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Foreign exchange regulatory framework and characteristics of the Argentine exchange market regarding the transfer of funds from and to foreign countries

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Introduction

The purpose of this document is to prove that the establishment in Argentina of regulations and records for exchange market transactions has a positive externality with respect to the prevention and control of asset laundering and potential terrorist financing, thus making this type of criminal transactions through this channel extremely difficult.

In February 2002, after the abandonment of the fixed exchange rate regime, the need arose for institutionalizing a transparent and single exchange market for all currency transactions. This change resulted from the introduction of Article 29 into the Central Bank Charter, empowering it to pass regulatory standards for the exchange regime and to regulate their strict compliance, added to Executive Order No. 260/2002 which created the Single Free Exchange Market (MULC)¹. This mechanism and others that were further established have given rise to a system for regulating and recording foreign exchange transactions made by residents and non-residents, and have contributed to strengthening an exchange rate system focused on the reduction of uncertainty and of exchange rate volatility, thus favoring an environment of certainty for consumption, saving and investment decisions.

On the other hand, Argentina is an open economy, with a relatively small capital market and financial system, where international short-term flows of funds and their volatility have a disruptive impact on the economy, especially in terms of activity and employment levels. Therefore, and in order to create a stable macroeconomic context, the design and implementation of a regulatory framework for these types of flows became necessary.

¹ Article 10 of Law No. 25562, enforced on February 6, 2002, amended the Central Bank Charter by introducing Article 29, which reads as follows: “The Central Bank of the Argentine Republic shall: a) advise the Ministry of Economy and the Honorable National Congress on the exchange system and establish general regulations; b) formulate regulations governing the exchange system and supervise the enforcement thereof”.

Executive Order No. 260/2002 was enforced on February 8, 2002, and lays down the following: **Article 1** — A Single Free Exchange Market is hereby created to channel all foreign exchange transactions as from the effective date of this Executive Order. **Article 2** — Foreign exchange transactions shall be made at the exchange rate freely agreed upon and shall be subject to the requirements and the regulatory framework to be established by the ARGENTINE CENTRAL BANK.

It is important to underline that the regulations established in Argentina are consistent with the institutional framework of the Articles of Agreement of the IMF².

This document describes the main regulations applicable to the Argentine exchange market for the above-mentioned purposes. The next two sections explain the general characteristics of the MULC and of the main transfer transactions, and their applicable rules, respectively. Further on, a quantification is included of the amounts transacted at the MULC as per type of regulation, and finally, the conclusions are presented.

General characteristics of the Argentine exchange market

This section lists the main regulatory provisions governing the Argentine foreign exchange market³.

- 1) All foreign exchange transactions shall be made through a financial institution that is duly authorized by the Central Bank to operate in this market.
- 2) Within the scope of the Argentine Central Bank competence, the Superintendency of Financial and Exchange Entities deals with the supervision and control of the performance of institutions authorized to operate in foreign exchange transactions.
- 3) The institutions that have been authorized to deal with foreign exchange transactions must comply with the requirements in force regarding taxation and the prevention of money laundering and other illicit activities; in addition, if an attempt to infringe the provisions in force, or an actual violation, is detected, such event must be immediately reported to the Central Bank.
- 4) All foreign exchange transactions, regardless of the amount involved, are properly recorded with an unequivocal identification of the client, concept and transacted amount. The foreign exchange transactions are subject to the “Know Your Client” principle, including the identification of the final beneficiary of the transactions.
- 5) All payments for the import of goods, irrespective of the amount, and for the purchase of banknotes in foreign currency and portfolio investments abroad for amounts exceeding US\$ 20,000 per month, require that the funds for the purchase originate in sight deposits (current accounts and savings accounts) held by an institution of the domestic financial system in the client’s name. In these cases, the funds used for purchases exceeding the equivalent of US\$ 250,000 per year have to be properly justified with the client’s tax return.

² Article VI, Section 3. Controls of capital transfers.

Members may exercise such controls as are necessary to regulate international capital activity, but no member may exercise these controls in a manner which will restrict payments for current transactions or which will unduly delay transfers of funds in settlement of commitments, except as provided in Article VII, Section 3(b) and in Article XIV, Section 2.

³ A summary of the foreign exchange regulatory framework is available online at www.bcra.gov.ar. Regulations, Summarized Exchange Regulations.

6) If the transactions are made by proxy, then the corresponding and duly-certified power of attorney must be submitted to the intervening institution before the transaction is made.

7) The client must submit the documents supporting the concept inherent in the transaction, and the institution involved is responsible for checking that the documentation submitted validates the concept declared.

8) Data of the holder of the domestic sight accounts from which the funds originate or to which the funds for foreign exchange transactions are transferred must be consistent with the data of the client making the transaction.

9) The exports of foreign banknotes and coins as well as precious metals for amounts equal to or higher than the equivalent of US\$ 10,000 are subject to approval of the Argentine Central Bank and must be dealt with by entities under the supervision of the Superintendency of Financial and Exchange Entities.

10) The identification of the sender in all transactions received from or issued to foreign countries is required, and it must fulfill the requirements established by FATF Special Recommendation VII.

11) The foreign exchange information is added to the database of the *Administración Federal de Ingresos Públicos (AFIP)*, the Argentine Tax Authority) for this agency to check the consistency between the transaction traded at the exchange market and the corresponding tax returns.

On a quarterly basis, the Central Bank controls the consistency between the foreign exchange information and the foreign liability statements created by new financial borrowing; in addition, foreign exchange transfers related to the international trade of goods are also monitored via specific IT systems.

The foreign exchange information is monitored on a monthly basis by the Central Bank to detect both potential cases of infringements to foreign exchange regulations and the involvement of clients in transactions that might eventually be related to money laundering. These cases are reported to the Central Bank's specific area for a proper analysis.

12) Law No. 19359 on "Criminal Regulations for Foreign Currency Transactions" applies to any detected failure to comply with the requirements established for transactions in the exchange market, since Article 1 of such Law states that the following actions shall be punishable with the penalties provided for in the Law, including fines and even imprisonment in case of recidivism:

- i. Any foreign exchange negotiation without the participation of an institution authorized to make such transactions.
- ii. Dealing with foreign exchange transactions without authorization to such effect.
- iii. Any false statement related to foreign exchange transactions.

- iv. Omitting a rectification to statements submitted and omitting the corresponding readjustments if the actual transactions turned out to be different from the transactions reported.
- v. Any foreign exchange transaction not made for the amount, in the currency, at the exchange rate, within the terms established and according to the remaining provisions laid down in the regulations in force.
- vi. Any act or omission that infringes the regulations established in the exchange regime.

13) Transactions suspected to have been channeled through informal exchange markets are subject to judicial actions and the parties involved in the suspicious dealings are subject to the provisions of Law No. 19359, Article 1.

14) Any detected infringement to the regulations in force on exchange transactions or money laundering may empower the Central Bank to suspend, on a precautionary basis, the foreign exchange transactions of an individual or company (Law No. 19359, Article 17).

Transfer of funds from and to foreign countries

This section describes the main type of transfers and the regulations in force in the Argentine exchange market.

1) General conditions:

The Argentine foreign exchange regulatory framework **requires senders to be clearly identified in all transfers, from and to foreign countries**. To this effect, Communication “A” 5181 requires the transfer to include the following information, in line with international regulations:

- a) full name (for individuals) or corporate name (for companies);
- b) address or national identity card number or CUIT (Tax Identification Number), or International Bank Account Number (IBAN);
- c) identification number of the client at the sender entity (in some cases, the account number).

Domestic institutions authorized to operate in foreign exchange transactions **shall not make** transfers abroad if they fail to comply with all the requirements related to sender’s identification.

Domestic entities **are required to keep every payment order of funds received from abroad failing to state the information on the sender as indicated above as pending for clearing, return or re-transfer**. If a domestic institution receives in its

correspondent account a transfer of funds where the sender's identification information is incomplete, the transfer shall remain in such account and will be neither cleared nor transferred until the missing data required to identify the sender pursuant to the requirements established are completed.

The entity involved in the foreign exchange transaction is liable to comply with the regulatory framework in force. Likewise, the submission of documents to support the transaction concept and amount is required; simultaneously, a double-checking is performed with non foreign exchange information (such as customs office information or tax returns). It is worth mentioning that, given its structure, the Argentine exchange market is highly concentrated, in relation to foreign exchange transactions, in banking institutions of foreign capital which are supervised by the banking authorities of their respective countries of origin, in addition to the controls they are subject to in Argentina.

2) Some special requirements according to the type of transaction:

Outflows of Funds from the Local Exchange Market

a) Payments for the import of goods

For this type of transaction, there is a payment control system with a centralized follow-up managed by the Central Bank (Communications "A" 5134 and "A" 5208), combining the exchange information with every officialization of an import customs clearance recorded at the Customs Office. Import payments can only be made with funds from a sight account held by domestic financial entities. There are **two ways available, and they depend on the time the payment is made:**

1- When **the payment is made after the registration of the entry of goods to the country by the Customs Office**, the commercial invoice and a copy of the transportation documents shall be required, which must be consistent with the customs information that the Central Bank makes available to financial entities. The payment shall be made to the foreign supplier or to the non-resident that has funded the transaction or is indicated in the document issued by the exporter.

2- When **the payment is made before the registration of the entry of goods to the country by the Customs Office**, the documentation proving the existence of a purchase of goods abroad where a partial down payment or the total payment is required must be submitted. Under this method, the importer commits itself to submit the documents related to the entry of goods to the country within a specified term. Payments can only be made to the supplier, financial entities or official credit agencies that finance the down payment to the supplier. In all cases, the transaction follow-up finishes with: 1) the assignment of the transaction to an official import clearance or 2) if the transaction is not made, the refund to the country of any previously-transferred currencies.

b) Payments of financial debts

The requirements for the payment of these debts are the evidence of a prior entry of the funds giving rise to such indebtedness into the single free exchange market (MULC) and the foreign debt statement before the Central Bank (reporting system provided by Communication “A” 3602), together with the documents supporting the existence of such foreign debt (Reporting System provided by Communication “A” 4177, item 4.). Foreign debt statements are controlled by the Central Bank against foreign exchange inflows.

c) Portfolio investments by residents

In this case, the regulations in force require that currency purchases for amounts over US\$ 20,000 per month are made only with funds from sight deposits (checking and savings accounts) held at financial institutions, and that the destination account bears the name of the client making the transaction. The regulatory framework requires that **the accounts abroad to which the currencies purchased in the domestic market shall be transferred are opened in:** 1) foreign banks and financial institutions regularly dealing with investment banking activities, established in OECD countries whose sovereign debt has at least a “BBB” international rating; 2) foreign banks consolidating their balance sheets with a domestic institution, or 3) foreign banks located in the country of permanent residence of individuals who entered the country as temporary residents.

In addition, **in the case of currency purchases exceeding a specified amount throughout the calendar year** (amounts over US\$ 250,000 in this time period) made by individuals, proof of consistency with their tax returns is required; if the purchases are made by companies, the submission of the closed and audited annual balance sheet (Communication “A” 5198) is required.

d) Profits and dividends

In the specific case of these transfers, the submission of the closed and audited balance sheet pursuant to the formalities in force for annual balance sheets (Communication “A” 3859, item 3) is required. In addition, the submission of the **direct investments statement** (Communication “A” 4762, item 11) is required and, **if the distributed profits were not made available to the shareholders** in the same calendar quarter, the corresponding foreign debt statement (Communication “C” 41002) shall be required as well.

e) Payments for services

The amounts transacted under this concept are mainly related to Argentine foreign trade, tourism & travel transactions. In the latter case, they correspond to 1) payments of purchases made abroad with domestically-issued credit cards, and 2) payments of travel agencies for tourist packages purchased abroad. In all these cases, the documentation supporting the concept used and the amount transacted must be submitted. It is worth pointing out that 64% of the transactions made for this concept in the second quarter of 2011 was channeled through foreign-private institutions operating in the country.

f) Insurance

As supporting mechanism for insurance transactions made with foreign countries, the previous intervention of the National Insurance Superintendency is required to access the exchange market for transactions originated in the payment of reinsurance premiums abroad.

g) Repatriation of non-residents' direct and portfolio investments

Transactions related to non-residents' direct and portfolio investments require the previous approval by the Central Bank when the foreign beneficiary is an individual or company residing at, or incorporated in, dominions, jurisdictions, territories or associated States appearing on the list of countries with low or nil taxation published by the Financial Information Unit (UIF) (Executive Order No. 1344/98 regulating Income Tax Law No. 20628, as amended).

h) Other payments

Payments can be made for other transfers, accounting for 8% of total transfers for services, provided the documentation supporting the concept and amount of the transfer is properly submitted.

Inflow of funds into the Local Exchange Market

i) Goods Exports Receipts

The current regulations establish that receipts from exports of goods are subject to the obligation of inflow and clearing of funds in the domestic exchange market (Executive Order No. 1606/01)⁴ within time periods depending on the type of product exported, except for cases expressly exempted⁵.

For the inflow of currencies due to collection of exported goods, the domestic financial institutions must control the commercial and transportation documents as well as the customs information related to the transaction made available to these institutions through the SECOEXPO⁶ system (Communication "C" 51946).

In the case of **advanced payments and/or pre-financing of exports**, there shall be a purchase order from abroad or a request of supply by the foreign purchasers of the goods, documented according to the customary usage and practices of the activity, the fulfillment of which shall allow for servicing the new indebtedness originated by the

4 Article 5 of Executive Order No. 1606/01 repeals Executive Order No. 530/91 and restores the validity of the provisions of Article 1 of Executive Order No. 2581/64, imposing the obligation to clear the funds from collections of exports of goods.

⁵ Up to 70% of exports of hydrocarbons (Executive Order No. 2703/02) and 100% of exports of goods related to mining ventures with exchange stability (Executive Order No. 417/03 and Executive Order No. 753/04) are exempted from the obligation of clearing funds into the MULC.

⁶ This system is made available by the Customs Office to financial entities for them to enquire about the shipment permits made official before this Agency.

advance payment or pre-financing. Under this procedure, it is also possible to operate without submitting this documentation to the extent that the transaction involves an amount not exceeding a specific percentage (a limit that depends on the product type) of the volumes effectively exported in previous years (Communication “A” 4443 and supplementary rules). For this type of inflow, the obligation exists of effectively making the shipment within a time period that depends on the product type. Compliance with the requirements established is verified by means of a specific control system based on the identification of each transaction made through the exchange market, and the follow-up finishes with the assignment of the inflow of funds, either as advance payment or pre-financing, to a specific shipment permit.

j) Services provided to non-residents

Receipts in foreign currency derived from this concept are subject to the obligation of clearing funds into the country by the service provider (domestic resident). These transactions require the submission of documents proving that the collection of the transfer in foreign currency was received on account of a service rendered by a resident to a non-resident. In the second quarter of 2011, service transfers accounted for 12% of total inflows and were mainly related to professional and technical services, tourist activities and travels.

k) Financial External Loans granted by non-residents and external issues of debt securities

For transactions related to this concept, the institution dealing with the transaction (inflow of funds) must have the documentation supporting the existence of a foreign indebtedness.

l) Foreign direct investments

These transactions require the submission of the pertinent documents to classify the transaction under this concept (including capitalization of firms, purchase of a stock participation or of real estate, among other concepts). In addition, the regulations require specific documentation for this type of inflow to be exempted from the creation of a registered, non-redeemable, non-transferable and non-remunerated deposit established by Executive Order No. 616/05 (Communication “A” 4762).

m) Repatriation of residents’ own funds

The regulations in force have defined some requirements to check that these funds are really owned by the client. Such requirements vary according to the account of origin of the funds from which the transfer is made, whether held by the client or not, form and date when the client constituted the assets abroad and the concept under which such assets were originated (Communication “A” 4717 and amendment of Communication “A” 4786).

n) Other inflows of funds

All foreign exchange transactions related to the purchase, before the transaction, and sale of securities shall correspond to holdings of these assets that have remained at least 72 hours in accounts in the seller's name (Communication "A" 4882).

For transactions of the financial system related to swaps and arbitration with foreign countries, such as derivative transactions, counterpart requirements are established.

Quantification of amounts traded in the exchange market as per type of control

In the second quarter of 2011, foreign exchange transactions managed by authorized institutions in relation with the purchase and sale of foreign currency by clients in banknotes and coins have reached an approximate volume of US\$ 23 billion per month in the exchange market.

Fifty-five percent of this volume corresponds to import and export transactions of goods which, as stated above, are controlled not only through the basic documentation related to international trade transactions but also via the Customs Office information collected through different information regimes.

Another 7% is accounted for by sales to residents of banknotes in foreign currency and portfolio investments abroad, which must be purchased with funds deposited at banking institutions because they exceed US\$ 20,000 per month, and are therefore subject to the money-laundering regulations in force for the local financial system.

Another 4% corresponds to transactions by the national public sector and local governments which, in addition to the control of documents established in the foreign exchange regulations, are subject, on account of their operations, to several state control agencies.

Two per cent corresponds to transfers of profits and dividends.

One per cent corresponds to clearing of primary subscription of securities of companies of the financial and non-financial sectors which, in addition to the exchange controls, require the previous intervention of different control agencies of Argentina and of the country of issuance (generally, the United States) in the processes prior to the issuance. On the other hand, for domestic issues with subscription in foreign currency, these transactions must be made with funds previously deposited in banking institutions and are, therefore, subject to the money-laundering controls at the time of clearing the funds into the financial system.

Seventeen per cent was accounted for by transfers from and to foreign countries for other concepts requiring the application of the requirements on sender's identification in addition to the control of documents by the institution involved in the transaction according to its type, added to the fulfillment of the specific requirements applicable to some types of transactions.

There is another 5% corresponding to domestic loans in foreign currency granted by financial institutions to residents; by definition, these funds are managed through the banking system.

Finally, the remaining 9% corresponds to transactions with banknotes where no previous deposit of the funds in a banking institution is required; in this case, the foreign exchange information is analyzed on a monthly basis, and this allows for the detection of transactions by a client that might be potentially related to money laundering.

On the other hand, it is worth mentioning that the Argentine exchange market is highly concentrated, with a strong presence of Argentine public banks and foreign banks of the G20 member countries. Taking the second quarter of the current year as reference⁷, 66% of total transfers to foreign countries were made by foreign financial institutions authorized to operate in our country. These entities are subject to the Argentine regulations in force and to the requirements of the country of their own holding companies.

Conclusions

As from the abandonment of the fixed exchange rate regime, the Single Free Exchange Market (MULC) was created, through which all transactions in foreign currency must be channeled. In order to ensure transparency, a system for the regulation and recording of all foreign exchange transactions made by residents and non-residents was established.

Among other issues, the system is intended to prevent the use of the foreign exchange market for asset laundering or laundering of funds from terrorist financing transactions by means of different standards of the foreign exchange market regulatory framework (such as the identification requirements, submission of documents, origin and destination of the funds).

Data from the MULC reveal that 55% (slightly over one half) of the US\$ 23 billion transacted on average in this market on a monthly basis corresponds to import and export transactions. All transactions require the identification of the parties involved or the submission of transaction documents, among other requirements. An additional 36% of the transactions require funds to be deposited in banks. Likewise, over two thirds of the transactions made through authorized institutions correspond to foreign-capital entities which, in addition to being subject to the local regulatory framework, must comply with the requirements of the country of their holding companies.

A simple analysis of the main regulations in force applicable to foreign exchange transactions, their scope in terms of the transaction type, the coordinated interaction among Argentine official control agencies and the information provided by the transactions made in the Argentine exchange market, provide a solid support for the idea that the asset laundering or financing of terrorist activities through the domestic exchange market are strongly restrained.

⁷ These percentages do not substantially vary from those recorded in previous periods.