

## Dispute Resolution

## Argentina

**I. INTRODUCTION TO ARGENTINE LAW****I.1 LEGAL SYSTEM**

Argentina has a Civil Law System which is a codified system of law that sets out a comprehensive system of rules that are applied and interpreted by judges. It is inspired by Roman law, the primary feature of which is that laws are written into a collection, codified, and not determined, as in common law, by judges. In Argentina legislation is the primary source of law.

**I.2 LEGISLATIVE HIERARCHY**

In Argentina, the highest law is The Constitution which can only be modified by a Constitutional Amendment. The last Constitutional Amendment occurred in 1994, and among several changes, it included several International Human Rights Treaties with Constitutional hierarchy.

Below the Constitution there are the international treaties without Constitutional Hierarchy which are above the law. Thereafter follow the laws voted by the Congress.

In any dispute, the applicable law is the Argentine one. However, the parties are entitled to choose the applicable law should the agreement have an international connection with such law.

Argentine law (Civil Code) prohibits the application of foreign law :

- a. when its application is contrary to public or criminal law, the State supported religion, religion tolerance and morality;
- b. when its application is incompatible with the spirit of the Civil Code;
- c. when it establishes arbitrary privileges;
- d. when the laws of the Civil Code, in collision with foreign law, are more favorable to the validity of the acts.

**I.3 LIMITATION PERIOD**

The Civil, Commercial and Criminal codes establish certain statutes that allows litigation to be brought for a certain time only. All rights, except non disposal rights, are extinguished if they are not exercised within the time limit fixed by the law which starts from the moment that the right can be enforced.

Except otherwise provided, the limitation period is ten years for contractual matters –with several exceptions depending on the contract or procedural way chosen– and two years for tort law.

In most cases the limitation period can be interrupted with the filing of the judicial complaint or suspended –in this case only once and for only one year, or the time of the limitation if is shorter than one year– with extrajudicial claim to the debtor of the credit or obligation.

## **2. ADMINISTRATION OF JUSTICE AND JUDICIAL FUNCTION**

### **2.1 JURISDICTION**

Justice is administered by federal and provincial courts. There is a Supreme Court which is competent to control the decisions of all other courts, in case all the requisites for the admission are fulfilled, there is a Constitutional matter to be decided, and the Supreme Court does not execute the certiorari right provided by section 280 of the Federal Procedural Code. It is a special tribunal which only act in exceptional cases and they tend to reject more appeals every time. Provincial Courts also have their own Supreme Courts.

## **3. CIVIL LEGAL PROCEEDINGS**

### **3.1 COURT SYSTEM**

Generally speaking the decisions of a first instance Court can be appealed to a higher or appeal Court.

For federal matters all around the country and regular civil and commercial matters to be decided in the City of Buenos Aires, the Civil and Commercial Procedural Code is applicable.

### **3.2 CIVIL OR COMMERCIAL PROCESS**

Civil and Commercial Procedural Code establishes two main kind of civil or commercial processes. The “acknowledgment process”, which is based on a discussion between parties to be solved by a judge. In this acknowledgment process the possibility of discussion, defenses and evidence production is wide.

There is also the foreclosure summary proceedings, which is a collection action based on an enforceable document or title. In this process the discussion, defenses of defendant and evidence that can be produced are limited in order to provide celerity to the proceeding. In this cases the cause of the title or debt cannot be discussed, but if defendant gets a contrary ruling it can file in most cases an acknowledgement process in which the cause of the credit can be matter of discussion.

### **3.3 PRECAUTIONARY MEASURES**

Argentine procedural code provides precautionary measures and injunctions to protect the rights of the claimant before the complaint is filed, during proceedings or to assure the fulfillment of the first instance final decision.

Except otherwise provided, there are three requirements to be fulfilled to obtain a Precautionary Measure. The first one, Verisimilitude in the Right alleged. The Judge has to make a preliminary analysis of the right alleged by Plaintiff, without prejudgment nor certainty about the right. The second one is the Danger in the Delay. Plaintiff needs to allege and prove, even in

a basic way, that the damage that will suffer if the precautionary measure is not granted, will be irreparable or difficult or expensive to be repaired. The third requisite is to guarantee to the judge that the eventual damages that the injunction may cause will be repaired. This can be made, depending on the judge's decision, by means of an insurance policy, cash funds to be deposited in the tribunal account, shares of a company, attachment of goods, or even with the sole promise of the Plaintiff to repair the damages.

Once the injunction is granted the parties have 10 business days within which ordinary proceedings must be filed.

### **3.4 FOREIGN DECISIONS ENFORCEMENT**

Foreign decisions are recognised in Argentina according to the treaties between the parties' States.

When there is no treaty the following requirements are needed to enforce a Foreign Decision.

1. That the judicial authority that issued the decision was competent according to the Argentine laws of international jurisdiction.
2. That the defendant has been personally served with the complaint and that the defense right has been respected.
3. That according to the rules of the foreign country the final ruling fulfills with all the requirements to be considered as a judicial decision.
4. That the decision is not contrary to the Argentine principles of public policy.
5. That the decision is not incompatible with other previously issued by Argentine Courts. The debtor has the right of being heard in the enforcement proceeding.

This is not a short proceeding because there are many aspects to be analysed. On the contrary, should the trial have commenced directly in Argentina, the execution of the judicial decision would be faster and easier.

## **4. ARBITRATION**

### **4.1 ARBITRATION IN ARGENTINA**

Arbitration is regulated in the Civil and Commercial Procedural Code. Except for the controversies that are not subject to the possibility of settlement by the parties, every dispute can be solved in Arbitration.

There are two kinds of arbitrations the first one, called "*de derecho*" in which the arbitrators will apply the law, and the other called "*amigables componedores*" (*ex aequo et bono*) in which the arbitrators will solve the dispute according to their knowledge and belief. In this case, the Arbitrators have the power to dispense with consideration of the law and consider solely what they believe to be fair and equitable in the case.

## 4.2 PROCEDURE

The parties can submit their disputes to an arbitration if they have included an arbitration clause in their contract or, if they did not, by stipulating a submission agreement after the dispute arises.

## 4.3 APPEAL

According to the National Civil and Commercial Procedural Code, except otherwise provided in the arbitration clause, the parties can appeal before the hierarchically superior tribunal that would have acted if the dispute has not been submitted to arbitrators.

## 5. ALTERNATIVE DISPUTE RESOLUTION

Since 1995 before filing an acknowledge claim, the Plaintiff needs to carry out a mediation proceeding before a Mediator registered in the Ministry of Justice. This proceeding is mandatory for most of the acknowledge claims. This proceeding consists in one or several meetings with the parties before the Mediator who will try to facilitate the parties to reach a settlement. Only when this mediation proceeding is closed without any agreement, the complaint can be filed. It is proven to be an effective way of alternate dispute resolution and many cases are settled before the judicial stage.

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