

ARGENTINA

Limited enforcement

0.3% of global exports

Investigations and cases

In the period 2016-2019, Argentina opened 10 investigations, commenced one case and concluded no cases with sanctions.

In 2019, the OECD WGB noted in its Phase 3bis Follow-Up Report on Argentina that one foreign bribery case was at trial and 10 new investigations had been initiated since 2017.¹ Also in 2019, Argentina reported that foreign bribery investigations were underway relating to the companies **Techint, Transener, Telespazio, Bioart, Oil Fuels, Agribusiness, Interpampas, Contreras Hnos, Lab Esme, Tenaris, Unetel** and **Corporación America**. It also reported on four preliminary inquiries in process concerning **Electroingeniería, Camisea, Galileo** and **Isolux Bolivia**, and two investigations that were closed (**Riovia, Kollector**).²

Federal prosecutors filed charges against four **Unetel** executives in May 2017 and judicial proceedings are ongoing.³ The executives are alleged to have paid bribes of more than US\$500,000 to public officials in El Salvador, to obtain a contract to supply the management system for the country's public transport service.

The Prosecutor's Office for Economic Crimes and Money Laundering (PROCELAC) is investigating allegations that **Techint** and its Brazilian subsidiary **Confab Industrial** paid bribes of more than US\$9

million to Brazilian officials in exchange for contracts with **Petróleo Brasileiro S.A. (Petrobras)**, the Brazilian state-owned oil giant.⁴ PROCELAC is also investigating allegations about **Techint's** role in the payment of bribes to win construction contracts in **Angra 3**, a nuclear power plant in Brazil.⁵ **Techint** is also under investigation by Brazilian and Italian authorities.⁶

Recent developments

The entry into force of the Corporate Criminal Liability Law⁷ has led the Public Prosecutor's Office (PPO) to increase its role in relation to foreign bribery. This in turn has led to an improvement in the internal detection system and the development of preliminary investigative proceedings.

In January 2019, President Macri led an effort to enact legislation on non-conviction-based confiscation through a Decree of Necessity and Urgency (DNU). The OECD WGB has called on Argentina to address this issue on numerous occasions, but efforts were paralysed for two years in the National Congress. The decree must still be approved by both chambers of Congress to be fully valid.

Through a decree in 2019, President Macri created the National Witness Protection Agency, in an attempt to improve the protection of whistleblowers and witnesses in Argentina.⁸ This followed an unsuccessful attempt to bring the whistleblower protection programme into the purview of the judiciary. With the change in government, President Alberto Fernández revoked the decree in February 2020.⁹

¹ <https://www.oecd.org/corruption/anti-bribery/OECD-Argentina-3bis-follow-up-report-ENG.pdf>

² <https://www.oecd.org/corruption/anti-bribery/OECD-Argentina-3bis-follow-up-report-ENG.pdf>

³ <https://www.fiscales.gob.ar/criminalidad-economica/imputaron-a-empresarios-de-la-firma-argentina-unetel-s-a-por-el-presunto-pago-de-sobornos-en-el-salvador/>

⁴ <https://www.perfil.com/noticias/cuadernos-de-las-coimas/caso-techint-fiscal-italiana-pide-cruzar-informacion-con-el-fiscal-stornelli.shtml>

⁵ <https://www.lanacion.com.ar/politica/acusan-a-techint-de-pagar-us-9-millones-de-sobornos-en-brasil-nid2054977>

⁶ <http://www.mpf.mp.br/pr/sala-de-imprensa/noticias-pr/executivos-ligados-ao-grupo-techint-sao-investigados-pela-lava-jato-por-participacao-no-cartel-de-empreiteiras>

⁷ Law n°. 27.401

⁸ DNU n° 795/2019

⁹ <https://www.infobae.com/politica/2020/02/20/el-gobierno-derogara-el-decreto-de-macri-que-creo-la-agencia-de-proteccion-de-testigos/>

Transparency of enforcement information

Argentina does not publish statistics on foreign bribery investigations, cases commenced or cases concluded, but this information can be sought through Freedom of Information requests. The PPO publishes an annual report containing information on general trends in foreign bribery enforcement, but no information about cases. The latest available report is for 2018.¹⁰ Information on mutual legal assistance (MLA) requests is not published by the Ministry of Foreign Affairs or the PPO, but can theoretically be obtained through Freedom of Information requests.

The Judicial Information Centre of the Supreme Court of Justice houses a dedicated “Observatory of Corruption” which publishes all judgments and resolutions related to corruption.¹¹ However, the information is not clearly presented and resolutions relating to foreign bribery are difficult to access without specific information on the file (e.g. file number or case name), due to the restrictive search mechanism.

Beneficial ownership transparency

There is no centralised register for company beneficial ownership information in Argentina. Instead, several oversight bodies collect information on the beneficial owners of legal persons, such as the General Inspection of Justice (IGJ)¹², the Financial Intelligence Unit (UIF)¹³ and, since April 2020, the Federal Administration of Public Revenue.¹⁴ There is also no central register for beneficial ownership of trusts. Different entities collect information regarding trusts, namely the UIF,¹⁵ the IGJ¹⁶ and the National Value Commission.¹⁷ Though there are no

specific provisions on this, law enforcement authorities have access to beneficial ownership information, but that information is not accessible to the public.

Inadequacies in legal framework

One of the main deficiencies pointed out by the OECD WGB in its Phase 3bis report in 2017 is Argentina’s lack of a legal framework for whistleblower protection relating to foreign bribery. In addition to hindering detection and investigation, this leads to a significant risk to people who report irregularities and wrongdoings. In particular, there is no provision for anonymous reports.¹⁸ The Argentinian legal framework for confiscation and forfeiture of proceeds of crime (“extinction of domain”) is also deficient, failing to provide a clear structure that guarantees that the value of confiscated assets corresponds to what was paid as a bribe and to whatever profits it generated. Nor does the framework provide for how the forfeited proceeds will be used.

Inadequacies in enforcement system

Lack of independence of judges continues to be a significant problem in Argentina. The selection process for lower judges involves the participation of three bodies – the Council of the Magistracy, the executive branch and the National Congress – which provides opportunities for political interference. Delays in appointments are also common, leading to many vacant positions, which are often filled by interim or surrogate judges.¹⁹ This violates guarantees of due process. The OECD WGB has noted that the lack of independence of prosecutors

¹⁰ https://www.mpf.gov.ar/transparencia-activa/files/2019/03/Informe_Anuar_MPFN-2018.pdf

¹¹ <http://www.cij.gov.ar/causas-de-corrupcion.html>

¹² Resolution 7/15 IGJ, arts. 510 and 518, http://www.jus.gov.ar/media/2951604/resolucion_general_07-15_actualizada.pdf

¹³ Resolution UIF 30 E/2017, <http://servicios.infoleg.gov.ar/infolegInternet/anexos/275000-279999/275996/norma.htm>

¹⁴ Resolution 4697/2020, <https://www.boletinoficial.gob.ar/detalleAviso/primera/227833/20200415?busqueda=2>; <http://poderciudadano.org/a-partir-de-hoy-se-deberan-informar-los-beneficiarios-reales-de-las-empresas/>

¹⁵ Resolution 140/12, <http://servicios.infoleg.gov.ar/infolegInternet/anexos/200000-204999/200723/texact.htm>

¹⁶ Resolution 6/16, http://www.jus.gov.ar/media/3140423/resoluci_n_general_6-16.pdf

¹⁷ Digest 2013, <https://www.cnv.gov.ar/sitioWeb/Content/assets/files/TOC2013.pdf>

¹⁸ <http://www.oecd.org/corruption/anti-bribery/Argentina-Phase-3bis-Report-ENG.pdf>

¹⁹ <https://www.lanacion.com.ar/politica/causas-nuevas-jueces-nuevos-otras-perlitas-reforma-nid2408750>

remains an issue.²⁰ The limited amount of resources available for investigators and prosecutors is also an impediment to stronger enforcement efforts against foreign bribery. Most prosecutors in Argentina lack sufficient knowledge and expertise to thoroughly investigate complex foreign bribery cases, while judicial proceedings are excessively long.²¹

A Transparency International Brazil report in June 2019 about MLA requests made and received from Brazilian authorities in the country's Operation *Lava Jato* investigations found that Argentina's response to a high number of requests was poor, due to irreconcilable differences in the two countries' legislation.²²

Recommendations

- Publish statistics and information on foreign bribery investigations and cases, as well as on MLA requests
- Create a centralised public register of beneficial ownership information
- Strengthen the regulatory framework allowing for the extinction of domain
- Create a special regime to recover assets in corruption cases, instituting a clear and transparent procedure for how the recovered funds will be used
- Strengthen the existing whistleblower protection system following international standards to ensure protective measures for people who report corruption allegations
- Ensure the independence of the judiciary
- Enact measures aimed at reducing the length of judicial proceedings.

²⁰ <http://www.oecd.org/corruption/anti-bribery/Argentina-Phase-3bis-Report-ENG.pdf>

²¹ <https://www.mpf.gob.ar/procelac-ap/files/2013/10/Los-procesos-judiciales-en-materia-de-corrupci%C3%B3n.pdf>

²² <https://www.jota.info/especiais/cooperacion-internacional-en-el-caso-odebrecht-argentina-29052019>