In response to long-standing requirements and recommendations by the UN and the OECD, honoring certain commitments assumed by Argentina before the G-20 and following the latest international trends in anticorruption prevention and enforcement, in October 2016 the Argentine government sent to Congress a bill intended to establish criminal responsibility of corporates for acts of corruption (bribery and other related crimes). The bill was the subject of much political debate and underwent several amendments at successive rounds through the Chamber of Deputies and the Senate. Eventually, it was approved and became law on November 8, 2017.

Before the law was passed, only individuals were criminally responsible for corruption-related crimes in Argentina. Criminal corporate responsibility was limited to a few other crimes such as money laundering, financing of terrorism and some infringements to customs, foreign exchange and competition regimes.

In fact, Argentina was the last of all signatories of the OECD Convention on Combating Bribery of Foreign Public Officials to implement corporate responsibility for acts of bribery.

Originated in theories of economic analysis of the law, the explicit purpose of the legislation is to create strong and effective incentives for compliance in the private sector. Faced with the prospect of receiving heavy penalties themselves, corporations and other legal entities should cooperate in discouraging, preventing, detecting and sanctioning corrupt behavior of their employees, officers, agents and other related third parties.

The law follows in some aspects the Brazilian Clean Companies Act Nº12,846, which together with the Chilean law, the UK Bribery Act and the FCPA were expressly recognized as relevant precedents in the statement of purpose of the bill.

The main features of the law are as follows:

**Scope:**

- The law establishes liability of private legal entities of Argentine or foreign ownership, (even if they are partially owned by the State) for the following crimes: (a) bribery and influence peddling (national or transnational), (b) negotiations incompatible with the exercise of public functions (i.e., in conflict of interest by the public official), (c) extortion, (d) illicit enrichment of public officials and (e) false financial statements and reports, when used to conceal bribery.

- Companies are responsible for criminal activity done directly or indirectly on their behalf, for their benefit or in their interest. The company will be exempt from liability only if the persons who committed the crime acted for their exclusive benefit and without generating any benefit to the company.
In cases of transformation, merger, spin-off or any other corporate modification, the liability of the company is transmitted to the continuing or surviving entity.

Significantly, the definitive text excluded a clause of the original bill which broadly provided for liability upon acts by third parties (such as suppliers, contractors and distributors). Therefore, the entity will only be liable for acts by third parties if they fit within the general attribution mechanism (i.e., acts that benefitted the entity or made expressly on its behalf).

**Extinction of the criminal action**

Criminal action against the company may only be extinguished by amnesty or the run of the statute of limitations. Termination of actions involving individuals (authors or participants in the criminal act), will not affect the validity of the action against the company.

**Penalties**

- In all cases, a fine shall be applied, ranging from 2 to 5 times the undue benefit obtained by the company as a result of the criminal activity. Judges will determine the specific penalty according to certain parameters such as amount of damage, involvement of high management, size and economic capacity of the company, violation of internal rules, self-denunciation by the company, collaboration with the authorities and recidivism.
- Additionally, penalties may include (upon judicial assessment): (a) suspension of the company’s activities for up to 10 years; (b) loss or suspension of any subsidies or other government-granted benefits; (c) exclusion from public contracts and calls for bids for up to 10 years; (d) termination of legal existence, but only in cases where the commission of crimes is the principal activity of the legal entity and (e) publication of the judgment.
- Loss of title over goods and disgorgement of profits obtained from the illicit activity are also contemplated, in accordance with applicable provisions of the Argentine Criminal Code.

**Exemption from responsibility**

Companies may be altogether exempt from criminal responsibility and penalty provided these three elements are present:

- The company has spontaneously reported the criminal activity to the authorities;
- An adequate compliance program was in place before the crime was committed; and
- The company has returned the undue benefit obtained.

**Collaboration agreements**

The entity being indicted may enter into a collaboration agreement with the prosecutor, and obtain a reduced penalty in exchange for relevant information and collaboration in
the investigation. Terms of the collaboration agreement must, at the minimum, include payment of a reduced fine, disgorgement of profits and loss of title over assets obtained from the illicit activities. Other terms may include performance of community service, disciplinary measures against involved individuals, payment of damages and implementation of compliance programs (or improvement of existing ones).

**Compliance Programs**

- The law establishes general criteria and some specific contents that compliance programs must fulfill to qualify for penalty mitigation or exemption.
- An adequate compliance program will also, from now on, be a requirement for entering into public concession agreements and other contracts with the federal administration.
- Mandatory elements include a code of ethics or conduct, specific rules for interaction with the public sector and periodic training sessions. In turn, some of the optional components are: periodical risk-analysis, internal communication channels to report irregularities, whistle blower protection mechanisms, internal investigation system, proper due diligence of third parties and during corporate reorganizations, constant monitoring and assessment and an internal compliance officer or responsible person.

**Recidivists Registry**

- The law mandates registration of sanctions within the National Recidivism Registry, which is a part of the National Ministry of Justice and Human Rights.
- A company shall be considered a repeated offender if it commits a new crime within three years as from the issuance of a previous judgment.

**Extraterritorial effects of Bribery of Foreign Public Officials**

The law modifies Section 1 of the Argentine Criminal Code, by giving jurisdiction to Argentine courts over bribery of foreign public officials committed abroad by Argentine citizens or legal entities domiciled in Argentina. This amendment had been a specific recommendation by the OECD and it is relevant because, up to date, this crime could only be prosecuted to the extent it was committed within the Argentine territory or had effects in it.

**Inclusion of fines for certain corruption-related crimes**

The law further modifies the Penal Code by including substantial fines (in addition to prison sentences) for several corruption-related crimes involving public officers or interposed persons.

**Statute of limitations**

The law sets the statute of limitation at six years for corruption crimes attributable to companies.
Conclusions

The law is a very important step for the full integration of Argentina in the international community, and accomplishes a milestone much awaited both domestically and abroad.

With a culture of compliance still in its infancy and largely limited to subsidiaries of multinational companies subject to the provisions of the FCPA or the UK Bribery Act, the law poses a substantial cultural challenge to the Argentine business community.

Additionally, being a criminal statute, it will require prosecutors and courts to become up to date with concepts largely unfamiliar to “ordinary” criminal enforcement, as well as developing uniform criteria for attribution of responsibility, collaboration agreements and sentencing.

Finally, to a large extent its overall effect will also depend on other pieces of legislation that are still on the make (such as the Asset Forfeiture Law) or have not yet played a decisive role (as the individual plea bargaining or “Repentant Law”) in the combat against corruption.

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