

OVERVIEW OF ARGENTINA'S DOMESTIC AND FOREIGN ANTI-CORRUPTION LEGAL FRAMEWORK

Domestic bribery

The Argentine Criminal Code (ACC) is the main regulation that governs and punishes behaviors related to bribery and corruption.

Section 256 of the ACC sets forth that any public official who, personally or by means of an intermediary, receives money or any other gift or, directly or indirectly accepts promise of such benefit in order to carry out, delay, or not to do something in relation to his or her duties shall be punished with imprisonment of one to six years and disqualification from public office for life.

Section 256bis of the ACC sets forth that any public official who, personally or through an intermediary, requests or receives money or any other gift or directly or indirectly accepts promise of such in order to make unlawful use of his or her influence before a public official, with the purpose of having such official do, delay, or not do something in relation to his or her duties, shall be punished with imprisonment of one to six years and special disqualification from holding public office for life.

The second paragraph of this Section 256bis sets forth that if this conduct is intended to make unlawful use of any influence before a magistrate of the Judicial Branch or the Attorney General Office (AGO), with the purpose of having such magistrate issue, decree, delay, or omit any resolution, sentence, or judgment concerning any matter under his or her jurisdiction, the maximum term of imprisonment shall be increased to twelve years.

Section 258 of the ACC sets forth that any person who personally or through an intermediary gives or offers any gift for the purpose of obtaining any of the conducts punished by Sections 256 and 256bis shall be punished with a prison sentence ranging from one to six years.

If the gift is given or offered with the purpose of obtaining any of the conduct described in Sections 256bis second paragraph and 257, the punishment shall be prison of two to six years. If the perpetrator is a public official, special disqualification from public office lasting two to six years shall also be imposed in the first case and lasting three to ten years in the second case. In this sense, facilitating payments are also considered bribery under de ACC.

Section 257 of the ACC sets forth a punishment to any magistrate from the Judicial Branch or the AGO who personally or through an intermediary, receives money or any other gift, or directly or indirectly accepts promise of such in order to issue, decree, delay, or omit any resolution, sentence or judgment concerning any matters under his or her jurisdiction. In such case, the defendant shall be punished with imprisonment of four to twelve years and total disqualification from public office for life.

Law 25,188 (Public Ethic Law) forbids public officers from receiving gifts, donations, benefits or gratuities, services or goods "as a result of their work in the performance of their public duties". However, the prohibition does not apply to "courtesy gifts" and "gifts offered as diplomatic practice". In this regard, Decree 41/1999 provides the Code of Ethics for Public Officials of the National Executive Branch and Decree 1179/16 sets forth a registry for those gifts and the applicable proceedings. Additionally, there are provincial regulations regarding gifts and interactions with provincial and local public officials.

In addition, the General Regime for Public Procurement and its Regulation (approved by means of Decree 1023/2001 and Decree 1030/2016, respectively) establish that certain persons cannot enter into contracts with the public administration. These include, among others: (i) bidders who have been convicted for the commission of intentional crimes are disqualified for a period equal to twice the length of the sentence imposed for their crimes; (ii) companies that have been convicted abroad of bribery or transnational bribery practices under the terms of the OECD Convention will not be eligible for a period equal to twice the sentence; (iii) individuals or legal entities that were included in the lists of debarred persons of the World Bank or the Inter-American Development Bank, as a result of corrupt practices referred to in the OECD Convention will not be eligible while such condition continues to exist.

Bribery between private individuals is not a criminal offence in Argentina. The only offence equivalent to private bribery the ACC considers is that of Section 312 ACC which establishes criminal penalties for the employees of financial entities and entities operating in the stock exchange that take bribes in order to perform a financial, credit or stock-trading related transaction.

Foreign bribery

Section 258bis ACC sets forth that any person can be punished with imprisonment from one to six years and special disqualification for life from the exercise of any public office if that person offers or gives a public official from a foreign state or from an international public organization, personally or through an intermediary, money or any object of pecuniary value or other benefits such as gifts, favors, promises or benefits, for: (i) that person's own benefit or for the benefit of a third party or (ii) the purpose of having that official do or not do an act related to his office or to use the influence derived from the office he holds in an economic, financial or commercial transaction.

"Foreign public official" is defined in Section 258bis as any person designated or elected to perform a public function, in any level or territorial division of government, or class of body, agency or public company in which the foreign state exercises a direct or indirect influence.

Additionally, a fine of up to ARS 90,000 can be imposed where an offence is committed "with the aim of monetary gain" (Section 22bis of the ACC). This provision applies both to domestic and foreign bribery.

Furthermore, there are also civil and administrative liabilities regarding breaches of foreign and domestic bribery laws.

Criminal liability of legal entities

Law 27,401 on Corporate Criminal Liability entered into force in March 2018. This Law modified the ACC and established that legal entities are criminally liable for the following offences:

- (a) Bribery and influence peddling, whether national or international (Section 258 and 258bis ACC)
- (b) Prohibited transactions for public officials (Section 265 ACC)
- (c) Illegal exactions (Section 268 ACC)
- (d) Illegal enrichment of public officials and employees (Section 268 (1) and (2) ACC); and
- (e) Aggravated offences of counterfeiting of balance sheets (Section 300bis ACC)

According to Law 27,401, legal entities will be criminally liable for these offences when "(they) have been carried out, directly or indirectly, with their intervention or in their behalf, interest or benefit". Under this Law, criminal punishment for legal entities may include:

- (a) A fine of two to five times the undue benefit obtained or that could have been obtained [by the legal entity];
- (b) Total or partial suspension of activities, which in no case can exceed 10 years;
- (c) Suspension of participation in public bids or tenders of public works or services or in any other activity linked to the government, which in no case may exceed 10 years;
- (d) Dissolution and liquidation of the legal entity when it was created for the sole purpose of committing the crime, or when criminal acts constitute the main activity of the entity;
- (e) Loss or suspension of state benefits; and
- (f) Publication of an extract from the conviction at the legal entity's expense.

Section 6 provides the "independence of action" criteria. This means that the legal entity can be convicted even if it is not possible to identify or convict the individual involved in the crime, provided that the circumstances of the case establish that the crime could not have been committed without the knowledge of the authorities of the legal entities.

Even so, according to Section 9, the legal entity could be excepted of penalties and administrative liability from the offences provided by Law 27,401, if the following circumstances concur (if they do not concur, they could be still considered as a factor to mitigate the penalty):

- (a) The legal entity spontaneously self-reported the offence as a result of an internal detection or investigation; and
- (b) The legal entity had established, prior to the facts under investigation, a proper control and supervision system (the offence must have required an effort from the individual who intervened); and
- (c) The legal entity returned the undue benefit obtained through the offence.

On these bases, the Law encourages companies to implement "adequate" compliance programs; that is to say, "in relation to the specific risks of the activities performed by the company, its size and economic

capacity” (Sections 22). Moreover, implementing such programs is mandatory to enter into certain contracts with the federal government.

In this regard, Section 23 specifies mandatory and non-mandatory elements for such programs, and Argentina’s Anti Corruption Office issued on October 4, 2018, the Guidelines on Integrity/Compliance programs to help legal entities comply with Sections 22 and 23.

When it comes to anti-corruption prosecutions, Law 27,401 sets forth the possibility for legal entities to negotiate an “effective cooperation agreement” with the AGO (Section 16) at any time before being summoned for trial, whereby the entity is obliged to cooperate disclosing information or precise, useful and verifiable data for the clarification of facts, identification of authors or participants and recovery of the proceeds of the crime. Sections 17 to 21 specify the content and conditions for a valid agreement.

Repentance law

Law 27,304 (*Ley del Arrepentido*), which amended the ACC, allows penalty reduction for individuals being investigated for crimes of corruption (among other) who collaborate with authorities regarding the investigation. Among other requirements, they must disclose verifiable facts in which the individual participated and that involve individuals whose criminal liability is equal or greater than their own. They are also subject to protection under the National Witness Program established by Law 25,764.

INFORM THE MAIN REGULATORS AND A BRIEF DESCRIPTION OF THE JURISDICTION OF THE REGULATOR

The [National Congress](#) has the power to enact provisions of the Argentine Criminal Code (ACC), as well as provisions of the Federal Criminal Procedural Code (FCPC), which apply to crimes of corruption (Argentina is currently undergoing a process to substitute the FCPC). Even so, provincial congresses can enact local regulations, such as laws on public ethics and ethical codes applying to local public officials and laws for entering into contracts with the provincial Administration.

Regarding enforcement:

- Federal Court on Criminal and Correctional Matters is the competent court for bribery and corruption matters involving public officials at federal level. The National constitution provides a special mechanism for the removal and prosecution of certain officials and judges (impeachment).
- Federal judges are assigned to conduct bribery and corruption investigations, under the FCPC. They have broad power to request reports from public and private agencies, and ordering precautionary measures.
- National and provincial police forces are at the disposal of the federal judiciary, as court assistants, to comply with its orders.

There are no special procedures or guidance for investigation bribery crimes. Even so, the following bodies are key institutions:

- [Anti-Corruption Office \(AO\)](#): [Decree 102/99](#) grants AO certain powers, such as conducting preliminary investigations and filing criminal complaints with the federal justice. In 2019, through [Decree 54/2019](#), it became a decentralized agency of the Argentine Executive and its Director acquired the hierarchy of a Federal Minister. These changes gave AO more independence; though AO’s administrative structure and budget are still within the Ministry of Justice and Human Rights.
- The Office of the Prosecutor for Economic Crime and Money Laundering ([PROCELAC](#)): it is a unit within the Attorney General’s Office (AGO), is designed to combat money laundering and other economic crimes (including crimes against public Administration)
- The [National Prosecutor’s Office for Administrative Investigations](#): it is a special division of the Public Prosecutor’s Office, investigates and promotes the investigation of crimes concerning corruption and administrative irregularities.

OVERVIEW OF ARGENTINA'S FOREIGN ANTI-CORRUPTION LEGAL FRAMEWORK

Section 1 of Argentina's Criminal Code (ACC) establishes the territoriality principle. That is to say, ACC applies to "offences committed or whose effects occur in Argentine territory or in places subject to Argentine jurisdiction". Even so, Section 1 also establishes that ACC applies to "offences committed abroad by agents or employers of Argentine authorities while performing their duties".

In the need to adequate Argentina's legislation to international anti-corruption standards, ACC's extraterritorial reach was expanded by Law 27,401 on Corporate Criminal Liability, which entered into force in March 2018. This Law amended Section 1, establishing that ACC also applies to the "offence provided in Section 258bis [transnational bribery] committed abroad by Argentine citizens or by legal entities domiciled in Argentina, including both the address established in its bylaws and that of its establishments or branches in Argentine territory". This means that both Argentine citizens and legal entities can be criminally liable for bribing a public official from a foreign state or from an international public organization, personally or through an intermediary, even when abroad.

This amendment to the ACC made by Law 27,401 was consequence of OECD's requirements in the ongoing process of accepting Argentina as Member.

Argentina has also commitments as party to several multilateral, regional and bilateral treaties against corruption, such as the Inter-American Convention Against Corruption, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the United Nations Convention Against Transnational Organized Crime and the United Nations Convention Against Corruption. Among other commitments, these treaties enhance cooperation with other jurisdictions to prevent, investigate and judge crimes of corruption, including agreements on asset-recovery.

Also regarding international cooperation, Law 24,767 on International Cooperation in Criminal Matters can be subsidiary applied when no treaty exist with another country. In addition, local prosecutors have the power to sign cooperation agreements with foreign Public Ministries concerning specific cases.

Argentina is signatory of the following international anti-corruption conventions:

- The [Inter-American Convention Against Corruption](#) (IACAC) (approved by [Law 24,759](#), in 1997)
- The [OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions](#) (OECD Convention) (approved by [Law 25,319](#), in 2000)
- The [United Nations Convention Against Transnational Organized Crime](#) (approved by [Law 25,632](#), in 2002)
- The [United Nations Convention Against Corruption](#) (UNCAC) (approved by [Law 26,097](#), in 2006)

KEY PROVISIONS OF THE LAW

- [Argentine Criminal Code, Sections 256 to 259 of the ACC](#)
- [Law 27,401 on Corporate Criminal Liability](#)
- [Law 27,304 Repentance Law \(plea bargains in anticorruption investigations\)](#)
- [Law 25,188 on Ethics in Public Office](#)
- [Decree 41/1999 - Code of Ethics for Public Officials](#)
- [Decree 1179/16 – Gifts to Publics Officials](#)

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