

NEW ARGENTINE ANTICORRUPTION LAW



OLGA HELENA PAVLIDIS

DAVID GURFINKEL

P 2

ARGENTINA & CORRUPTION: IN NEED OF A DEEP CHANGE



POLITICAL CHANGE

P 3

- ⇒ President Macri took office in December 2015
- ⇒ His political party is named Cambiemos = Let's Change
- ⇒ A key factor of his election campaign was the fight against corruption
- ⇒ President Macri appointed ministries and public officers who used to work in the private sector and are aware of the importance of fighting corruption

SPECIFIC MEASURES AGAINST CORRUPTION

P 4

- ⇒ Transparency in public bids procedures
- ⇒ Appointment of independent judges
- ⇒ Anticorruption Office becomes active
- ⇒ Suspected officers are temporarily removed from office



CORRUPTION CASES: SAME JUDGES, SAME CASES, NEW MOMENTUM

After delaying corruption-related investigations for years, courts finally decided to start doing their job



MOST RELEVANT CASES

- ⇒ Former President Cristina Fernández de Kirchner
- ⇒ Former Vice-President Amado Boudou
- ⇒ Chauffeur's notebook scandal



MOST RELEVANT CASES

Former President Cristina Kirchner
The Hotesur Case
Money laundering



- Cristina and her sons own Hotesur, a company that runs an hotel in the Province of Santa Cruz. Hotesur assigned the exploitation of the hotel to a company owned by Lázaro Báez, who at the same time owns construction companies which were awarded most of the public tenders in the Province of Santa Cruz between years 2003 and 2014.
- Cristina and her sons have been indicted under the charges of money laundering.

MOST RELEVANT CASES

Former President Cristina Kirchner
Los Sauces Case
Bribery and money laundering

- Cristina and her sons, through a company named Los Sauces, rented real estate in the Province of Santa Cruz and Buenos Aires to Lázaro Báez and Cristóbal López.
- Báez owns construction companies that were awarded most of public tenders in Santa Cruz. López owns casinos that were granted license to operate in Argentina during the Kirchner administration.
- Cristina has been prosecuted for the charges of illicit association and money laundering

MOST RELEVANT CASES

Former Vice-President Amado Boudou
Ciccione Case – Printing company
Bribery and forbidden negotiations



- Former Vice President Amado Boudou was accused of using shell companies, secret middlemen and his office as former Minister of Economy to gain control of former Ciccione Calcográfica, one of the two printing companies in Argentina with the capacity to produce sensitive material such as bank notes, checks, etc.
- On August 7th, 2018, Mr. Boudou was sentenced to 5 years and 10 months in prison for bribery and forbidden negotiations, was banned for life to hold any public position and fined with US\$ 3,200.
- Boudou is currently imprisoned and has filed an appeal against the ruling.

MOST RELEVANT CASES

Chauffeur's notebook scandal

- Former public officer Mr. Roberto Baratta (closely related to the former Federal Planning Minister, Mr. Julio De Vido) -among other public officers-, have been accused of receiving bribes from businessmen leaders for their companies to be awarded public bids related to the construction and energy sectors.
- Mr. Centeno (Baratta's former chauffer) kept 8 handwritten notebooks where he meticulously recorded dates, amount of the bribes, bribe payers and also indicated that the bags full of cash in many cases were delivered to the president's private residence or to the presidential residence.
- The notebooks cover from 2003 to 2015, when Cristina and Néstor Kirchner were in office.



MOST RELEVANT CASES

Chauffeur's notebook scandal



- ⇒ The content of Mr. Centeno's notebooks was released by the press.
- ⇒ The most relevant Argentine construction companies are currently under investigation for allegedly having paid bribes. President Macri's cousin is one of the businessmen under investigation.
- ⇒ Certain businessmen have executed agreements with the prosecutor and are rendering testimony under the provisions set forth in the Repentance Law.
- ⇒ Cristina Kirchner is currently under investigation for allegedly being the head of an illicit association.

NEW ANTICORRUPTION LEGISLATION

- ⇒ New Argentine Anticorruption Law 27401
- ⇒ Anticorruption Office's guidelines (draft version)
- ⇒ Repentance Law
- ⇒ Informant's Law

ARGENTINE ANTICORRUPTION LAW

- In force as from March 1st, 2018
- Corporations' criminal liability for corruption related crimes committed on their behalf, interest or benefit
- Applies to public officer's bribery, prohibited transactions, illegal enrichment of public officers and books and records related crimes
- Successors are liable in cases of M&A or corporate restructurings
- 6 years statute of limitations from the date of the crime

SANCTIONS

- Fines between 2 to 5 times the amounts illegally obtained
- Suspension of activities for up to 10 years
- Inability to participate in public bids for up to 10 years
- Cancellation of the legal entities' capacity if the company was created with the purpose of committing the crimes
- Loss or suspension of state benefits
- Publication of the judgment at its cost

DETERMINATION OF SANCTIONS

- ⇒ Company's compliance of internal rules and procedures
- ⇒ Seniority of executives and employees involved
- ⇒ Omission to duly control the wrongdoer's activities
- ⇒ Damaged caused, monies involved, company's size and economic capacity
- ⇒ Self-reporting and collaboration with authorities
- ⇒ Willingness to repair damage caused and recidivism
- ⇒ Payment of fines may be fractionated in up to 5 years

NO SANCTIONS SHALL APPLY IF:

- ⇒ Self-report as a consequence of an internal investigation
- ⇒ Existence of an adequate compliance program in place
- ⇒ Refunding of the monies illegally obtained
- ⇒ All three circumstances must be accomplished

ADEQUATE COMPLIANCE PROGRAM

The Anticorruption Law does not provide a definition of the term “adequate” (at least comply with the 3 mandatory elements in accordance with the company’s size, risk and economic capacity)

MANDATORY ELEMENTS

1. Code of Ethics (Spanish version)
2. Specific policies and procedures issued to prevent illegal acts related to public tender and bids, administrative contracts or any other relationship with the public sector
3. Periodic training sessions (at least once a year)

ADEQUATE COMPLIANCE PROGRAM

RECOMMENDED ELEMENTS

1. Periodic analysis of corruption risks to amend the compliance program accordingly.
2. Tone at the top evidence.
3. Internal hot-lines to receive complaints in Spanish (available to third parties too).
4. Non-retaliation program to protect whistleblowers.
5. An adequate internal investigation system.
6. Due diligence procedures to confirm the integrity and reputation of business partners, both prior and also during the commercial relationship.
7. Periodic monitoring and evaluation of the compliance program.
8. Appointment of a Compliance Officer.

ADEQUATE COMPLIANCE PROGRAM

ADVICE REGARDING ARGENTINE SUBSIDIARIES

- ⇒ Analyze the Company's Global Code of Ethics/ABC policies vis-à-vis the provisions set forth by the Argentine Anticorruption Law and make amendments if needed.
- ⇒ Draft a specific policy to prevent illegal acts related to public tender and bids, administrative contracts or any other relationship with the public sector (may be included in the Code of Ethics).
- ⇒ Formally incorporate the Code of Ethics/ABC policies and the specific policy to prevent illegal acts related to the public sector.
- ⇒ Formally appoint a Compliance Officer.

COOPERATION AGREEMENTS

- ⇒ Executed with the Public Prosecutor
- ⇒ Company must provide useful information, identify wrongdoers and reimburse monies illegally obtained
- ⇒ Subject to court approval and supervision
- ⇒ Payment of a fine
- ⇒ Delivery of the assets subject to confiscation
- ⇒ Remediation actions and community services
- ⇒ Internal disciplinary measures
- ⇒ Implementation of an adequate compliance program

Thank you!