

Sailing in Turbulent Waters:

Strengths and Opportunities in Unstable Scenarios

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In the last couple of years I have been listening to the same questions: What is going on in Argentina? What are the opportunities in Argentina? Is now the time to get in? What can we expect for the next two years in Argentina?

First, I like to remind people that in Argentina the long term is one or two years and the short term means the current month, so any analysis should necessarily be short-term oriented, bearing in mind the ba-

sic fundamentals of the Argentine economy – great agriculture potential, good living standards, attractive real estate, tourism potential, mining potential, etc.

Now, let us briefly recall how this story began; how the exchange controls came about. In October 2011 – after winning the presidential election with 54% of the vote – the Argentine government imposed exchange controls “in order to comply with international anti-money laun-

dering standards.” This meant that before purchasing foreign currency, individuals and companies resident in Argentina needed to prove the “origin of their funds and have sufficient economic capacity to acquire foreign currency.” Soon these arguments became insufficient and the control system became more professionalized, limiting many of the customary foreign exchange operations in any country such as imports or acquisitions for savings.



These exchange controls soon brought about different rates of exchange because most of the transactions in foreign currency required government approval. In principle we had the official rate (applicable to certain transactions, exports, certain credit card expenses), the unofficial rate of exchange that applies to transactions between parties where there is no intervention of the government, and soon other rates of exchange came about, such as the “contado con liqui,” explained below.

From the beginning of the exchange controls, there was a method for legally acquiring foreign currency: the purchase with local currency (through a local Argentine stock broker) of bonds or shares in the local Argentine stock market, the subsequent assignment or transfer of such bonds to a foreign broker institution, and the ultimate sale of securities in a foreign market. In order for this system to operate you need an Argentine bank account, a US bank account, an Argentine brokerage account, and a US brokerage account.

The system is quite simple, and the use of it implies the existence of an underlying rate of exchange between the dollar and the peso for these types of transactions. Basically, the price in pesos of securities (ADRs or bonds) that are also traded in other markets normally reflects this differential rate of exchange, which is of course higher

than the official rate of exchange and lower than the unofficial rate of exchange. To convey this, currently (February 12, 2015) the official rate of exchange is ARS8.70 per US dollar, the “contado con liqui” rate of exchange is ARS12.42, and the unofficial rate of exchange is ARS13.20 per US dollar.

How to access the different rates of exchange

Naturally, these parallel exchange rates work both ways and can also be used by foreign investors willing to enter the Argentine market and invest in Argentina. Therefore, provided that the conditions of the rules are met, foreign investors may be able to access the Argentine market at a rate of exchange substantially higher than the official rate of exchange.

What assets can be purchased like this? Any peso-denominated asset in Argentina, such as real estate, private equity, securities, capital goods, machinery, etc. – even as collateral for other obligations.

Of course, it may be a little bit more complicated when applied in reverse (specifically the “contado con liqui”) because the funds would not have been generated in Argentina by a non-Argentine entity and therefore one would need to have

the foreign entity registered in Argentina as a branch of the foreign entity with the investable assets. Why is this? Well, the reverse process would be the following: let us say a US entity has US dollars in its bank account, then this entity purchases securities (public bonds or Argentine ADRs), subsequently this entity transfers to the same entity in Argentina such securities and then sells the securities in Argentina.

The issue is how to open a brokerage account for a non-Argentine entity. The only way a non-Argentine entity would have to operate in Argentina is as the branch of a foreign entity as set forth in section 118 of the Argentine companies law.

The foreign entity needs to obtain certified copies of its bylaws, minutes approving the opening of a branch in Argentina, and the appointment of a legal representative in Argentina (with sufficient powers to operate the branch). In addition, the foreign company seeking to exploit this differential rate of exchange will have to prove it has economic activity and/or substantial assets in its home jurisdiction. If it cannot prove substance, or if the company was incorporated in an International Financial Center (or offshore center or low or zero tax jurisdiction), the company could be registered as a “special purpose vehicle” (SPV) of another company or an individual with substantial assets in its home jurisdiction.

All those documents need to be translated and filed with the Public Registry of Commerce in Argentina (PRC) in order to obtain registration of such foreign entity before the PRC.

Once the company has been registered it will have to be registered with the tax authorities, demonstrating sufficient evidence of the existence of an actual domicile in Argentina.

After registration before the PRC and the tax authorities, the company may go ahead and be able to open a brokerage account and a bank account in Argentina and carry out the reverse operation of the “contado con liqui.”

Looking ahead

The “contado con liqui” demonstrates the existence of two legally applicable rates of exchange (the official rate and the “contado con liqui”), which provides Argentine companies and individuals with a mechanism for accessing foreign currency, and allows foreign entities or individuals to access local currency at a more favorable rate than the official rate, promoting investments in Argentina.

The risk associated with this operation is that there could be a run against the local currency, and the value of the assets could depreciate in the short term (Argentine rules

provide for a 72-hour hold on the securities), or that there could be a political conflict, and the investments entered into in Argentina might not be considered “capital investment” and would not enjoy the protection of the bilateral investment treaties executed by Argentina.



About the Author

Javier is a partner in the BA firm Canosa Abogados. Javier's practice develops in corporate law issues, advising several national and foreign companies in various corporate matters, including investment vehicles, corporate management, directors' duties and responsibilities, audits, risks' detection and distribution, documents, policies and corporate contracts, and design and implementation of a suitable corporate form for each business.

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