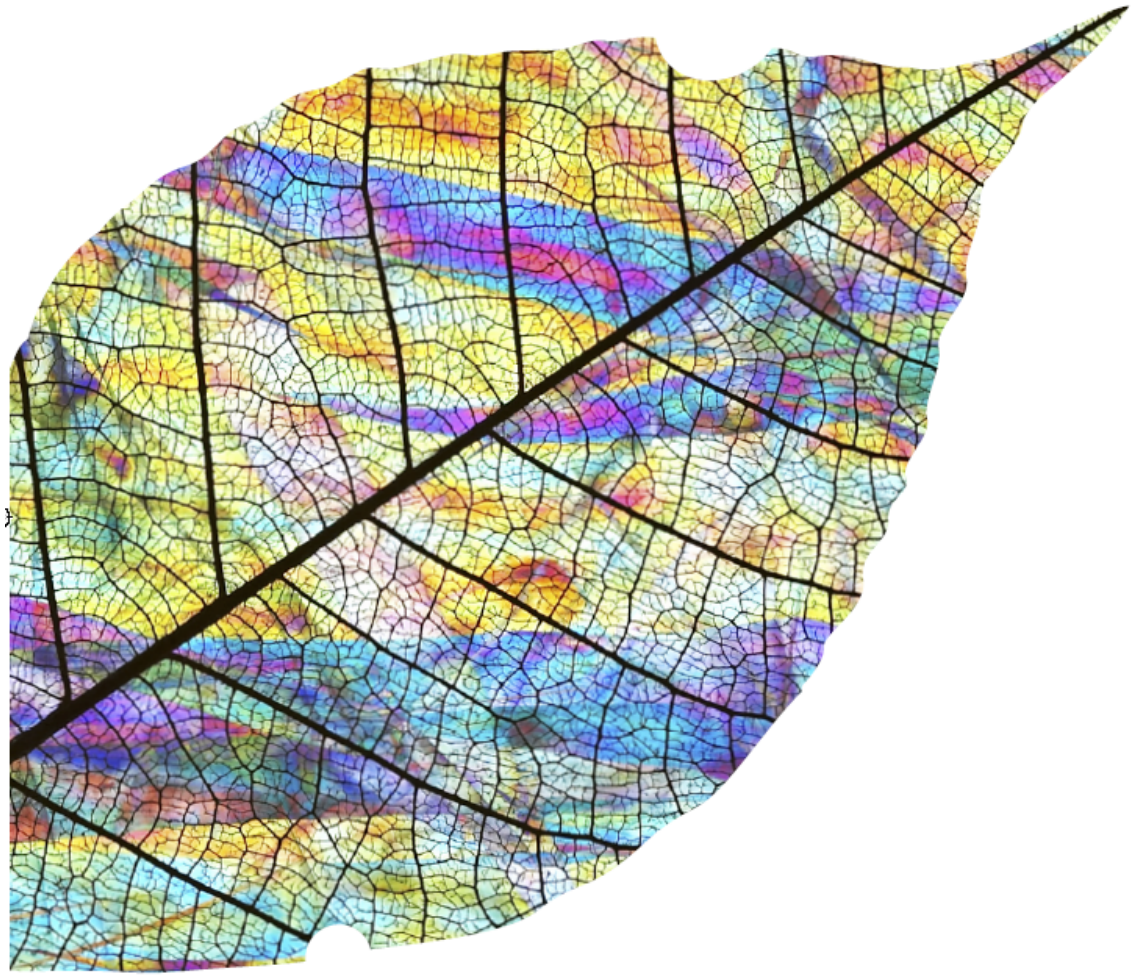
World Universities Comparative Law Project
Legal rating of Argentina

carried out by students at the Pontificia Universidad Católica Argentina

A production of the Allen & Overy Global Law Intelligence Unit



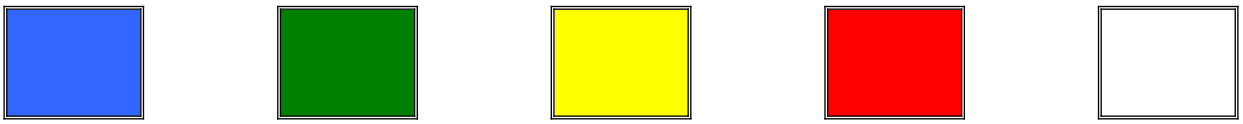
March, 2017

World Universities Comparative Law Project

Legal rating of Argentina

carried out by students at Pontificia Universidad Católica Argentina University

March 2017



Produced by the Allen & Overy Global Law Intelligence Unit

World Universities Comparative Law Project

The World Universities Comparative Law Project is a set of legal ratings of selected jurisdictions in the world carried out by students at leading universities in the relevant jurisdictions. This legal rating of Argentina was carried out by students at the Pontificia Universidad Católica Argentina.

The members of the Faculty of Law who assisted the students were Horacio Tomás Azar and Jorge Nicolás Lafferriere.

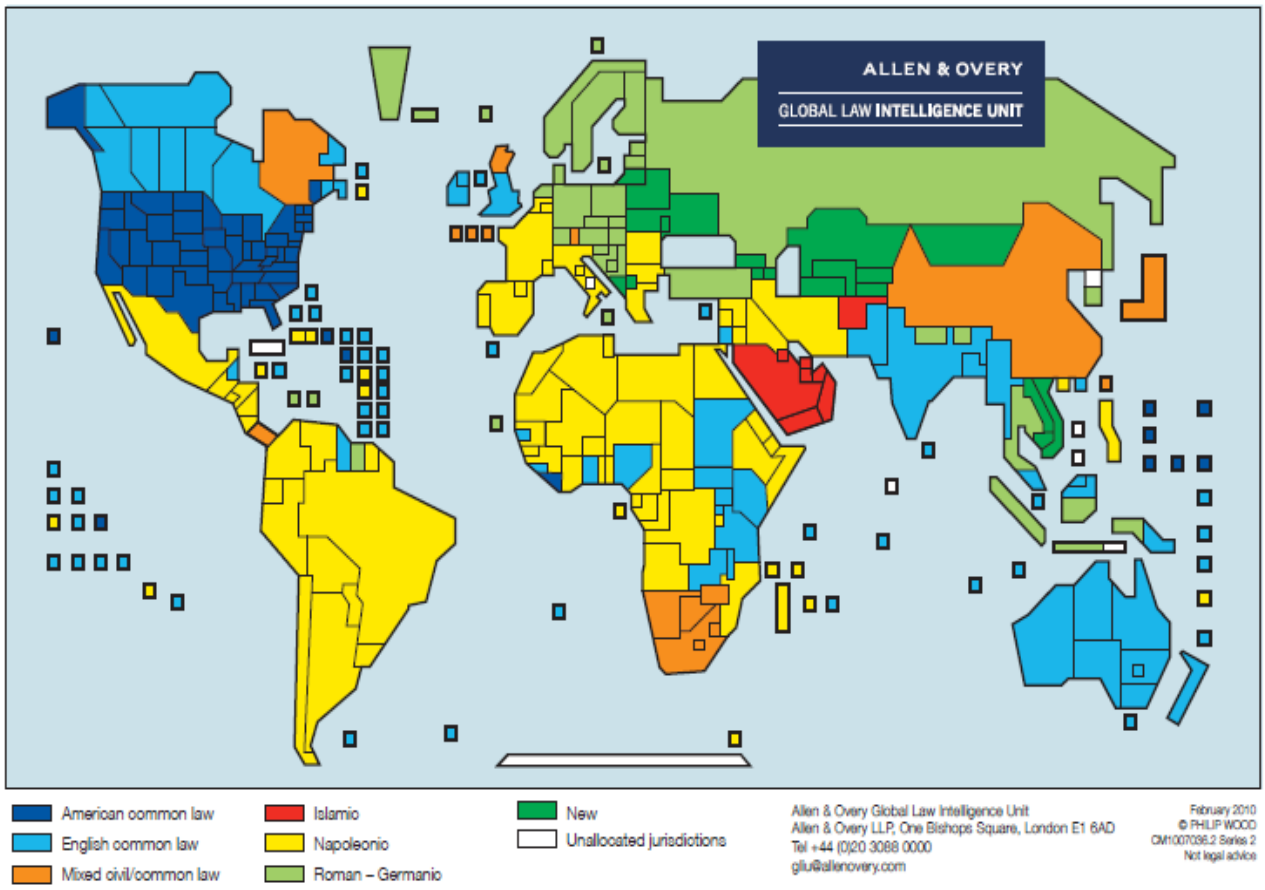
The members of the Practitioners Expert Panel with whom the students could discuss the questions in the survey were:

- Eduardo E. Represas from Brons & Salas
- Florencia Askenasy from Brons & Salas

The Allen & Overy Global Law Intelligence Unit produced this survey and is most grateful to the above for the work they did in bringing the survey to fruition.

All of those involved congratulate the students who carried out the work.

Families of law



Foreword

It is a great honor to present this work that was prepared by a chosen group of outstanding students from the Pontificia Universidad Católica Argentina: María Florencia Balbín; Gregorio José Uriburu; Maria Laura Müller; Julieta Chabagno; Victoria Hugo.

Our Law School is very pleased to be able to participate in this innovative project, introducing our students into the complex nature of financial and corporate law around the world.

As one of the top Law Schools in Argentina, in a globalized world, law students can no longer study our internal law alone, in isolation from the rest of the world. On the contrary, they need to acquire the abilities to understand financial and corporate law from a global perspective, and thus understanding the needs of foreign clients who want to invest in Argentina, or local clients who want to invest around the world, in order to provide suitable legal solutions for their needs.

I would like to highlight the hard work, responsibility and compromise that this team has shown. The questions were divided among the students, giving them the opportunity to join and share their ideas and arguments to answer the task. Once this research was done, the work was reviewed by the leader of the group, Ludmila Andrea Viar and the professors in charge of the project, Jorge Nicolas Lafferriere and Horacio Tomás Azar.

By working together with a top corporate law firm, and by studying in depth the legal system of Argentina, this project has successfully encouraged our students to learn more about our own financial and corporate legal system. Furthermore, by comparing it with other legal systems of the world, this project provides the necessary insight to be able to critically understand the Argentine legal system, with its comparative advantages and disadvantages.

To conclude, it is a pleasure to present this final research and to congratulate all the effort done by the team. Consequently, I hope this could be the beginning of having more work together in the nearby future.

Daniel Herrera
Dean
Law School, Pontificia Universidad Católica Argentina

Description of the legal rating method

Introduction

This paper assesses aspects of the law in Argentina with a view to rating the law in the relevant areas. The survey is concerned primarily with wholesale financial and corporate law and transactions, not with retail law.

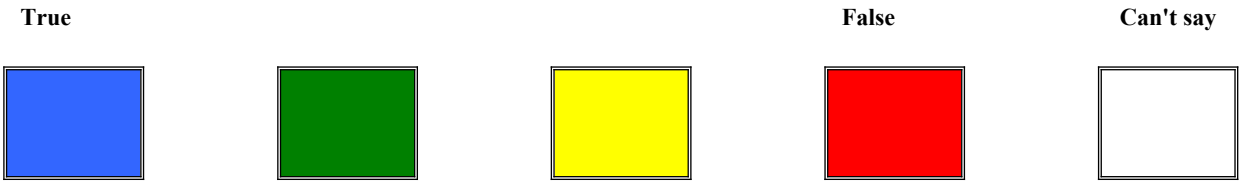
Legal risk has increased globally because of the enormous growth of law; because of its intensity; because many businesses are global but the law is national; because nearly all countries are now part of the world economy; and because the law is considered to play a very significant role in the fortunes of our societies. Liabilities can be very large and reputational losses severe.

The survey was carried out by students at Pontificia Universidad Católica Argentina. The survey was designed by the Allen & Overy Global Law Intelligence Unit.

The students were requested to express their views freely and in their own way. The views expressed are their views, not necessarily those of Pontificia Universidad Católica Argentina, the members of the Practitioner Expert Panel or the Global Law Intelligence Unit, the members of Allen & Overy.

Methodology

The survey uses colour-coding as follows:



Blue generally means that the law does not intervene and the parties are free, ie the law is liberal and open.

Red generally means that there is intense legal intervention, usually in the form of a prohibition.

Green and **yellow** are in-between.

The purpose of this colour-coding is to synthesise and distil information in a dramatic way, rather than a legal treatise. The colours correspond to a rating of 1, 2, 3 or 4, or A, B, C or D.

The cross in the relevant box signifies the view of the students carrying out this assessment of the position of [Argentina]. This is followed by a brief comment, e.g. pointing out qualifications or expanding the point. These comments were written by the students.

The colour-coding does not usually express a view about what is good or bad. Whether the law should intervene in a particular arena is a matter of opinion. The scale is from low legal intervention to intense legal intervention or control. This is not a policy or value judgment as to whether or not the law should or should not intervene. Jurisdictions often disagree on whether the law should intervene and how much. So one of the main purposes of this survey is to endeavour to identify some of the points of difference so as to promote fruitful debate.

Black letter law and how it is applied

This survey measures two aspects of law. The first is black letter law, ie what the law says or the written law or law in the books.

The second measure is how the law is applied in practice, regardless of what it says. Thus, the law of Congo Kinshasa and Belgium has similar roots but its application is different.

Although there is a continuum, these two measures have to be kept separate. Otherwise we may end up with just a blur or noise or some bland platitude, eg that the law depends upon GDP per capita.

In fact, only the last two questions deal with legal infrastructure and how the law is applied. All of the others deal with the written law, without regard to enforcement or application.

Key indicators

The survey uses key indicators to carry out the assessment. It is not feasible to measure all the laws or even a tiny fraction of them. The law of most jurisdictions is vast and fills whole libraries.

The key indicators are intended to be symptomatic or symbolic of the general approach of the jurisdiction. To qualify as useful, the indicator must usually be (1) important in economic terms, (2) representative or symbolic and (3) measurable. In addition, the indicators seek to measure topics where jurisdictions are in conflict. There is less need for measuring topics where everybody agrees.

An important question is whether this method is useful or not, and, if it is, whether the indicators are relevant.

Legal families of the world

Most of the 320 jurisdictions in the world, spread just under 200 sovereign states, can be grouped into legal families. The three most important of these are: (1) the common law group, originally championed by England; (2) the Napoleonic group, originally championed by France; and (3) the Roman-Germanic group, originally championed by Germany, with major contributions from other countries.

The balance of jurisdictions is made up of mixed, Islamic, new and unallocated jurisdictions.

Many aspects of private law are determined primarily by the family group, but this is not true of regulatory or economic law.

Excluded topics

This survey does not cover:

- transactions involving individuals
- personal law, such as family law or succession
- competition or antitrust law
- intellectual property
- auditing
- general taxation
- macroeconomic conditions, such as inflation, government debt, credit rating or savings rates
- human development, such as education, public health or life expectancy
- infrastructure, such as roads, ports, water supply, electricity supply
- personal security, such as crime rates, civil disorder or terrorism.

Banking and finance

Introduction

Banks and bondholders (typically also banks, but also insurance companies, pension funds and mutual funds) provide credit or capital. Their main risk is the insolvency of the debtor and therefore the key indicators intended to measure whether the law supports those habitual creditors or debtors, such as large corporations

as borrowers, when it matters, ie on bankruptcy. This is when commercial law is at its most ruthless in deciding who survives and who drowns.

This debtor or creditor decision is implemented mainly through the bankruptcy ladder of priorities. A feature of common law systems is the presence of super-priority creditors who are paid before anyone else - creditors with a set-off or a security interest and beneficiaries under a trust. For example, if a bank has universal security over all the assets of a company, the bank is paid before all other creditors, including employees and trade creditors. This regime therefore protects significant creditors who such as banks.

Jurisdictions based on the English common law model give super-priority to all three claimants. Traditional Napoleonic jurisdictions typically do not allow insolvency set-off, have narrower security interests and do not recognise the trust. Their bankruptcy ladder favours greater equality of creditors. Most traditional Roman-Germanic jurisdictions are in-between. They allow insolvency set-off and have quite wide security but most do not recognise the trust. There are wide exceptions to these generalisations.

Insolvency set-off

Generally If set-off of mutual debts is allowed on insolvency, the creditor is paid. If it is not allowed, then effectively the creditor is not paid. Very large amounts are involved in markets for foreign exchange, securities, derivatives, commodities and the like, so that the question of whether exposures should be gross or net is a matter of policy as to who the law should protect.

Q1 In **Argentina**, creditors can set off mutual debts on the insolvency of a debtor if they are incurred before notice of the insolvency.

True			False	Can't say
			X	

Comment:

The Argentine Bankruptcy Law (N° 24.522), refers to this situation in Article 130. It allows creditors to set off mutual debts on the insolvency of a debtor only before the judicial declaration of bankruptcy. However, according to the Argentine Bankruptcy Law there is a "*suspicious period*" presumed from the date of the cessation of payments until the date that insolvency is declared by the Court. In addition, it is important to mention the Article 116 of the Bankruptcy Law which refers to the settlement of the cessation of payments that cannot take place more than two years before the date of the judicial decision of bankruptcy or before the presentation in a "*reorganization proceeding*"("*concurso preventivo"*). So, if a set off occurs during this period, it can be declared invalid by a judicial action. The Argentine Bankruptcy Law, in Section 118, includes this judicial action and an example of detrimental act that can be: "advance payments of debts due on the day of the bankruptcy or subsequently". Consequently, setting off mutual debts with the debtor during the insolvency proceeding, may affect the "par *conditio creditorum* "or "*pari passu rule*" principle. It means that all the debtor´s creditors must be treated in the same way, because of this collective action that they have in this type of process, different from the individual actions. There are also exceptions to this general rule, for example, those creditors who have privileged credits.

In regards of "*reorganisation proceedings*", known in Argentina as "*concurso preventivo*", the set off can only take place before the presentation in court, in order to commence with this "*reorganisation proceeding*". Otherwise, it can affect the "*pari passu*" rule, and there is no provision in Bankruptcy law, which authorises a set off during the "*reorganisation insolvency proceeding*".

Legal Sources: Bankruptcy Law N° 24.522, Articles: 116, 118 and 130.

Security interests

Generally Security interests give priority to the creditor with security - typically banks - who are the main providers of credit in most countries.

In traditional common law jurisdictions, a company can create universal security over all its present and future assets to secure all present and future debt owed to a bank. Once registered, the security is valid against all creditors, except that the floating collateral ranks after preferred creditors - typically wages and taxes. The security can be granted to a trustee for creditors. On a default there are no mandatory grace periods and the creditor can enforce out-of-court by appointing a receiver (a type of possessory manager) or by private sale. But in some common law jurisdictions there are freezes on enforcement in the event of a judicial rescue of the debtor. Also, in some of these jurisdictions there are stamp duties.

On the other hand, in many traditional Napoleonic jurisdictions, universal security is not possible, neither is security for all future debt. There is no trustee to hold the security. On enforcement, there are grace periods and no receiver. Sale is through the court and a public auction. Preferential creditors rank ahead. Some countries have a freeze on enforcement under a judicial rescue statute.

The main policy issue is therefore whether security should be encouraged or whether the law should intervene to impose greater equality.

The main tests are (1) scope of eligible assets, (2) debt secured, (3) trustee, (4) priority over preferred creditors, (5) private enforcement and receiver, (6) no rescue freezes and (7) low costs.

Q2 In **Argentina**, the law offers a security interest which is highly protective of the secured creditor.

True			False	Can't say
		X		

Comment:

In Argentine Bankruptcy Law, there are two types of credits: the secured and unsecured ones. The "*secured credits*" are those credits secured over specific assets and are collected from the proceeds of the sale of the respective asset. Consequently, those secured creditors enjoy a preference or privilege in the distribution of the debtor's assets once the bankruptcy expenses have been accounted for, since they have first priority. This rule may differ for certain debtors such as financial institutions, insurance companies and pension funds. The law sets forth two types of preferences: i) "*special preferences*" which are granted exclusively over specific assets of the debtor; and ii) "*general preferences*, which are granted over all the debtor´s assets.

The most frequent credits with "*special preferences*" are, in decreasing order of priority set forth in Article 241 of the Argentine Bankruptcy Law:

- credits related to the construction, improvement or maintenance expenses over the relevant asset (to the extent that such asset is still in debtor´s possession);
- certain credits regarding work or labour (eg, over the existing stock, raw material or machinery located in the place where they provide services); salaries and related compensation owed to debtor´s business workers for six months, and those redundancy

compensations or compensations due to accidents at work which are made effective over sales of stock, raw materials, and machines located in the debtor's business.

- specific property taxes and duties over the asset to which the tax applies
- credits secured by mortgages; loans secured by pledges;
- liens on machinery; and rights of retention

The following credits have "*general preferences*", in decreasing order of priority, that are described in Article 246 of the Argentine Bankruptcy Law:

i) abour credits not subject to a special preference;

ii) the principal amount of social security debts;

iii) funeral, medical and certain personal expenses of individuals; and

iv) the principal amount of any taxes and duties owed to the Tax Authority.

The Argentine Bankruptcy Law in Article 249 states that if the funds do not cover credits with general preference, the distribution shall be prorated between them. Also this rule is applied to unsecured creditors.

Finally, the Argentine Bankruptcy Law, in Article 248 mentions the "unsecured creditors" ("*quirografarios*"). They do not have any privilege over debtor´s assets and they are the last ones to satisfy their credit with the assets that remain (if there are any) after paying the secured creditors.

Legal Sources: Bankruptcy Law N° 24.522, articles: 241,246, 248 and 249.

Universal trusts

Under a trust, one person, called the trustee, holds title to the assets of another person, called the beneficiary, on terms that, if the trustee becomes insolvent, the assets go to the beneficiary and are not used to pay the trustee's private creditors. The assets are immune and therefore taken away from the debtor-trustee's bankrupt estate.

The main examples of trusts are custodianship of securities, pension funds, securities settlement systems and trustees of security for bondholders and syndicate banks. The amounts involved are enormous.

All jurisdictions have an effective trust of goods (called bailment or deposit). The common law group has a universal trust for all other assets (land and intangible property). Most members of the civil code group do not have a universal trust, subject to wide exceptions, especially for custodianship of securities. A few countries in this group have a universal trust by statute, e.g. France and China.

Q3 **Argentina** has a universal trust for all assets.

True			False	Can't say
	X			

Comment:

The answer to this question is affirmative, because in Argentina there is no limitation on the type of property that can be subject to a trust ("fideicomiso") and also intellectual rights can be subject matter of it. That is the

reason why there are many different types of "fideicomisos" in Argentina such as of: guarantee administration, financial, construction at cost and testamentary. However, it is important to mention that Argentina does not have the American or Anglo Saxon institution of the "trust". It has a similar legal institution called "*fideicomiso*" that is defined by the law N° 24.441. The first article explains the "*fideicomiso*" as a contract in which a person (settlor) conveys the fiduciary ownership of particular assets to another (trustee) who commits to act as owner for the benefit of whomever is designated in the contract (beneficiary) and to transmit the property upon the expiration of a given term or the fulfilment of a condition, to the settlor, to the beneficiary or to the residual beneficiary. This law was partially abrogated by the New Civil and Commercial Code and has incorporated this definition in Article 1666.They have differences, for example, while the trust has a wide scope and may include such contracts as deposit, mandate, guardianship and so on,. the "*fideicomiso*" has a very narrow meaning that and does not recognise all of those cases. The main difference between these two legal institutes is on one hand, the American or Anglo-Saxon trustee is the legal owner by the common law and the beneficiary is the equity owner in law. On the other hand, Argentine trustee has an imperfect ownership over the property, and the beneficiary has a personal right in the "*fideicomiso*". The Civil and Commercial Code states that every "fideicomiso" must be registered in order to prevent frauds to third parties. Therefore, every "fideicomiso" must be duly registered by filing its registration at the National Registry of "Fideicomisos" of the correspondent jurisdiction.

Legal Sources: Law N°24.441, article 1; New Civil and Commercial Code, article 1666.

Other indicators

Other bankruptcy indicators not measured here include freezes on the termination of contracts, fraudulent preferences, the priority of rescue new money, the presence and intensity of corporate rescue proceedings and recognition of foreign insolvencies. Director liability for deepening the insolvency is dealt with below.

Other financial law topics not covered in this survey include the regulatory regime, especially capital, liquidity, authorisation of financial business, conduct of business, control of prospectuses, control of market abuse and frauds, such as insider dealing, and the insolvency regime for banks. Financial regulation is a very large field.

Corporations

Introduction

Financial law involves competition between debtors and creditors so that jurisdictions can be positioned on a straight line. Corporate law however involves three main competitors: (1) shareholders, (2) creditors and (3) managers - a triangle. If the key indicators show that a jurisdiction strongly favours one or other of the parties at the points of the triangle, whether creditors, shareholders or management, then one can begin to build up a picture of the choices which the jurisdiction habitually makes in resolving the conflicting interests of the parties.

For example, a very tough prohibition on financial assistance (which is protective of creditors against shareholders) tends also to support an attitude to other principles of the maintenance of capital or to support the proposition that mergers by fusion are difficult (because they can prejudice creditors). This would be true of the English regime in 1948. Similarly, a view which easily imposes personal liability on directors for deepening an insolvency might also show a legal approach which is not supportive of the veil of incorporation in other areas, eg shareholder liability and substantive consolidation on insolvency.

The two extreme corporate law models are the Delaware model and the traditional English model, exemplified by the English Companies Act 1948 (now superseded). Napoleonic and Roman-Germanic models are in-between to varying degrees.

The Delaware regime is highly protective of management in the key areas. The traditional English regime favours creditors on most of the key contests and, where creditor interests are not involved, it tends to favour shareholders as opposed to managers.

Director liability for deepening an insolvency

Generally If the law imposes personal liability on directors for deepening an insolvency, eg carrying on business and incurring debts where there is no reasonable prospect of paying them, then the regime is hostile to the interests of management. The legal risks of management are increased.

There are basically four regimes internationally: (1) directors are hardly ever liable for deepening the insolvency, eg Delaware and most US jurisdictions, plus some traditional English jurisdictions which only punish fraudulent trading; (2) directors are liable for serious negligence (England, Singapore, Australia, Ireland); (3) directors are liable for mere business misjudgements deepening the insolvency (France); and (4) directors are liable if they fail to file for an insolvency proceeding after the company becomes insolvent (France, Germany and others).

Q4 In Argentina the law rarely imposes personal liability on directors for deepening the insolvency and there is no rule that the directors must file for insolvency when the company is insolvent.

True			False	Can't say
			X	

Comment:

The Argentine Bankruptcy Law Article 173 provides that the directors or officers of a bankrupted Company shall indemnify any damages caused by them when they have wilfully produced, facilitated, allowed or worsened debtor´s financial situation or his insolvency. These acts must be performed up to one year before the date of the cessation of payments declared by the court.

Furthermore, the Argentine Corporate Law states that directors are joint and severally liable in front of the company, its shareholders and third parties in case of wrong performance of their functions breach of law, breach of company´s by–laws and any other harm caused by wilful misconduct or gross negligence. The applicable standard of care is the care of a "*good business man*". The concept of loyalty includes the obligation to act in defence of corporation´s interests. In addition, Directors are liable for debts with the public administration, that is why, among other things, they are required to have insurance as guarantee when the company files their designation at the Public Registry of Commerce.

Legal Sources: Bankruptcy Law N° 24.522, article: 173.

Financial assistance to buy own shares

Generally Many jurisdictions prohibit a company from giving financial assistance to buy its own shares. The typical example would be where a bidder finances the acquisition of a target company by a loan and after the takeover arranges for the target to guarantee the loan and charge its assets to secure the guarantee. The commercial effect is similar to the repayment of the share capital of the target before its creditors are paid. Shareholders should be subordinated to creditors.

The prohibition therefore favours creditors against shareholders of the target.

The Delaware regime does not prohibit financial assistance. The traditional English regime has a wide prohibition (not England any more). Most Roman-Germanic regimes are against it, with Napoleonic regimes hesitant. The EU has a prohibition against financial assistance by public companies. Some countries allow financial assistance by private companies if solvency is established.

A contravening transaction is usually a criminal offence and void.

Q5 **Argentina** permits a company to grant financial assistance for the purchase of its own shares.

True			False	Can't say
		X		

Comment:

In principle, the acquisition by a corporation of its own shares is prohibited, because it would disrupt the operation of its governing body and affect the inviolability of the capital stock (it would translate into an implied capital stock reduction, without following the procedures set out by the Argentinean Corporate Law, No. 19,550). However, this law provides some exceptions.

The term "acquisition" must be interpreted with a broad meaning, including any type of transaction that translates or may lead to the transfer of shares to the corporation itself, whether executed by the corporation or by a third party, whether for free or against payment.

Additionally, the acquisition can only be made to a shareholder; the corporation is not allowed to subscribe for its own shares.

Pursuant to Section 220 of the Argentinean Corporate Law, a corporation may acquire its own issued shares only in the following situations:

a) To cancel them and with a previous agreement to reduce the capital stock. Locally known as a "*rescate de acciones"* (rescue of shares), in this case the corporation receives its own shares in order to cancel them after the reduction of the capital stock has been decided and registered. Cancellation of the shares is logical, ever since they no longer represent the cancelled capital stock. It is not meant to have the shares enter into the assets of the corporation, but just to have them cancelled.

b) Exceptionally, with realized and net earnings or free reserves, when the shares are wholly paid-in and to avoid grave harm, which shall be justified in the following ordinary shareholders' meeting. Acquisition should, at first hand, be done proportionately to all shareholders. This acquisition is decided by the Board of Directors to avoid any serious harm, e.g.: (i) in publicly listed companies, if by reasons beyond the corporation's control, the shares suddenly lose their value, and their acquisition simulates an increase in demand; and (ii) the acquisition of shares consequent to a limited-transferability clause in the by-laws. After the acquisition, the Board of Directors must inform the shareholders, in their first ordinary meeting, about its terms and conditions. Shareholders should then consider if the invoked grave harm was real, concrete and objective, if the acquisition was convenient, and eventually, the liability of the directors for the acquisition perpetrated.

   From an accounting point of view, the acquisition of shares entails a decrease in the corporation's assets, but the capital stock remains unaltered. However, until the shares are re-sold (see Section 3 below) they must be charged differently within the capital stock as "treasury shares" ("*acciones en cartera*").

c) To pay-in the capital of an acquired establishment or of a company that it incorporates: this is evidenced when a corporation acquires an ongoing concern that holds within its own assets shares of the acquiring corporation, or when the corporation absorbs, by means of a merger, another company that owns shares of the absorbing corporation.

It is important to note that public listed companies have a special regulation set out by the "*Comisión Nacional de Valores"* for the acquisition of their own shares.

After an acquisition of shares by the corporation in the terms of items 2.b) and 2.c) above, the Board of Directors must sell them within the following year, unless the shareholders' meeting extends this term (extension has to be for a determined period of time). Section 221 of the GCA stipulates that in these cases, the right of first refusal granted by Section 194 of the GCA must be applied.

It may be the case that after the acquisition of shares, the shareholders resolve to reduce the capital stock and have them cancelled within the year of acquisition. On the contrary, shares that are "rescued" to be cancelled as a consequence of a capital stock reduction cannot later on be sold.

Another possible measure is to adjudicate them directly to the shareholders, or have them distributed as dividends.

The price of sale shall be, at least, the same price of acquisition, regardless of the nominal value of the shares.

The rights correspondent to the acquired shares (both political and economic) shall be suspended until they are sold. Furthermore, the shares shall not be considered for the determination of the quorum and/or majorities of shareholders' meetings.

The infringement of Section 220 of the GCA does not imply an absolute invalidity of the action. Only the corporation, its shareholders and third party creditors can challenge it. The seller of the shares cannot request the nullity of the sale. Additionally, the shareholders, directors and syndics that participated in the sale can be economically liable by the damage incurred in by the acquisition of the shares.

Legal Sources: Argentinean Corporate Law, No. 19,550, articles 194,220,221.

Public takeover regime

Generally A public takeover regime which is free and open tends to favour managers who can guard against takeovers by poison pills and the like and who have relative freedom to acquire other companies. An example is the Delaware regime. A restrictive regime on the lines of the British system tends to favour shareholders.

The chief features of a restrictive regime are: (1) the bidder must make a mandatory bid in cash when a threshold of shares in the target is reached, eg 30%; (2) the bidder must pay the same price to all shareholders (sharing the control premium); (3) no partial bids (getting control on the cheap); (4) proof of certain funds to implement the offer; (5) compulsory acquisition of dissenting minorities (squeeze-out); (6) fixed timetable; (7) no ability of the managers to frustrate a bid by poison pills without shareholder approval; and (8) control of the content of circulars, especially forecasts.

Q6 Apart from exchange controls and restrictions on foreign direct investments, the public takeover regime in Argentina is open and has few restrictions.

True		False		Can't say
		X		

Comment:

In Argentina there is a restricted public takeover regime. There is a series of imperative laws that must be applied. These provisions are set out in the law 26.831 of capital market which is regulated by the National Securities Exchange Commission, in the procedure for the public acquisition of shares is legislated.

The law tends to protect the rights of shareholders and creditors of the Company.

Any takeover bid of shares with voting rights of a company whose shares are admitted to the public offer system, either of a voluntary or mandatory character under the provisions of the subsections below, should be directed to all holders of those shares. In the case of mandatory takeover bids it should include also the holders of subscription rights or share options, convertible debt securities or other similar securities, that directly or indirectly, may entitle the holder to a subscription right, purchase or to a conversion into shares with voting rights ratably with their holdings and the amount of participation intended to be purchased; and shall abide by any and all procedures established by the CNV, in accordance with all applicable transparency rules governing primary placements and secondary trading of securities.

The procedure to be established by *Comisión Nacional de Valores* shall ensure and provide for: *a)* An equal treatment of shareholders both in the economic and financial conditions and in any other condition for the purchase of all shares, securities or rights of the same class or kind; *b)* The fair price; *c)* Reasonable and sufficient time limits for recipients of the offer to avail of sufficient time to take a decision thereon, and also the computation method for these periods; *d)* The obligation to supply detailed information to investors to enable them to make a decision relying on the necessary data and information, with full knowledge of the facts; *e)* The terms under which the offer is irrevocable or may become subject to conditions, in that case under objective causes, that must be clearly included and highlighted in the offer prospectus, and whenever provided by the enforcement authority, the guarantees required according to the consideration offered consisting of cash, marketable securities or securities already issued or securities whose issue has not yet been agreed by the offerer; *f)* The regulation of the management board duties to provide, in the interest of company and all holders of securities subject to the offer, its opinion on the tender and on bid prices or the considerations offered; *g)* The scheme of possible competing offers; *h)* The rules on withdrawal or revision of the offer, apportionment, revocation of acceptance, rules of best price offered and minimum offer period, among others; *i)* The information to be included in the offering memorandum / offer prospectus, and the registration form thereof, which shall consider the offerer's intentions regarding the future activities of the company; *j)* The rules regarding the publicity of the offer and related documents issued by the offerer and the management of the company; *k)* In the case of exchange offers of securities, the regulation of financial and accounting information of the issuer of the securities offered in exchange to be included in the offer prospectus; *l)* The validity of the principle that the management board of the company is prohibited from impeding the normal development of the offer, unless it refers to the search for alternative offers or has received prior authorization to this effect from the shareholders' meeting during the term of the offer; *m)* That the company must not be hindered in the conduct of its affairs by a bid for its securities for longer than is reasonable; *n)* The exemptions that are applicable to such procedure.

The law prohibits insider trading. The directors, supervisory board members, shareholders, shareholder representatives and anyone who by their work, profession or duties within an issuer company or registered entity, per se or through an intermediary, as well as public officials and those managers, officers and employees of risk rating agents, and of public or private control agencies, including *Comisión Nacional de Valores,* markets and deposit agents, and any other person who, by reason of their duties have access to similar information, may not rely on any non-public or insider information to obtain, for himself or for others, benefits of any kind, resultant both from the purchase or sale of securities or any other transaction relating to the public offer regime. These provisions shall also apply to those persons referred to under section 35 of Law 24,083, as amended. In these cases, the positive price differential obtained by those who have unduly availed of insider information resultant from any trading operation made within a six (6) month period, relating any securities of issuers with whom they are related to, shall be deemed for, and be recoverable by the issuer without prejudice to the penalties that may correspond to the offender. If the issuer fails to initiate the appropriate action or to act consequently within sixty (60) days of being notified to do so, or if it will not drive the action diligently after notification, those actions may be performed by any shareholder;

Any takeover bid of shares with voting rights of a company whose shares are admitted to the public offer system must be addressed to all holders of those shares, including the holders of subscription rights or options, of convertible debt securities or other similar securities, that directly or indirectly, may entitle to a right to underwrite, to purchase or conversion into shares with voting rights ratably to their holdings and the amount of participation intended to be purchased.

The offer shall be made at an equitable price determined according to the guidelines in the next chapter, and shall refer at least to the participations provided under the regulations which shall determine the obligation to promote full or partial, and differentiated mandatory bids according to the equity share and voting rights intended to be attained.

Legal Sources: Law N° 26.831, articles 86, 88.

Other indicators

Other important indicators are corporate governance (difficult to measure), free ability to merge companies by fusion, the one-share-one-vote rule, and, to a lesser extent, minority protections. Other indicators relate to quick and cheap incorporation, the *ultra vires* rule, maintenance of capital, no par value shares, shareholder liability, substantive consolidation on insolvency and disclosure. These are not measured here.

Commercial contracts

Introduction

Contract is at the heart of commercial life, and is everywhere. In fact, the main tenets of contract law across the main families of jurisdictions are consistent - it is in the fields of insolvency and property law where the main differences emerge. It is true that there are contract differences, for example, between writing requirements, open offers, the time of acceptance and specific performance, but often these differences are of lesser significance in practice in the business field.

The key indicators the survey chooses all tend to symbolise whether the approach of the jurisdiction to contract is hard or soft. If the approach is hard, then the jurisdiction tends to support predictability in business contracts so that certainty and freedom of contract are valued more than mitigating the risk of occasionally abusive behaviour and unfair results, especially for weaker parties. A soft jurisdiction tends to give greater primacy to notions of good faith and the like.

Exclusion of contract formation

Generally Commercial parties often wish to be able to negotiate heads of terms commercially without being bound by a contract. In some jurisdictions, the courts are ready to infer that the parties are bound if the terms are sufficiently clear, even if they have said expressly that they do not intend to be bound.

Q7 In Argentina, parties are not bound to heads of terms if they expressly state that the terms are "subject to contract" or some such clear phrase.

True			False	Can't say
X				

Comment:

In Argentina exists freedom to decide on the terms of contracts. The Civil and Commercial Code set in articles 958 and following that contracts are governed by the autonomy of the parties, who are free to choose the terms of their own agreements, respecting the limits established by law, public order, morality and good manners. Any contract in compliance with the legal requirements is like the law for the parties.

Nevertheless, there are some particulars contracts that are covered by the Civil and Commercial Code set in articles 1092 and following. For example, the consumer contract, sale contract, supply contract, lease contract and others. The code sets minimum standards for erecting these contracts. In addition, labor contracts and consumer contracts have a different regime in which the freedom aforementioned is limited as both types of contracts may go in detriment of public order.

Judges cannot amend the terms of the contract unless there is a party request. They may be authorized to do it by the law or ex officio if public order is affected.

Contracts must be concluded, interpreted and applied according to the principle of good faith.

The laws relating to contracts are suppletive of the will of the parties, unless they are mandatory for them.

Termination clauses

Generally Many contracts, especially loan contracts, leases of goods and long-term sales contracts, contain events of default on the occurrence of which one party can terminate the contract. Jurisdictions which uphold freedom of contract and the literal interpretation of contract give effect to these clauses and do not rewrite the contract according to the court's notions of what is fair. Other jurisdictions prefer good faith. We ignore consumer contracts - where there may be consumer protections.

Q8 In **Argentina**, a termination clause in a loan or sale of goods contract between sophisticated companies (not individuals) providing for the termination of the contract immediately on certain events is usually upheld, even if the event concerned is relatively trivial.

True		False	Can't say
	X		

Comment:

The civil and commercial code in the articles 1083 and following regulate matters related to the termination clauses. The law establishes the general principle that a party has the right to terminate the contract in whole or in part in case of breach of contract committed by the other party. However, this breach of contract must be essential.

Likewise, the parties can agree on termination clause, which will take effect since one party can notify the other one about the intention officialising the contract.

On the other hand, there is an implicit default clause in bilateral contracts, which is subjected to the provisions of Articles 1088 and 1089 of the code.

The frustration of the purpose of the contract, authorizes the aggrieved party to declare its resolution. As long as was caused by an alteration of an extraordinary nature of the circumstances existing at the time of its conclusion, which is unrelated to the parties and which exceeds the risk assumed by them. The same principle applies for "force majeure" events.

Legal Sources: Civil and commercial code, articles 1086, 1087, 1088 and 1089.

Exclusion clauses

Generally Contracting parties often seek to exclude their liability for defective performance of the contract. So the issue is whether these exclusion clauses are generally upheld if they are clear and whether freedom of contract is allowed in this area.

Q9 In **Argentina**, exclusions of liability in most commercial contracts between sophisticated companies, such as a sale of goods contract, are generally upheld if they are clear.

True		False	Can't say
	X		

Comment:

It's is true since the guiding principle of Argentinian contract law is the autonomy of the parties to decide the terms of their agreements. This principle is in articles 958 and 962 of the Civil and Commercial Code. At this point, the Code establishes some exceptions to this main principle. One of those exceptions is related to the

fraud law and the abuse of law. Also, the Consumer Protection Law is an exception, legislated by the law 24.240 and the special section of the Civil and Commercial Code.

In addition, it is important to call attention to the *standard form contracts* in which the autonomy of the parties is restricted, since one of the contractual parties adheres to the conditions set by the other one. The signatory is always protected by the law because it has little or no ability to negotiate more favourable terms. In consequence, the Civil and Commercial Code establishes that in the event of an ambiguity the courts must interpret the clauses against the party that drafted the contract.

Legal Sources: Civil and commercial code, articles 958 and 962.

Other indicators

Other contract indicators not assessed here include writing formalities, open offers, mistake, frustration, damages, penalties, specific performance and whether notice of assignment of the contract to the debtor is mandatory if the assignment is to be valid on the insolvency of the assignor.

Litigation

Introduction

The first three key indicators of governing law, jurisdiction and arbitration tend to show whether the jurisdiction does or does not place a high value on international comity and freedom of contract as opposed to national primacy.

The indicator on class actions tends to show whether or not the jurisdiction's litigation system is orientated towards plaintiffs, especially mass plaintiffs in product liability cases. This indicator may also show the attitude of the jurisdiction to the protection of individual parties as against business parties, both in terms of the incidence of costs and enforcement.

Governing law clauses

Generally Most countries apply a foreign governing law of a contract even if there is no connection between the contract and the jurisdiction. If the courts do not uphold the governing law, the effect is that the contract obligations may be different.

Q10 The **Argentina** courts will apply an express choice of a foreign law in a loan or sale of goods contract between sophisticated companies, even though the contract has no connection with the foreign jurisdiction, but subject to Argentina public policy and mandatory statutes.

True			False	Can't say
		X		

Comment:

The application of a foreign law in a loan or sale of goods contract by Argentinian courts is conditioned by the recognition of a foreign connection. The Civil and Commercial Code establishes some rules for the

applicable jurisdiction in an international contract but also the country is part of the Montevideo treaties of 1889 and 1940.

These international rules consider that, in principle, the contracts will be ruled by the law of the place of their performance; this may be the rules of the place where the goods are or the ones of the country where the debtor has his address at the time of his fulfilment. In case that the place of performance can't be identified the contract shall be governed by the law of the region where it was celebrated. Finally, when the contract is celebrated between distant parties, the applicable law is that of the place where the acceptance of the offer is sent.

As it will be explained in Question 11, a foreign law can only be applied by Argentine courts when it respects the public order and the international imperative rules.

Foreign jurisdiction clauses

Generally Many contracts confer jurisdiction, sometimes exclusive, on the courts of a foreign jurisdiction, usually accompanied by a choice of foreign governing law.

Q11 The **Argentina** courts will generally uphold a clear submission in a loan or sale of goods contract between sophisticated companies to the exclusive jurisdiction of the courts of a foreign country, even if there is no connection between that country and the contract.

True			False	Can't say
	X			

Comment:

According to the Argentinian Civil and Commercial code the parties in an international contract have the right to decide the applicable law in their relationship. Article 2651 only requires the respect of the country's public order and of the international imperative rules.
Article 2599 expresses that international imperative rules must be enforced above the autonomy of the parties and the foreign law should be excluded. Eventually, if it is necessary to apply a foreign law, its international imperative rules must also be respected.
In Argentina, public order can be defined as a body of principles that inform the legal regulations; therefore article 2600 excludes the application of a foreign law when the solution is incompatible with those fundamental values.
The authorization of the law to admit the intervention of foreign courts is only a general rule when the subject in discussion has an international aspect. There is only one exception to this autonomy, when the agreements are legislated by the Consumer Protection Law.

Arbitration recognition

Generally Contracting parties, especially in trading and construction contracts, but less so in loan contracts, wish to submit disputes to arbitration, sometimes in a foreign country. The resulting award is often enforceable locally under the New York Arbitration Convention of 1958, to which most countries have adhered.

Q12 In **Argentina**, the courts allow sophisticated contracting parties to submit contract disputes to a foreign arbitral tribunal to the exclusion of the Argentine courts.

True		False	Can't say
	X		

Comment:

The civil and commercial code allow the parties in economic and international agreements to submit contract disputes to a foreign arbitral tribunal, except when the Argentine courts have the exclusive jurisdiction or law forbids the submission.

Furthermore, Argentina has adhered to the New York Arbitration Convention of 1958, as well as most countries around the world, which goal is to promote within member countries the possibility of recognise and execute foreign decisions in the same terms as the local ones.

Class actions

Generally In some countries, such as the United States, a plaintiff can be authorised by the court to sue on behalf of all claimants who are similarly situated. Claimants have to opt out or they are bound.

Q13 In Argentina, class actions where the class is bound if they do not opt out are generally not allowed.

True		False	Can't say
	X		

Comment:

Our country has not regulated class actions.

On the other hand, article 43 of the Argentine Constitution makes express mention of the protection of rights of public interest that are the subject-matter of joint or class actions by means of a proceeding regarding constitutional guarantees ("*Amparo*"). Moreover, the supreme law does not only limit to that, but provides that said protection may be sought by the damaged party, the ombudsman and the associations which foster such ends, registered according to law.

The Supreme Court, by its Resolution 12/16, approved a regulation of class actions proceedings in federal Courts. Previously, the Supreme Court created a Public Registry of Class Actions through Resolution 32/14.
Legal Sources: Argentine Constitution.

Other indicators

Other indicators not covered by this survey include contingent costs, loser pays the costs of the winner, prejudgment freezes or arrests, appeals, scope of disclosure (discovery of documents), efficacy of waivers of sovereign immunity and the enforceability of foreign judgments.

Real property

Ownership of land

Generally In most countries, nationals can own land absolutely and are not restricted simply to leases for a limited term or simple rights of occupancy. However, in some jurisdictions, absolute ownership of land is not available to nationals or local corporations. If this is so, then the jurisdiction would be coloured green if citizens can lease land for a very long term without material restrictions, such as 999 years, and can also mortgage or sell the land or give it away or bequeath it under their wills without official consent because the ownership is a close proximate of absolute ownership. If on the other hand citizens are entitled only to a lease of, say, 70 years or less, or to similar rights of occupancy, and if there are limitations on dealing with the land without official consent, such as mortgaging, selling or bequeathing it, then the jurisdiction would be red.

Q14 In **Argentina** nationals and local corporations are entitled to own land absolutely.

True			False	Can't say
X				

Comment:

Under the Argentine Civil and Commercial Code, in our country citizens and local companies are entitled to own lands absolutely, which means granting the owner the greatest physical and legal powers over the property, including, among others: *jus utendi*(right of use), *jus fruendi*(right of enjoyment), and *the* right of disposition). This is unless the right acquired over such land is subject to a real property encumbrance, in which case the owner shall lack some of those powers, for example: usufruct, where the title holder shall lack the powers of use and enjoyment since, at the moment of acquiring such title, it was dismembered.

Legal Sources: Argentine Civil and Commercial Code.

Security of land title and land registers

Generally Many jurisdictions improve the security of title to land by a registration system which, although not necessarily state-guaranteed, has high reliability. An example is the Torrens system developed in Australia and used in many other countries, eg Canada and England.

Most countries in the civil code groups do not have a title register but instead require documents concerning land to be notarised and filed at the registry so that they can be searched. The United States does not generally have title registers for land although there may be mortgage registers. They rely on title registration companies which provide title insurance.

Q15 Most land in **Argentina** is registered in a land register which records most major interests in land, eg ownership, mortgages and longer-term leases.

True			False	Can't say
	X			

Comment:

In Argentina, the French system is applied, under which registration is not indispensable for a right in rem to arise or be transferred between the parties, but it is indispensable for said right to be enforceable as against third parties. The right *in rem* is acquired through a document of title and by appropriate means (i.e., delivery). Recordation is declaratory, for purposes of publicity, and not constitutive.

Publicity is fundamental to protect the rights of creditors, and allows third parties that may wish to acquire a right *in rem* over a piece of property to know in what condition such property is(mortgaged, held in usufruct), and who its owner is. Moreover, it allows the State to identify the actual owner of each piece of real property so as to collect the applicable taxes.

Legal Sources: article 1983 of Argentine Civil and Commercial Code, and the law 17.801.

Land development restrictions

Generally Many countries restrict development and the change of use of land and require permits to be obtained for any development or change of use.

Q16 In **Argentina**, apart from environmental controls (dealt with later), the control of commercial development and the change of use of land is very light and, where required, permits are quick and cheap to obtain.

True			False	Can't say
			X	

Comment:

In Argentina, municipalities divide their territories into: rural areas, urban areas, and complementary areas.

Rural areas are comprised by the areas destined to accommodate facilities with uses related to extensive farming, forestry, mining and other types of production.

Urban areas are comprised by two subareas: urbanized and semi-urbanized.

Complementary areas are comprised by those areas which surround or are adjacent to an urban area, and are functionally related to it.

Urban and complementary areas make up the centers of population and constitute component parts of a territorial unit.

The existence or not of areas, subareas or delimited zones, as well as some of their locations, will depend on the inherent conditions or the needs of each district or each of its urban centers.
Areas, subareas and zones shall, when appropriate, be divided into plot, circulation, green and free public spaces.

Therefore, a change in use is not possible since a particular use has already been established for each area. Within the urban and complementary areas, a change in the use of a particular land can be achieved but it has to go through some administrative proceedings.

Legal Sources: decree-law 8912/77

Other indicators

Other indicators not surveyed include transfer costs, stamp duties and lessee protections.

Employment law

Generally The indicator here is whether it is easy or hard to hire and fire employees. The measures include high minimum wages, maximum hours, minimum holidays, maternity rights, equal pay for equal work (non-discrimination) and severance costs.

Q17 In **Argentina**, there are few controls on hiring and firing employees or on the terms of employment.

True			False	Can't say
		X		

Comment:

In Argentina, there is a restricted freedom to decide terms of employment.

There are a series of imperative labor laws that must be applied to every labor relationship. These laws — among others, laws 11.544 and 20.744— establish minimum obligations for both employers and employees. Therefore, every labor contract must be based on the labor laws and the Collective Agreements (that applies to their specific industry) between the trade unions and the employers. Once all the legal terms are fulfilled the employer and the employee can arrange better conditions for that individual labor relationship, favoring the employee.

The labor laws and the Collective Agreements regulate the minimum salary, maximum working hours, holidays, paid leaves, overtime pay, notice period and the severance package.

On the private sector, when an employee is fired, a legal cause must exist that makes it impossible to continue the laboral relationship. Otherwise the employer must pay a severance established by the law, collective agreement and individual contract depending on the case. In certain cases determined by the law, like firing a pregnant woman or a trade unionist, a higher severance must be paid.

On the other hand, in the public sector, employees have a special laboral stability except specific reasons established by law, such as incurring in serious misconduct, or committing crimes.

Legal Sources: Ley de Jornada Laboral 11.544, Ley de Contrato de Trabajo 20.744, Ley Nacional de Empleo 24.013, Ley 25.323.

Environmental restrictions

Q18 In **Argentina** the rules governing the environment and liability for clean-up are very light and relaxed.

True			False	Can't say
			X	

Comment:

The Argentine "General Environment Act" establishes that when a danger of serious or irreversible environmental damage exists, businesses must have effective mechanisms in order to prevent in a total or partial way the damaging of the environment.

Regarding liability for clean-up, businesses are always responsible for the environmental damage or relevant alteration, whether they could have prevented it or not. Even though there was no negligence, the liability is objective. As a result, companies are obliged to pay for the preventive mechanisms and the restoration of the original environment.

Everyone that makes environmentally risky activities is obligated by law to have a special insurance that guarantees the integral restitution of the environmental damage and to carry out the necessary research before taking any action in order to prove that it will not affect the environment.
If repairing the damage is impossible, substitutive reparation determined by a judge must be paid. The money is destined to the "Environment Compensation Fund", which functionally consist in repairing the environmental damage.

Violating the anti-pollution measures established by law may result in fining or debarment of the business.

This topic is a provincial jurisdiction matter. That is why the general parameters are given by the federal law 25.675.

Legal Sources: Ley General de Ambiente 25.675; ley 20.284; Ley de Residuos Peligrosos 24.051.

Openness to foreign business

Generally These indicators measure the degree to which the country is open to foreign businesses. The indicators are quite generic and therefore subjective.

Foreign direct investment

Q19 In **Argentina** foreigners may freely own and control local companies outside protected industries, such as media, banks and defence.

True			False	Can't say
X				

Comment:

Argentina has a very liberal Foreign Investment Act, which establishes that outside protected industries, foreigners may freely own and control local companies. As there are no restrictions for them beyond to what applies to nationals, having only to prove their existence accordingly to the laws of their country of constitution, give information about their articles of association, their noncurrent assets outside the country, individualize shareholders and designate a representative in Argentina. In consequence, they do not require a discretional administrative approval in any case, no matter the amount of the investment. Nevertheless, for tax purposes foreign companies acting in Argentina must comply annually with an annual reporting obligations in which they demonstrate that their non-current assets outside Argentina are greater than the assets held inside the country. The aforementioned report does not apply to foreign natural individuals acting as shareholders of local companies.

Foreign owned companies have the same rights as national owned companies.
Large investors must submit a sworn statement with information about the investment, required by the Central Bank every six months in order to elaborate statistics about Foreign Direct Investments.

Legal Sources: Ley 21.382 y decreto reglamentario; Comunicación "A" 4237 del Banco Central de la República Argentina.

Exchange controls

Q20 In **Argentina**, there are no exchange controls. Businesses may therefore have foreign bank deposit accounts in foreign currency, borrow in foreign currency and repatriate profits to foreign shareholders in foreign currency.

True			False	Can't say
	X			

Comment:

Until December 2015, there were several exchange controls, commonly known as the "dollar stocks". Natural persons such as legal entities had many restrictions to acquire foreign currency. However, since August 2016, foreign currencies can be bought and sold freely, as no authorization from the Administration is needed. There is a floating exchange rate that in individual transactions is freely determined by the parties,

though the Government usually intervenes by buying or selling foreign currency to maintain the exchange rate between certain limits in order to keep its monetary policy.

Businesses may freely have foreign bank deposit accounts in foreign currency, and repatriate profits to foreign shareholders in foreign currency. Minimum restrictions of time on the permanence of the investment and the maximum limits of repatriation have been eliminated.

Businesses may freely borrow in foreign currency.
Finally, formal reporting is always required by the Central Bank in order to prevent money laundering and to elaborate statistics.

Legal Sources: Comunicaciones "A" del Banco Central de la República Argentina: 6037, 5850, 4305 y 3602.

Alien ownership of land

Q21 In **Argentina**, foreign-controlled companies have the same rights as nationals or residents to own or lease land without a permit.

True			False	Can't say
			X	

Comment:

In Argentina, the law 26.737 establishes a limit to the juridical persons, which have been constituted according to the national law or foreign law and whose capital is composed by more than the 51 % in hands of natural or juridical foreign persons; or when the proportionality distribution of the shareholders results in the fact that the majority percentage of the society will consist of foreign persons.

In consequence, according to the law, a natural or judicial foreign person can´t have more than 1000 hectares into the *zona núcleo* (nucleus area), which is essentially composed by the north of the Buenos Aires Province, the south of Santa Fé Province and the south of Córdoba Province or an equivalent surface out of this *zona núcleo*, regarding the territoriality location.

The key point is that when the law talks about the equivalent surface, that means the other provinces can determinate an equivalent surface regarding the *zona núcleo*, limiting the acquisition of lands by natural or juridical foreign persons.

In that case, the decree 820/2016 gives more faculties to the *Consejo Interministerial* (Interministerial Council). One of the main new faculties is that they can modify the equivalency established by the provinces, through a founded resolution based on changes in the quality of rural land, the growth of urban suburbs, rural lands that are complementary or ancillary to a facility that requires industry qualification, the implementation of projects of general interest or of local, regional or national ones related to the need and / or desirability of harmonizing the equivalence set for each province according to the type of operation, municipality, department and province, or other appropriate reasons.
Finally, if the foreign society or person has lands in more than one provinces or more than one commercial business the limit is determined by prorating in a proportional way the amount of hectares and commercial

business. Every deal regarding land in which foreign investors act as buyer or seller must be previously approved and reported to the Federal Agency of Rural Land ("Dirección Nacional de Tierras Rurales")

Legal Sources: Law 26737Decree 820/2016

Application of the law

Generally These indicators deal with the application of the law, as opposed to what the law actually says. They are bound to be generic and subjective, a matter of impression.

Q22 In **Argentina**, the higher courts usually treat big businesses as fairly as they treat individuals and do not favour local interests over foreigners.

True			False	Can't say
X				

Comment:

It is true; also our National Constitution provides an article that guarantees a fairness treatment and also a kind of privilege. Article 20 of the National Constitution establishes the equality between foreign and national people. Article 116 of the same legal source gives the foreign citizens access to federal courts. This is also legislated into law 48, article 2. Regarding large businesses, they treat them as fairly as individuals, but never forget that the Supreme Court, has established that in all circumstances they must look after the national public interest.

Legal Sources: National Constitution, article 20 and 116; Law 48 and leading case: CSJN, Peralta, Luis A. y otro c. Estado nacional (Ministerio de Economía --Banco Central--); 12/27/1990.

Costs and delays of commercial litigation

Q23 The costs and delays of commercial litigation in the higher courts in **Argentina** are not considered materially greater than in other comparable countries.

True			False	Can't say
		X		

Comment:

The Process Codex in the article 242 requires that the trial object must be a minimum of ARS50.000.

But the judicial tax rates are not so high in general.

The *Recurso de Queja*, is interposed below the National Supreme Court when the extraordinary appeal is rejected. In that case the same Process Codex imposes an obligation to deposit the amount of ARS900.000S as a requirement to interpose the *Recurso de Queja*.

Finally, regarding the ordinary appeal to the National Supreme Court, it is necessary for the State to be one of the parties in the trial, and the object of it must be higher than ARS10.890.000. In a leading case last year, the Court said that this ordinary appeal was against the Constitution. Despite the fact that our system is codified, the decisions taken by the National Supreme Court are meant to be followed by lower courts. However, the decision is always for the specific case, this argumentation of the Court implies its application in further legal issues with these characteristics.

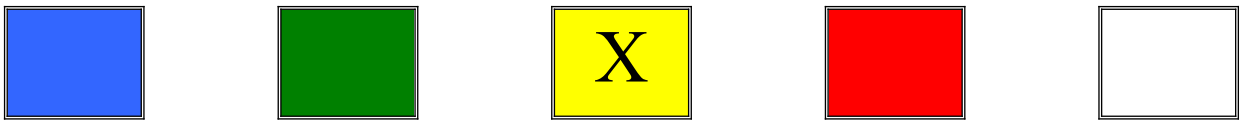
Legal Sources: Process Codex, article 242 and 286; CSJN, Anadon, Tomás Salvador c/ CNC", 08/20/2015.

Overall ranking

This overall ranking is achieved by a survey of all the rankings as shown in this table:

	Question	Rating
1.	Insolvency set-off	
2.	Security interest	
3.	Universal trusts	
4.	Director liability for deepening insolvency	
5.	Financial assistance to buy own shares	
6.	Public takeover regime	
7.	Exclusion of contract formation	
8.	Termination clauses	
9.	Exclusion clauses	
10.	Governing law clauses	
11.	Foreign jurisdiction clauses	
12.	Arbitration recognition	
13.	Class action	
14.	Ownership of land	
15.	Security of land title and land registers	
16.	Land development restrictions	
17.	Employment law	
18.	Environmental restrictions	
19.	Foreign direct investment	
20.	Exchange controls	
21.	Alien ownership of land	
22.	Court treatment of foreign big business	
23.	Costs and delays of commercial litigation	

True **False** **Can't say**



Profiles

The survey was carried out by the following students:

Ludmila Andrea Viar (Leader of the group)

Ludmila is a lawyer graduated from the Pontificia Universidad Católica Argentina, Faculty of Law. She holds a Master of Tax Law granted by the Pontificia Universidad Católica Argentina. Nowadays, Ludmila works in the Tax and Accounting Department of a multinational company, where she is responsible for tracking changes to indirect tax on Latin American countries, especially focus on Brazil. Ludmila can be contacted at: ludmilaviar@gmail.com.

María Florencia Balbín

María Florencia will receive her Law degree, from the Pontifical Argentinian Catholic University, Faculty of Law, in a few months. She is interested in Private, Corporate and Public Law. Currently, she is doing an internship at "Nicholson & Cano" Law firm, located in the city of Buenos Aires, where she is mainly involved in Public Law tasks. When she was at the University, she played an active role as a member of the Student´s Association. Additionally, she has just begun as an assistant professor of Obligations and Tort's Law course at the University mentioned above. María Florencia can be contacted at: mariaflorenciabalbin@gmail.com

Julieta Chabagno

Julieta is a lawyer graduated from the Pontificia Universidad Católica Argentina. She is generally concerned with Corporate law and Tax law. She has worked as paralegal in corporate law in Perez Alati Grondona Artsen & Martinez de Hoz in the city of Buenos Aires. Julieta can be contacted at: julichabagno@gmail.com

Victoria Hugo

Victoria is a lawyer, graduated from the Pontificia Universidad Católica Argentina in December 2016. She is generally concerned with Private International law and Litigation. Currently she is working at Allende&Brea in the litigation area in the city of Buenos Aires. Next to law, she has hold a jurisprudence course in the Foundation Centro Cultural Universitario. Victoria can be contacted at: victoriahugo@outlook.com

María Laura Muller

María Laura will be graduated as a lawyer from the Pontificia Universidad Católica, Faculty of Law in few months. She is interested in private and public law. María Laura can be contacted at: maria_laura919@hotmail.com

Gregorio José Uriburu

Gregorio is a lawyer graduated from the Pontificia Universidad Católica Argentina, Faculty of Law. He is generally concerned with Corporate Law and Criminal Law. He has worked as a clerk at a correctional district attorney's office, and now works as a clerk at the National Attorney General's Department. Next to law school, he has been involved in volunteer work as President of the board of the Students' Association. Gregorio can be contacted at gregoriouriburu@hotmail.com.

The faculty members managing the survey

Horacio Tomás Azar

Horacio is a Lawyer and a Magister in Finance. He is Professor of Securities, Contests and Bankruptcies, and Private International Law in Pontificia Universidad Católica Argentina. He is partner of the Firm Azar Abogados. Horacio can be contacted at azar@azarabogados.com.ar

Jorge Nicolás Lafferriere

Jorge Nicolás is a Lawyer and he is Doctor in Juridical Sciences. He is Professor of Civil Law at Pontificia Universidad Católica Argentina and Universidad de Buenos Aires. He is the Director of Juridical Applied Research at the Law School in Pontificia Universidad Católica Argentina. He can be contacted at nicolas_lafferriere@uca.edu.ar

The Faculty of Law at Pontifical Catholic University of Argentina

The Faculty of Law was among the original faculties at the founding of the Pontificia Universidad Católica Argentina (UCA) on March 8, 1958.

Our University, by its very nature it is a community. As such, it proposes to work in harmony, united in diversity, to which it opens respectfully and spontaneously from it members, genuine in that all must act in accordance with the principles that govern and Christian in the spirit it encourages.

The UCA community seeks to grow in sincere dialogue, reflection upon itself to deepen its achievements, correct courses whenever necessary and help each member reach its fullness as human beings. Ultimately, lead to a vibrant and creative university, committed to society and culture in which it is inserted.

The Faculty of Law offers the degree of Lawyer, the Doctorate degree and 10 programs of postgraduate studies, including 3 Masters and 7 Specialization degrees. It has 2000 undergraduate students and almost 700 postgraduates students.

Members of the Practitioner Expert Panel

Eduardo E. Represas

Eduardo is a partner at Brons & Salas, and he is also a member of the firm's Managing Board. He graduated in 1972 from the Universidad de Buenos Aires. He is the partner in charge of the Financial Law Department of Brons & Salas and, together with other partners, of the Corporate Law and Mergers & Acquisitions Departments. He has experience in advice on corporate, regulatory, and litigation matters to lots of multinational companies doing business in Argentina. He has also advised several domestic and international commercial clients and financial institutions, as well as multilateral organizations, on banking and financial transactions in general. In addition, he has vast experience in the financing of projects and in advice to issuers and investment banks concerning the public offering of bonds, shares, and other securities. He is and has been a member of boards of directors and statutory auditors' committees of renowned domestic and international companies.

Florencia Askenasy

Florencia is an associate at the Corporate Law and Mergers & Acquisitions Department of Brons & Salas. She began working for the law firm in 2007. She received her LL.B. (cum laude) from the School of Law of the Universidad de Buenos Aires in 2001. Furthermore, she took an undergraduate course at Université Pantheón Assas – Paris II (France, 2000). In the corporate law area, Florencia specializes in the provision of

advice on matters related to business and corporate law to multinational companies doing business in Argentina, as well as on merger and acquisition transactions. Moreover, she provides advice on matters related to insurance law and in relation to the regulatory framework for the prevention of money laundering and terrorism financing. She is a member of the Buenos Aires Bar Association.

Allen & Overy Global Law Intelligence Unit

The Allen & Overy Global Law Intelligence Unit is part of the international firm of Allen & Overy and produces papers, surveys and other works on cross-border and international law within the field of its practice. Allen & Overy is one of the largest legal practices in the world with approximately 5,000 people, including some 512 partners, working in 40 offices worldwide. For further information, please contact Philip Wood, philip.wood@allenovery.com or Melissa Hunt, melissa.hunt@allenovery.com.

Philip R Wood CBE, QC (Hon) BA (Cape Town), MA (Oxon) LLD (Lund, Hon)

Head, Allen & Overy Global Law Intelligence Unit
Special Global Counsel at Allen & Overy LLP
Visiting Professor in International Financial Law, University of Oxford
Yorke Distinguished Visiting Fellow, University of Cambridge
Visiting Professor, Queen Mary University, London

Philip Wood is one of the world's leading comparative lawyers and practitioners. He has written about 18 books on financial law. He was formerly a partner and head of the banking department of Allen & Overy. For many years he has been developing innovative and pioneering methodologies for assessing legal jurisdictions and has produced a book of maps of world financial law. His university textbook on the Law and Practice of International Finance has been translated into Chinese and a Japanese version is forthcoming.

Melissa Hunt is project director of the Intelligence Unit and is responsible for the management of the project. She carries out other work for the Intelligence Unit, including the preparation of tables covering rule of law and legal infrastructure risks in the jurisdictions of the world.

Allen & Overy LLP
One Bishops Square
London E1 6AD

T: 00 44 (0)20 3088 0000
D. 00 44 (0)20 3088 2552
M. 00 44 (0)7785 500831

philip.wood@allenovery.com
intelligence.unit@allenovery.com

D. 00 44 (0)20 3088 2750
melissa.hunt@allenovery.com

Allen & Overy LLP

One Bishops Square, London E1 6AD United Kingdom | Tel +44 (0)20 3088 0000 | Fax +44 (0)20 3088 0088 | www.allenovery.com