

- If a bidder (whether or not a shareholder) intends to obtain an interest of 51% or over, it must make an offer to acquire 100% of the target's shares.

For indirect mergers or acquisitions (that is, a merger by incorporation or acquisition of a company which holds the shares of the target), if the company incorporated or acquired is a holding company or its principal assets are the shares of the target, the tender offer must be made in the same way as a direct acquisition of shares of the target. Otherwise, the mandatory tender offer is triggered only if the indirect merger or acquisition involves the acquisition of 51% or more of the target company's shares, and is subject to specific provisions (*section 19, Chapter II, Title III, CNV Rules*).

If the parties do not satisfy the requirements of the tender offer regime, the CNV can (*section 89, ASL*):

- Declare the transaction as "administratively ineffective".
- Order the sale of the relevant securities through a public auction.
- Impose the applicable sanctions, including:
 - warnings;
 - fines;
 - disqualification of the parties' management; and
 - prohibition from making or being subject to a public offer.

There are certain exceptions to the mandatory tender offer regime that allow control of a public company to be acquired by any legal means (for example, a public offer or legal merger). These include (*sections 8, 19, 21 and 22, Chapter II, Title III, CNV Rules*):

- Where the acquisition does not lead to the control of the company (that is, the power to make any decision at the company's ordinary shareholders meetings or to appoint a majority of the company's directors).
- Where the acquisition is made by financial trusts or similar investment entities under a decision of the Argentine Central Bank (ACB) or the Argentine National Insurance Superintendence.
- Where the acquisition is made under an expropriation or any other public authorities' prerogatives.
- Where all shareholders of the target company agree to sell 100% of the company's shares.
- Where the acquisition is the result of a restructuring of a specific economic sector decided by the national government.
- Where there is an indirect merger or acquisition, or the purchaser is a financial entity, and it is planned to sell some shares to reduce the participation below the "significant interest" applicable threshold (*see above*).

Consideration

17. What form of consideration is commonly offered on a public takeover?

The consideration can be secured in cash, securities or through the issuance of a banking guarantee.

Cash payment through bank deposits or wire transfer is the most common form of consideration. However, securities or a combination of cash and securities are also offered as consideration. The CNV Rules contains certain requirements and restrictions related to each form of consideration. For example, if the consideration includes shares of the bidder, the bidder must call a shareholders' meeting to decide on the capital increase.

18. Are there any regulations that provide for a minimum level of consideration?

The price offered for the shares must be "fair" and can be determined based on the shares' value or a discounted cash flow analysis (*Argentine Securities Laws* and *CNV Rules*). However, the "fair price" cannot be lower than the:

- Average price of the shares during the last semester.
- Highest price paid by the bidder for the shares during a 90-day period before publication of the announcement of the offer.
- Price agreed between the bidder and any shareholder.

The fairness of the price can be challenged by both the:

- Target's shareholders.
- National Securities Commission (CNV)

To determine whether the price is fair, the CNV takes into account the:

- Process followed by the bidder to fix the price offered.
- Opinions of two independent specialised appraisers, which must be requested (*CNV Rules*).
- Any favourable opinion of the target's board.

The CNV can only accept or reject the price but is not empowered to recommend a fair price to the bidder. Acceptance of the price by the CNV does not prevent minority shareholders to challenge the price through legal proceedings.

19. Are there additional restrictions or requirements on the consideration that a foreign bidder can offer to shareholders?

Any transactions involving shares must be paid:

- In pesos, through one of the various means of payment available.
- In foreign currency, through an electronic wire transfer of funds to and from demand accounts in local financial entities.
- "Delivery-versus-payment", in transactions involving foreign accounts.

Therefore, shares cannot be paid in a foreign currency in cash, or through deposit in custody accounts or third party accounts.

Additionally, because these transactions correspond to primary subscriptions of shares listed in self-regulated markets, any funds transferred to Argentina will not be subject to the *Encaje* (that is, a non-transferable and non-interest bearing time deposit in US dollars of 30% of the amount transferred to Argentina that must remain in the country for 365 calendar days).

Post-bid

Compulsory purchase of minority shareholdings

20. Can a bidder compulsorily purchase the shares of remaining minority shareholders?

If a shareholder holds at least 95% of the shares of a public company whose shares are publicly traded, and is intending to acquire 100% control of the target, it can make a public statement of acquisition of a 100% control of the target within six months after acquiring the 95% interest (*section 91(b), Argentine Securities Law (ASL)*).

Additionally, if a shareholder has control of at least 95% of the shares of a public company, any minority shareholder (including any holder of voting shares, pre-emptive rights, options, convertible notes or any similar securities which can give the right to own or buy, or can be turned into, shares) at the time the controlling party acquired its 95% interest, can require at any time the controlling shareholder to make either a (*sections 91 (a) and 92, ASL*):

- Tender offer to acquire 100% control of the target.
- Public statement of acquisition of a 100% control of the target.

The controlling party has 60 days to decide on making either a public tender offer or a public statement of acquisition. If the controlling party fails to do so, any minority shareholder can require the competent court or arbitral tribunal to:

- Order that its shares must be acquired by the controlling party.
- Fix the fair price for its shares (*Section 98 (d), ASL*).
- Order the controlling party to pay this price in cash.

If the controlling party decides to make a public statement of acquisition and obtains the approval of the CNV, the minority shareholders must sell their shares at a fixed price, which is determined under the rules applicable to a de-listing offer (*section 21 to 35, Chapter II, Title III, CNV Rules*). However, certain courts have held that minority shareholders may not be forced to sell their shares. For example, in the *Tenaris* case, the courts held that the compulsory acquisition of shares is contrary to the Constitution. Additionally, minority shareholders can challenge the fixed price by following a specific procedure within three months of the announcement of the compulsory purchase before either the:

- Competent courts.
- Stock Exchange Arbitration Tribunal.

Restrictions on new offers

21. If a bidder fails to obtain control of the target, are there any restrictions on it launching a new offer or buying shares in the target?

If the tender offer fails, the bidder cannot make another tender offer for 180 days from the publication of the outcome of the offer. This also applies to any company from the bidder's group, and the bidder's board of directors and senior management. In addition, none of these persons can buy shares in the target company for an amount that would trigger the mandatory tender offer regime (*section 76, Chapter II, Title III, CNV Rules*) (see *Question 2*).

De-listing

22. What action is required to de-list a company?

A public company that voluntarily decides to de-list must make a tender offer that satisfies the following requirements (among others) (*section 97 to 98, ASL and section 25-31, CNV Rules*):

- The company must offer to acquire 100% of the company's shares and votes (including voting shares, pre-emptive rights, options, convertible notes or any similar securities which can provide the right to own or buy, or can be turned into, shares).
- It is not necessary to include the shareholders that voted for the de-listing in the offer. The shares must be immobilised until the term of acceptance has expired.
- The prospectus must state that the company is proposing to de-list and identify the shares that are immobilised.
- The price offered must be fair, following certain guidelines under the CNV Rules (*section 27, Chapter II, Title III*).
- The consideration must be in currency.
- The company must prove that the payment will not affect its solvency.

The National Securities Commission (CNV) can challenge the fairness of the price. The CNV will take into account the:

- Process followed by the bidder to fix the price offered.
- Opinions of two independent specialised appraisers, which must be requested (*CNV Rules*).
- Any favourable opinion of the target's board.

Target's response

23. What actions can a target's board take to defend a hostile bid (pre- and post-bid)?

In the case of an hostile bid, the target's board must (*section 3, 36 and 39, Chapter II, Title III, CNV Rules*):

- Maintain its neutrality and avoid doing anything outside the ordinary course of business.
- Issue an opinion on the fairness of the price offered, and a recommendation to accept or reject the offer.
- Provide the shareholders with any relevant information about the company that can affect their decision on the offer.

The CNV Rules expressly prohibit the target company from (*section 37, Chapter II, Title III*):

- Issuing shares or other securities, unless it obtained the shareholders' approval before notification of the tender offer.
- Implementing stock operations with the securities included in the offer.
- Disposing of or pledging its assets, if this can affect the tender offer.

Tax

24. Are any transfer duties payable on the sale of shares in a company that is incorporated and/or listed in the jurisdiction? Can payment of transfer duties be avoided?

The sale of shares of a company incorporated in Argentina is subject to income tax and stamp duty.

Income tax

Income tax applies as follows:

- If the seller is an Argentine legal entity or an enterprise, the applicable rate is 35% of its net income arising from the sale of shares.
- If the seller is an Argentine resident individual, the applicable rate is 15% on the net income obtained (that is, the transfer price less acquisition cost). The seller must include these profits in his income tax return.
- In the case of a non-resident seller, the taxpayer can choose the following applicable rates:
 - 13.5% on the transfer price; or
 - 15% on the net income obtained (that is, the transfer price less acquisition cost).
- The sale of shares that are publicly quoted in Argentina are generally exempt from income tax.

The buyer must assess, withhold and pay the income tax to the Argentine tax authorities.

The taxation of the sale of shares may differ if a double taxation treaty is applicable.

Stamp duty

Stamp duty applies to agreements for the sale of shares (that is, all agreements or any document that transfer ownership of shares). The rates vary depending on the jurisdiction, and normally range from 1% to 1.5% of the value of the agreement.

However, there are ways to avoid paying this tax. For example, entering into an agreement through an offer letter (that is, a proposal accepted through a tacit or express acceptance (as opposed to an agreement executed and signed by both parties) does not trigger the payment of stamp duty.

In addition, the sale of publicly quoted shares are exempt from stamp duty in certain jurisdictions (for example, Buenos Aires), in specific circumstances.

Other regulatory restrictions

25. Are any other regulatory approvals required, such as merger control and banking? If so, what is the effect of obtaining these approvals on the public offer timetable?

Central Bank

The acquisition of shares in a local financial entity is subject to the Central Bank regulations.

Under the Central Bank's regulations, any transfer of shares or capital contribution in a financial entity which lead to a change in the shareholding structure must be notified to the Superintendence within ten days after the first of the following acts occurs:

- Signing of the agreement (or preliminary agreement).
- Delivery of the shares.
- Payment in advance of the price or the capital contribution (which cannot exceed 20% of the agreed price or capital contribution).

No further actions can be taken without the Central Bank's approval.

Any transfer of shares or capital contribution that must be notified to the Central Bank must take into consideration that an authorisation of the Central Bank is required. Therefore, any documents regarding the transaction must be agreed *ad referendum*.

For offers made in stock exchanges in Argentina or abroad, the financial entity must only notify the Central Bank of the characteristic of the deal prior to the offer (*Central Bank's regulations*). In addition, if as a result of the offer tender, any individual stakes exceed 2% of the total shares, the financial entity must file before the Central Bank information on the subscribers or acquirers within ten days of the offer.

When the tender offer could cause a change in the rating of the entity or a change in the structure of the groups of stakeholders, the offering prospectus must inform the potential investors of the Central Bank's prior approval requirement.

Anti-trust Authority

Under the Argentine Competition Act (ACA), certain transactions must be filed for merger control and are subject to the approval of the Argentine Competition Commission. The obligation to subject a transaction to merger control depends on whether:

- There is a change of control in a company or part of a company with activities or assets in Argentina.
- The following thresholds are met:
 - the aggregate Argentine turnover of the acquiring group and the target during the previous fiscal year is equal to or more than AR\$200 million; and
 - the price of the transaction or the value of the Argentine assets acquired are equal to or more than AR\$20 million.

Substantial and regular exports into Argentina count as Argentine turnover. The transaction may also be also exempt from merger control if an exception to the obligation to file applies.

As a general rule, filing may be made before or until one week after closing (ACA). In certain circumstances, the National Securities Commission (CNV) requires the bidder to notify the offer to the Anti-trust Authority for prior approval. This notification must be done within seven days of the application for authorisation submitted to the CNV. If the Anti-trust Authority does not approve the transaction before the expiration of the tender offer, the CNV will require the bidder to withdraw the offer.

26. Are there restrictions on the foreign ownership of shares (generally and/or in specific sectors)? If so, what approvals are required for foreign ownership and from whom are they obtained?

Foreign entities are subject to the same general requirements as local entities. Additionally, to become a shareholder of an Argentine company, foreign companies must:

- Register with the competent Public Registry of Commerce.
- Show that the company:
 - performs its main activity outside Argentina;
 - holds sufficient assets outside Argentina;
 - has decided, through its board of directors, to register the company in Argentina; and
 - provide details of its shareholders.

If a foreign company develops habitual business in Argentina, it must either (*section 118, Companies Law No. 19.550*):

- Register a branch in Argentina.
- Set up a local subsidiary, by registering its shareholders with the competent Public Registry of Commerce.

27. Are there any restrictions on repatriation of profits or exchange control rules for foreign companies?

The repatriation of profits and dividends is regulated by the Central Bank. The Central Bank regulations allow the remittance of profits and dividends to non-resident shareholders and American and Brazilian depository receipts holders, provided that the profits are evidenced in a closed and audited financial statement, duly approved by the company.

However in practice, even where all formal requirements are complied with, transfers of funds abroad cannot be completed or are delayed due to informal governmental restrictions.

28. Following the announcement of the offer, are there any restrictions or disclosure requirements imposed on persons (whether or not parties to the bid or their associates) who deal in securities of the parties to the bid?

There are no restrictions or disclosure requirements imposed on persons who deal in securities of the parties to the bid. However, the rules on maintaining secrecy may apply (*see Question 6*).

Reform

29. Are there any proposals for the reform of takeover regulation in your jurisdiction?

There are currently no proposals to reform the takeover regulations in Argentina.

The regulatory authorities

National Securities Commission (*La Comisión Nacional de Valores*) (CNV)

W www.cnv.gov.ar

Main area of responsibility. The CNV is responsible for the regulation of public offerings of securities in general and the control of the companies that make public offering of securities.

Online resources**INFOLEG**

W www.infoleg.gov.ar

Description. This website is maintained by the Treasury Department and contains an up-to-date database of legislation.

Judicial Information Centre (*Centro de Información Judicial*) (CIJ)

W www.cij.gov.ar/sentencias.html

Description. This website is maintained by the Argentine Justice Department and contains an up-to-date database of judgments issued by national courts.

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