
THE
INTERNATIONAL
CAPITAL MARKETS
REVIEW

EDITOR
JEFFREY GOLDEN

LAW BUSINESS RESEARCH

THE INTERNATIONAL CAPITAL MARKETS REVIEW

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For further information please email Adam.Sargent@lbresearch.com

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INTERNATIONAL
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REVIEW

Editor
JEFFREY GOLDEN

LAW BUSINESS RESEARCH LTD

PUBLISHER
Gideon Robertson

BUSINESS DEVELOPMENT MANAGER
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EDITOR'S PREFACE

Since the recent financial markets crisis (or crises, depending on your point of view), international capital markets ('ICM') law and practice are no longer the esoteric topics that arguably they once were.

It used to be that there was no greater 'show-stopper' to a cocktail party or dinner conversation than to announce oneself to be an ICM lawyer. Nowadays, however, it is not unusual for such conversations to focus – at the initiation of others and in an animated way – on matters such as derivatives or sovereign debt. Indeed, even taxi drivers seem to have a strong view on the way the global capital markets function (or at least on the compensation of investment bankers). ICM lawyers, as a result, can stand tall in more social settings. Their views are thought to be particularly relevant, and so we should not be surprised if they are suddenly seen as the centre of attention – 'holding court', so to speak. This edition is designed to help ICM lawyers speak authoritatively on such occasions.

In part, the interest in what ICM lawyers have to say stems from the fact that the amounts represented by current ICM activities are staggering. The volume of outstanding over-the-counter derivatives contracts alone was last reported by the Bank for International Settlements ('BIS') as exceeding \$700 trillion. Add to this the fact that the BIS reported combined notional outstandings of more than \$180 trillion for derivative financial instruments (futures and options) traded on organised exchanges. Crisis or crises notwithstanding, ICM transactions continue apace: one has to admire the resilience. At the time of writing, it is reported that the 'IPO machine is set to roar back into life', with 11 flotations due in the United States in the space of a single week. As Gandhi said: 'Capital in some form or another will always be needed.'

The current interest in the subject also stems from the fact that our newspapers are full of the stuff too. No longer confined to the back pages of pink-sheet issues, stories from the ICM vie for our attention on the front pages of our most widely read editions. Much attention of late has been given to regulation, and much of the coverage in the pages of this book will also report on relevant regulation and regulatory

developments; but regulation is merely 'preventive medicine'. To continue the analogy, the courts are our 'hospitals'. Accordingly, we have also asked our contributors to comment on any lessons to be learned from the courts in their home jurisdictions. Have the judges got it right? Judges who understand finance can, by fleshing out laws and regulations and applying them to facts perhaps unforeseen, help in the battle to mitigate systemic risk. Judges who do not understand finance – given the increase in financial regulation, the amounts involved, and the considerable reliance on standard contracts and terms (and the need therefore for a uniform reading of these) – may themselves be a source of systemic risk.

ICM lawyers are receiving greater attention because there is no denying that many capital market products that are being offered are complex, and some would argue that the trend is towards increasing complexity. These changing financing practices, combined with technological, regulatory and political changes, account for the considerable challenge that the ICM lawyer faces.

ICM activity by definition shows little respect for national or jurisdictional boundaries. The complete ICM lawyer needs familiarity with comparative law and practice. It would not be surprising if many ICM practitioners felt a measure of insecurity given the pace of change; things are complex and the rules of the game are changing fast – and the transactions can be highly technical. This volume aims to assuage that concern by gathering in one place the insights of leading practitioners on relevant capital market developments in the jurisdictions in which they practise.

The book's scope on capital markets takes in debt and equity, derivatives, high-yield products, structured finance, repackaging and securitisation. There is a particular focus on *international* capital markets, with coverage of topics of particular relevance to those carrying out cross-border transactions and practising in global financial markets.

Of course, ICM transactions, technical though they may be, do not take place in a purely mechanical fashion – a human element is involved: someone makes the decision to structure and market the product and someone makes the decision to invest. The thought leadership and experience of individuals makes a difference; this is why we selected the leading practitioners from the jurisdictions surveyed in this volume and gave them this platform to share their insights. The collective experience and reputation of our authors is the hallmark of this work.

The International Capital Markets Review is a guide to current practice in the international capital markets in the most significant jurisdictions worldwide, and it attempts to put relevant law and practice into context. It is designed to help practitioners navigate the complexities of foreign or transnational capital markets matters. With all the pressure – both professional and social – to be up to date and knowledgeable about context and to get things right, we think that there is a space to be filled for an analytical review of the key issues faced by ICM lawyers in each of the important capital market jurisdictions, capturing recent developments but putting them in the context of the jurisdiction's legal and regulatory structure and selecting the most important matters for comment. This volume, to which leading capital markets practitioners around the world have made valuable contributions, seeks to fill that space.

We hope that lawyers in private practice, in-house counsel and academics will all find it helpful, and I would be remiss if I did not sincerely thank our talented group of authors for their dedicated efforts and excellent work in compiling this edition.

Jeffrey Golden

London School of Economics and Political Science

London

November 2011

Chapter 1

ARGENTINA

*Ricardo W Beller and Valentina Vullo**

I INTRODUCTION

i Legal and institutional framework

Applicable law

Most laws and regulations in the Argentine securities markets are based on standards that are similar to those of developed securities markets, such as the United States. The main area in which Argentina differs from those developed markets relates to the transfer of funds and foreign-exchange transactions, which in Argentina are considerably regulated and in some cases restricted.

Law No. 17,811 ('the Securities Law') is the main law governing securities markets in Argentina. The Securities Law, enacted in 1968, defines the concept of 'public offering' of securities, creates the National Securities Commission ('the CNV') and establishes the basic legal framework that regulates the activities of issuers, stock exchanges and brokers in Argentina.

The Securities Law was amended in 2001 by Decree No. 677/01 ('the Transparency Decree'). The intention of the Executive Power was to move towards the creation of an adequate legal framework to strengthen the level of protection of investors in the market. Other objectives of the Transparency Decree were the promotion of the development, liquidity, stability, solvency and transparency of the market, generating procedures to guarantee the efficient distribution of savings and good practices in the administration of corporations.

The Transparency Decree covered a broad array of topics. It introduced the concept of *valores negociables* following the definition of 'securities' of the US Securities Act of 1933, and it increased corporate governance regulations by, *inter alia*, increasing disclosure requirements, providing special procedures for the approval of certain

* Ricardo W Beller is a partner and Valentina Vullo is an associate at Marval, O'Farrell & Mairal.

transactions with related parties and requiring registered companies to appoint an audit committee comprising independent directors. It also provided procedures for conducting public tender offers, which in certain cases are mandatory, such as when a 'change of control' of a public company occurs.

National Securities Commission

The CNV is the government agency in charge of supervising the functioning of the Argentine securities markets. The CNV is a self-governing agency that is part of the National Ministry of Economy. The CNV has the function of overseeing securities offerings and the activities of issuers, stock exchanges, brokers and rating agencies.

The CNV has the power to issue general resolutions to regulate activities related to the securities markets. The CNV also has the power to enforce compliance of the Securities Law, CNV resolutions, and related laws and regulations, and may initiate summary proceedings for breach of these.

The Central Bank

The primary mission of the Central Bank is to preserve the value of the currency. For such purpose it is entitled to regulate the amount of money and credit in the economy and to enact regulations in monetary, financial and exchange matters, in accordance with applicable laws. In exercise of these functions, the Central Bank may temporarily restrict the public offer of new securities issued by private corporations or public entities. The Central Bank is responsible for the implementation of the foreign exchange policy, advises the government in matters related to monetary and exchange markets, issues regulations on those matters and supervises compliance with such rules.

Stock exchanges and the Mercado Abierto Electrónico

There are 12 stock exchanges in Argentina, which are located in the cities of Buenos Aires, Córdoba, La Rioja, Mendoza, Rosario, Santa Fe, Bahía Blanca, La Plata, Chaco, Salta, Tucumán and Corrientes. Trading in securities listed on a stock exchange is conducted through a stock market affiliated with the exchange. The first six stock exchanges listed above have affiliated stock markets and are authorised to quote publicly offered securities.

The Buenos Aires Stock Exchange ('the BASE'), founded in 1854, is the principal and longest-established exchange in Argentina. The affiliated stock market of the BASE is the Mercado de Valores SA ('the Merval'). The only persons authorised to effect transactions in securities listed on the BASE are the stockholders of the Merval, which is the company that oversees brokerage activities and transactions on the floor of such stock exchange. Individuals or brokerage firms organised as sole-purpose corporations, including subsidiaries of commercial banks, are allowed to become stockholders of the Merval.

As of 31 December 2010, the shares of 101 Argentine companies, excluding mutual funds, and six foreign companies were listed on the BASE and approximately 90 per cent of all equity traded in Argentina is executed in the BASE. Although the BASE is one of Latin America's largest stock exchanges in terms of market capitalisation, it remains relatively small and illiquid compared with major world markets, and therefore, is subject to greater volatility.

Securities may also be listed and traded on the Mercado Abierto Electrónico SA ('the MAE') an electronic over-the-counter ('OTC') market trading system that functions independently from the BASE and the Merval.

In March 1992, the BASE, the Merval and representatives of the dealers of the MAE implemented an agreement that caused trading in equity and equity-related securities to be conducted exclusively on the Merval, while all corporate debt securities listed on the Merval may also be traded on the MAE. Trading in Argentine government bonds, which are not covered by the agreement, is conducted principally on the MAE. The agreement does not extend to other Argentine stock exchanges.

Each stock exchange and the MAE have their own regulations that apply to the listed securities and to issuers and brokers that trade in the same. Under the law, each of these is denominated a 'self-regulated entity'. The CNV has passed a set of resolutions under which each self-regulated entity is responsible for developing and implementing regulations governing its respective stock market, subject to the approval and oversight of the CNV. Internal rules of each exchange for its affiliated stock market establish conditions for listing securities, admitting brokers, conducting trades and controlling the veracity of any information that is required to be reported in connection therewith. These rules must conform to the Securities Law and to the CNV resolutions, and must be enforced by the each self-regulated entity.

Derivatives markets

The Buenos Aires Grain Exchange and the Buenos Aires Futures Market (MATBA) are the two largest institutions trading commodity derivatives and are the most important futures and options agricultural markets in Mercosur. The assets traded in those markets include wheat, corn, soybean, rye, sorghum, sunflower and their derivatives.

In November 2010, Banco Ciudad, the commercial bank of the City of Buenos Aires, and the Futures Exchange Market of Rosario (ROFEX) launched the futures market for gold.

Caja de Valores

The clearing of transactions on the BASE is carried out through its affiliated organisation, the Caja de Valores SA, which is the Argentine clearing agency that provides central depository facilities for securities and may act as a transfer and paying agent. Settlement is carried out through the Merval. OTC transactions are cleared and settled by their respective parties, and the participants (known as depositors) may deposit traded securities with the Caja de Valores SA, which then holds them on behalf of their principals.

Rating agencies

Rating agencies are corporations formed by specialists that provide an independent technical review of securities. There are currently four rating agencies operating in Argentina: Standard & Poor's International Rating LLC (Argentina branch), Moody's Latin America Calificadora de Riesgo SA, Fitch Argentina Calificadora de Riesgo SA and Evaluadora Latinoamericana SA Calificadora de Riesgo.

Any security may be rated at the request of the issuer, including securities that are placed privately. In certain cases, ratings are mandatory. Securities that may be

rated include shares, negotiable obligations, government bonds, certificates and debt instruments of financial trusts and participations in mutual investment funds.

ii Public offering

The CNV supervises the public offering of securities within Argentina. If an offering is characterised as a ‘public offering’ and it is carried out within Argentina, the securities offered must have been previously registered with the CNV and authorised to be publicly offered, and the offering must be conducted by a licensed broker dealer.

Public offering is defined very broadly as:

[...] an invitation, made by an issuer or by individuals or companies engaged fully or partially in the purchase and sale of securities, to the general public, or certain sectors or groups thereof, made through personal offers, newspaper advertisements, radio or television broadcasts, films, billboards, signs, programs, circulars, printed notices or by any other means, to enter into any transaction involving securities (Article 16 of the Securities Law).

The term ‘transaction’, in turn, is also defined very broadly and includes the initial issue and placement of securities (primary offer), as well as the subsequent negotiation and trading of securities (secondary market), whether by traditional or electronic means.

‘Private placement’ of a security needs to be defined by exclusion as a transaction that does not constitute a public offering. Neither the Securities Law nor the CNV Regulations define private placement nor provide ‘safe harbour’ or ‘bright line’ tests that allow absolute certainty that a transaction will not be defined as a public offering. Therefore, practitioners need to analyse the elements of a transaction on a case-by-case basis to determine if it constitutes a public offering or a private placement.

iii Types of security

The definition of ‘securities’ is very broad. It includes notes, debt instruments, shares, creditor rights, certificates of participation in mutual funds or trusts, and in general any agreements or rights that may be issued in series that are homogenous, fungible and may be traded in the financial markets.

To issue securities that will be publicly offered the issuing corporation needs to be registered with the CNV, and the public offering of the corresponding security needs to be authorised by the CNV. To obtain authorisation certain documentation needs to be filed with the CNV, including a prospectus related to the public offering of the security.

As a general rule, securities that are publicly offered in Argentina must also be listed on a stock exchange or the MAE. The law provides an exemption for negotiable obligations or other notes of private sector issuers, which may be publicly offered without being listed in one of these entities.

To grant its authorisation the CNV need only determine whether the applicable securities regulations have been complied with; the CNV authorisation should not be deemed to provide any assurance with respect to the subsequent performance of the particular security as an investment. Issuers who have received authorisation must continue to observe certain reporting requirements as long as they are authorised to publicly offer securities.

National, provincial or municipal governments do not need to be registered with the CNV to issue bonds that will be offered in an initial public offering; however, the subsequent trading of sovereign, provincial and municipal bonds in the Argentine stock exchanges and markets will be governed by the applicable securities regulations under the CNV's supervision.

The securities that are most issued and traded in the Argentine securities markets include stock, negotiable obligations, foreign securities, CEDEARs (*certificados de depósito Argentino*), financial trust instruments, mutual fund participations and government bonds.

Stock

The Argentine Companies Law No. 19,550, as amended ('the Companies Law') provides the legal framework that applies to companies incorporated in Argentina. The Companies Law contains a number of provisions that apply to the issuance of shares and shareholders' rights, *inter alia*.

Argentine corporations may issue shares that may be publicly offered and traded on the stock markets. Shares must be nominative, in registered form and denominated in Argentine currency.

Shares may be issued as common or preferred stock. Common stock may grant holders from one to five votes per share; once the corporation has become a registered company authorised to publicly offer shares, however, it may only issue common shares granting one vote per share, and not multiple vote shares. Preferred stock may grant one vote per share, or be issued as non-voting stock that will not be entitled to vote except in certain circumstances in which they regain their right to vote.

To conduct an initial public offering of shares, the issuer corporation must request an authorisation from the CNV. The shares must also be listed on a stock exchange. Most corporations list their shares on the BASE.

Public investors have the same rights and protection as minority shareholders under the Companies Law, including appraisal rights, rights to access information and preference rights in the event of a new issuance of shares or convertible debt. The Transparency Decree additionally provides that in the event of a transaction that will result in a change of control or transfer of a 'significant participation', the acquirer must launch a tender offer to all shareholders offering equal terms for the purchase of their holdings.

Negotiable obligations

The debt instruments that are most commonly issued to be publicly offered by Argentine companies are negotiable obligations, issued under Argentine Law No. 23,576, as amended ('the NOL').

Negotiable obligations may be non-convertible negotiable obligations or convertible into stock of the issuer, and may be denominated in Argentine pesos, US dollars or any other foreign currency. Negotiable obligations may be issued individually or under programmes that may be created by the issuer for the issuance of negotiable obligations up to a maximum amount during a period of up to five years.

Negotiable obligations may be issued under an indenture. The NOL governs the requirements for notes to qualify as negotiable obligations, and provides rules for

certain matters such as meetings of holders; however, it is very common in international transactions to provide in the terms of the negotiable obligations that all other matters related to the negotiable obligations will be governed by the laws of another jurisdiction, such as the laws of the state of New York.

The main reason for the widespread use of negotiable obligations rather than other types of debt instrument relates to tax exemptions. Among other benefits, interest payments on negotiable obligations are exempt from Argentine income tax if they are authorised by the CNV to be publicly offered, are effectively publicly offered in accordance to regulations of the CNV, and the proceeds of the placement are used for specific purposes, including investment in tangible assets or working capital located in Argentina or refinancing of liabilities of the issuer company.

Foreign securities

Foreign securities and CEDEARs may be publicly offered in Argentina. This may be done in two ways: offering the foreign securities directly, or offering CEDEARs, which represent the foreign securities. If the foreign security is being offered directly, the foreign issuer needs to request authorisation from the CNV complying with the same requirements as Argentine issuers.

CEDEARs are negotiable depositary receipts that represent foreign securities, and are similar to the American depositary receipts (ADR) and American depositary shares (ADS). CEDEARs are issued by an authorised Argentine institution, which may be a financial institution or the Caja de Valores. CEDEARs evidence and are issued against the deposit of a single kind and class of foreign securities in a depository institution that holds them in custody. They are freely transferable and may be exchanged for the represented foreign securities.

Several shares of foreign entities and CEDEARs are currently listed on the BASE.

Financial trusts

Law No. 24,441 provides the basic legal framework that applies to trusts in general. Financial trusts are a type of trust governed by such law and by regulations of the CNV.

Financial trusts are trusts constituted by assets that are transferred by a settler to a trustee for the benefit of holders of debt instruments or certificates of participation that may be offered to the public; trusts are not juridical persons.

Financial trusts are a vehicle through which 'securitisation' of illiquid assets may be implemented. In general, any class of assets with a relatively predictable cash flow can be securitised. The most common assets include car leases, retail loans, credit cards, mortgages and future revenues.

Financial institutions and certain corporations duly authorised by the CNV can act as trustees to financial trusts. Likewise, the public offering of debt securities or certificates of participation requires the authorisation of the CNV.

Debt securities generally entitle holders to principal and interest payable from the cash flow of the assets held in trust, and will rank higher than certificates of participation. Certificates of participation are similar to equity, and will entitle their holders to be paid the remaining cash flow of the trust assets once the debt securities have been paid.

Debt securities may be issued by the trustee, the settler or a third party. Certificates of participation may only be issued by the financial trustee.

Mutual funds

Mutual funds are governed by Law No. 24,083, as amended ('the Mutual Fund Law') and applicable regulations of the CNV.

A mutual fund is an investment vehicle administered by a management company that invests the assets of the fund in accordance to the agreement and investment terms of the fund. The assets of the fund are deposited in a depositary entity. The assets of the fund are jointly and indivisibly owned by holders of participations in the fund known as '*cuotapartes*'. The fund is not a juridical person.

There are two basic types of mutual funds: open-end funds and closed-end funds. The key difference is that the open-end fund has a variable number of participations, which increases and decreases on a continuous basis. The closed-end fund, in contrast, issues a fixed and limited number of participations, which may not vary during the term of the fund.

Open-end funds invest in stock, bonds, precious metals, commodities, futures and options, money market instruments or other assets as determined by the management company in accordance to the investment terms of the fund. These funds may be classified as floating income (mainly investing in stock), fixed income (mainly investing in government or private bonds), combined income (a combination of stock and bonds) or money market (fixed-term deposit and money markets funds). They may be created for an unlimited time. Upon investment in the fund, the management company invests the proceeds received in accordance to the investment guidelines of the fund, and issues new participations that are subscribed by the investor. To divest, the investor must request that the management company redeem its participations, which will result in the management company divesting a proportional amount of assets of the fund to pay the investor its redeemed participation.

Closed-end funds generally invest in a specific project, and could be used as a 'securitisation' vehicle of illiquid assets. Closed-end funds provide a fixed term of duration, which will generally coincide with the duration of the project to which they relate. As the participations are limited, investors may either subscribe the initial offering of participations or later purchase existing participations of the fund from other investors. Likewise, as the participations may not be redeemed, to divest during the term of the fund the investor must sell the participation to another investor. Therefore, to enhance liquidity, the Mutual Fund Law requires that closed-end funds be listed on a stock exchange.

Government bonds

A government bond is a bond issued by the federal, provincial or municipal government or an autarchic entity or governmental agency.

The legal procedure to be followed to issue bonds in general involves passing a law by the legislative branch to include the debt in the budget and the issuance of a decree passed by the executive branch to approve the terms and conditions.

A wide array of government bonds are currently available, including bonds issued by the federal government, certain provincial and municipal governments, and autarchic

entities such as the Central Bank; bonds issued in Argentine pesos, US dollars, euros, yen and other foreign currencies; short-term (cancelled within the budget year), medium-term (cancelled between three to five years) and long-term (cancelled after five years); and fixed-income bonds or adjustable according to gross domestic product or inflation indexes.

iv Foreign exchange regulations and anti-money-laundering

In February 2002 the government established a single free exchange market ('the FX Market'). The rate of exchange in the FX Market is determined by market forces, but the Central Bank has the power to intervene by buying and selling foreign currency on its own account, a practice in which it currently engages on a regular basis.

Foreign exchange regulations do not require non-Argentine residents wishing to invest in Argentina to transfer the funds to the country to make such investments and therefore transactions can be closed offshore; however, if transferred to Argentina, foreign exchange regulations apply.

As a general rule, all transfers of foreign currency to and from Argentina must be made through the FX Market. The transfer must be registered through foreign currency exchange forms executed with the financial entity or exchange agency that participates in the transaction. Financial entities must request all the information and documentation necessary to verify that the transactions are reasonable and genuine. Such documentation must be kept in the files of the financial entity or the exchange agency.

Transfers of funds to Argentina must be exchanged for Argentine pesos in the FX Market. Additionally, a mandatory deposit for one year without interest for an amount equivalent to 30 per cent of the amount transferred may be required, except if the transfer falls under an applicable exemption, and there are few exemptions; one, however, is the transfer of funds made to purchase an initial public offering of debt or equity securities that are listed in an Argentine stock exchange or OTC market.

Transfers of funds abroad from Argentina may be made provided certain requirements are complied with. The transfer must be made under one of the authorised items listed by the Central Bank regulations. If the transfer may not be characterised as one of the authorised items (known locally as 'concepts'), then a prior authorisation of the Central Bank will be required to make the transfer.

Foreign exchange regulations are numerous and are modified frequently. The above explanation does not intend to be exhaustive. The main point to bear in mind is that foreign exchange regulations currently apply, and must be complied with to avoid sanctions. Upon analysis, in most cases a feasible way to make a transfer is generally found to be available. If no available alternative is found under applicable regulations, a special authorisation of the Central Bank may always be requested as a last resort; many have been granted by the Central Bank in different cases, in particular when they relate to long-term foreign investments to be made in Argentina.

Anti-money-laundering regulations

Money laundering is a crime in Argentina. Argentine Law No. 25,246 ('the Anti Money Laundering Law')¹ provides the main anti-money-laundering legal framework.

Money laundering is defined as the conversion, transfer, administration, sale, concealment, disguise or any manner of introducing into the market assets obtained by a crime, with the possible consequence of giving the original assets, or the substitutes thereof, the appearance of having been obtained through legitimate means. Recent modifications to money-laundering regulations have resulted in an increase in the number and types of securities transactions to which these are applied. Additionally, Law No. 26,683 modified the notion of the crime of money laundering, formerly a crime of 'covering-up', to now constitute an autonomous crime against the national economic and financial order.

The Financial Information Unit ('the UIF'), is responsible for monitoring compliance with the Anti Money Laundering Law. The UIF is a governmental agency under the jurisdiction of the National Ministry of Justice and Human Rights.

The Anti Money Laundering Law requires certain individuals and entities to implement 'know-your-customer' procedures, collect information and report suspicious transactions to the UIF. These obligations apply to public officials and governmental agencies that are involved in the supervision and control of economic activities, such as the Central Bank and the CNV, and to several private-sector entities such as banks, stock brokers, insurance companies, real estate agents and notaries public. The scope of the law was recently broadened to also include individuals or legal entities who act as trustees under any trust, as well as individuals or legal entities that directly or indirectly are the holders of bank accounts of trusts, settlers or trustees.

The anti-money-laundering provisions that apply to capital markets activities are specifically regulated by Resolution No. 33/2011 of the UIF ('the Resolution'). The Resolution applies to brokers, agents and investment fund managers, *inter alia*. Such persons must report unusual transactions that they suspect as money laundering and terrorism financing. The Resolution describes several specific circumstances that may be considered to determine whether a transaction is unusual or suspicious, such as the relationship between the amount and nature of transactions and the economic activity of the clients, or an unusually high amount, complexity or frequency of transactions. CNV regulations also provide that underwriters must comply with UIF regulations, including identification of clients, collection of information, maintenance of documents, and reporting of suspicious transactions.

v Dispute resolution

Judicial system

The Argentine Constitution provides for a tripartite system of government consisting of an executive branch headed by the president, a legislative branch and a judiciary. Each

1 As subsequently amended by Law No. 26,087, Law No. 26,119, Law No. 26,268 and Law No. 26,683.

province also enacts its own Constitution, elects its own governor and legislators, and appoints its own judges to the provincial courts.

The judicial system is divided into federal and provincial courts, and each system has lower courts, courts of appeal and supreme courts. Federal courts deal with federal matters while provincial courts resolve upon non-federal law disputes. Non-federal courts in the city of Buenos Aires are known as national courts.

The National Constitution entitles congress to enact codes concerning civil, commercial, criminal, mining, labour and social security matters, which are applicable throughout the country. The Criminal Code, the Civil Code, the Commercial Code (which incorporates the Companies Law and the Bankruptcy Law) and the Securities Law apply in all jurisdictions.

The Criminal Code sanctions and specifically defines fraud and market manipulation, imposing prison terms on anyone found guilty of these.

Judicial procedure is governed by the federal or provincial procedural law that applies to each jurisdiction. It must be noted that federal and provincial procedural laws differ; however, each of these courts must apply the laws provided by the codes and other national laws approved by Congress mentioned above.

CNV

In the event of a breach of the Securities Law or the CNV Regulations, the CNV may initiate summary administrative proceedings. These proceedings may also be initiated as a result of a claim filed by an investor.

Upon initiation of the proceedings, the CNV shall notify the defendants, allowing them to present a defence and relevant evidence. Upon analysis of these, the CNV shall issue a resolution with the corresponding sanction, if any. This resolution may be appealed before the Judicial Commercial Court of Appeals of the relevant jurisdiction, except in the case of the warning, which may only be appealed before the CNV itself.

Depending on the nature of the unlawful act, sanctions may range from a warning, a fine (which could be calculated by multiplying by up to five times the benefit received or the damage caused by the unlawful act), an injunction for up to five years to act as director or hold other offices in companies related to securities activities, a temporary suspension or a permanent prohibition to act in the securities markets.

Arbitration

The stock exchanges are required to have a permanent arbitration tribunal. Entities that have securities listed and brokers that are members of the stock exchange must submit to the jurisdiction of these arbitration tribunals. Investors who have a dispute with listed entities or authorised brokers may chose to file a claim before the corresponding arbitration tribunal of the stock exchange or before the competent judicial court.

II THE YEAR IN REVIEW

With few exceptions, the international capital markets have not been accessible to either the private or public sector of Argentina since the second half of 2007. During this period Argentina has faced its own financial restrictions, to which it later added

the international financial turmoil that resulted from the subprime crisis and the fall of leading financial institutions such as Bear Stearns and Lehman Brothers, and more recently the European crisis.

Argentina is facing increasing inflation, which is eroding the competitive exchange rate that resulted from the 2002 devaluation of the Argentine peso. In 2002 the peso was devalued from a fixed \$1 to 1 peso exchange rate, to a floating exchange rate of approximately \$1 to 3 pesos. At the time of writing, the floating exchange rate stood at approximately \$1 to 4.2 pesos, which reflects a devaluation of the peso that is lower than the amount of aggregate inflation during this eight-year period.

The Argentine government intervened in the INDEC (the public entity that measures inflation). Private analysts claim that after the intervention the INDEC is no longer accurate in its statistics, as inflation is actually higher than the inflation reported. In particular, this has affected investments in certain government bonds, and has also decreased the level of other investments, as investors cannot rely on the information that is available to them.

In November 2008, the Argentine government resolved to take over the local pension funds ('AFJPs') and confiscate the securities held by these, most of which consisted of equity and debt instruments of Argentine private companies, as well as government bonds. The AFJPs were key players in the Argentine capital markets up until then. The disappearance of AFJPs has had a severe negative impact on local capital markets, as they are no longer available to underwrite initial offerings of securities.

Notwithstanding the foregoing, Argentina's GDP is expected to grow at least 6 to 7 per cent this year according to some forecasts, based on significant private and public consumer demand and its exports of agricultural and manufactured products.

The subprime market crisis in the US and the recent European crisis have not affected some of Argentina's main trading partners, such as Brazil and China, whose economies continue to grow and have a demand for Argentine products. These crises have therefore not significantly affected the Argentine economy.

In June 2010 the Argentine government closed a successful second debt restructuring exchange of its bonds in default. The first exchange offer had been made in 2005, and was accepted by approximately 76 per cent of the holders of bonds in default at that time. The aggregate amount of debt to be restructured in this second exchange was \$18.3 billion, and it was accepted by approximately 70 per cent of the remaining holdouts. The Minister of the Economy has announced that the government bonds that were not exchanged represent approximately \$5.5 billion, and are held mostly by distress funds, most of which have filed judicial claims against Argentina. Adding the results of the first and second exchange, approximately 92 per cent of the defaulted sovereign bonds have been restructured.

As a result of its success in the second debt restructuring exchange, the Argentine government has announced that it is optimistic regarding the prospect of accessing international markets.

This economic prosperity was reflected in both the equity and fixed income markets. During 2010 the Merval rose by 51.8 per cent in pesos and 45.2 per cent in dollars, evidencing the best performance in dollars since 2000 without taking into account the exceptional hikes of 2003 (134 per cent) and 2009 (95.2 per cent), after the crises of 2002 and 2008 respectively.

The fixed-income market was also boosted by the successful outcome of the second sovereign debt swap. During 2010 the IAMC Bond Index increased by 38.7 per cent in pesos and 32.6 per cent in dollars, being the best performance since 2000, without taking into account the year 2009.

The volume of securities traded in 2010 totalled \$44.4 billion, which represented a 33 per cent increase compared with 2009. This constitutes the highest volume since 2001 with the exception of 2007 and 2008, which had higher volumes due to a significant flight of investors from the market.

III OUTLOOK AND CONCLUSIONS

On 23 October 2011, President Cristina Fernández de Kirchner was re-elected for a four-year presidential term. The main economic policies will probably remain unchanged during the new presidential term; some corrective economic measures are, however, expected. No significant announcements have yet been made.

Appendix 1

ABOUT THE AUTHORS

RICARDO W BELLER

Marval, O'Farrell & Mairal

Ricardo W Beller has been a partner of Marval, O'Farrell & Mairal since 1999, having joined the firm in 1996. He specialises in capital markets, mergers and acquisitions, debt restructuring, and oil and gas. He graduated from the Universidad de Buenos Aires in 1989 with a law degree, and obtained an LLM with honours at Northwestern University School of Law, Chicago, in 1995. Mr Beller was admitted by the New York Bar in 1996 and is also a member of the Bar of the City of Buenos Aires. Various publications rank him among the leading lawyers in Argentina in his areas of practice, including *Chambers Global*, *Chambers Latin America*, *PLC Which Lawyer*, *Who's Who Legal* and *Best Lawyers*. In 2010, International Law Office awarded him the ILO Client Choice Award as best capital markets lawyer in Argentina.

VALENTINA VULLO

Marval, O'Farrell & Mairal

Valentina Vullo joined Marval, O'Farrell & Mairal in 2008. She specialises in corporate law, capital markets, mergers and acquisitions, debt restructuring, and oil and gas. She graduated from the Universidad Católica Argentina in 2004 with a law degree. She is a member of the Bar of the City of Buenos Aires.

MARVAL, O'FARRELL & MAIRAL

Av Leandro N Alem 928
C1001AAR Buenos Aires
Argentina
Tel: +54 11 4310 0100
Fax: +54 11 4310 0200
rwb@marval.com.ar
vv@marval.com.ar
www.marval.com.ar