

Country Focus

Argentina

The Legal Landscape

*In association with
Canosa Abogados*

GETTING THE
DEAL THROUGH 

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Argentina: The Legal Landscape *In association with* Canosa Abogados

Welcome to **Country Focus: The Legal Landscape**.

This new Getting The Deal Through initiative is designed to offer in-house legal departments, as well as private practice lawyers with an international clientele, a concise ‘helicopter view’ of the legal environments in which they do business, or where they may be considering investment.

The Legal Landscape addresses the key factors that underpin civil and common law legal frameworks, policy, regulation and enforcement, taxation, organisational behaviour and investor strategies.

Getting the Deal Through has canvassed general counsel at more than 100 multinational corporations and financial institutions to focus on the first points of legal reference that in-house counsel need to know when assessing unfamiliar jurisdictions where they may seek opportunities or be exposed to risk. The following questions and answers cover the essential areas of consideration in their ‘first step’ analysis.

We would like to thank Canosa Abogados for their valued contribution on Argentina’s legal system.

GETTING THE
DEAL THROUGH

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Argentina: The Legal Landscape

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Canosa Abogados

Country overview

- 1 Give an overview of the country's economy, its structure and main characteristics, and prevailing government economic policy, particularly as regards foreign investment.

The Republic of Argentina is organised as a federal republican democracy with a presidential political system.

The Constitution provides an executive branch headed by the president, a judicial branch and a legislative branch. The main driver of economic and social policies is the executive branch. The president is elected by direct vote and serves a four-year term, which may be renewed once.

Argentina has 23 provinces and a federal capital, which functions as another province. Argentina is the eighth largest country by landmass in the world and the second largest in Latin America, with a population of 43 million people.

Historically, under the first Constitution of 1853, modelled on the ideas and ideals of Juan Bautista Alberdi, Argentina was liberal and open to trade and commerce with all the 'nations of the world'. In 1930 Argentina's gross domestic product (GDP) was four times that of its neighbour Brazil and similar to that of rich European countries such as France, Germany and the United Kingdom.

This period of political, constitutional and economic stability lasted from 1853 until 1930. In 1930 Argentina had its first coup d'état, which subsequently led to different populist governments and different interruptions to the Constitution by subsequent coups. The period of political instability and interruptions to the Constitution lasted until 1983 with the election of President Raúl Alfonsín.

Argentina has a mixed economy, balanced between services, agriculture and industrial production.

Argentina's economic problems began with the first coup and continue today, with some periods of economic stability. A vicious circle of fiscal deficit, high inflation, large public debt and increased regulations and taxes has characterised the recent economic history of Argentina.

In the 2015 presidential elections, the political coalition led by Mauricio Macri tightly won the run-off presidential elections, changing the economic and political landscape of Argentina and putting an end to 12 years of leftist government led by Cristina Kirchner and her late husband.

Since his inauguration, Mr Macri has tackled the main economic obstacles left by the Kirchner administration; he has lifted the foreign exchange controls, tackled inflation, sorted out the claims for the sovereign debt with the so-called holdouts and successfully carried out the largest tax amnesty in the world.

Mr Macri wants to open up the economy and attract foreign direct investment and has made several state visits promoting trade and foreign investment into Argentina. He has also pledged to have a free trade agreement concluded between the European Union and the Mercosur trade union before the end of 2017.

Legal overview

- 2 Describe the legal framework and legal culture in your jurisdiction as regards business and commerce.

The Argentine Constitution was adopted in 1853 and was amended in 1949 and 1994. The Constitution provides for a tripartite system of government.

- The Executive Branch, headed by the President.
- Congress comprises two houses: the Senate and the Chamber of Deputies. Congress enacts all federal legislation – it imposes federal taxes and duties, international and inter-provincial trade, immigration and citizenship laws. It also approves international treaties and enacts the civil, commercial, criminal and mining codes.
- The judicial system is divided into federal and provincial courts and each system has lower courts, courts of appeals and supreme courts. The supreme judicial power is the Supreme Court of Justice.

Argentina's legal system is continental, based on the Napoleonic Code. The original Civil Code was enacted in 1869 and was influenced by the French and Chilean Civil Codes. In 1862 the Commercial Code was enacted. The Commercial Code regulated commercial companies and individuals, bankruptcy, insurance and general commercial matters.

These two Codes were the main legal sources regulating businesses and individuals until 1 August 2015 when the new Argentine Civil and Commercial Code entered into force. This new Civil and Commercial Code introduced a wide range of modifications, which have an impact on different areas of the law and public life:

- The main change in the scope and emphasis of the code, which shifts from the individually affected (such as private parties) to general and community interest by means of the protection of 'collective incidence rights'.
- Contracts have been substantially regulated.
- General Rules about private legal entities regulating the liability of directors and managers have been incorporated.
- Certain new in rem property rights have been incorporated.
- Finally, it incorporated new private international rules in connection with applicable law to certain contracts and situations and the determination of the international jurisdictions for the resolution of international disputes.

Following the 1853 Constitution, Argentina was historically considered an investment-friendly jurisdiction. Private property is protected by the Constitutions with standards even more stringent than those of the fifth amendment of the US Constitution; private property cannot be taken for public use without an expropriation law (providing grounds for public use) and prior just compensation.

However, in practice private property has not been properly protected in Argentina. Contracts between private parties have been affected as regards terms, currency and equivalence of consideration (in the aftermath of the 2001 crisis) by the executive and legislative powers; and, these effects to private property have been approved by the judiciary. In addition, the government has defaulted on its contracts, which have been suspended indefinitely. All these restrictions and attacks on private property have been consented to by the highest judicial authorities.

Confiscatory taxes have been imposed and approved by the judiciary. Private property has been confiscated in clear violation of the Constitution, and the use of private property has been prevented, again without judicial protection.

The execution of court rulings against Argentina has been suspended for long periods, and foreign judgments to which Argentina had voluntarily subjected itself to have not been recognised by local courts.

The Argentine Supreme Court has ratified these effects on private property rights in different rulings (*Russo* (1959), *Cine Callao* (1960), *Peralta* (1990), *Brunicardi* (1996), *Galli* (2005) and *Claren Corporation* (2014). Most of these rulings have justified the emergency doctrine that provides for the suspension of constitutional rights in times of emergency, while others have been handed down following political pressure in clear violation of the limits imposed by the same court.

It is clear that the rule of law and the idea that government can be limited by a written document is not as strong in Argentina as in other countries. The idea that the rights of a few can be limited or restricted for the benefit of the public or the people has had wide repercussions in Argentina. The Macri administration, however, is determined to strengthen the rule of law, providing for stronger institutions.

3 What are the main sources of civil and administrative law applicable to companies?

Companies are regulated by the Civil and Commercial Code, the Argentine Companies Law No. 19,550 (ACL) and the rules enacted and applied by the relevant Public Registry of Commerce of each of the 23 provinces of Argentina; provided that in the City of Buenos Aires it is currently regulated and subject to the federal government.

In addition, certain specific sectors, such as financial institutions, insurance companies, reinsurance companies, and publicly traded companies, have special regulators.

Dispute resolution

4 How does the court system operate with regards to large commercial disputes?

Given the room for arbitrary solutions by local courts, large commercial disputes are likely to be settled before there is a ruling, unless one of the parties is the government. Arbitration has dramatically increased in the past two decades as a response to the lack of predictability of local courts.

Claims against one of the provinces have jurisdiction of origin before the Supreme Court, which is the most political court of Argentina.

5 What legal recourse do consumers typically have against businesses?

In Argentina, consumer's protection has been a constitutional right since the 1994 amendment. The main regulations stem from the newly enacted Civil and Commercial Code and the Consumer Protection Law No. 24,240.

The statute of limitations for a consumer liability claim is three years. These regulations set forth strict, joint and several liability of the producer, manufacturer, distributor, supplier, retailer and anyone using its brand or trademark on the product for damages arising from the risk or defect of products or services. Consumers are able to start individual actions if their rights are affected.

Argentine law does not yet provide a mechanism for class actions. However, non-governmental organisations and consumer associations can file collective actions in defence of a group of affected consumers.

6 How significant is arbitration as a method of dispute resolution?

There are no official public statistics available because arbitrations are either ad hoc or conducted through the various institutions that are commonly appointed (including the International Chamber of Commerce, the London Court of International Arbitration, the Buenos Aires Stock Exchange, and the Business Mediation and Arbitration Centre). In addition, parties tend to agree on the confidentiality of arbitration proceedings.

Most large business transactions that have some international element use arbitration to resolve any disputes arising out of their transactions, to avoid the uncertainty of Argentine courts.

7 What other methods of dispute resolution are commonly used?

Argentina has mandatory mediation for civil and commercial matters. Conciliation is also commonly used.

8 How easy is it to have foreign court judgments and foreign arbitral awards recognised and enforced in your jurisdiction?

To enforce a foreign judgment the following conditions must be met:

- the judgment must have been issued by a court considered competent by the Argentine conflict of laws principles regarding jurisdictions;
- the defendant must have been duly served and given the opportunity to defend themselves according to the principles of due process in Argentina;
- the judgment must have been valid in the jurisdiction where it was issued;
- the judgment must not violate any principles of public policy of Argentine law; and
- the judgment must not be in conflict with prior or simultaneous judgment of Argentine courts.

As regards to foreign arbitral awards, they are subject to the same requirements applicable to the recognition of foreign judgments. Argentina is party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 with reservations regarding reciprocity and commercial disputes. Additionally, Argentina has also acceded to the Inter-American Convention on International Commercial Arbitration of 1975 and the Mercosur International Commercial Arbitration Agreement of 1988.

Foreign investment and trade

9 Outline any relevant treaty organisations, economic or monetary unions, or free trade agreements.

In March 1991, Argentina, Brazil, Paraguay and Uruguay signed a treaty creating a single market between the four countries with a common external tariff. The main objectives are the free transit of production goods, services, persons and capital between member states by eliminating customs duties, the fixing of a common external tariff, and the coordination of macroeconomic and sectorial policies.

In addition, Argentina and the other Mercosur members have adopted the International Classification of Goods and are members of the World Trade Organization (WTO). WTO regulations on customs valuation, labelling and fair-trade practices are therefore applicable to Argentina.

President Macri has also stated that he intends to have a free trade agreement with the EU before the end of 2017 and for the country to become a member of the Pacific Alliance (trade bloc organised by Chile, Colombia, Mexico and Peru).

10 Are foreign exchange or currency controls in place?

In December 2001, and after over ten years of economic deregulation, the Argentine Central Bank imposed tight exchange controls. From the end of 2002, the Central Bank gradually loosened some restrictions until October 2011, when the Argentine government started to strengthen the restrictions again as result of the economic crisis and the depletion of the reserves of the Central Bank.

The Macri administration has loosened most of the foreign exchange restrictions imposed by the Central Bank, but these have not been totally eliminated. There are still restrictions for large transactions and each foreign trade transaction must be filed with certain documents and requirements.

This is of course without prejudice to Anti-Money Laundering (AML) regulations of the Financial Information Unit (FIU) and the Tax authorities.

11 Are there restrictions on foreign investment?

A top priority for the Macri government is to attract foreign direct investment (FDI) inflows to improve the nation's productive capacity, increase employment and restore economic growth. Immediately upon entering office on 10 December 2015, the Macri administration began to correct macroeconomic imbalances and reduce market distortions, such as reducing trade restrictions, lifting exchange controls, unifying the exchange rate and revising economic reporting data.

Official government statements indicate that the government will continue pursuing a path of reform to improve the investment climate and increase business confidence to attract investment inflows.

Foreign and domestic investors generally compete under the same conditions in Argentina.

12 Are there grants, incentives or tax reliefs for foreign investors or businesses?

According to the Foreign Investment Act, a presidential decree that governs foreign investment in Argentina, foreign investors may invest in Argentina without prior governmental approval, under the same conditions as investors domiciled within the country. Investors are free to enter into mergers, acquisitions or joint ventures.

Foreign firms may also participate in publicly financed research and development programmes on a national treatment basis. Incoming foreign currency destined for investment must be registered before the Argentine Central Bank. There is no official executive or other interference in the judicial system that could affect foreign investors.

Non-resident corporations are entitled to all of the tax exemptions provided by the Income Tax Law, provided they file a certificate with the Argentine tax authorities evidencing that the exemption will not result in liability to taxation in a foreign jurisdiction.

One of the most important tax exemptions established by the law is that any interest accruing upon accounts and deposits made by Argentine and foreign entities in Argentine financial institutions is tax-exempt, provided the foreign beneficiary of the interest files the required certificate.

13 What are the main taxes that apply to cross-border or foreign-owned business and investors?

The main tax that applies to foreign-owned business and foreign entities is income tax at 35 per cent. This is a federal tax on the worldwide income obtained by Argentine-resident individuals, legal entities incorporated in Argentina and Argentine branches of foreign entities.

Legal entities without a permanent establishment in Argentina are taxed only on income from Argentine sources, which are assets located, placed or used in Argentine territory, the performance of any act or activity in Argentina that produces and economic benefit.

Additionally, any income from an Argentine source obtained by a non-resident individual or a foreign legal entity without permanent establishment in Argentina is subject to a withholding tax. Gains derived from the sale, exchange or disposal of shares, quotas, bonds, obtained by non-resident individuals and foreign legal entities are subject to income tax in Argentina at a rate of 15 per cent.

Another tax that applies is the tax on presumed minimum income, to all assets of permanent establishments of foreign entities and individuals in Argentina. The tax only applies if the total value of the assets exceeds 200,000 pesos at the end of the entity's financial year. In this case, the total value of the assets will be taxed at a rate of 1 per cent.

Regulation

14 Which industry sectors are regulated or controlled by the government?

The government controls and regulates several industries – for example, oil and gas, through the national company YPF. It also has companies in other relevant sectors, such as Correo Argentino SA (mail), Ferrocarriles Argentinos (trains) and Aerolíneas Argentinas (airline). In other industries, the government implements a regulation, such as in energy and power and telecommunications.

15 Who are the key industry regulators, and what are their powers?

The key industry regulators in Argentina are:

- the Secretary of Commerce, who regulates and has authority over all retail operators;
- the Central Bank/Superintendency of Financial Entities, which regulates financial entities;
- the Superintendency of Insurance Companies, which regulates insurance companies;
- the National Securities Commission (CNV), which regulates publicly traded companies; and
- the Ministry of Energy, which regulates oil, gas and alternative energy companies.

16 What are the other main enforcement authorities relevant to businesses?

Other enforcement authorities in Argentina relevant to business are the Argentine Tax Authorities (AFIP), the Argentine Business' Entities Controlling Body (IGJ), the Financial Information Unit (UIF) and the National Industrial Property Institute (INPI).

17 On which areas have regulators particularly focused their recent enforcement activities?

In the past year, regulators of the Financial Information Unit have been very active as compared to other enforcement agencies.

Compliance

18 What are the principal bribery, corruption and money laundering concerns for businesses?

Decree No. 360/2016 states that the fight against money laundering, terrorism financing and the proliferation of weapons of mass destruction is a strategic priority of the Argentine government.

If the value of the laundered assets is less than 300,000 pesos, the person responsible is subject to a lower criminal sanction. The treatment of these criminal offences is handled on a risk-based analysis, which may include the confiscation and return of the assets. Money laundering constitutes a specific criminal offence.

Applicable rules on money laundering are mainly included in Argentine legislation, as well as in several international commitments that the country has undertaken. The main international guidelines are the recommendations made by the Financial Action Task Force (FATF). Local enforcement is comprised of two different stages: the actions of the security forces and criminal proceedings, and a previous confidential, preventive and repressive stage. The authority in charge of the controlling and sanctioning in the first instance is the Financial Information Unit.

There are no specific anti-corruption regulations such as the US Foreign Corrupt Practices Act (FCPA) or the UK Bribery Act.

19 What are the main data protection and privacy risks for businesses?

Argentina's comprehensive data protection law, passed in 2000, provides general protection for personal data stored in public or private databases and other processing platforms, just as Chapter II of the Federal Constitution recognises individuals' habeas data rights to access and correct information stored about citizens.

Moreover, the knowing insertion of false information into a personal data file is a crime punishable with imprisonment. In addition to enforcing laws recognising 'network neutrality' and the regulation of IT and communication services, Argentina's Data Protection Authority is very proactive. In April 2016, it forced a US-based ride-sharing service to take down its website and mobile apps in-country as part of a privacy law compliance investigation. In May 2016, Argentina's Data Protection Authority issued an open consultation to further modernise its primary privacy law in response to technological advances.

20 What are the main anti-fraud and financial statements duties?

Argentine generally accepted accounting principles (GAAP) provide that financial statements must be audited by independent auditors that must issue an auditor report setting forth the findings of the audit, which is broad in content and scope.

In addition, publicly traded companies and companies with capital of 10 million pesos or more must have statutory auditors. Companies whose shares are publicly traded must also have an independent audit committee.

21 What are the main competition rules companies must comply with?

Argentina has a long history of competition policy and action. It was one of the first countries in Latin America enacting a competition law. The National Commission for Competition Defence (CNDC) is the regulator and its main purposes are:

- to penalise anticompetitive behaviour by enforcing antitrust actions to tackle cartels and abuses of dominant position;

- to prevent concentration, to the extent that it may result in restrictions or distortions to competition and have a negative impact on social welfare;
- to review and control mergers and acquisitions; and
- promoting competition by: addressing competition advocacy issues, particularly by fostering acknowledgement of competition law and culture of competition as a way to allocate resources within the general public and the local business community; and evaluating regulations to identify barriers and restrictions to competition and making recommendations, in coordination with sectoral regulators, for establishing pro-competitive regulations.

The CNDC has lawyers and economists with expertise in trade and competition law and policy. Despite this, so far Argentina has had very erratic policies related to competition law enforcement. Lately the competition authorities have been used as tools for different political purposes.

22 Outline the corporate governance regime.

Corporate governance regimes differ between closely held companies and publicly traded companies.

For private companies the main directors' duties are mainly regulated by the ACL. Public companies are also regulated by the transparency decree No. 677/2001 (TD).

Generally there is a unitary management and board structure. However, in some situations, there is a two-tiered structure.

The managers of a corporation are referred to as the board of directors while the managers of a limited liability company are referred to as the board of managers. The company's by-laws can provide for the board of directors to organise an executive committee to manage the day-to-day business of the company, creating a two-tiered board structure. The by-laws can also provide for a supervisory body (auditors or *sindico* or *comisión fiscalizadora*) to be set up. This is mandatory in companies whose capital exceeds 10 million pesos, publicly traded companies and other specially defined companies.

In addition, the board of directors can appoint general or special managers (who may or may not be directors), to whom they can delegate executive administrative functions. In the case of limited liability companies, the distribution of management powers can be distributed among the individual members of the board of managers.

Only directors sit on the board. It is not necessary to be a shareholder or partner to be a director of a corporation or manager of a limited liability company.

Companies must have at least one director. Companies subject to permanent government supervision (for example, public companies, companies with a relevant capital, companies that provide public services) must have at least three directors. There is no maximum limit on the number of directors, unless the company's articles state otherwise.

The ACL does not provide for a minimum of non-executive directors to be appointed to the board in private companies. Public companies must have at least two non-executive and independent directors who should also make up the majority of the members of their auditing committee.

A company's internal management is regulated by the articles and, where the articles do not mention a particular matter, the relevant provisions of the ACL.

23 Can business entities incur criminal liability? What are the sanctions for businesses, related companies and their directors and officers for wrongdoing and compliance breaches?

Companies can incur criminal liability and are subject to monetary penalties. Physical sanctions are applied to directors or those who exercised control over the relevant entity.

Directors must act honestly and in good faith with a view to the best interests of the company. Directors can be held personally liable to the company, shareholders and third parties if they fail to comply with their general legal duties or the specific duties contained in the ACL.

In addition, directors can be held civilly and criminally liable for theft or fraud. Directors of public companies can be held personally liable for, for example, failing to disclose relevant events that are likely to have a substantial impact on the company's share price; using privileged information for their own or a third party's benefit.

Directors can be personally liable if they knowingly contribute to, promote, permit or worsen the insolvency of the company. They can also be criminally liable for certain wilful acts that damage creditors of the company. Directors can be held jointly and severally liable for: the company's tax liabilities in certain cases where they wilfully impede the payment of tax or pay less than they should; the company's labour and social security's liabilities in cases where they wilfully do not declare all the employees or all their salary or compensation; the company's customs fines in cases of smuggling, or lower or over-invoicing of goods or services; the foreign exchange control liabilities for not having sold or purchased on time the foreign currency through the official Argentine exchange market. Criminal penalties can also be imposed on directors if certain tax, social securities, customs and foreign exchange control obligations are not complied with and their conduct amounts to tax, social securities, customs and foreign exchange control evasion or violation.

Business operations

24 What types of business entity are most commonly used by foreign investors and why? What are the main requirements for their establishment and operation?

Foreign companies may conduct business in Argentina on a permanent basis. The alternatives are the appointment of a local commercial representative, the setting up of a branch, the incorporation of a local corporate entity (subsidiary) or the acquisition of shares of an existing Argentine company.

The main types of investment vehicle utilised by non-resident individuals and foreign companies are the branch of the foreign entity, the corporation (*sociedad anónima*) and the limited liability company (*sociedad de responsabilidad limitada*).

The ACL now recognises single shareholder corporations as one of the types of corporate entities that can be adopted.

- Branch of a foreign entity: any company duly organised and existing in accordance with the laws of its country of origin can set up a branch in Argentina. In principle, it is not necessary to allocate capital to the Argentine branch. It must keep separate accounting records in Argentina and file annual financial statements with the IGJ.
- Corporation or *sociedad anónima*: this structure requires at least two shareholders, which may be corporate entities or individuals. The minimum capital is 100,000 pesos. Capital is divided into shares, which must be in registered form and denominated in Argentine currency. Except for specific cases provided by the law, foreign individuals or foreign companies may hold up to 100 per cent of the share capital. The SA is managed by a board of directors elected at a shareholders' meeting. The directors and even the president may be foreigners, but the majority of the members of the board of directors must be Argentine residents. Corporations must keep the following corporate books: share registry book, attendance record book for shareholders' meetings, board meetings minute book, shareholders' meetings minutes book. In addition, accounting books must be kept.
- Single shareholder's corporations (SAU): these have the same incorporation requirements of a corporation, with some additional requirements. SAUs can only be incorporated as corporations; a SAU cannot incorporate another SAU; and SAU's share capital must be fully subscribed and paid upon incorporation.
- Limited liability companies or *sociedades de responsabilidad limitada*: the limited liability company requires a minimum of two and a maximum of 50 partners. Foreign corporate entities can be admitted as partners of limited liability companies provided that they are empowered to participate in such companies by the laws of their jurisdiction of incorporation. The partners may appoint one or more managers to manage the company, who may be partners, employees or third parties. The appointment of a statutory supervisor or the creation of a supervisory committee is optional for limited liability companies unless their capital amounts to 10 million pesos or more, in which case one or more statutory supervisors must be appointed.

25 Describe the M&A market and the merger control regime. How easy is it to complete deals in your jurisdiction?

The ACL regulates mergers. It provides for two types of mergers:

- mergers by consolidation, where two or more companies transfer their assets and liabilities to set up a new company which, as consideration, issues shares to the shareholders of the merged companies, which are dissolved; and
- mergers by absorption, where one or more companies transfer their assets and liabilities to the shareholders of the absorbed companies, which are then dissolved.

The ACL requires that the merger be recorded at the Public Registry of Commerce. If the merger, the capital increase or modification of the charter or by-laws of the absorbing company is not registered, the merger will have no legal effect against third parties.

In addition, certain mergers must be approved by the Competition authorities. Of the 500 transactions analysed by the Commission during the last decade, 94 per cent were approved without restrictions, 5 per cent were restricted and only 1 per cent were rejected.

With regard to merger clearances with conditions, the Commission has imposed structural and behavioural remedies. The structural remedies include the sale of facilities, shareholdings of other companies, brands, etc. The behavioural solutions include the acceptance of trade commitments offered by the parties of a deal (for example, market-access agreements, the provision of special services at cheaper prices, compliance with investment plans).

As for the rejected transactions, they vary from cases where there was a specific concern about the market share after the deal, to cases in which the deal was frustrated by political interests.

26 Outline the corporate insolvency regime. Is bankruptcy protection available for corporates?

Argentina's Bankruptcy Law No. 24,522 contemplates three main insolvency proceedings: out-of-court restructuring agreement, reorganisation and bankruptcy.

- Out-of-court agreement (*acuerdo preventivo extrajudicial*): a debtor in a situation of 'suspension of payments' may reach an agreement with the majority of unsecured creditors and submit it for court endorsement before the commencement of reorganisation proceedings or bankruptcy adjudication. The parties are free to determine the terms of the restructuring and the unsecured creditors may be placed in different classes with different restructuring proposals. To be endorsed by the court, the agreement must be executed by unsecured creditors representing within each class an absolute majority of creditors by headcount. Upon court endorsement, the agreement is binding on all unsecured creditors, even those who have not executed the agreement or have challenged the proceedings or the agreement.
- Reorganisation proceedings (*concurso*): debtors may file a voluntary petition for reorganisation at any time prior to bankruptcy adjudication. Admission of the petition requires the filing of evidence showing that the debtor is in 'suspension of payments' and at least one year has elapsed since a court declaration of performance of any prior reorganisation. Once the reorganisation starts, the debtor stays in possession of its assets but their administration is subject to the supervision of the receiver. All creditors must submit proof of their claims with the receiver, who reviews them. Once the plan has been approved by the required majorities, the judge must conduct a substantive review of the terms of the plan prior to approving it. Creditors that have not consented to the proposal may challenge the approved plan.
- Bankruptcy: bankruptcy may be adjudicated indirectly upon failure of reorganisation proceedings, or directly, upon a petition of the debtor or any of its creditors. If the debtor is in 'suspension of payments', they may have a voluntary bankruptcy or involuntary petition filed against them. Unlike reorganisation, upon bankruptcy adjudication the debtor loses possession of its assets, which will be subject to the administration of a receiver appointed by the court, who will, among other things, collect all the debtor's receivables. In the event that there is no decision on the continuation of the debtor's activities, the receiver will conduct the liquidation of the assets of the estate. The liquidation may be carried out either by the sale of the entire business as a going concern, the sale of the

bulk of all the estate's assets, or the sale of each individual asset of the estate.

Employment

27 How easy is it to enter into and terminate employment contracts?

Entering into an employment contract is very simple. The contract does not require any formalities and does not need to be written. Employment contracts may be for an indefinite period or a fixed term. In indefinite period contracts, the first three months are the trial period. During this period, either party may terminate the labour relationship at any time without the employer having an obligation to make a severance payment. However, the terminating party must give fifteen days' notice.

Regarding the termination of the contract, the employee may resign at any time and must give the employer fifteen days' notice. In indefinite term employment contracts, the employer may dismiss an employee at any time upon giving the employee notice of fifteen days (during the trial period), one month (if the period of service is less than five years) or two months (if the period of service is more than five years). Employers who do not give sufficient notice must make a severance payment. If there is no legitimate cause for the dismissal, the employer must pay the employee one month's salary for each year of employment or period worked in excess of the three months for which the employee worked for such employer.

28 What are the key rights of local employees?

Employees have the right to receive a mandatory minimum wage per month. By law, they are also entitled to a 13th month salary paid in two instalments, on June 30 and December 18 each year. Employees also have the right to receive family allowances, medical service and pension benefits. They are also entitled to annual paid holidays, which vary from 14 to 35 calendar days each year depending on the number of years they have worked. In addition, employees are entitled to short leaves of absence in the event of marriage, birth, death of a close relative and high school or university exams.

Female employees enjoy additional rights: maternity leave of 45 days before and 45 days after childbirth.

In the event of inability to work owing to illness or accidents that are not work-related, employees are entitled to their full salaries for a period that may vary from three to 12 months.

29 What are the main restrictions on engaging foreign employees?

Any foreign person wishing to reside and work in Argentina must obtain a residence permit from the Argentine Immigration Board. There are two categories of resident: permanent resident and temporary resident.

In principle, permanent and temporary residence permits must be obtained by filing an application at the nearest Argentine consulate in the country of origin. If the applicant prefers to apply for a permanent or temporary residence permit at the consulate, such request must be preceded by the issuance of an entry permit approved by the Argentine Immigration Board.

30 What are the other key employment law factors that foreign counsel, investors and businesses should be aware of?

When there are 50 or more employees a union delegate may be appointed. Union delegates enjoy more labour benefits than regular employees.

Intellectual property

31 Describe the intellectual property environment. How effective is enforcement and what are the key current issues?

Intellectual property is protected by section 17 of the Constitution, which provides: 'all authors or inventors are the exclusive owners of their works, inventions or discoveries for the period of time established by law'.

Trademarks and trade names are regulated by Trademark Law No. 22,362. This law provides that the ownership of a trademark and the right to its exclusive use are obtained by registration with the

Trademark Office. Registration grants proprietary rights. The duration of a trademark registration is ten years from the date of its granting and it is renewable indefinitely for periods of ten years.

Patents and utility models in Argentina are governed by Law No. 24,481. This law provides that patents will be granted for any invention that complies with the requirements of novelty, inventive step and industrial application. Patents are granted for 20 years from the filing date. Owners of patents granted in Argentina may prevent third parties from carrying out without their consent acts of manufacture, use, offer for sale, sale or importation within the territory of the product that is the subject matter of the patent. Patent applications may be filed in the name of an individual or a company. A foreign individual or legal entity must establish a legal address within Argentine territory.

Legal reform and policy

32 What are the key issues in legal reform, government policy and the economy?

The mid-term elections in Argentina make 2017 a pivotal year. This year the government may enact a new capital markets law to simplify capital market regulations and investment.

The government is planning a massive tax reform to come into force in 2018. The Macri administration is aware of the need to reduce the tax burden (currently the highest in the world according to the World Bank). To reduce the tax burden the government needs to reduce its fiscal deficit so it will also need to redefine the relationship between the provinces and the federal government amending the federal regulation and the distribution of government resources between the government and the provinces.

33 Are there any significant legal developments ongoing or pending? What are their effects on the business environment?

The tax reform referred to in the previous question may dramatically change the investment and business environment. A reduction of provincial taxes is desperately needed if Argentina wants to open up its economy and compete.

Resources and references

34 Please cite helpful references, for example sources of law, websites of major regulators and government agencies.

- ACL: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/25000-29999/25553/texact.htm>
- Tax Authorities: <http://www.afip.gov.ar/sitio/externos/default.asp>
- Financial Information Unit: <https://www.argentina.gob.ar/uif>
- National Securities Commission: <http://www.cnv.gob.ar/web/>
- Argentina Central Bank: <http://www.bcra.gov.ar/>
- Argentine Business' Entities Controlling Body: <http://www.jus.gob.ar/igj>
- Secretary of Commerce: <http://www.produccion.gob.ar/institucional/subsecretarias/secretaria-de-comercio/>
- Presidency: <http://www.casasada.gob.ar/>
- Senate: <http://www.senado.gov.ar/>
- Chamber of Deputies: <http://www.diputados.gov.ar/>
- Judicial Branch: <http://www.pjn.gov.ar/>

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Canosa Abogados is a young corporate and tax law firm, which has been successful in every area of business law in Argentina.

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