

Supply Chains: an Analysis of Nearshoring and Friendshoring Trends

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Organising a worldwide operation of supply chain distribution is not easy; on the one hand, one needs a detailed view and analysis of customs and labour considerations, taxes, costs of transport, cultural similarities and differences while, on the other hand, one needs an overview of all these issues and to be able to consider them as a whole. It is in this context of strategic decision-making that the concepts of nearshoring and friendshoring arise. These two concepts are of central importance and require a differentiated understanding of the associated legal and cultural intricacies.

The 2020 pandemic came about in a context in which the model of productive globalisation based on international supply networks was already showing signs of exhaustion or even reversal owing to many reasons (environmental concerns, protectionist measures, geopolitical crisis, etc). This could be seen in companies' decisions to return certain segments of production to their countries of origin or to nearby countries.

This article deals with the advantages, disadvantages and potential risks of nearshoring and friendshoring, with a special emphasis on Argentina. It also looks at the general significance of near- and friendshoring in the future. In addition, it will highlight the legal considerations that lawyers need to pay particular attention to in the context of near- and friendshoring.

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What is nearshoring?

Nearshoring means the outsourcing of certain supply chains to neighbouring countries or regions. Outsourcing often takes place directly in neighbouring countries.

Outsourcing to neighbouring countries and the resulting geographical proximity give the company better control over production processes, among other things. For example, compliance with certain legal requirements can be checked more effectively and reliably. In South America, all the neighbours of Argentina are members of the trade union denominated Mercosur, which facilitates the trading and commercial process.

The short distance between the individual production sites also means that the goods have to travel less before they arrive back in the company's home country, thus reducing the risks of problems with transport, warfare, attacks, etc. Imports are also less affected by logistical problems, such as bottlenecks in harbours or delays in air traffic due to environmental influences. In addition, outsourcing to a neighbouring country does not have to be as long term as moving a supply chain to a country on the other side of the world.

Locating production facilities in the immediate vicinity of one's own country also has the side effect of bringing companies one step closer to resettling production in their own country. Accordingly, there are also many economic considerations in favour of nearshoring.

What is friendshoring?

Friendshoring is a relationship between companies in two countries that is based on a strategic and ideally long-term partnership between these countries from which both party-companies benefit. This cooperation is not limited to economic relations, but also includes the exchange of expertise, technologies and innovations. It is therefore essential for such cooperation that the participating countries share the same values.

A cultural and economic affinity between the two countries already ensures a close relationship of trust. The relocation of supply chains to countries with which such a relationship of trust exists and which have the same value base means that the risk of an interruption in the supply chain due to political incidents is reduced and there are no ethical concerns about outsourcing.

Nearshoring in Latin America

According to an estimate of the Inter-American Development Bank (IDB), nearshoring could add an annual \$78bn in exports of goods and services in Latin America and the Caribbean in the near and medium term, with opportunities for quick wins in the car industry, textiles, pharmaceuticals and renewable energy, among others.¹

Mexico and Brazil would see the biggest gains, although all countries would benefit from nearshoring, according to data contained in a forthcoming study. The \$78bn includes \$64bn in exported goods and \$14bn in services.

‘Increased environmental concerns, along with the health crisis and the recent invasion of Ukraine by Russia, has presented an opportunity in which the region can contribute to the global economy and the fight against inflation by taking a more active role in global supply chains in a way that is sustainable and equitable’, said then-IDB President Mauricio Claver-Carone.

Regulatory similarities and differences between neighbouring countries

The basis for successful nearshoring is trade agreements between the cooperating countries, such as the Common Market of the South (Mercosur). Mercosur is an economic and political integration process that was originally founded by Argentina, Brazil, Paraguay and Uruguay and later joined by Venezuela and Bolivia. It functions as a customs union.

In addition, Mercosur has entered into trade agreements with many countries and regions, such as:

- Economic Complementation Agreement No 36 between Mercosur and Bolivia.
- Economic Complementation Agreement No 35 between Mercosur and Chile.
- Economic Complementation Agreement between Mercosur and Colombia.
- Partial Scope Economic Complementation Agreement No 62 between Mercosur and Cuba.
- Partial Scope Economic Complementation Agreement No 59 between Mercosur and the Andean Community of Nations.
- Free Trade Agreement between Mercosur and Egypt.
- Preferential Trade Agreement between Mercosur and India.

1 www.iadb.org/en/news/nearshoring-can-add-annual-78-bln-exports-latin-america-and-caribbean.

- Free Trade Agreement between Mercosur and Israel.
- Economic Complementation Agreement No 54 between Mercosur and Mexico.
- Economic Complementation Agreement No 58 between Mercosur and Peru.
- Preferential Trade Agreement between Mercosur and Southern African Customs Union.

On 28 June 2019, the European Union (EU) and Mercosur reached an agreement in principle that is to be part of a broader association agreement between the two regions, which is currently subject to legal review and formal approval. This agreement was the result of over 20 years of negotiations and, for both parties, will be the largest trade agreement in place.

Another regional trade organisation is the Latin American Integration Association (Asociación Latino Americana de Integración), which came about in 1981 (ALADI). Its members are Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Ecuador, Mexico, Paraguay, Peru, Uruguay and Venezuela.

Since the creation of ALADI, its main purpose has been to promote a common economic space that aims to create business and investment opportunities through the competitive integration of national economies into the international market.

In the context of enlargement and deepening, problems repeatedly arise in practice that complicate the further development of the agreement. The reasons for this are complex, which is why this article will not go into them in detail.

Nevertheless, Mercosur already serves as a suitable basis for nearshoring between the member states. For example, the Mercosur countries have set standardised tariffs for external duties for most of the goods listed in the common list of goods, meaning that the exchange of goods is largely duty-free.

Nearshoring in Argentina

In Argentina, nearshoring is particularly important owing to the country's geographical location. A look at Argentina's most important export and import countries in 2022 confirms the particular importance of nearshoring in Argentina.

Argentina borders the Atlantic Ocean to the east, Bolivia and Paraguay to the north and Brazil and Uruguay to the north-east; Chile and Argentina share the longest border in the west of the country. Among the top ten exporting countries were three Latin American countries, two of which directly border Argentina: Brazil (first place with 14.29 per cent), Chile (fourth place with

5.68 per cent) and Peru (eighth place with 2.76 per cent). If the US is also included (third place with 7.58 per cent), 30.31 per cent of exports were generated through nearshoring.

The importance of nearshoring is also evident when analysing the ten most important importing countries. With Brazil (second place with 19.6 per cent), Bolivia (fifth place with 2.72 per cent), Paraguay (sixth place with 2.4 per cent) and Mexico (ninth place with 2.1 per cent), four Latin American countries are among the ten most important trading partners for imports. If the US (third place with 12.67 per cent) is also taken into account here, 39.49 per cent of imports in 2022 were realised through nearshoring.

The economic benefits are pronounced and include cost savings (including low energy prices), access to skilled labour and the strategic cushioning of currency fluctuations. At the same time, logistical advantages owing to proximity to key trading partners, such as shorter lead times and greater operational flexibility, make Argentina an attractive location for nearshoring.

Practical examples of nearshoring

A current example of successful nearshoring in Argentina is Whirlpool Corporation, an American manufacturer of household appliances, which decided to relocate the production of washing machines to Argentina between the first and second wave of the coronavirus in December 2020. According to João Carlos Brega, President of Whirlpool Latin America, this decision was made because of increased energy and logistics costs caused by the war in Ukraine and a decline in production in China, which was due to the strict lockdown rules. However, the aim is not only to bring production to Argentina, but to develop things in general in order to establish long-term competitiveness. The Argentinian site produces 300,000 washing machines a year, 70 per cent of which are exported to Mexico and other Latin American countries.²

Another example is the Argentinian company Ceramica Alberdi, which is the market leader in Argentina for floor and wall ceramic tiles. Despite competition from China and Europe, Ceramica Alberdi tripled its exports to Bolivia, Paraguay, Chile and Uruguay between 2019 and 2022. Here too, the managing director cites the rise in logistics and energy prices as the reason for the increase in exports.³

2 www.dw.com/de/argentinische-unternehmen-nutzen-vorteile-des-nearshoring/video-63635563.

3 www.dw.com/de/argentinische-unternehmen-nutzen-vorteile-des-nearshoring/video-63635563.

Friendshoring in Argentina

At a time when the global economy is affected by crises and political unrest such as the war in Ukraine or the conflict between Israel and Palestine, the model of friendshoring is becoming increasingly important in the context of economic relations. Taking these circumstances into account, there are many points in favour of cooperation with Argentina, particularly in the area of friendshoring. This is because there is a high degree of overlap in values and norms between Argentina and Western countries.

These include shared cultural values such as the political system, language and business practices. These overlaps serve as a solid foundation for a lasting partnership. Cultural alignment also goes beyond purely operational considerations and fosters trust, effective communication, problem solving and a culture of innovation through cooperation.

Its rich natural resources and market potential undoubtedly rendered Latin America a vital region in the diversification plans of the United States, the EU and China. In return, the strategic significance of lithium grants a rare opportunity to boost the region's countries' manufacturing industries, thereby diversifying their exports from being natural-resources dominant to value-added products derived from those raw materials.

Although Argentina is currently facing major challenges, such as low economic growth, social inequality and a high level of debt, it remains an attractive business location for Western companies: Argentina's population is quite young, with 15.5 per cent of the population aged between 15 and 24. By comparison, this corresponds to 10.6 per cent of the population in the EU.⁴ Argentina is also the country with the highest level of digitalisation in Latin America and impresses with its enormous surface area. The southernmost country in Latin America is the eighth largest (in terms of size) country in the world and therefore very interesting, for example for providers of digital solutions in the field of virtual reality.

Finally, one remark on the quality and team spirit of Argentines. Argentina has 0.58 per cent of the world population and yet it is normally between the top ten countries in team sports such as football, rugby, tennis or field hockey. This shows a people that is prone to cooperation and team building.

Successful examples of friendshoring

One example of friendshoring is the project of the German mining company Deutsche E-Metalle AG. The company decided to invest in Argentina

4 www.ahkargentina.com.ar/de/markteintritt/news-details-de/personalwirtschaft-in-argentinien-chancen-fuer-deutsche-anbieter.

precisely because it is one of the largest economies and one of the most stable democracies in South America.

Added to this is the fact that the economic framework conditions are the same for both foreign and local companies. Foreign private individuals can set up and own companies and carry out all kinds of paid activities in almost all sectors. Foreign ownership of Argentine companies is not prohibited in most cases, with the exception of air transport and the media industry (US Department of State; 2021 Investment Climate Statements: Argentina). In addition, there is a high level of experience and the availability of many employees.

Friend- and nearshoring in the EU

Companies in Europe have also felt the disruption caused by the coronavirus pandemic (Covid-19), Russia's war against Ukraine and increasing geopolitical tensions in all areas (eg, the conflict between Israel and Palestine) and the risks of default in the supply chain. As a result, companies in the European payment area are adapting their trade relations and supply chain management. A survey⁵ conducted by the European Bank for Reconstruction and Development (EBRD), the Banca d'Italia, the Deutsche Bundesbank and others, in which leading companies in the eurozone were asked about risks in the supply chain, shows that the models of friend- and nearshoring play an important role in this.

The survey results show that companies are increasingly inclined to relocate production sites within and outside the EU over the next five years. There is a particular focus on 'nearshoring' and 'friendshoring', where companies move their production geographically closer to the end consumer or country of sale in order to strengthen the resilience of their supply chains. Interestingly, 42 per cent of companies surveyed say they are considering such a strategy, compared to just 11 per cent in the last five years.

Geopolitical risks such as the coronavirus pandemic and the conflict between Russia and Ukraine are playing a crucial role in these relocation decisions. In fact, almost half of companies cited geopolitical risks as an important factor in the decision to relocate production to the EU. This shift in priority from purely cutting costs to considering the resilience of their supply chains shows a clear trend towards adapting business models.

A similar trend can also be observed in the procurement of inputs. Companies are increasingly planning to align their supply chains near-shore, diversified and friend-shore, with a higher proportion of companies expecting

5 www.ecb.europa.eu/pub/economic-bulletin/focus/2023/html/ecb.ebox202307_01-2a0bcf0b48.en.html.

to source inputs from the EU. This trend goes hand in hand with increased concerns about geopolitical uncertainties and risks in the supply chain.

Overall, the survey results highlight a clear trend towards adapting production locations and supply chain strategies to strengthen resilience to geopolitical risks. This is reflected in an increased inclination to move closer to the end consumer and to more politically stable regions, which could potentially have far-reaching implications for the global economy.

Friend- and nearshoring in the US

The US government under President Biden is also planning to deepen its economic relations with what it perceives as trustworthy countries, while at the same time reducing its dependence on China and Russia. These efforts have been intensified as the Covid-19 pandemic and the Russian war of aggression against Ukraine have highlighted the risks and dependencies in global trade. A particularly critical area is semiconductor production, which is vital to numerous industries, including electronics, automotive and defence, and plays a role in the fight against the climate crisis. China controls a significant portion of the production of critical rare materials that are essential for semiconductors and other high-technology applications.

Examples of friendshoring include the Minerals Security Partnership: a coalition of Australia, Canada, Finland, France, Germany, India, Italy, Japan, Norway, the Republic of Korea, Sweden, the United Kingdom, the US and the EU, which has recently entered into discussions with a number of African countries to discuss opportunities for investment in socially responsible mining projects.

In the area of nearshoring, incentives are being created for domestic production and research of semiconductors, supported by programmes such as the US CHIPS Act and the EU Chips Act. Both regions are also planning to introduce export controls to protect intellectual property and reduce dependence on external suppliers. In the US, friend- and nearshoring are therefore also part of a broader strategy to strengthen the resilience of the economy and the security of supply chains.

The trend towards nearshoring and friendshoring is also reflected in political statements. In a speech on China policy, US Treasury Secretary Janet Yellen emphasised that security interests take priority, while at the same time advocating economic cooperation under fair conditions. Joe Biden's security adviser Jake Sullivan called for a paradigm shift and proposed a trillion-dollar investment programme to strengthen the US and its partners in geopolitical competition and to counter China's influence.

Friend- and nearshoring in the US and EU compared to Argentina

From the points made above in relation to nearshoring and friendshoring in Argentina, the EU and the US, it can be concluded that Europe must continue to rely on imports of energy and critical raw materials and is therefore seeking greater economic cooperation with friendly states with regard to imports in order to reduce its dependence on China and Russia.

For the US, security interests come first, even if this could have negative economic consequences.

For Argentina, friend- and nearshoring are therefore an opportunity to expand and intensify international economic relations. This is because the conditions for successful friendshoring with the US and European countries are in place (see above).

For American and European companies, friend- and nearshoring involve considerable effort in terms of changing business models, supply chains and contracts. Argentine companies, on the other hand, can align their business models, supply chains and contracts to the associated special features from the outset as part of friendshoring.

Risks and challenges

Argentina elected a new president in November 2023, Javier Milei; who took office in December 2023.

With a proposed amendment legislation called 'Foundations and starting points for the freedom of the Argentines' sent to Congress on 27 December 2023, Milei has followed up his announcement of radical change in the country with action. The proposed new legislation contains far-reaching economic policy measures. The changes include the possibility of privatising state-owned companies such as the oil company YPF, the airline Aerolíneas Argentinas and the state bank 'Banco de la Nación'. The bloated state apparatus is also to be downsized, for example by cutting numerous subsidies and social spending. The economy is to be opened up to the outside world and private autonomy and private property are to be more strongly protected.

Political instability

Even if individual measures make economic sense, it is questionable to what extent the new government will be able to implement the plans. Milei utilised the legal leeway that gives the President the authority to rule by decree in urgent cases, as long as Congress does not subsequently reject it.

Economic fluctuations

As a result of the devaluation of the country's own currency by more than 50 per cent by the government in December 2023, a monthly inflation rate of up to 20 per cent per month is expected for the first half of 2024. If the new president's measures work as intended, it can be assumed that the inflation rate will stabilise.

In its October 2023 forecast, the International Monetary Fund also assumes that Argentina's gross domestic product (GDP) will grow by just under 2.8 per cent in real terms in 2024.⁶

Language barriers

A very important fact about the Argentine population is the level of English language spoken. According to international studies, Argentina has the best English level in Latin America, and is ranked 28th in the world.⁷ This is according to the English Proficiency Index, developed globally by EF Education First, an international language teaching company with more than 600 schools in 111 countries.

In the context of globalisation, the language skills of the population are of utmost importance for the development of trade.

Sustainability of nearshoring and friendshoring

As a result of existing political tension worldwide and the changing landscapes caused by the climate crisis, it can be assumed that nearshoring and friendshoring will continue to play an important role in the future, depending on the location.

Most companies do not see nearshoring and reshoring as a temporary phenomenon. On the contrary, companies see the relocation of orders to neighbouring countries as the most suitable restructuring option to increase their efficiency, improve flexibility and shorten delivery times. Two-thirds of the companies surveyed are planning to restructure their supply chains in the next five years. Industrial companies in particular (67 per cent) intend to increase regionalisation and relocate procurement capacities to politically more stable areas. Eastern European countries are seen as the most important option here. Fifty-seven per cent of the companies surveyed already source goods from the region, while 32 per cent plan to relocate their activities to Eastern Europe in the next few years. Ninety-one per cent of respondents

6 IWF 2023; OECD 2023.

7 www.ef.com/wwen/epi.

state that they take geopolitical tensions into account in their decision-making. They expect a multipolar world and bloc formation in the future.⁸

Strategies

For nearshoring and friendshoring activities to be successful, the location must be chosen carefully. Companies need to make a number of considerations when choosing a location, including the cost and availability of labour, infrastructure, legal environment and distance from the home country.

The most important factor remains the same whether it is nearshoring or friendshoring. Choosing the right supplier partnerships is crucial for successful collaboration. It can be advantageous not to commit to a single supplier, but to maintain a broad supplier base. Since you want to enable well-functioning and consolidated supply chains, it is essential to build close relationships with a select group of strategic suppliers in the nearshore target country.

The secret is to set clear performance targets that are shared by both parties. Together, buyers and suppliers can reduce risk, identify innovation opportunities and optimise costs by working towards predetermined performance targets and sharing data, insights and ideas.

Strong relationships also enable suppliers to collaborate on issues of sustainability, supply chain planning, product innovation and design.

Solid relationships with suppliers can also be very helpful in difficult political and economic times. Positive relationships proved invaluable during the pandemic and energy crisis, for example, due to the high level of trust built up.

Legal considerations for business lawyers

In the case of cooperation in the form of nearshoring or friendshoring, the legal points to be observed hardly differ, as in both cases either a company or government from another country is involved or a production site is outsourced to another country.

In the following, the most important legal key points that commercial lawyers need to consider in the context of a possible partnership will be outlined.

8 <https://beschaffung-aktuell.industrie.de/news/nearshoring-gekommen-um-zu-bleiben>.

Legal compliance in Argentina and partner countries

Brazil's Operation Car Wash, a multi-billion dollar corruption scandal in Brazil involving politicians and state-owned companies, has led to a change of direction in the fight against white-collar crime in Latin America, bringing the issue of compliance to the forefront of companies' minds. As international interest in the fight against corruption continues to grow and partnerships between international law enforcement agencies intensify, companies operating in Latin America should keep an eye on the latest developments in legislation, case law and law enforcement, as well as on the actions of international regulators.

Some countries in Latin America – such as Argentina with Law 27,401 – have established compliance guidelines for companies. However, these guidelines are not always mandatory, but merely recommendations. However, some countries offer benefits (eg, loans) or criminal privileges (such as leniency programmes) to require implementation of the measures.

Argentina has adopted compliance guidelines for companies through Law 27,401, which came into force in 2017 and consists of binding and recommended guidelines. According to these guidelines, it is mandatory for companies to have a code of conduct, issue binding internal guidelines to prevent criminal offences in the context of public tenders and cooperation with public bodies, and provide regular compliance training for employees. Only a regular risk analysis and review of the established compliance system, internally binding guidelines regarding an anti-corruption policy within the company, a whistleblower hotline (whistleblower protection), principles of due diligence towards third parties, requirements for careful due diligence and the appointment of a compliance officer are recommended, but are still useful.

These recommendations largely correspond to the mandatory compliance regulations of the EU, which is why Law 27,401 should not be an obstacle for companies with locations within the EU to open a location in Argentina.

In Brazil, compliance programmes for companies are not currently required by law, but there are anti-corruption laws that must be observed. In Chile, companies that have effective 'prevention models' are completely exempt from liability for corrupt behaviour. In Peru and Ecuador, companies can also benefit from establishing their own compliance management in the context of criminal investigations into white-collar crime.

In addition to the legal component, the establishment of a compliance management system is a challenge for the company's reputation. Particularly when thinking about cooperation with companies from the EU,

the draft European Supply Chain Act should be mentioned, which obliges companies to carefully manage the social and environmental impact along their entire value chain, including direct and indirect suppliers, their own business activities, as well as products and services.

This also includes the obligation to publish and implement climate transition plans, including emission reduction targets that are compatible with the Paris climate target. The aim is to comply with applicable human rights standards and environmental protection worldwide in order to promote a fair and sustainable global economy and responsible corporate governance.

It will therefore be necessary for Latin American companies to meet certain compliance requirements in the future as part of a cooperation in the form of friendshoring with companies that also operate in the EU. It is therefore advisable to draw attention to this fact when providing legal advice in order to prepare companies for the establishment of a compliance management system at an early stage.

Environmental social governance ('ESG') criteria

ESG is made up of the terms environment, social and governance. With the help of ESG criteria, countries, companies or financial product providers can be assessed with regard to the three aspects of environment (eg, resource and species protection), social (eg, working conditions and safety) and corporate governance (eg, protection against exploitation or corruption). The implementation of ESG criteria is usually measured by sustainability rating agencies, which make sustainability standards comparable with the help of various indicator systems (eg, ESG score). Other approaches used to evaluate sustainable investments include exclusion criteria (exclusion of certain negative standards such as human rights violations or similar) or best-in-class (selection of the best in class of an entire industry).

In recent years, sustainability standards have become increasingly important in the internal organisation and management of Western companies. This is certainly due to legal developments, such as the EU supply chain law, but also to the attitude and awareness of the younger generations with regard to sustainability.

Although there is no mandatory ESG reporting system in Argentina, the Argentine Securities Commission (Comisión Nacional de Valores or 'CNV') adopted non-binding guidelines in 2019 that provide companies with guidance for socially responsible investments. These include the 'Guidelines for Socially Responsible Investment in the Argentine Capital Market 2021', the 'Guidelines for External Evaluators of Social, Green and

Sustainable Bonds 2021’ and the ‘Guidelines for the Issuance of Thematic Securities in Argentina 2023’, which extend the scope of application to gender, ‘blue’ (marine), ‘orange’ (culture and creativity) and ‘transition’ bonds (financing the issuer’s transition to environmental sustainability).⁹

The Bolsa de Comercio de Buenos Aires (the Buenos Aires Stock Exchange) has adopted guidelines and regulations for the issuance and listing of ‘social’ (financing of projects with a social impact), ‘green’ (environmental) and ‘sustainable’ (financing of social and green projects) bonds. Issuers are required to submit a sustainability report together with their annual financial statements. This report is reviewed by external bodies. If the specified requirements are not met, a seal of approval can be withdrawn. In order to provide an incentive for companies to comply with the guidelines, the registration and regulatory fees for stock exchange listings have been reduced for companies that meet the requirements.¹⁰

Owing to the changing geopolitical landscape, governments have enacted measures in recent years to ensure energy security and stabilise supply chains. Some of these measures, such as the US Inflation Reduction Act (IRA), could trigger a global race for green subsidies. The IRA mobilises \$369bn in support for domestic energy production and manufacturing, creating a tremendous force to attract clean energy companies, investment, talent and materials. Other countries are considering what this could mean for their own clean energy ambitions.¹¹ The EU has responded with the Green Deal Industrial Plan and the Critical Raw Minerals Act to protect its clean energy industry and maintain progress towards net zero.¹² The increasing importance of ESG is also evident in the private sector. According to a survey conducted in 2023, 50 per cent of professional investors worldwide plan to increase their share of socially responsible investments in the coming year.¹³

Based on the above, it can be assumed that ESG will be an important criterion for successful cooperation in the future, particularly in the area of friendshoring. It is therefore advisable for business lawyers to familiarise themselves with the current situation in the ESG landscape in order to be able to explain the advantages and legal risks to their clients.

9 <https://wsclegal.com/esg-criteria-in-argentina-2/#:~:text=In%20Argentina%20there%20is%20no,relevant%20to%20socially%20responsible%20investment>.

10 <https://wsclegal.com/esg-criteria-in-argentina-2/#:~:text=In%20Argentina%20there%20is%20no,relevant%20to%20socially%20responsible%20investment>.

11 www.pwc.com/kz/en/publications/new_publication_assets/esg-trends-in-2023-eng.pdf.

12 www.pwc.com/kz/en/publications/new_publication_assets/esg-trends-in-2023-eng.pdf.

13 www.statista.com/statistics/1191755/esg-etf-increased-investment-next-year-worldwide.

Dealing with regulatory changes and force majeure events

As lawyers practising law in Argentina, we are aware of the continuous changes in regulatory matters, and even more so in extraordinary times. On this point, the Covid-19 pandemic was a clear example.

Fortuitous event and force majeure are ‘irresistible harmful phenomena’, which are treated identically in the Argentine legal system. They are ‘events of different origin but with the same effects’. The fortuitous event refers to acts of nature and force majeure is linked to human acts.

The Covid-19 pandemic and the measures dictated by the government ‘were objectively unforeseeable, unavoidable and beyond the control of the parties’. In short, it was an extreme, unforeseeable and unavoidable crisis, which required a contractual renegotiation derived from the principle of good faith.

In Argentina, on 21 December 2023, the Decree of Necessity and Urgency No 70/2023 was published in the *Official Gazette*, which makes reforms in several areas of Argentine legislation.

The Decree declares a public emergency until December 2025 and involves a package of measures that seeks to deregulate and modernise the Argentine economy, promoting trade openness, labour flexibility, the privatisation of public companies and the simplification of procedures. The Decree aims to promote competitiveness, investment, employment and economic growth, following international trade standards.

The Decree contains 366 articles and covers 16 titles that reform different sectors, such as banking, mining, energy, aviation, communication, health and tourism, among others. For the purposes of quantifying the impact of the rule, in total the Decree repeals 50 laws and modifies approximately 34 regulations.

The situation as at the date of writing, that is, January 2024, is comparable to the pandemic in terms of the legal changes the government is seeking to make to the economy, as it is currently impossible to predict which of the government’s planned changes can be implemented. It is therefore particularly important to keep an eye on legal developments in Argentina and monitor them closely so that clients can be advised professionally in the area of nearshoring and friendshoring.

Formulation of solid contractual agreements

From a legal perspective, by virtue of the change of paradigm resulting from the change of government in Argentina, we see a 360 degree shift, which seeks to provide greater legal certainty to contract parties. As an example,

a decree promoted by the new President modifies the Argentine civil and commercial code and eliminates the limitation to enter into contracts only in local currency. As of today it is possible to enter into all types of contracts in any currency, including digital currencies and cryptocurrencies.

Protection of intellectual property in international cooperations

Argentina has been a member of the World Intellectual Property Organization (WIPO) since 1980 and is a party to the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works, in addition to 11 other treaties administered by the WIPO.

Conclusion

The real-world examples highlighted in this article illuminate the unique benefits that arise from the Argentine perspective and offer actionable insights for companies considering similar approaches.

In summary, Argentina presents itself as an attractive hub for nearshoring and friendshoring strategies in the ever-evolving international business landscape. Geographical proximity and logistical efficiencies make nearshoring in Argentina compelling, exemplified by successful cases such as Whirlpool and Ceramica Alberdi.

Friendshoring, characterised by shared values and long-term partnerships, further positions Argentina as a strategic collaborator. Despite challenges such as political instability and economic fluctuations, the nation's rich resources and cultural alignment make it an appealing choice for global companies.

Legal considerations, compliance requirements and the growing importance of ESG criteria add complexity to the decision-making process. Nevertheless, Argentina's potential for fostering resilient, sustainable and mutually beneficial global collaborations remains noteworthy as businesses navigate an ever-changing global landscape.