

MINING SECTOR

On 1 September 2019 Argentina re-established foreign exchange controls, granting the Central Bank of the Republic of Argentina ("BCRA") extensive powers to issue regulations. Based on this authorization, the BCRA has issued a series of rules that have been amended from time to time. Some rules pose unsurmountable restrictions. Some other rules depend on the circumstances and statements of the companies or individuals entering the transactions, and thus such rules may be broken. Breach of foreign exchange regulations can be prosecuted by the BCRA under the Foreign Exchange Criminal Law 19359, as restated in 1995, which establishes fines ranging up to ten times the amount of the transaction performed against regulations and -in certain cases- even jail time against directors and officers participating in such transactions.

Given the significant consequences of breaching foreign exchange regulations, companies and individuals need to be fully cognizant of the rules applicable to any transaction they may be willing to execute. Such regulations are updated by BCRA with no specific periodicity and consolidated from time to time into an amended and restated text, the last of which was issued on 28 February 2020.

Since that date, driven by the economic consequences of the quarantine established to deal with the sanitary emergency generated by the COVID-19 pandemic and the financial stress generated by the negotiation of the public debt, various resolutions were issued in order to reduce demand of foreign currency. The most relevant of those regulations were:

Communiqué A 7001, from 30 April 2020, by which the BCRA restricted access to the official foreign exchange market ("MULC" by its Spanish acronym) to entities:

1. That have previously obtained foreign currency by a transaction known as blue chip swap ("BCS"), involving the purchase of a bond in one currency and its sale in a different currency, effectively resulting in a transaction similar to exchanging currency at a higher exchange rate.
2. That have previously obtained loans in Argentinean Pesos ("ARS") at a 24% subsidized interest rate if such loan remains outstanding.

Likewise, companies that have taken one of these soft loans may not sell securities with settlement in foreign currency or transfer them to depository entities abroad, before having fully paid off the soft loan, thus preventing them to access to foreign currency via BPS transactions. The norm does not restrict, however, the possibility of locally selling those securities against pesos.

All foreign currency outflow operations from the Argentine exchange market -whether previously they need to be acquired in the MULC will require a previous affidavit from the applicant stating: (i) that on the day of the request for the exchange operation and during the 30 calendar days prior to it, it has not carried out operations for the sale of securities with settlement in foreign currency (local BPS) nor has it transferred them to a foreign depository entity (outbound BPS); and (ii) that it will not carry out BPS transactions during the course of 30 calendar days following the request to withdraw foreign currency.

This communiqué also restricted the use of credit cards to pay for purchases of jewelry, precious stones and precious metals.

Communiqué A 7030, from 28 May 2020, by which the BCRA further restricted access to MULC, requiring companies having liquid assets denominated in foreign currency (notes and coins in foreign currency, gold coins or good delivery gold bars, demand deposits in financial institutions abroad, and other investments that allow immediate availability of foreign currency such as securities, funds in investment accounts, crypto assets, etc.), either locally or abroad, must use said assets to pay for obligations abroad.

As a result of this regulation, companies seeking access to MULC are required to:

1. Have all their foreign currency holdings in country deposited in local bank accounts.
2. File an affidavit stating that it does not have foreign currency holdings abroad
3. Commit to settle within five business on the MULC those funds received abroad originated from the collection of loans granted to third parties, the collection of term deposits, or the sale of any asset, when any of those have been acquired, constituted or granted after 28 May 2020.

This communiqué established additional restrictions to access funds to pay for imports of goods or the cancellation of debts originated in the import of goods, and extended the exclusion window to access to MULC if transacting BPS from 30 days to 90 days before and after any access to MULC. In order to access the exchange market to make payments for imports of goods or the cancellation of debts originated in the import of goods it will be required to have the prior formal approval of the BCRA. Certain exceptions are established to this requirement of prior formal approval, the client must submit an affidavit in which it is recorded the total amount of payments.

Communiqué A 7042, from 11 June 2020, by which the BCRA granted some relief to the access to the MULC for the productive sectors, allowing access to those companies having less than USD 100,000 in foreign assets; or having any amount held as reserve or collateral under contracts with foreign parties; or having any amount which is still within the 5-day term from collection to be brought into the country.

Further relief was granted to pay imports of pharmaceutical products and fertilizers and supplies for the local production of medicines; as well as for prepayment of imports by medium sized companies up to USD 1 million.

Communiqué A 7052, from 25 June 2020, by which the BCRA extended the application of some of the regulations until 31 July 2020. This communiqué further amends and restates the limitations to make prepayments of imports of goods, increasing the amount from USD 1 million to USD 3 million for those imports related to goods related to medicines or health care. It also provides relief for payment of related party loans for local financial institutions.

Communiqué A 7068, from 8 July 2020, by which the BCRA made some further amendments to the foreign exchange regime allowing for payments of foreign financing granted by export credit agencies and financial institutions in relation with imports of goods, and reducing the amount of prepayments for import of medicines and health care related goods from USD 3 million to USD 2 million.

This communicate further restates the list of exceptions to require and obtain prior BCRA authorization to make prepayments of imports of goods, which under current regulations include:

1. Deferred or demand payments of imports of goods related to operations shipped as of 07.01.2020 or that, having been shipped before that date, have not yet arrived in country.
2. Payments related to debt from other imports of goods that have been financed by export credit agencies or foreign financial entities.
3. Payments to be made by the National government, companies in which the Nation has a majority equity participation, or trust constitute with contributions from the National government.
4. Payments related to imports of critical medicines to be imported via Private Request by the beneficiary of such medical coverage.
5. Payments related to imports of kits for the detection of the coronavirus COVID-19 and other goods related to health care.
6. All other payments for imports of goods to the extent that the aggregate payments do not exceed USD 1 million, or USD 2 million if related to medical or health care supplies.

This document is intended to convey some of the complexities of the foreign exchange regime but does not provide advice on any particular transaction, which needs to be analyzed considering all its relevant details. Alfaro Abogados has a team of experts which may help you on the issue.

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