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Argentina's response to the COVID-19 pandemic

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This document includes (i) the main aspects of the Sanitary Emergency, mandatory isolations and transit restrictions decided by Argentina's Government, (ii) the employment rules applicable to sick leaves, (iii) possible alternatives to adapt work practices to the COVID-19 pandemic, (iv) suspensions or terminations for force majeure or lack or reduction of work for unforeseen circumstances, (v) possible measures to be adopted regarding salaries or benefits (vi) contractual issues from a commercial perspective including force majeure, impracticability and suspension of performance, (vii) tax matters and (vii) financial matters.

I. SANITARY EMERGENCY. MANDATORY ISOLATION AND TRANSIT RESTRICTIONS.

The President of Argentina issued Emergency Executive Order No. 260/2020 on March 12, 2020 ("EEO 260"), which provided a series of measures to contain the COVID-19 pandemic. On March 19, 2020 the President of Argentina issued Emergency Executive Order No. 297/2020 ("EEO 297), which provided for a preventive and mandatory self-isolation for all the individuals living in the country or temporarily residing in it, from March 20, 2020 until March 31, 2020. This term can be extended depending on the evolution of the pandemic.

Please find below a list of the measures set forth by EEO 260 and EEO 297:

1. Sanitary emergency: In force until March 31, 2021 and to be extended depending on the evolution of the pandemic. Special powers were granted to the Chief of the Cabinet Ministers to, among others, adopt measures to mitigate COVID-19 effects and coordinate the implementation of mandatory sanity measures with local jurisdictions in order to:

    - Disinfect public transports, classrooms, workplaces, and any place with public access or possible meetings.
    - Restrict the landing or arrival by plane, ship, bus, subway or train;
    - Order the isolation of zones or regions;
    - State restrictions for transports and their exceptions.

2. Prohibition to enter Argentina for foreigners and non-residents: Executive Order No. 276/2020 issued on March 16, 2020 prohibited the entrance of foreigners and non-residents until March 31 2020.

3. Suspension of public events: EEO 297 suspended and canceled public events, such as shows and any other massive events or places with public access as museums, cinemas, theaters, sport centers, gambling spaces, restaurants and swimming pools.

4. Mandatory report of symptoms and mandatory isolation for confirmed or suspected cases: Symptoms compatible with COVID-19 must be reported to the authorities. Confirmed or suspected COVID-19 patients and those who have near and close contact with them, and those who arrive to Argentina after travelling through the affected areas must isolate themselves for 14 days.

5. General self-isolation until March 31, 2020: On March 19, 2020, EEO 297 set forth a preventive and mandatory self-isolation for all the individuals living in the country or temporarily residing in it, from March 20, 2020 until March 31, 2020. Such term may be extended in accordance with the

epidemiologic scenario. Federal and provincial authorities will conduct permanent controls in routes, streets and public spaces, accesses, and any other strategic spots. During the preventive and mandatory self-isolation period individuals must:

a. Stay at their place of dwelling.

b. Refrain from going to their workplaces, travel through routes, or go to the streets or public spaces.

c. Go only to places which are essential and are located at a minimum distance from their households, in order to obtain cleaning products, medicines, and groceries.

6. Penalties for non-compliance with the mandatory self-isolation: Noncompliance of mandatory isolation and other sanity measures adopted by the National Government are subject to the following penalties provided by the Argentine Criminal Code:

a. Section 205, which sets forth a prison term ranging from 6 months to 2 years for those who fail to comply with the measures adopted by the authorities to avoid the entry or the spread of an epidemy.

b. Section 239, which sets forth a prison term ranging from 15 days to 1 year for those who resist or disobey an order from a public officer or from a person assisting a public officer in the performance of her duty.

7. Activities exempted from the self-isolation requirement: Only individuals who perform activities and provide services stated as essential for the emergency are exempted from complying with the "preventive and mandatory self-isolation" and the prohibition to circulate, as follows:

a. Health, Security Armed Forces, immigration, national weather services and air traffic control personnel, and firefighters.

b. Higher authorities of national, provincial and municipal governments and of the government of the Autonomous City of Buenos Aires. Employees working for the national, provincial and municipal public sector, and for the public sector of the Autonomous City of Buenos Aires, called by the respective authorities for the purpose of guaranteeing the performance of essential activities.

c. Judicial services personnel available for duty, in accordance with the decisions rendered by competent authorities.

d. Diplomatic personnel and foreign consular personnel accredited before the Argentine Federal Government, within the framework of the Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations, as well as the personnel of international organizations accredited before the Argentine Federal Government, the Red Cross and White Helmets.

e. Individuals that must assist others that have disabilities, relatives that require assistance, the elderly, children and teenagers.

f. Individuals who must assist in a force majeure situation.

g. Individuals who provide funeral services and that perform burials and cremations. Within such context, no activities involving the attendance of individuals shall be authorized.

h. Individuals who carry out activities within school dining halls and community kitchens.

i. Personnel who works for audiovisual, radio and graphic communication services.

j. Personnel who performs activities within public works.

k. Wholesale and retail markets and similar retail stores. Pharmacies. Hardware stores. Pet stores. Gas cylinder providers.

l. Personnel who works for production chain and supplies of food and beverages, personal hygiene and cleaning products, medical equipment, vaccines and other health supplies activities.

m. Activities related to agricultural and fishing production, distribution and commercialization.

n. Telecommunications, cable and wireless internet services and digital services activities.

o. Urgent activities related to foreign trade.

p. Collection, transport and treatment of urban, hazardous and pathogenic solid waste.

q. Maintenance of basic services (water, electricity, gas, communications, among others) and emergency services.

r. Public transport of passengers, transport of goods, oil, gasoil and Liquified Petroleum Gas.

s. Delivery to households of groceries, medicines, hygiene products, cleaning products and other necessary supplies.

t. Laundry services.

u. Postal services and mail distribution services.

v. Essential surveillance, cleaning and guard services.

w. Minimum shifts ensuring the operation and maintenance of Oil and Gas Fields, treatment plants and/or oil and gas refining plants, transport and distribution of electrical energy, liquid gases, oil and gas, gas stations and electrical energy generators.

x. *S.E. Casa de Moneda* (Argentine mint), automatic teller machine services, transport of cash and any other activities that the Argentine Central Bank deems crucial to guarantee the operation of the payments system.

8. Delegation of authority to modify exemptions: The Chief of the Cabinet Ministers was delegated the authority to create new exemptions or to cancel existing ones. On March 20, 2020 the Chief of the Cabinet Ministers issued the Resolution No. 429/2020 stating that individuals who perform activities and provide services listed below are also essential for the emergency and consequently are exempted from complying with the "preventive and mandatory self-isolation" and the prohibition to circulate:

a. Industries involving continuous processes that cannot be interrupted without suffering structural damages on production lines or machinery can request a special authorization from the "Secretary of Industry, Knowledge Economy and External Commerce Matters" to continue its production with minimum activity and personnel.

b. Production and distribution of biofuels.

c. Operation of nuclear power plants.

d. Hotels that will be used to provide services during the sanitary emergency.

e. Operation of the "*Fábrica Argentina de Aviones Brigadier San Martín S.A.*" (plane manufacturing plant Brigadier San Martín), with minimum personnel.

f. The authorities of the Federal Securities Commission ("FSC") can authorize minimum activities and personnel for its own operation and the operation of listed and companies and other companies regulated companies, if necessary.

g. Airports and its parking, with minimum personnel.

h. Activities related to the environmental protection of mining.

i. Tanneries, to receive leather form meat processing companies, with minimum personnel.

j. Restaurants, prepared food and fast food stores, which will be authorized to deliver food.

k. Priests and ministers of different religions.

9. Employers' duty of care: Employers of exempted activities and services must guarantee the health and safety conditions pursuant to the Ministry of Health's regulations.

10. Employers' duty to pay full wages: Private sector workers are entitled to receive full payment of their wages during the self-isolation term, pursuant to the terms of the regulations to be

established by the Ministry of Labor. This applies even if the employees cannot work at their homes.

11. Paid leave for public employees: Employees from National Public Administration were granted a paid leave until April 1, 2020.

II. EMPLOYMENT LAW ASPECTS

As a rule, employers in Argentina owe an obligation to take care of employees' psychophysical health under Section 75 of Employment Contract Law No. 20,744 and Section 4 of Health and Safety Law No. 17,587. This means that employers must adopt reasonable measures to protect their employees' health and safety.

As mentiond, Section 8 of Executive Order No. 297/2020 sets forth that, during the mandatory isolation employees from private sector will be entitled to receive their salaries in accordance with the regulation to be issued by the Ministry of Labor will issue.

The Ministry of Labor has not issued special regulation for isolated employees yet. Please find below the applicable labor rules and possible measures to adopt in connection with the pandemic and the mandatory isolation requirement.

1. Sick leaves for non-work-related illnesses:

Employers in Argentina must pay salaries during sick leaves not related to the performance of the employee's duties. The term of paid leave will depend on the term of the employment and the existence of relatives under the employee's care:

- Less than five years of seniority without relatives under her care: 3 months of paid leave.
- Five or more years of seniority without relatives under her care: 6 months of paid leave.
- Less than five years of seniority with relatives under her care: 6 months of paid leave.
- Five or more years of seniority with relatives under her care: 12 months of paid leave.

Employers are entitled to verify and monitor the existence and evolution of the employee's sickness, thus hiring physicians for such purpose. If, upon expiration of the term of the paid sick leave, the employee is not allowed to return to work, which must arise from physician's written certificate, the employer must keep the employment position for such person for 1 year. If, after such 1-year term the sick employee is still not allowed to return to work, the employment relationship will be considered terminated, and the employer will have no obligation to pay a severance compensation.

2. Sick leaves for work-related illnesses or accidents:

Work-related illnesses or accidents are governed by the Labor Risks Law, and mainly involve the duty to pay salaries due and treatment costs throughout the duration of the license, as well as the payment of a tabulated compensation based on the degree of disability suffered by the employee. These consequences are faced by the Labor Risks Insurance Company hired by the employer, except in those involving the employer's negligence or malice. In such cases, the employer will be jointly and severally liable with the Labor Risks Insurance Company for treatment costs and indemnification.

Employers' failure to comply with their general obligation of care and safety, which in this context could imply the spread of the COVID-19, is considered a crime, and could be construed as a negligent or malicious

conduct, and, consequently, the employees affected may request a full compensation based on Civil Law (not tabulated) from their employer.

3. Possible alternatives to adapt work practices to the COVID-19 pandemic:

a. *Home office*: As a response to the mandatory isolation, companies can allow employees to work from home. This would be especially relevant for companies that supply services or the administrative personnel of industrial companies. Working from home is an option to all employees who can perform their tasks remotely, and it can be implemented for all kind of employment contracts (undetermined term, fixed term, temporary, seasonal, among others).

The Superintendence of Occupational Risks issued Resolution No. 21/2020 stating that under circumstances arising from COVID-19 and the home office promoted by the National Government, employees working from home will be covered by the employer's Labor Risk Insurance Company, subject to the employer's notice of the name, labor ID, work schedule and the location from where each employee will perform her tasks.

If home office is a temporary solution to the mandatory self-isolation requirement, it is strongly advisable to enter into a written agreement with the employees involved, stating the terms and conditions of the home office practice, and the obligation to resume the original conditions of employment after the end of the emergency.

b. *Advance of annual leave*: Section 154 of Employment Contract Law No. 20,744 sets forth that vacations can be granted between October of one year and April of the following year. Companies and isolated employees can agree on advancing the employees' annual vacations. Employees affected must consent to this in writing. This kind of agreement could represent a non-compliance of formal requirements established by labor regulations, subject to a fine imposed by labor authorities, but it is not usual to impose fines for such situations.

c. *Reduction of working hours*: Section 66 of Employment Contract Law No. 20,744 set forth that the employer will be entitled to amend the work methods and technical aspects of the employment contract to the extent that such amendments are not unreasonable, do not change key aspects of the contract or do not affect the worker, whether materially or morally. If the employer fails to comply with this obligation, the employee will be entitled to opt between: (i) requesting that the amendment be declared null and void and the subsequent restoration of the original conditions, or (ii) considering herself constructively terminated.

Employers can agree with their isolated employees a temporary reduction of daily hours with a pro-rata salary reduction. From a legal standpoint it is not an amendment but a legal adaption of the salary the hours actually worked. The employees affected must consent in written to this kind of modification. In the case of activities involving a high grade of unionization, such mining, this alternative will be difficult to implement but it could be useful for the personal not covered by a Collective Bargaining Agreement.

4. Suspensions or terminations for force majeure or lack or reduction of work for unforeseen circumstances.

Follows a list of possible suspensions, licenses and termination alternatives set forth by the Employment Contract Law No. 20,744 and employment practices:

a. *Suspensions agreed with employees*: Section 223 bis of Employment Contract Law No. 20,744 state the possibility to implement individual suspensions agreed with employees. The

agreement can include a compensation amount during the suspension period, that is exempted from social security payments. Medical insurance payments (in Spanish, *obra social*) are not covered by the exemption. This kind of agreement is usually rejected by labor unions.

b. *Individual leaves involving payment of reduced salaries*: This measure implies agreeing on leaves involving payment of reduced salaries with each employee individually. In practice it could be considered as a way to elude or conceal a suspension, making it as not visible.

c. *Suspensions or terminations decided by the employer*: Employers can unilaterally suspend or terminate employees because of force majeure or lack or reduction of work for unforeseen circumstances (that is to say, without the agreement of the union or the worker). Suspensions can be implemented without pay or stating a compensation non subject to Social Security payments. In the case of terminations, the employer must pay only 50% of severance for seniority. These suspensions or terminations require following a "crisis prevention procedure" with the Ministry of Labor, if they affect:

- more than 15% of the workforce, in companies that have less than 400 employees;
- more than 10% of the workforce, in companies that have between 400 and 1,000 employees; and,
- more than 5% of the workforce, in companies that have more than 1,000 employees.

An application must be filed with the Ministry of Labor, requesting authorization for suspensions or terminations for force majeure or lack or reduction of work. Employers must include all the necessary evidence to prove that the circumstances leading to the suspension or termination were unforeseeable. Within 48 hours, the Ministry of Labor must call for negotiations between the company and the union.

The negotiation hearings with the union must commence within the following 10 days. The company is required to participate in the negotiations in good faith and to provide them with any information required by the Ministry of Labor. If the employer and the union reach an agreement, the Ministry of Labor must approve or reject it within 10 days. The employer cannot suspend or terminate employees during this procedure.

In practice, it is not common to obtain the approval of the Union and/or the Ministry of Labor because circumstances such as drops in sales, business restructurings, mergers of companies or business divisions, regulatory and tax changes, reorganizations derived from insolvency, or general crisis of the business sector are not considered as valid reasons for such suspensions or terminations. The rationale is that these are considered risks inherent to the business that must be borne by the employers.

We understand that, depending on each case's circumstances, mandatory isolations, lockdown and shutdown because COVID-19 could theoretically be considered as a valid cause to authorize suspensions or terminations under a crisis prevention procedure. However, it is foreseeable that allowing suspensions or terminations of employees can be a sensitive political matter.

If the Ministry of Labor grants the authorization to implement suspensions, an agreement with the union could allow the employer to establish suspensions in accordance with the operative needs, without observing the requirements established by the law. It is usual to include a compensation during the suspension period, that range between 60% and 80% of the salary that would have been paid to the employee if he/she had provided its services.

Considering the current crisis because mandatory isolations, it could be possible to negotiate lower percentages, especially if the crisis extends over time.

If the Ministry of Labor grants the authorization to implement terminations, terminated employees will be entitled to 50% of seniority compensation. Otherwise, full compensation must be paid. Authorized terminations must commence by the least senior personnel in each category (that is, by those who were hired last).

5. Possible measures to be adopted regarding salaries or benefits.

a. *Reduction of salaries or benefits through individual agreements*: As a general principle, labor rights cannot be waived. If the employer ever agreed to grant a benefit to an employee, this benefit cannot ever be removed. If a removal or reduction is implemented or agreed, this will create a contingency of potential legal proceedings derived from differences in salaries. For example, this could happen with an annual bonus for production that the Company give their employees in addition to the compensations established in the Collective Bargaining Agreement. The exception to this principle are benefits negotiated under a Collective Bargaining Agreement, as described below.

b. *Reduction of salaries or benefits through a new Collective Bargaining Agreement*: It is admissible to negotiate with the applicable union a new Collective Bargaining Agreement that provides a temporary or permanent salary reduction, or the reduction or removal of benefits.

III. CONTRACTUAL ASPECTS

1. Private contracts

The provisions of the Argentine Civil and Commercial Code ("CCC") apply by default in contractual relationships, if the parties have not agreed differently. Therefore, to assess the impact of the COVID-19 in a contrat governed by Argentine law, you should first analyze the terms of your contract.
The following provisions of the CCC will apply if the contract does not provide otherwise:

a. Force majeure: Section 1730 of the CCC defines force majeure as an event that cannot be foreseen or that, if foreseen, cannot be avoided. Force majeure is an excuse from performance that releases the non-performing party from liability, if it was not already in default when the force majeure event happened. A pandemic is a textbook example of a force majeure event, provided there is a clear causal connection between the pandemic and the non-performance.

b. Impracticability: Pursuant to Section 1091 of the CCC, if, without fault attributable to the party of a contract, its duty to perform becomes excessively burdensome, such party can demand to a court of law either the termination or the revision of the contract. Needless to say, this also gives the affected party leverage for an out-of-court negotiation.

c. Suspension of performance: Pursuant to Section 1032 of the CCC, a party can suspend its contractual performance if the other party's solvency or capacity to perform is materially reduced. This suspension must cease if the other party reasonably secures its performance. In the case of the COVID-19 pandemic, it is reasonable for a party to

suspend its performance (for example, an advance payment) if it has become clear that the other party is no longer able to perform.

d. Frustration of the contract's purpose: Pursuant to Section 1090 of the CCC, the frustration of a contract's purpose allows the affected party to terminate the contract, provided the frustration is originated in an extraordinary change of circumstances after the contract's execution, is not attributable to the parties, and exceeds the risks expressly or tacitly assumed by the affected party.

These CCC provisions allow the affected party to terminate the contract, if the impossibility, impracticability or frustration is permanent, or if it is temporary but time is of the essence. Note that these provisions can be combined. For example, the performance of a contract can be temporarily become impossible by a force majeure event but, if time is of the essence, it can terminated due to the frustration of its purpose.

These rights provided by the CCC must be exercised in good faith. As a general rule, is highly advisable to communicate the impediments to performance and their impact on the contract as soon as they happen. Note that the existence of the pandemic may be publicly known and self-explanatory, but this will not necessarily be true with respect to its impact in on a particular contract. Furthermore, the risk materialized by the COVID-19 pandemic must not be expressly or tacitly assumed by the contract. Therefore, the application of force majeure, impracticability, suspension and frustration rules must be analyzed on a case-by-case basis.

2. Contracts that are not governed by Argentine law

The provisions on force majeure, impracticability, suspension and frustration set forth by the CCC apply only to contracts governed by Argentine law. If the contract is not governed by Argentine law, the impact of the COVID-19 pandemic must be analyzed under the substantive law that is applicable.

3. Administrative contracts

Force majeure and non-performance from the government can also be an excuse from performance of government contracts, if they have the effect of rendering the private party's performance impossible. The private contractor is entited to a price adjustment if unforseable and extraordinary circumstances turn its performance excessively onerous. Note that the exercise of the right to terminate or suspend a government contract must always be analyzed on a case-by-case basis in light of the public interest being affected.

IV. PUBLIC PROCUREMENT

Executive order 287/2020 authorizes the federal government, descentralized entities and state-owned entities managed by the federal government to engage in direct contracts for the supply of goods and services needed for the emergency. This is an exception to the general rule applicable to public procurement in Argentina, which demands the conduction of competitive tenders. Notwithstanding the foregoing, especially in this emergency scenario, it will be important to verify the compliance with these especial producement rules to assure the validity and enforceability of the contract.

V. DISPUTE RESOLUTION

Federal and provincial courts have closed and only the most urgent matters are being heard. All procedural terms have been suspended by the judiciay, the public administration and tax authorities at a federal and local levels.
To the extent they can adapt to the lockdown through remote tools, there are no impediments to conduction of commercial arbitrations.

VI. TAX MATTERS

The Executive Power and the Federal Tax Authority implemented benefits to help taxpayers deal with the pandemic, as follows:

1. Suspension of administrative proceedings: Executive Order No. 298/2020 sets forth that the terms of administrative proceedings will be suspended until March 31, 2020.

2. Tax cuts for the health services industry: Executive Order No. 300/2020 sets forth the following tax cuts for the health services industry for a period of 90 days:

    a. Tax on Debits and Credits. The tax rate will be of 0.25% for each debit and credit on local Bank Accounts and 0.5% for other levied transactions (instead of 0.6% and 1.2% respectively).

    b. Social security contributions: A tax cut of 95%.

    The health services industry is defined as social welfare, prepaid medicine services, hospital services, outpatient services performed by physicians and odontologists, diagnostic and treatment practice services, comprehensive consultation services, diagnosis and treatment services, emergency and transfers services, services related to human health not previously classified, social services with or without accommodation and services of associations not previously classified.

3. Extension Special Facility Payments Plan: General Resolution 4683/2020 Federal Tax Authority extends the Special Facility Payment Plan until June 30, 2020. The plan allows the taxpayers to finance their tax payments through installments and special interest rates.

4. Suspension of tax proceedings: General Resolution 4682/2020 Federal Tax Authority established that the terms of the Federal Tax Authorities administrative procedures will be suspended until March 31, 2020.

5. Extension of employees deduction affidavit: General Resolution 4686 Federal Tax Authority extended until April 30 the due date of the affidavit that employees file with their employer with their Income Tax deductions (Form 572), consequently the due date for the annual liquidation by the employer has been extended until May 29.

It is expected that both the Executive Power and the Federal Tax Authority issue new regulations regarding tax matters. These regulations may entail:

- Extension of tax returns due dates and payment dates.
- Special exemptions and deductions for sectors of the economy impacted by the COVID-19 pandemic.
- Waiver or deferral of employer and self-employed social security contributions.

- Tax exemptions for workers in health and other emergency-related sectors.
- Speed up of VAT refunds (including VAT export related refund).
- Deferral or adjustment of advanced payments.
- Extend terms of the loss carry-forward.

VII. FINANCIAL MATTERS

1. Banks and foreign exchange trading houses must not open to the public until March 31, 2020 but can operate online or through other remote mechanisms.

2. The payments to commercial banks that become due between March 20 and March 31 will be deferred until April 1, 2020.

3. The Central Bank must assure the operation of the wholesale exchange operations and the liquidity bills of March 25 and 26, 2020.

4. Stock Exchanges and capital markets agents registered with the Argentine Securities and Exchange Commission are authorized to negotiate and liquidate the operations remotely until March 31, 2020.

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