

MECHANISM FOR FOLLOW-UP ON THE  
IMPLEMENTATION OF THE INTER-AMERICAN  
CONVENTION AGAINST CORRUPTION  
Fifteenth Meeting of the Committee of Experts  
September 14-18, 2009  
Washington, DC.

OEA/Ser.L  
SG/MESICIC/doc.238/09 rev. 4  
18 September 2009  
Original: Spanish

REPUBLIC OF ARGENTINA

FINAL REPORT

(Adopted at the September 18, 2009 plenary session)

**COMMITTEE OF EXPERTS OF THE FOLLOW-UP MECHANISM FOR THE  
IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION AGAINST  
CORRUPTION**

**REPORT ON IMPLEMENTATION IN THE REPUBLIC OF ARGENTINA OF THE  
CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE THIRD ROUND, AND  
ON FOLLOW-UP TO THE RECOMMENDATIONS FORMULATED TO THAT COUNTRY  
IN PREVIOUS ROUNDS<sup>1/</sup>**

**INTRODUCTION**

**1. Contents of the report**

[1] This report presents, first, a review of implementation in the Republic of Argentina of the provisions of the Inter-American Convention against Corruption selected by the Committee of Experts of the Follow-up Mechanism (MESICIC) for review in the third round: Article III, paragraphs 7 and 10, and Articles VIII, IX, X and XIII.

[2] Second, the report will examine follow-up to the recommendations that were formulated to the Republic of Argentina by the MESICIC Committee of Experts in the previous rounds, which are contained in the reports on that country adopted by the Committee and published at the following web page: for the First Round, [http://www.oas.org/juridico/spanish/mec\\_inf\\_arg.pdf](http://www.oas.org/juridico/spanish/mec_inf_arg.pdf); for the Second Round, [http://www.oas.org/juridico/spanish/mesicic\\_II\\_inf\\_arg.pdf](http://www.oas.org/juridico/spanish/mesicic_II_inf_arg.pdf)

**2. Ratification of the Convention and adherence to the Mechanism**

[3] According to the official records of the OAS General Secretariat, the Republic of Argentina deposited the instrument of ratification of the Inter-American Convention against Corruption on October 9, 1997.

[4] In addition, the Republic of Argentina signed the Declaration on the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption on June 4, 2001.

**I. SUMMARY OF INFORMATION RECEIVED**

**1. Response of the Republic of Argentina**

[5] The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Republic of Argentina, and in particular from the Anticorruption Office of the Ministry of Justice, Security and Human Rights, which was evidenced, inter alia, in the response to the Questionnaire and in the constant willingness to clarify or complete its contents. Together with its response, the Republic of Argentina sent the provisions and documents it considered pertinent. The response, along with those provisions and documents, may be consulted at the following web page: [http://www.oas.org/juridico/spanish/mesicic3\\_arg\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_arg_sp.htm)

[6] For its review, the Committee took into account the information provided by the Republic of Argentina up to April 2, 2009, and that furnished and requested by the Secretariat and the members of

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1. This Report was adopted by the Committee in accordance with the provisions of Article 3(g) and 25 of its Rules of Procedure and Other Provisions, at the plenary session held on September 18, 2009, at its Fifteenth meeting, held at OAS Headquarters, September 14-18, 2009.

the review subgroup, to carry out its functions in keeping with its Rules of Procedure and the review Methodology.

## **2. Documents received from civil society organizations**

[7] The Committee also received, within the time limit established in the schedule for the third round, documents from the civil society organizations *Fundación Poder Ciudadano* (the Argentine chapter of Transparency International) in collaboration with the *Centro de Implementación de Políticas Públicas para la Equidad y el Crecimiento* (CIPPEC); as well as from the Inter-American Bar Association (IABA) in conjunction with the Committee for Follow-Up on Implementation of the Inter-American Convention against Corruption (Follow-Up Committee). These documents were submitted by those organizations in electronic format on April 1 and 2, 2009, respectively.<sup>2</sup>

## **II. REVIEW, CONCLUSIONS AND RECOMMENDATIONS ON IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISIONS SELECTED FOR THE THIRD ROUND<sup>3</sup>**

### **1. DENIAL OR PREVENTION OF FAVORABLE TAX TREATMENT<sup>4</sup> FOR EXPENDITURES MADE IN VIOLATION OF THE ANTICORRUPTION LAWS (ARTICLE III (7) OF THE CONVENTION)**

#### **1.1. Existence of provisions in the legal framework and/or other measures**

[8] The Republic of Argentina has a set of provisions related to the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws, among which the following should be noted:

[9] - Law 20,628, the Income Tax Act (*Ley de Impuestos a las Ganancias*), article 37 of which provides that when an expenditure lacks documentation or when it cannot be proven by other means that by its nature it had to be paid to obtain, maintain and retain taxable earnings, it may not be deducted in the tax balance sheet, and will, in addition, be subject to payment of the 35% rate, which will be considered definitive<sup>i</sup>; article 80 indicates that expenditures deductible under this law, with the express restrictions contained therein, are those made to obtain, maintain and conserve taxable earnings and shall be deducted from the earnings produced by the source that originates them; and articles 81 to 87 refer to permissible deductions, including (article 87 (a) and (i) respectively) “*expenditures and other outlays inherent to the business*”<sup>ii</sup> and “*representation expenses actually made to the amount of 1.5% of the total of remunerations paid to employees in the fiscal year.*”<sup>iii</sup> This law also lists (article 88) inadmissible deductions, including (88.j) “*net losses from illicit transactions*”<sup>iv</sup>.

[10] - Decree 1344/1998, Regulatory Decree to the Income Tax Act, Article 35 of which provides that outlays made by the taxpayer shall not be included in the taxable balance when they are missing documentation or when it may be presumed that they were not made for purposes of obtaining, maintaining and conserving taxable earnings; it refers to specific circumstances and cases in which

<sup>2</sup> These documents can be consulted at the following address: [http://www.oas.org/juridico/spanish/mesicic3\\_arg\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_arg_sp.htm).

<sup>3</sup> Given the nature of the rules and measures that Argentina has in place relating to the provisions of the Convention selected for the third round, this report covers provincial and municipal aspects as well, notwithstanding the fact that Argentina is a federal State.

<sup>4</sup> For the purposes of this report, the MESICIC Committee of Experts defines favorable tax treatment as all exemptions and any deductible items used for the purposes of determining the income tax base, and other treatment that gives rise to favorable reductions in the amount of tax payable by taxpayers.

deductions are admissible in that balance,<sup>v</sup> and provides that, in case of doubt, the Federal Administration of Public Revenues, the autonomous entity of the Ministry of Economy and Public Finances, must be consulted.

[11] - Law 11,683, the Tax Procedures Act, article 66 of which provides that “*the statute of limitations shall be suspended for two years for fiscal action to assess and collect taxes and to apply sanctions with respect to investors in firms that receive tax benefits from promotion systems of an industrial, regional, sectoral or any other nature, upon evidence of payment made to the firm entitled to the benefit*”; and provides, in article 143 (1) that “*in promotion systems of an industrial, regional, sectoral or any other nature that grant tax benefits of any kind, the respective enforcement authorities shall be required to receive, consider and resolve promptly or urgently, depending on the circumstances, any complaints formulated by the Federal Administration of Public Revenues alleging noncompliance by the responsible parties with the legal or contractual clauses on which those benefits are dependent.*”<sup>vi</sup>

[12] - Law 24,769, the Penal Taxation Regime, article 4 of which, entitled “*fraudulently obtained tax benefits*”, provides that “*any person who, through misleading statements, malicious concealment or any other form of deceit, by act or omission, obtains recognition, certification or authorization to enjoy a tax exemption, deduction, deferral, release, reduction, refund, recovery or return from the National Taxation Office shall be liable to a prison sentence of one to six years*”; and article 5 provides that, in the previous case, as in other cases covered by this law, in addition to the penalties stipulated therein the beneficiary shall lose the benefit and the possibility of obtaining or using tax benefits of any kind for a period of 10 years.

[13] The foregoing law also provides, in article 13, that the penalty shall be increased by one-third of the minimum and maximum for a public official or employee who, in exercise or on the occasion of his functions, takes part in the offenses stipulated in that law; it adds that in these cases that person will be permanently disqualified from employment in the public service, and establishes, in article 14, that “*if any of the deeds stipulated in this law have been committed in the name, with the assistance, or for the benefit of a fictitious person, a merely de facto association, or an entity that, although not a legal subject is deemed bound under the rules, the prison penalty shall be applied to the directors, managers, trustees, members of the oversight council, administrators, agents, representatives or authorized persons who have intervened in the punishable deed, including when the act that would have substantiated the representation is ineffective.*”

[14] Finally, this law provides (in article 17) that the penalties established therein shall be imposed without prejudice to administrative tax penalties and indicates, in article 22, that for its application in the autonomous city of Buenos Aires, competence will lie with the criminal tax courts, and in the case of the remaining jurisdictions, with the federal courts.

[15] - Law 23,984, the Code of Criminal Procedure, article 177 (1) of which lists, among those obliged to report prosecutable offenses ex officio, public officials or employees who become aware of such offenses in the exercise of their functions. This article complements National Decree 1162/00, which provides that such officials shall fulfill this duty by reporting the suspected offenses to the Anticorruption Office.

## **1.2. Adequacy of the legal framework and/or other measures**

[16] With respect to the provisions governing the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws, the Committee notes that, on the basis of the

information available to it, they may be said to constitute a coherent set of measures that are pertinent for promoting the purposes of the Convention.

[17] Nevertheless, the Committee believes that it would be beneficial for the country under review to consider taking such steps as it deems appropriate to make it easier for the appropriate authorities to detect sums paid for corruption in the event that they are being used as grounds for obtaining such treatment. (See recommendation 1.4 (a) in Chapter II of this report).

### **1.3. Results of the legal framework and/or other measures**

[18] In its response, the country under review did not refer to the results obtained from the provisions for denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws.

[19] In the document from the civil society organization Inter-American Bar Association (IABA), containing the Fifth Report of the Committee for Follow-Up on Implementation of the Inter-American Convention against Corruption, notes the following:<sup>5</sup>

[20] *“With respect to the lapsing of benefits for noncompliance, there have been decisions that nullified those benefits and that consequently obliged the responsible parties to pay the taxes they had evaded, with penalties, according to the rules set forth above.”*

[21] *“However, in terms of criminal proceedings, there has been only one trial, and it took place a couple of decades ago, involving fraudulent industrial promotion in the province of Tierra del Fuego, the outcome of which saw the company's manager sentenced to prison. Since that time there have been no other convictions of this kind, despite the many proceedings conducted in the federal courts of various provinces.”*

[22] Based on the foregoing, the Committee considers it appropriate, first, to commend the country under review on what the aforesaid civil society organization has expressed in the first of the above-transcribed paragraphs with regard to the loss of favorable treatment as a result of non-compliance.

[23] Second, the Committee believes it advisable for the country under review, bearing in mind the comments of that organization in the second of the above-transcribed paragraphs, to consider the adoption of such measures as it deems appropriate to expedite the processing of criminal cases connected with the fraudulent procurement of favorable tax treatment. The Committee will formulate a recommendation to the country under review in this regard (see recommendation 1.4 (b) in Chapter II of this report).

[24] Finally, in the absence of further information that would allow it to make an overall assessment of results in this area, the Committee will make a recommendation to the country under review so that, through the tax authorities that process applications for favorable tax treatment and the other authorities or organs with jurisdiction in that respect, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow up on the recommendations made in this report in relation thereto (see recommendation 1.4 (c) of Chapter II of this report).

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<sup>5</sup> Fifth Report of the Committee for Follow-Up on Implementation of the Inter-American Convention against Corruption, presented by the Inter-American Bar Association (IABA), at page 8.

#### 1.4. Conclusions and recommendations

[25] On the basis of the analysis conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article III, 7 of the Convention.

**[26] The Republic of Argentina has considered and adopted measures to create, maintain and strengthen standards on denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws, as described in Chapter II, Section 1.1 of this report.**

[27] In light of the comments formulated in that section, the Committee suggests that the Republic of Argentina consider the following recommendation:

[28]- Strengthen standards on denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws. To comply with this recommendation, the Republic of Argentina could take the following measures into account:

- a) Consider adopting the measures deemed appropriate to make it easier for the appropriate authorities to detect sums paid for corruption in the event that they are being used as grounds for obtaining such treatment, such as the following (see section 1.2 of Chapter II of this report):
  - i. Manuals, guidelines or directives that will guide them in reviewing those applications, so that they are able to verify that the applications contain the established requirements, to confirm the truthfulness of the information provided, and to confirm the origin of the expenditure or payment on which the claims are based;
  - ii. The possibility of accessing the sources of information necessary to conduct those verifications and confirmations, including requests for information from financial institutions,
  - iii. Computer programs that facilitate data consultation and cross-checking of information whenever necessary for the purpose of fulfilling their functions;
  - iv. Institutional coordination mechanisms that will provide the timely collaboration needed from other authorities, and such aspects as certifying the authenticity of the documents submitted with the applications;
  - v. Training programs designed specifically to alert officials to the methods used to disguise payments for corruption and to instruct them in ways of detecting such payments in the applications;
  - vi. Channels of communication so that they may promptly report to those who must decide on favorable treatment and warn them of the anomalies detected or of any irregularity that could affect the decision.
- b) Adopt the measures considered appropriate to expedite prosecution for fraudulent procurement of tax benefits (see section 1.3 of Chapter II of this report).

- c) Select and develop, through the tax authorities that process applications for favorable tax treatment and the other authorities or organs with jurisdiction in that respect, procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow up on the recommendations made in this report in relation thereto (see section 1.3 of Chapter II of this report).

## **2. PREVENTION OF BRIBERY OF DOMESTIC AND FOREIGN GOVERNMENT OFFICIALS (Article III(10) OF THE CONVENTION)**

### **2.1. Existence of provisions in the legal framework and/or other measures**

[29] The Republic of Argentina has a set of provisions related to prevention of bribery of domestic and foreign government officials, among which the following should be noted:

[30] - The Commercial Code (*Código de Comercio*), article 33 of which provides that those who make commerce a profession (*comerciantes* or “businesspersons”) thereby contract the obligation to submit to all the acts and formalities established in commercial law, including: registration in a public registry, in both the roster (*matricula*) and the documents required by law; the duty to maintain an orderly accounting system and to keep the books necessary for that purpose; the duty to conserve correspondence relating to the businessperson's business, as well as all books of account; and the obligation to render accounts as required by law.

[31] Article 43 of the Commercial Code, which requires every businessperson to keep account and justification of his transactions and to keep commercial records organized on a uniform accounting basis, with a clear justification of each and every one of the transactions which should be entered on the accounting records. The accounting vouchers must be supported with the respective documentation. Article 44 requires businesspersons to keep the following books: (1) journal-ledger, (2) inventories and balances, in addition to other special requirements imposed by this code and other laws.<sup>vii</sup>

[32] With respect to the journal-ledger, article 45 of the Commercial Code provides as follows: in the journal shall be entered day by day, in chronological order, all the transactions conducted by the businessperson, bills of exchange and all other documents of credit given, received, guaranteed or endorsed by him; and generally, anything received or delivered on his own account or that of another, and by whatever title, so that each entry shows who is the creditor and who the debtor in the transaction to which it refers.<sup>viii</sup>

[33] With respect to inventories, article 48 of the Commercial Code provides that the inventory book shall commence with an exact account of the money, movable and immovable property, credits and every other kind of asset which forms the capital of the businessperson at the beginning of his business. Thereafter, every businessperson must draw up within the first 3 months of each year, and enter in the same book, a general balance sheet of his business, comprising therein all his property, credits and assets, as well as all his outstanding debts and liabilities at the date of the balance, without any concealment or omission whatever.<sup>ix</sup>

[34] Article 53 of the Commercial Code provides that the books which are declared indispensable by the Code shall be bound and paginated and submitted to the local Tribunal of Commerce, in order for all the leaves to be authenticated as determined by the superior tribunal may determine, with a notation, stamped and signed, of the destination of the book, the name of its owner, and the number of pages it

contains. In towns where there is no Tribunal of Commerce, these formalities shall be performed by a Justice of the Peace.

[35] As to the manner of keeping the books required by article 44 of the Commercial Code and supplementary books not required by law, article 54 of the code makes it unlawful: 1. To alter the consecutive order of dates and transactions which must be entered according to the provisions of Art. 45; 2. To leave blanks or spaces, as all entries must be successive, without any space between them for insertions or additions; 3. To make erasures or corrections or entries between lines – any errors and omissions must be corrected by a fresh entry, made on the date on which the omission or mistake is noticed; 4. To cross out or delete any entry; 5. To mutilate any part of the book, to tear out a leaf or alter the binding and paging. Article 55 provides that commercial books which lack any of the formalities prescribed in Art. 53 or have any of the defects or imperfections noted in article 54, have no value in any court action in favor of the businessperson to whom they belong.

[36] Finally, article 62 of the Commercial Code provides that each businessperson may keep his own books and sign the documents for his business, by himself or through an agent, and article 67 obliges businesspersons to retain their commercial books, and the documentation referred to in article 44, for 10 years after they cease business.

[37] - Law 19,550, the Business Corporations Act (*Ley de Sociedades Comerciales*), and its amendments, article 61 of which provides that the formalities of Art. 53 of the Commercial Code can be dispensed with by keeping books in the manner that the controlling authority or Public Commercial Registry shall authorize, substituting them by computers, mechanical, magnetic or other means, save those concerning balance sheets and inventory. The petition must include an adequate discussion of the system, with a technical report or history of its use, which, once authorized, must be recorded in the books of inventories and balances. The accounting system must allow for transactions to be identified individually, along with the corresponding debit and credit accounts, and their later verification, consistent with Art. 43 of the Commercial Code.

[38] According to Article 55 of that Law, partners may examine books and company papers and obtain from the administrator the reports they deem pertinent. Article 62 provides that limited liability companies whose capital reaches the amount established by Art. 299, paragraph 2,<sup>x</sup> and joint stock companies, must present their annual accounting statements regulated by Arts. 63 to 65<sup>xi</sup> and comply with Art. 66.<sup>xii</sup> Article 67 provides that copies of the balance sheet, earnings statement of the fiscal year and the net worth statement, notes, complementary information and tabular annexes must be made available at company headquarters to partners or shareholders, no less than 15 days in advance for their consideration and that, when applicable, copies of the report of the board of directors or the administrators and the internal auditors' report shall also be kept at their disposal.

[39] Finally, the above-mentioned law also refers (article 284) to private oversight, to be performed by one or more internal auditors (*síndicos*) appointed by the assembly of shareholders; and article 302 indicates that the supervisory authority, in case of infringements of the law, bylaws or regulations, may apply the sanctions of 1) warning, 2) warning with publication, and 3) fines on the company, its directors and auditors.<sup>xiii</sup>

[40] - Law 18,805, The Organic Law on the Office of the Inspector General of Justice, article 2 of which gives that entity those functions conveyed by law to the Public Commercial Registry, as well as

the supervision of companies except for those supervised by the National Securities Commission,<sup>6</sup> those constituted abroad that normally do business in the country, or establish branches, offices or any other kind of permanent representation there, companies that engage in capitalization and savings operations, civil associations and foundations.

[41] Article 6 of the above-mentioned law provides that, for exercising the supervisory function, the Inspector General of Justice has the following powers, in addition to those stipulated for each of the subjects in particular: a) require information and any documentation he deems necessary; b) conduct investigations and inspections, to which end he may examine the books and documents of companies, request reports from their authorities, managers, staff and third parties; c) receive and substantiate complaints from interested parties in the exercise of his supervisory functions; d) file complaints with the judicial, administrative or police authorities, when the facts that come to his attention may give rise to public action. In addition, he may call directly upon the prosecution authorities to exercise the pertinent judicial actions in cases of violation or disregard of provisions affecting the public order; e) enforce his decisions, to which end he may apply to the competent civil or commercial judge to authorize: (1) support from the police; (2) search of residence and closure of premises; (3) seizure of books and documentation; f) declare irregular and ineffective for administrative purposes all acts submitted for his inspection when they are contrary to law, the bylaws or the regulations. This article also indicates that these powers do not exclude those conveyed by law on other agencies.<sup>xiv</sup>

[42] Finally, article 12 of the law provides that the Inspector General of Justice shall apply sanctions to corporations, associations and foundations, on their directors, auditors or administrators, and on every individual or entity that does not fulfill its obligation of furnishing information, provides false data or that in any way infringes the obligations established by law, bylaws or regulations, or hinders the performance of their duties, excluding from his purview sanctions on companies that are supervised by the National Securities Commission.

[43] - Resolution IGJ 7/2005 of the Inspector General of Justice, article 264 of which provides that corporations and limited liability companies whose capital amounts to the value determined by article 299 (2) of Law 19,550 must present their accounting statements to the Inspector General of Justice each year or, as appropriate, for interim periods, expressed in pesos; it indicates that those statements must conform to prevailing professional technical standards and their modifications (technical resolutions of the Argentine Federation of National Councils of Economic Sciences) under conditions of adoption set by the Professional Council of Economic Sciences of the Autonomous City of Buenos Aires, and where not stipulated otherwise in the law, regulatory provisions or these standards; and remit to the respective technical resolutions of that Federation, establishing surety for their application.<sup>xv</sup>

[44] Article 281 of that resolution provides that the book of inventories and balances must be kept in accordance with the provisions of the Commercial Code, transcribing chronologically: 1) the accounting statements prepared, signed by the legal representative and (for purposes of identifying them with the respective reports) the report of the representative of the supervisory body, if any, and that of the accountant; 2) analytical details or inventories of the composition of assets and liabilities corresponding to the statement of net worth issued, either at the close of the fiscal year or at other dates as specified in special rules, or that result from corporate resolutions; 3) reports on the accounting statements issued by the oversight body and the public accountant, signed by the issuers; 4) the chart of accounts used by the entity and the coding system for identifying the accounts used, signed by the legal representative, the

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<sup>6</sup> Pursuant to law 22,169, the National Securities Commission exercises control of joint stock companies that have listed their shares for public offering. That law may be consulted in the annexes to the Response of Argentina to the Questionnaire (Article III – 10.CICC) at the following Internet address: [http://www.oas.org/juridico/spanish/mesicic3\\_arg\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_arg_sp.htm)

oversight body if any, and the accountant. Under those same signatures must be transcribed the addition or replacement of accounts or confirmation of their elimination, followed by the complete chart of accounts resulting therefrom; 5) the description of the system and the technical opinion thereon stipulated by article 61 of Law 19,550, once approved by the Inspector General of Justice, or when deemed approved by law.

[45] Finally, article 282 of the resolution regulates authorization for the use of computers, mechanical, magnetic or other means, stipulated in article 61 of Law 19,550.<sup>xvi</sup>

[46] - Law 25,246, creating the Financial Intelligence Unit (FIU); Article 6 gives this unit responsibility for analyzing, processing and transmitting information for preventing the laundering of proceeds of various crimes, including crimes against the public administration stipulated in chapters VI, VII, IX and IX bis of title XI of the second book of the Criminal Code.

[47] Article 20<sup>7</sup> of that law identifies the natural and legal persons who are obliged to provide information under the terms of article 21, including licensed professionals whose activities are regulated by the Professional Councils of Economic Sciences, except when acting for the defense in court proceedings, and all legal persons that receive donations or contributions from third parties. The final paragraph of article 20 provides that *“the legal provisions relating to banking, tax or professional secrecy, and any commitments of confidentiality established by law or by contract, are inapplicable to, and may not be invoked by, the persons obliged by this law to submit reports, when they are ordered to provide information by the competent judge of the place where the information must be supplied or the headquarters of the Financial Intelligence Unit, at its option, or by any competent tribunal, on the basis of this law.”*

[48] Finally, article 21 of that law establishes the obligations of the persons indicated in article 20, including the duty to report to the FIU any suspicious deeds or transactions, irrespective of the amount involved, adding that for purposes of this law, suspicious transactions are deemed to be those transactions that, in accordance with normal use and customs, as well as the experience and suitability of the persons required to report, appear to be unusual, economically or legally unjustified, or unusually or unjustifiably complex, whether they are performed in isolation or repeatedly.

[49] - Law 20,488 on the exercise of economic science professions, article 1 of which provides that throughout the national territory the exercise of specific professions, including those of public accountant, is subject to the requirements of this law and its regulatory provisions, and that for these purposes registration in the respective rosters of the country's professional councils is mandatory; article 19 states that, in the Federal Capital, in the National Territory of Tierra Del Fuego, Antarctica and Islands of the South Atlantic and in each of the provinces that so provide there shall be a Professional Council of the graduates referred to in the preceding article; and article 21, listing the powers of the Professional Councils, includes those of enforcing the ethical principles that govern the economics profession and applying disciplinary measures for violations of the codes of ethics.

[50] - The codes of ethics issued by the Professional Councils of Economic Sciences, such as that adopted by the Professional Council of Economic Sciences of the Autonomous City of Buenos Aires through resolution 355/80, the preamble of which indicates that its purpose is to set forth the ethical standards and principles to which the economists registered with the Council must conform in their conduct and activity; article 3 declares that professionals must always act with integrity, truthfulness, independence of judgment and objectivity; article 5 indicates that any opinion, certification, report or

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<sup>7</sup> This article of Law 22,536 is transcribed at pages 21 and 22 of Argentina's response to the questionnaire.

assessment and, in general, any document that professionals issue must be expressed in a manner that is clear, accurate, objective, complete and in accordance with the standards established by the Council, and that their responsibility for the documentation they sign is personal and cannot be delegated; article 8 establishes that professionals must abstain from advising or intervening when their professional action would permit, protect or facilitate improper acts, could be used to mislead others or confuse their good faith, or could be employed in a manner contrary to the general interest or to the interests of the profession, or could violate the law; article 19 provides that the relationship between professionals and their clients must be conducted with absolute confidentiality and that they must not disclose any knowledge acquired as a result of their professional work without the express authorization of the client; article 20 provides that professionals are relieved of the obligation of professional secrecy when they must disclose their knowledge in their personal defense, to the extent that the information they provide has no substitute; and article 26 indicates that any violation of the code is subject to disciplinary action as set forth in article 16 of Law 20,476.

[51] - The Criminal Code, article 300 of which provides that *“Imprisonment from 6 months to 2 years shall be imposed on the incorporator, director, administrator, liquidator or auditor of a corporation, a cooperative or any other legal person who knowingly publishes, certifies or authorizes an either false or incomplete inventory, balance sheet, profit and loss statement, or the related reports, minutes or annual reports, or at the shareholders’ meeting, falsely or by insinuation, of important facts for assessing the company’s financial position, whatever the purpose sought when verifying them may be;”* and article 301 provides that *“Imprisonment from six months to two years shall be imposed on the director, manager, administrator or liquidator of a corporation, a cooperative or any other legal person who knowingly lends his assistance or consent to acts contrary to the law or the bylaws, when this may produce any damage. If the act involves the issuance of shares or capital stock, the maximum penalty shall be increased to three years imprisonment, provided the act does not constitute a crime more severely punished.”*

[52] The specific provisions that regulate aspects pertaining to the control of certain commercial corporations and associations,<sup>8</sup> such as Law 22,169 on the National Securities Commission's control over publicly listed corporations; Law 20,337 and Decree 721/00, on control of cooperatives by the National Institute of Cooperatives and the Social Economy; Law 21,526 on the control of financial entities by the Central Bank of Argentina and the rules it issues in the course of such control,<sup>9</sup> and Law 20,091 on control of insurance companies by the Superintendency of Insurance.

## **2.2. Adequacy of the legal framework and/or other measures**

[53] With respect to the provisions governing the prevention of bribery of domestic and foreign government officials, the Committee notes that, on the basis of the information available to it, they may be said to constitute a coherent set of measures that are pertinent for promoting the purposes of the Convention.

[54] The Committee, nevertheless, deems it appropriate to express some comments about certain provisions in this regard that the country under review could consider supplementing and/or adapting.

[55] First, the Committee believes it necessary for the country under review to consider adopting, through the means it deems appropriate, measures to ensure that “professional secrecy” is not an obstacle that would prevent professionals whose activities are regulated by the Professional Councils of

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<sup>8</sup> These provisions may be consulted at: [http://www.oas.org/juridico/spanish/mesicic3\\_arg\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_arg_sp.htm)

<sup>9</sup> These rules may be consulted through the links noted at pages 15 to 18 of Argentina’s response to the questionnaire.

Economic Sciences, from reporting to the competent authorities any acts of corruption they detect in the course of their work (see recommendation 2.4 (a) of Chapter II of this report).

[56] In relation to the foregoing, the Committee finds that, as provided in the final paragraph of Article 20 of Law 25,246, professional secrecy may be invoked by the aforesaid professionals in refusing to supply the information that Article 21 requires them to provide to the Financial Intelligence Unit (FIU) (except when the request for information is made by a judge), and this constraint may impede access to such information.

[57] Moreover, authorities other than the one referred to above may be deprived of valuable information about acts of bribery detected by such professionals, because of provisions such as in article 19 of the code of ethics adopted by the Professional Council of Economic Sciences of the Autonomous City of Buenos Aires, by resolution 355/80, which states that the professional relationship of accountants with their clients must be based on absolute confidentiality, and that they must not reveal any knowledge acquired in the course of their professional work without the express authorization of the client.

[58] Second, the Committee believes it would be useful for the country under review to consider holding awareness campaigns targeted at persons responsible for maintaining accounts and verifying their accuracy, on the importance of observing the rules issued to guarantee the truthfulness of those records and the consequences of violation, and also to consider implementing training programs designed specifically for internal comptrollers in publicly held companies and other types of associations who are required to keep accounts, to instruct them in ways of detecting acts of bribery in the course of their work (see recommendation 2.4 (b) of Chapter II of this report).

[59] Third, the Committee believes that it would be useful for the country under review to consider holding awareness and integrity promotion campaigns that target the private sector and to consider adopting measures such as the production of manuals and guidelines for companies on best practices that should be implemented to prevent corruption (see Recommendation 2.4 (c) in Chapter II of this report).

[60] Fourth, the Committee believes that it would be beneficial for the country under review to consider the adoption of such measures as it deems appropriate to make it easier for the organs and agencies responsible for the prevention and/or investigation of noncompliance with measures designed to safeguard the accuracy of accounting records to detect sums paid for corruption concealed in those records (see recommendation 2.4 (d) in Chapter II of this report.)

### **2.3. Results of the legal framework and/or other measures**

[61] In its response, the country under review did not refer to the results obtained from the provisions for prevention of bribery of domestic and foreign government officials.

[62] The document from the civil society organization “Inter-American Bar Association (IABA)”, containing the Fifth Report of the Committee for Follow-Up on Implementation of the Inter-American Convention against Corruption, states the following:<sup>10</sup>

[63] *“We note that there are currently a great many companies constituted that are not active, i.e. they have not complied with the presentation of balance sheets or the reappointment of their Board of Directors. It would be important for the Inspector General of Justice to take action, which might consist*

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<sup>10</sup> Fifth Report of the Committee for Follow-Up on Implementation of the Inter-American Convention against Corruption, Presented by the Inter-American Bar Association (IABA), at page 15.

*in advising inactive corporations to regularize their status within a reasonable period of time, or arranging for a new registration whereby companies that are in compliance may be clearly distinguished from those that are not.”*

[64] On the basis of the foregoing, the Committee believes it would be useful for the country under review to consider adopting the measures it deems appropriate in order to identify clearly those companies supervised by the Inspector General of Justice that are inactive or that have not presented their balance sheets or reappointed their boards, in order to apply corrective measures. The Committee will formulate a recommendation in this sense to the country under review (see recommendation 2.4 (e) of Chapter II of this report).

[65] Finally, in the absence of further information that would allow it to make an overall assessment of results in this area, the Committee will make a recommendation to the country under review so that, through the organs and agencies responsible for prevention and/or investigation of violations of measures designed to safeguard the accuracy of accounting records and ensure that publicly held companies and other types of associations required to establish internal accounting controls do so in the proper manner, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto (see recommendation 2.4 (f) of Chapter II of this report).

#### **2.4. Conclusions and recommendations**

[66] On the basis of the analysis conducted in foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article III, 10 of the Convention:

**[67] The Republic of Argentina has considered and adopted measures to create, maintain and strengthen standards on prevention of bribery of domestic and foreign government officials, as described in Chapter II, Section 2.1 of this report.**

[68] In light of the comments formulated in that section, the Committee suggests that the Republic of Argentina consider the following recommendation:

[69] - Strengthen standards on prevention of bribery of domestic and foreign government officials. To comply with this recommendation, the Republic of Argentina could take the following measures into account:

- a) Adopt, in accordance with its legal framework, through the means it deems appropriate, measures to ensure that “professional secrecy” is not an obstacle that would prevent professionals whose activities are regulated by the Professional Councils of Economic Sciences from reporting any acts of corruption they detect in the course of their work to the competent authorities (see section 2.2 of Chapter II of this report).
- b) Hold awareness campaigns targeted at persons responsible for keeping accounts and verifying their accuracy, as to the importance of observing the rules issued to guarantee the truthfulness of those records and the consequences of violation, and implement training programs designed specifically for internal comptrollers in publicly held companies and other types of associations who are required to keep accounts, to instruct them in ways of

detecting acts of bribery in the course of their work (see section 2.2 of Chapter II of this report).

- c) Consider holding awareness and integrity promotion campaigns that target the private sector and consider adopting measures such as the production of manuals and guidelines for companies on best practices that should be implemented to prevent corruption (see section 2.2 of Chapter II of this report).
- d) Consider adopting the measures it deems appropriate to facilitate the work of the organs or bodies responsible for preventing or investigating noncompliance with measures for safeguarding the accuracy of accounting records, and to help them detect amounts paid for corruption that are concealed in those records, such as the following (see section 2.2 of Chapter II of this report):
  - i. Manuals, guidelines or directives on the manner in which accounting books should be reviewed to detect sums paid for corruption;
  - ii. Computer programs that allow ready access to the information needed to verify the truthfulness of accounting records and their substantiating documentation, and the possibility of obtaining information from financial institutions for this purpose;
  - iii. Institutional coordination mechanisms to facilitate timely collaboration from other institutions or authorities as necessary to perform such verification or to establish the authenticity of the substantiating documentation;
  - iv. Training programs for their employees, designed specifically to alert them to the methods used to disguise bribes in accounting records, and to instruct them on ways of detecting such payments
- e) Adopt the measures it deems appropriate in order to identify clearly those companies supervised by the Inspector General of Justice that are inactive or that have not presented their balance sheets or reappointed their boards, in order to apply corrective measures (see section 2.3 of Chapter II of this report).
- f) Select and develop, through the organs and agencies responsible for prevention and/or investigation of violations of measures designed to safeguard the accuracy of accounting records and ensure that publicly held companies and other types of associations required to establish internal accounting controls do so in the proper manner, procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto (see section 2.3 of Chapter II of this report).

### **3. TRANSNATIONAL BRIBERY (ARTICLE VIII OF THE CONVENTION)**

#### **3.1. Existence of provisions in the legal framework and/or other measures**

[70] The Republic of Argentina has the following provisions relating to transnational bribery:

[71] - Criminal Code, article 258 bis: *“The offering or granting, directly or indirectly, to a public official of another State or of a public international organization, of sums of money or any article of*

*monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions, in a matter related to a transaction of an economic, financial or commercial nature, shall be punished by imprisonment of one to six years and perpetual disqualification from exercising public office.”*

### **3.2. Adequacy of the legal framework and/or other measures**

[72] With respect to the transnational bribery provisions of Article VIII of the Convention, the Committee notes that, on the basis of the information available to it, the provisions adopted by the Republic of Argentina for criminalizing this conduct are pertinent for promoting the purposes of the Convention.

[73] The Committee, nevertheless, believes it would be useful for the country under review to consider adopting the pertinent measures for applying the corresponding penalties, subject to the Constitution and to the fundamental principles of its laws, to companies domiciled in its territory that engage in the conduct described in article VIII of the Convention, independently from the penalties applicable to the persons connected with those companies who are involved in such conduct. The Committee will formulate a recommendation in this respect to the country under review (see recommendation 3.4 (a) of Chapter II of this report).

### **3.3. Results of the legal framework and/or other measures**

[74] In the chapter of the response from the Republic of Argentina to the questionnaire, relating to this matter, the following information is provided:<sup>11</sup>

[75] *“The Ministry of Foreign Relations, International Trade and Worship has filed a complaint alleging the payment of bribes in the Philippines by a firm based in Argentina, and criminal proceedings have been initiated before the federal courts of the city of Buenos Aires (case 9421/06, National Court for Federal Criminal and Correctional Matters no. 12, Secretariat no. 23), in which international cooperation has been sought from the Swiss Confederacy and the Philippines. In the context of that case, the Supreme Court of Justice intervened because of a conflict of jurisdiction, ruling that the case was beyond its original and exclusive competence and that it fell within the competence of the federal courts of the country, reaffirming Argentine jurisdiction to judge such cases (see Dictamen “De Paoli, Gustavo A. s/ denuncia cohecho art. 258 bis-Causa N° 9421/06, attached as an annex to this questionnaire).”*

[76] The documents submitted by the civil society organizations “Inter-American Bar Association” (IABA)<sup>12</sup> and *Fundación Poder Ciudadano*<sup>13</sup> also refer to this case.

[77] With respect to the foregoing information, the Committee considers that it serves to demonstrate that in Argentina, there has been a proceeding for the crime of transnational bribery as stipulated in article VIII of the Convention, and that those proceedings are continuing.

[78] Although the document submitted by the Inter-American Bar Association<sup>14</sup> also alludes to two other cases *“intended to investigate alleged acts of transnational bribery covered by article 258 bis of the*

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<sup>11</sup> Argentina’s Response to the Questionnaire, at page 26.

<sup>12</sup> Fifth Report of the Committee for Follow-Up on Implementation of the Inter-American Convention against Corruption, presented by the Inter-American Bar Association (IABA), at page 17.

<sup>13</sup> Document “Report of Civil Society for the Third Round of the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption”, presented by *Fundación Poder Ciudadano* (Argentine chapter of Transparency International), at page 7.

*Criminal Code*”, it indicates that both those cases have been closed and that it is not possible for the time being to access them and determine their status.

[79] While the response from the Republic of Argentina to the questionnaire refers to information contained in the statistical annex to that response, that annex does not contain any information on the offense of transnational bribery stipulated in article VIII of the Convention, which the country under review has criminalized under article 258 bis of the Criminal Code.

[80] Finally, in the absence of further information that would allow it to make an overall assessment of results in this area, the Committee will make a recommendation to the country under review so that, through the organs or agencies charged with the investigation and/or prosecution of the offense of transnational bribery, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto (see recommendation 3.4 (b) of Chapter II of this report).

### **3.4. Conclusions and recommendations**

[81] On the basis of the analysis conducted in foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article VIII of the Convention:

[82] **The Republic of Argentina has adopted measures on the offense of transnational bribery as provided in Article VIII of the Convention, as described in Chapter II, Section 3.1 of this report.**

[83] In light of the comments formulated in that section, the Committee suggests that the Republic of Argentina consider the following recommendations:

- a) Adopt the pertinent measures for applying the corresponding penalties, subject to the Constitution and to the fundamental principles of its legal system, to companies domiciled in its territory that engage in the conduct described in article VIII of the Convention, independently from the penalties applicable to the persons connected with those companies who are involved in such conduct (see section 3.2 of Chapter II of this report).
- b) Select and develop, through the bodies or agencies responsible for investigating and/or prosecuting the crime of transnational bribery, procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard (see section 3.3 of Chapter II of this report).

## **4. ILLICIT ENRICHMENT (ARTICLE IX OF THE CONVENTION)**

### **4.1. Existence of provisions in the legal framework and/or other measures**

[84] The Republic of Argentina has a set of provisions related to illicit enrichment, among which the following should be noted:

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<sup>14</sup> Fifth Report of the Committee for Follow-Up on Implementation of the Inter-American Convention against Corruption, presented by the Inter-American Bar Association (IABA), at page 17.

[85] - Criminal Code, article 268 (2): “*Any person who, when so demanded, fails to justify the origin of any appreciable enrichment for himself or a third party in order to hide it, obtained subsequent to assumption of a public office or employment, and for up to two years after having ceased his duties, shall be punished by imprisonment from 2 to 6 years, a fine of 50% to 100% of the value of the enrichment, and absolute perpetual disqualification. Enrichment will be presumed not only when the person's wealth has been increased with money, things or goods, but also when his debts have been canceled or his obligations extinguished. The person interposed to dissimulate the enrichment shall be punished by the same penalty as the author of the crime.*”

[86] Criminal Code, article 268 (3): “*Any person who, by reason of his position, is required by law to present a sworn statement of assets and maliciously fails to do so shall be punished by imprisonment from 15 days to 2 years and special perpetual disqualification. The offense is deemed committed when, after due notice of the obligation, the person obligated has not complied with those duties within the time limits established by the applicable law. Any person who maliciously falsifies or omits data required in those sworn statements by the applicable laws and regulations shall be liable to the same penalty.*”

#### **4.2. Adequacy of the legal framework and/or other measures**

[87] With respect to the provisions on illicit enrichment as provided by Article IX of the Convention, the Committee notes that, on the basis of the information available to it, they may be said to constitute a coherent set of measures that are pertinent for promoting the purposes of the Convention.

#### **4.3. Results of the legal framework and/or other measures**

[88] In its response,<sup>15</sup> the country under review refers to the action of the control agencies and authorities responsible for the detection, investigation and prosecution of illicit enrichment, such as the federal judges and prosecutors; the Prosecutor General's Office, with respect to which it mentions measures that have been adopted to expedite investigation of offenses such as that indicated; and the Anticorruption Office, with respect to which it indicates that detailed information on its activities can be obtained through the “management reports” page of the web site [www.anticorrupcion.gov.ar](http://www.anticorrupcion.gov.ar).

[89] In addition, it refers to the information contained in the statistical annex accompanying the response, listing the criminal proceedings relating to the conduct described in article IX of the Convention, which the country under review has criminalized through provisions of the Criminal Code cited in section 3.1 of this report.<sup>16</sup>

[90] Finally, the country under review refers to documents attached to its response, dealing with judgments and decrees adopted in cases of illicit enrichment.<sup>17</sup>

[91] The document from the civil society organization “Inter-American Bar Association (IABA)”, containing the Fifth Report of the Committee for Follow-Up on Implementation of the Inter-American Convention against Corruption, notes the following:<sup>18</sup>

[92] “*Despite the exhaustive definition of the crime of illicit enrichment and the generalized suspicion that such conduct exists, there have been few criminal proceedings for such offenses in Argentina, and*

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<sup>15</sup> Argentina's Response to the Questionnaire, at pages 32 to 34.

<sup>16</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic3\\_arg\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_arg_sp.htm)

<sup>17</sup> Available at: [http://www.oas.org/juridico/spanish/mesicic3\\_arg\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_arg_sp.htm)

<sup>18</sup> Fifth Report of the Committee for Follow-Up on Implementation of the Inter-American Convention against Corruption, Presented by the Inter-American Bar Association (IABA), at pages 27 to 29.

*far fewer cases that ended in conviction. The annex contains a list of judicial proceedings for illicit enrichment undertaken in recent years. With respect to the few precedent-setting cases that have ended in conviction, two are worthy of note for the broad publicity they received.”*

[93] The document from the civil society organization cited above then refers to the two cases mentioned in the previous paragraph, and notes the judicial rulings on the constitutionality of the criminalization of illicit enrichment in the country under review, in those two cases.

[94] The Committee considers that the information referred to in this section of the report serves to demonstrate that in the country under review, investigations have been opened, judicial proceedings are underway, and judgments and rulings have been issued with respect to the illicit enrichment described in article IX of the Convention, which has been made an offense through the provisions of the Criminal Code cited in section 3.1 of this report.

#### **4.4. Conclusions**

[95] **On the basis of the analysis conducted in foregoing sections, with respect to implementation in the country under review of the provisions contained in Article IX of the Convention, the Committee concludes that the Republic of Argentina has adopted measures on the offense of illicit enrichment as provided by Article IX of the Convention, as described in Chapter II of this report.**

### **5. NOTIFICATION OF CRIMINALIZATION OF TRANSNATIONAL BRIBERY AND ILLICIT ENRICHMENT (ARTICLE X OF THE CONVENTION)**

#### **5.1. Existence of provisions in the legal framework and/or other measures**

[96] The Republic of Argentina criminalized transnational bribery as provided by Article VIII of the Inter-American Convention against Corruption, after the date on which it ratified the Convention, but has not yet notified the OAS Secretary General of that criminalization.

[97] As well, the Republic of Argentina criminalized illicit enrichment as provided in Article IX of the Inter-American Convention against Corruption, prior to the date on which it ratified the Convention.

#### **5.2. Adequacy of the legal framework and/or other measures**

[98] 112. With respect to the criminalization of transnational bribery, the Republic of Argentina, in its response to the questionnaire,<sup>19</sup> indicates that: *“The Republic of Argentina, upon ratifying the Inter-American Convention against Corruption (Law 24,759) and for purposes of complying with article VIII of the international instrument, incorporated article 258 bis into the Criminal Code (article 36, Law 25,188, Official Gazette of November 1, 1999) prohibiting the bribery of foreign public officials.”*

[99] With respect to the criminalization of illicit enrichment, the Republic of Argentina, in its response to the questionnaire,<sup>20</sup> indicates that: *“At the time it signed the Convention, the Argentine State already had in its internal legislation a criminal provision prohibiting conduct described by article IX of the Convention”.*

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<sup>19</sup> Argentina’s Response to the Questionnaire, at page 24.

<sup>20</sup> Argentina’s Response to the Questionnaire, at page 27.

[100] The response of the country under review provided no additional information with respect to notifying the OAS Secretary General that it had adopted that legislation.

[101] It should be noted that the document submitted by the civil society organization “Inter-American Bar Association (IABA)”, containing the Fifth Report of the Committee for Follow-Up on Implementation of the Inter-American Convention against Corruption, states the following:<sup>21</sup>

[102] *“As of the time this report was written, the Ministry of Foreign Relations and Worship had not provided information as to whether it had notified the Secretary General of the Organization of American States that transnational bribery and illicit enrichment have been criminalized.”*

[103] Bearing in mind that the Republic of Argentina criminalized illicit enrichment as provided in Article IX of the Inter-American Convention against Corruption, prior to the date on which it ratified the Convention, the notification provided in Article X thereof is not necessary and, therefore, the Committee will offer no recommendation in that regard.

[104] However, bearing in mind that the Republic of Argentina criminalized transnational bribery as provided in Article VIII of the Inter-American Convention against Corruption, after the date on which it ratified the Convention, but has not yet notified the OAS Secretary General of said criminalization, in accordance with Article X thereof, the Committee will recommend that it proceed with that notification (see the recommendation in Chapter II, Section 5.3 of this report).

### **5.3. Conclusions and recommendations**

[105] On the basis of the analysis conducted in the foregoing sections, the Committee offers the following conclusion and recommendation with respect to implementation in the country under review of the provisions contained in Article X of the Convention:

**[106] The Republic of Argentina criminalized transnational bribery as provided in Article VIII of the Inter-American Convention against Corruption, after the date on which it ratified the Convention, but has not yet notified the OAS Secretary General of said criminalization, in accordance with Article X thereof. Accordingly, the Committee recommends that it proceed to that notification.**

## **6. EXTRADITION (ARTICLE XIII OF THE CONVENTION)**

### **6.1. Existence of provisions in the legal framework and/or other measures**

[107] The Republic of Argentina has a set of provisions related to extradition, among which the following should be noted.

[108] - Law 24,767, on International Cooperation in Criminal Matters, article 6 of which provides that for the extradition of a person to proceed, the act in question in the proceedings must constitute a crime which, under both Argentine law and the law of the requesting State, carries a penalty of deprivation of liberty, the mean between the minimum and maximum penalty being at least one year. Article 8 specifies the cases in which extradition will not proceed, one of which is if the crime is of a political nature.

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<sup>21</sup> Fifth Report of the Committee for Follow-Up on Implementation of the Inter-American Convention against Corruption, Presented by the Inter-American Bar Association (IABA), at page 29.

Article 9 lists the crimes that are not deemed political: these include crimes with respect to which the Republic of Argentina has assumed an international treaty obligation to extradite or prosecute.

[109] The first paragraph of article 12 of that law provides that if the person sought for trial is an Argentine national, he or she may opt to be tried by Argentine courts, unless a treaty making the extradition of nationals mandatory is applicable to the case. The third paragraph adds that, where he/she chooses to be tried in Argentina, extradition shall be denied, and the national shall be tried in Argentina, under Argentine criminal law, provided the requesting State so agrees, declines its jurisdiction, and transfers all the relevant background information and evidence necessary for prosecution.

[110] Article 23 of that law stipulates that in the case mentioned in article 5, last paragraph,<sup>22</sup> the government shall decide whether or not to accept the request, and indicates the situations in which it may do so, providing that if the request is accepted and extradition is granted, any proceedings underway in the Argentine courts will be terminated.

[111] Finally, article 44 of the law provides that the provisional arrest of a person sought by the authorities of a foreign State shall proceed: a) when formally requested by an authority of the interested country; b) when the person attempts to enter the country while sought by the authorities of a bordering country; or c) when the person is sought by a tribunal of a foreign country through notices inserted in the bulletins of the International Police Organization (Interpol).

[112] The Republic of Argentina has signed extradition treaties with Brazil, Bolivia, Peru, Uruguay, Paraguay, and the United States of America, and the Convention on Extradition signed in Montevideo, to which it is a party together with Colombia, Chile, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and the Dominican Republic.<sup>23</sup>

[113] The judgments of the Supreme Court of Justice in the *Crousillat* and *Ralph* cases, the first of which<sup>24</sup> refers, in its introductory section, to the Inter-American Convention against Corruption, declaring that the facts substantiating the request for extradition will be deemed “acts of corruption” by its material scope of application, and the second of which<sup>25</sup> refers in its introductory section to the applicability of an international convention in the absence of a bilateral extradition treaty.

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<sup>22</sup> Article 5 of Law 24,767 provides: “The jurisdiction of the requesting country with respect to the crime motivating the request for assistance shall be determined by its own legislation. The fact that the crime also falls within Argentine jurisdiction shall not constitute an obstacle to providing assistance; (last paragraph): but nevertheless, if the assistance involves extradition, the request may be conditioned by the provisions of article 23.”

<sup>23</sup> These treaties may be consulted at: <http://www.oas.org/juridico/mla/sp/arg/index.html>

<sup>24</sup> Page 2, *Considerandum* 4 of the judgment of the Supreme Court of Justice of April 18, 2006 in the *Crousillat* case reads: “4) That the facts substantiating the request for extradition are deemed “acts of corruption” by the scope of material application of the Inter-American Convention against Corruption, approved by national law 24,759, internationally valid since June 6, 1997. As well, the requesting country deposited the instrument of ratification on June 4, 1997.” This judgment may be consulted at: [http://www.oas.org/juridico/spanish/mesicic3\\_arg\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_arg_sp.htm)

<sup>25</sup> At pages 1 and 2, *Considerandum* 3 of the judgment of the Supreme Court of Justice of October 19, 2000, in the *Ralph* case, it is stated: “3) That in the absence of an extradition treaty binding Argentina and Portugal, the United Nations Convention on Trafficking in Narcotics and Psychotropic Substances approved at Vienna in 1988 is applicable. This flows from the fact that it has been ratified by both states and the conduct on which the extradition request was based (trafficking in narcotics) is a crime mentioned in article 3 (1). The same instrument provides that it must be taken as the legal basis of an extradition request in the absence of a specific treaty binding the parties. Under these circumstances, disregard of these precepts could make the Argentine State liable for failure to fulfill its duties of international cooperation and legal assistance in criminal matters (article 75 (22) of the national Constitution).” Available at:

[http://www.oas.org/juridico/spanish/mesicic3\\_arg\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_arg_sp.htm)

## 6.2. Adequacy of the legal framework and/or other measures

[114] With respect to the provisions governing extradition, the Committee notes that, on the basis of the information available to it, they may be said to constitute a coherent set of measures that are pertinent for promoting the purposes of the Convention.

[115] Notwithstanding the foregoing, the Committee believes that, by virtue of article XIII (6) of the Convention, the country under review should consider the pertinent measures so that, when it denies a request for extradition in relation to the crimes set forth in the Convention, based on the nationality of the person sought or because it deems that it has jurisdiction, it will in due course inform the requesting State of the final outcome of the case that, as a result of the denial of extradition, has been presented to the competent national authorities for prosecution (see recommendation 6.4 (a) of Chapter II of this report).

[116] It should be mentioned that the document submitted by the civil society organization, the Inter-American Bar Association (IABA), containing the Fifth Report of the Committee for Follow-Up on Implementation of the Inter-American Convention against Corruption, states the following:<sup>26</sup>

[117] *“As to whether it ‘reports the final outcome to the requesting State in due course, in the cases where extradition has been denied in order to try the suspect locally, Argentine legislation contains no obligation to report.’”*

[118] *“It would undoubtedly be very useful to establish the obligation to report in these cases. Not only would this allow closer monitoring of the case, but it would also represent a form of healthy control over the action of the local justice system.”*

## 6.3. Results of the legal framework and/or other measures

[119] In the section of its response to the questionnaire relating to results in this area, the Republic of Argentina reports the following:<sup>27</sup>

[120] *“Given the great number of bilateral extradition treaties that Argentina has signed with countries of the Americas,<sup>28</sup> there have to date been no cases in which the Convention against Corruption has been invoked as the sole legal framework for extradition. For this reason, it must be noted that the majority of extradition requests involving Argentina, both active (where Argentina requests extradition) and passive (where Argentina receives a request for extradition) have been based on specific extradition treaties and not on conventions against a specific set of crimes, such as the Inter-American Convention against Corruption.”*

[121] *“The greatest number of requests received by Argentina originate from bordering countries and from Spain and Italy, States with which Argentina has specific agreements on extradition. The great majority of requests refer to drug-related offenses or to violent crimes (robbery and murder) and there have been few cases where the person was charged, prosecuted or convicted for crimes included in the Convention.”*

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<sup>26</sup> Fifth Report of the Committee for Follow-Up on Implementation of the Inter-American Convention against Corruption, Presented by the Inter-American Bar Association (IABA), at page 35.

<sup>27</sup> Argentina’s Response to the Questionnaire, at pages 39 to 42.

<sup>28</sup> The footnote to this page reports the following: “Argentina has signed extradition treaties with Brazil, St. Vincent and the Grenadines, Bolivia, Peru, Uruguay, Paraguay, United States of America, and is a party to the Convention on Extradition signed in Montevideo in 1933 together with Colombia, Chile, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and the Dominican Republic.”

[122] “Nevertheless, as mentioned in the response to question a) of this chapter, the convention may be used as the basis for an [extradition] request.”

[123] “The Inter-American Convention against Corruption was in fact used in arguments in the Crousillat case (mentioned above) to discount the political crime allegations invoked before the Court. The Prosecution held that it was fully applicable, and that position was accepted by the highest court of the land.”

[124] The country under review then refers in its response to the most significant cases relating to international extradition treaties and their outcomes, and goes on to cite the measures adopted by the Prosecutor General's Office to make the handling of extradition requests more efficient.

[125] Finally, Argentina's response to the questionnaire notes that, by resolution PGN 55/08, the Office of International Legal Cooperation and Assistance of the General Secretariat for Institutional Coordination was given responsibility for ensuring interagency cooperation at the national and international levels in this matter; it cites the principal objectives of that Office; it indicates the instruments of cooperation most widely used in both active and passive requests; and it presents a graphic illustration of requests for international legal assistance submitted to that office in 2008.

[126] The Committee considers that the information referred to in this portion of the report serves to demonstrate that the country under review has relied on the Inter-American Convention against Corruption as the basis for the case to which this information refers, and that it reflects which cooperation instruments have been the most widely used in requests for international cooperation in criminal matters and extradition.

[127] On the basis of that information, the Committee believes it would be useful for the country under review to consider adopting the measures it deems pertinent to take greater advantage of the Inter-American Convention against Corruption in cases of extradition, which could consist, among other things, in implementing training programs on the possibilities of applying the Convention, designed specifically for the judicial and administrative authorities responsible for this matter (see recommendation 6.4 (b) of Chapter II of this report).

#### **6.4. Conclusions and recommendations**

[128] On the basis of the analysis conducted in foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article XIII of the Convention:

**[129] The Republic of Argentina has adopted measures on extradition, as provided in Article XIII of the Convention, as described in Chapter II, Section 6.1 of this report.**

[130] In light of the comments formulated in that section, the Committee suggests that the Republic of Argentina consider the following recommendations:

- a) Adopt the pertinent measures so that, when it denies a request for extradition in relation to the crimes set forth in the Convention, on the basis of the nationality of the person sought or because it deems that it has jurisdiction, it will in due course inform the requesting State of the final outcome of the case that, as a result of the denial of extradition, has been presented to the competent national authorities for prosecution (see section 6.2 of Chapter II of this report).

- b) Adopt the measures it deems pertinent to take greater advantage of the Inter-American Convention against Corruption in cases of extradition, which could consist, among other things, in implementing training programs on the possibilities of applying the Convention, designed specifically for the judicial and administrative authorities responsible for this matter (see section 6.3 of Chapter II of this report).

### **III. OBSERVATIONS REGARDING THE PROGRESS MADE WITH IMPLEMENTING THE RECOMMENDATIONS ISSUED IN REPORTS FOR PREVIOUS ROUNDS**

#### **FIRST ROUND**

[131] With respect to implementation of the recommendations issued to the Republic of Argentina in the report from the first round on which it did not supply information with regard to progress in their implementation in its response to Section II of the Questionnaire for the Second Round, or on those for which it supplied information but which the Committee considered in Section IV of the report for that round that they needed additional attention, and on the basis of the information available to it, the Committee notes the following:

#### **A. ANTICORRUPTION ACTIVITIES AND PREVENTIVE MEASURES AT PROVINCIAL AND MUNICIPAL LEVELS**

##### Recommendation 1:

Consider promoting with the provinces and the municipalities the relevant cooperation mechanisms to secure information under issues related to the Convention from those levels of government and to provide technical assistance for the effective implementation of the Convention.

[132] In the report adopted in the second round,<sup>29</sup> the Committee concluded that this recommendation had been satisfactorily considered by the State under review. Bearing in mind that that report indicates that the recommendation, by its nature, requires continuity in its implementation, the Committee looks forward to the country under review reporting on actions taken in this respect in the annual progress reports called for by article 32 of the Committee's Rules of Procedure.

#### **B. RECOMMENDATIONS AT THE FEDERAL LEVEL**

##### **1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE COMPLIANCE 1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE COMPLIANCE (ARTICLE III, PARAGRAPHS 1 AND 2 OF THE CONVENTION)**

###### **1.1. Standards of conduct to prevent conflicts of interests and enforcement mechanisms**

##### Recommendation 1.1.

*Strengthen implementation of laws and regulatory systems concerning conflicts of interest so that they cover all government officials and employees so that they permit practical and effective application of the public ethics system.*

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<sup>29</sup> See page 41 of that report, available at [http://www.oas.org/juridico/spanish/mesicic\\_II\\_inf\\_arg.pdf](http://www.oas.org/juridico/spanish/mesicic_II_inf_arg.pdf)

Measures suggested by the Committee that require information on their implementation or which required additional attention within the framework of the report from the Second Round:<sup>30</sup>

- *Ensuring more effective enforcement of Law 25.188 for all government employees and officials, including those of the legislative and judicial branches and the Attorney General's office.*
- *Instituting appropriate post-employment restrictions (see section 1.1.2.1 of Chapter II).*
- *Resolving the discrepancy between the law establishing the National Commission on Public Ethics and the non-existence of this Commission; or restructuring the legal and regulatory system to provide for appropriate mechanisms to enforce standards of conduct, including conflict of interest restrictions, for all civil servants (see section 1.1.2.1 of Chapter II).*
- *Ensuring that officials appointed directly by the President are subject to appropriate, enforceable conflict of interest restrictions, as established by the specific conflict of interest regime contained in the Ministerial Law (see section 1.1.2.2 of Chapter II).*
- *Expanding the coverage of sworn declarations of elected officials to include employment history.*
- *Designing and implementing mechanisms to publicize and provide training on the standards of conduct including those involving conflicts of interest, to all government officials and employees, and to provide further training or periodic updating regarding them.*

[133] In its response,<sup>31</sup> the State under review presents no additional information to that examined by the Committee in the report from the second round, with respect to the measures cited from the foregoing recommendation. Accordingly, the Committee reiterates the need for the State under review to give additional thereto.

[134] With respect to implementation of these measures of the recommendation, the civil society organization Fundación Poder Ciudadano (the Argentine chapter of Transparency International) in collaboration with the *Centro de Implementación de Políticas Públicas para la Equidad y el Crecimiento* (CIPPEC) states the following:<sup>32</sup>

[135] With respect to the first of these measures:

[136] *“The rules of conduct, including those for preventing conflicts of interest, are applied within the executive branch, more precisely by the Anticorruption Office, whose statistics appear in its management reports and have been duly reported to the Committee of Experts.<sup>33</sup> With respect to the legislative and judicial branches and the Attorney General's Office (Office of the Defender General), Argentina in its various MESICIC progress reports has not reported any cases in which the rules of conduct and rules on*

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<sup>30</sup> See pages 42 and 43 of that report, available at [http://www.oas.org/juridico/spanish/mesicic\\_II\\_inf\\_arg.pdf](http://www.oas.org/juridico/spanish/mesicic_II_inf_arg.pdf)

<sup>31</sup> Argentina's Response to the Questionnaire, Annex 1, pages 5 to 7

<sup>32</sup> Document “Report of Civil Society for the Third Round of the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption”, presented by *Fundación Poder Ciudadano* with the collaboration of CIPPEC. Pages 8 to 10

<sup>33</sup> In the footnote to this page and the civil society organization refers to the management reports available at <http://www.anticorrupcion.gov.ar/gestion.asp>

*conflict of interest have been enforced, except for disqualifications in the context of judicial proceedings (but not in the administrative sphere)."*

[137] With respect to the second of these measures:

[138] *"In this aspect, the law remains in force pursuant to the text incorporated by Decree 862/2001 which repealed the one-year extension of the conflict of interest rules upon leaving the public service. There has been no progress in implementing this recommendation since the last review of the question by the MESICIC Committee of Experts (report from the second round)".*

[139] With respect to the third, fourth and fifth measures, it notes that there has been no progress since the last review by the Committee of Experts (Report from the Second Round).

[140] With respect to the sixth measure:

[141] *"The Anticorruption Office has designed a distance training system (e-learning) for fulfilling this recommendation<sup>34</sup>. The courses deal with transparency in procurement (PAMI), ethics and transparency in tax administration (AFIP), ethics, transparency and combating corruption in the national public administration (INAP, ANMAT and Ministry of Defense). It also provides courses on ethics and corruption issues in the National Institute of Public Administration (INAP)."*

## **1.2. Standards of conduct to ensure the proper conservation and use of resources entrusted to government officials in the performance of their functions and enforcement mechanisms**

### Recommendation 1.2.

*Strengthen the internal and external control systems and utilize effectively the information generated during audits.*

Measures suggested by the Committee that require further information on their implementation or which required additional attention within the framework of the report from the Second Round:<sup>35</sup>

- *Ensuring that an effective control system exists for congressional oversight of the expenditure of public funds.*
- *Making public, where appropriate, the reports issued by control bodies.*<sup>36</sup>
- *Establishing an effective enforcement system for violations of law or regulation found during the course of an audit.*
- *Ensuring the highest degree of stability and independence of internal auditors.*

[142] In its response,<sup>37</sup> the State under review presents no additional information to that examined by the Committee in the report from the second round, with respect to the measures cited from the foregoing

<sup>34</sup> In the footnote to this page, the civil society organization refers to information on the Public Ethics Training System available at [www.sicep.jus.gov.ar](http://www.sicep.jus.gov.ar)

<sup>35</sup> See paras 43 and 44 of that report, available at [http://www.oas.org/juridico/spanish/mesicic\\_II\\_inf\\_arg.pdf](http://www.oas.org/juridico/spanish/mesicic_II_inf_arg.pdf)

<sup>36</sup> With respect to this measure, in the report from the second round the Committee noted Argentina's satisfactory consideration as regards the Sindicatura General de la Nación and the Anticorruption Office. See page 44 of that report.

recommendation. Accordingly, the Committee reiterates the need for the State under review to give additional attention thereto.

[143] With respect to implementation of these measures from the recommendation, the civil society organization Fundación Poder Ciudadano (the Argentine chapter of Transparency International) in collaboration with the *Centro de Implementación de Políticas Públicas para la Equidad y el Crecimiento* (CIPPEC) states the following:<sup>38</sup>

[144] With respect to the first measure:

[145] *“Many draft bills have been submitted by representatives of various parties (Proyectos exptes. 2714-D-2007 (Pinedo); 6978- D-2008 (Marcela Rodríguez et al.); 6968-D-2008 (De Marchi and Pinedo); 0475- S-2008 (Rodríguez Saa, Negre de Alonso and Basualdo, among others) to strengthen the Office of the Auditor General (the external oversight body) and the Sindicatura General de la Nación (the internal oversight body) but these have not been debated by the parliamentary committees even though the topic was included in action plans for implementing the recommendations, and despite constant reminders from civil society, the media and the academic world of the need to strengthen these agencies.”*

[146] With respect to the second measure:

[147] *“The audit reports, both from the Office of the Auditor General ([http://www.agn.gov.ar/n\\_informes.htm](http://www.agn.gov.ar/n_informes.htm)) and the Sindicatura General de la Nación (<http://www.sigen.gov.ar/informes.asp>) are being published.”*

[148] With respect to the third measure:

[149] *“There has been no progress in fulfilling this recommendation since the last review by the MESICIC Committee of Experts (report from the second round). The draft laws presented were not dealt with.”*

**1.3. Standards of conduct and mechanisms concerning measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware**

Recommendation 1.3.

*Strengthen the existing mechanisms for requiring public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.*

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<sup>37</sup> Argentina's Response to the Questionnaire, Annex 1, pages 7 to 9.

<sup>38</sup> Document “Report of Civil Society for the Third Round of the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption”, presented by *Fundación Poder Ciudadano* with the collaboration of CIPPEC. Pages 10 to 14.

Sole measure suggested by the Committee in relation to the foregoing recommendation, which has been satisfactorily considered in the framework of the report from the second round.<sup>39</sup>

- *Training public officials on the existence and purpose of their responsibility to report to appropriate authorities, acts of corruption of which they are aware in the performance of their public functions.*

[150] As that report indicated, this measure by its nature requires continuity in its implementation. The Committee therefore looks forward to the country under review reporting on actions taken in this regard, in the annual progress reports called for by article 32 of the Committee's Rules of Procedure.

## **2. SYSTEMS FOR REGISTERING INCOME, ASSETS AND LIABILITIES (ARTICLE III, PARAGRAPH 4 OF THE RECOMMENDATION)**

### Recommendation 2.

*Improve the systems for the timely collection, use, and public release of the financial disclosure reports.*

Measures suggested by the Committee that require further information on their implementation or which required additional attention within the framework of the report from the Second Round:<sup>40</sup>

- *Resolving the discrepancy between the law establishing the National Commission on Public Ethics and the non-existence of this Commission; or restructuring the legal and regulatory systems to provide for mechanisms to enforce effectively the systems for registration of income, assets, and liabilities.*
- *Using the financial disclosure reports for counseling public officials on how to avoid conflicts of interest as well as for detecting illicit enrichment.*<sup>41</sup>

[151] In its response,<sup>42</sup> the State under review presents no additional information to that examined by the Committee in the report from the second round, with respect to the first of the measures cited from the foregoing recommendation. Accordingly, the Committee reiterates the need for the State under review to give additional further thereto.

[152] With respect to implementation of the first of these measures from the recommendation, the civil society organization Fundación Poder Ciudadano (the Argentine chapter of Transparency International) in collaboration with the *Centro de Implementación de Políticas Públicas para la Equidad y el Crecimiento* (CIPPEC) states the following:<sup>43</sup>

[153] *“Nearly 10 years after Law 25,188 on ethics in the exercise of public functions was approved, the National Commission on Public Ethics has not been created nor has the legal and regulatory system*

<sup>39</sup> See pages 44 and 45 of the report, available at [http://www.oas.org/juridico/spanish/mesicic\\_II\\_inf\\_arg.pdf](http://www.oas.org/juridico/spanish/mesicic_II_inf_arg.pdf)

<sup>40</sup> See pages 45 and 46 of that report, available at [http://www.oas.org/juridico/spanish/mesicic\\_II\\_inf\\_arg.pdf](http://www.oas.org/juridico/spanish/mesicic_II_inf_arg.pdf)

<sup>41</sup> With respect to this measure, in the report from the second round the Committee noted Argentina's satisfactory consideration as regards the actions taken by the Anticorruption Office. See page 46 of that report

<sup>42</sup> Argentina's Response to the Questionnaire, Annex 1, page 11.

<sup>43</sup> Document “Report of Civil Society for the Third Round of the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption”, presented by *Fundación Poder Ciudadano* with the collaboration of CIPPEC. Pages 32 and 33.

*been restructured so as to implement proper mechanisms for enforcing the system of sworn statements. The executive branch remains the only sphere of government that has a body for enforcing the rules, through the Anticorruption Office.”*

[154] In its response,<sup>44</sup> the State under review presents additional information to that examined by the Committee in the report from the second round, with respect to the second of the measures cited from the foregoing recommendation. Based on that information, the Committee notes the following measures as steps that contribute to progress in implementing the recommendation:

[155] - The updated version (2007) of the book entitled “*Sworn Statements of Public Officials: a tool for the prevention and control of corruption. Information technology and public management*”, published by the Anticorruption Office, highlighting the relationship between the system of sworn statements of assets, the detection of illicit enrichment, and the prevention of conflicts of interest.<sup>45</sup>

[156] - The activities of the Sworn Statements Control and Monitoring Unit (UDJ) of the Transparency Policies Directorate (DPPT) of the Anticorruption Office, referring to the detection of increases in wealth and situations of possible incompatibility or conflict of interest, which makes reference to the Annual Report of that Office for the year 2008.<sup>46</sup>

[157] With respect to implementation of the second of these measures from the recommendation, the civil society organization *Fundación Poder Ciudadano* (the Argentine chapter of Transparency International) in collaboration with the *Centro de Implementación de Políticas Públicas para la Equidad y el Crecimiento* (CIPPEC) states the following:<sup>47</sup>

[158] “*While the legislative and judicial branches are complying with the duty to keep the sworn statements of their members, there has yet to be any analysis or control of the information contained in those documents to evaluate whether there is illicit enrichment or conflict of interest.*”

[159] The Committee notes the steps taken by the State under review to move forward with implementation of the second measure from the foregoing recommendation, and the need for it to continue giving attention thereto. It hopes that the State under review will be able to overcome the

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<sup>44</sup> Argentina’s Response to the Questionnaire, Annex 1, page 12.

<sup>45</sup> Argentina’s Response to the Questionnaire, Annex 1, page 12, notes: “as well, we recommend consulting the second edition of the book entitled “Sworn Statements of Public Officials: a tool for the prevention and control of corruption. Information technology and public management”, published by the Anticorruption Office, available at [www.anticorrupcion.gov.ar](http://www.anticorrupcion.gov.ar), by entering “publicaciones de la OA”.

<sup>46</sup> Argentina’s Response to the Questionnaire, Annex 1, page 12, notes: “The statistics from the System of Comprehensive Sworn Declarations of Assets of public officials can also be consulted and monitored through the Management Reports of the Anticorruption Office, at the following link: : <http://www.anticorrupcion.gov.ar/gestion.asp>”

<sup>47</sup> Document “Report of Civil Society for the Third Round of the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption”, presented by *Fundación Poder Ciudadano* with the collaboration of CIPPEC. Pages 32 and 33.

implementation difficulties reported in its response<sup>48</sup>. The Committee also takes note of the information provided on the internal agencies that have participated in its implementation.<sup>49</sup>

### **3. OVERSIGHT BODIES FOR THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4 AND 11 OF THE CONVENTION)**

#### Recommendation 3.

*Examine the feasibility of implementing the proposals contained in the Management Report for 2001 of the Anticorruption Office.*

Measures suggested by the Committee that require further information on their implementation or which required additional attention within the framework of the report from the Second Round:<sup>50</sup>

- *Ensuring better coordination and cooperation among the Attorney General's Office, Administrative Investigations Office, Inspector General, Anticorruption Office, Auditor General and Congressional Committees.*<sup>51</sup>
- *Reforming or strengthening the oversight bodies by such measures as transparent and public mechanisms for the selection, appointment, promotion and removal of career employees of such bodies; continuous evaluation and follow-up of actions; political and social support for actions of the oversight bodies; greater autonomy for internal auditors; and independent status for the Anticorruption Office.*<sup>52</sup>

[160] In its response,<sup>53</sup> the State under review presents no additional information to that examined by the Committee in the report from the second round, with respect to the measures cited from the foregoing recommendation. Accordingly, the Committee reiterates the need for the State under review to give additional attention thereto.

[161] With respect to implementation of these measures from the recommendation, the civil society organization *Fundación Poder Ciudadano* (the Argentine chapter of Transparency International) in

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<sup>48</sup> Argentina's Response to the Questionnaire, Annex 1, page 12, reports: "With respect to problems of implementation, it was noted that some aspects of the OANET application need adjustments or changes to handle more information and to facilitate control of sworn statements. This work is now underway in the IT area of the Ministry of Justice and Human Rights. With respect to reminding noncompliant officials, while there has been progress there are still some problems in ensuring that personnel managers actually issue these reminders and that they do so in accordance with prevailing rules, in terms of the text and form of the notice. On the other hand, when the official has left office, the address recorded in the personnel files is often not updated and consequently the notice cannot be sent."

<sup>49</sup> Argentina's Response to the Questionnaire, Annex 1, at page 12.

<sup>50</sup> See pages 43 and 44 of that report, available at [http://www.oas.org/juridico/spanish/mesicic\\_II\\_inf\\_arg.pdf](http://www.oas.org/juridico/spanish/mesicic_II_inf_arg.pdf)

<sup>51</sup> With respect to this measure, in the report from the second round the Committee noted Argentina's satisfactory consideration as regards the actions taken to achieve greater cooperation by the Anticorruption Office and the Administrative Investigations Bureau. See page 47 of that report.

<sup>52</sup> With respect to this measure, in the report from the second round the Committee noted Argentina's satisfactory consideration as regards the new judicial recognition of the capacity of the Anticorruption Office to bring cases. See page 48 of that report

<sup>53</sup> Argentina's Response to the Questionnaire, Annex 1. Pages 7 to 9.

collaboration with the *Centro de Implementación de Políticas Públicas para la Equidad y el Crecimiento* (CIPPEC) states the following:<sup>54</sup>

[162] With respect to the first measure:

[163] *“Institutional cooperation is not a standing government policy. It depends on the authorities of the day in each agency. The Auditor General's Office (AGN) reported that it had no formal institutional agreements for coordinating control agencies. Nevertheless, the Auditor General's Office advised Fundación Poder Ciudadano, in the course of preparing this report, that it had sent approved audit reports to the Administrative Investigations Bureau and the Anticorruption Office, whenever a crime was suspected. The AGN also reported that the College of Auditors decided to submit reports of interest to the Sindicatura General de la Nación (SIGEN) on a regular basis, including all those referring to the oversight agencies for concessioned or privatized services. Finally, in its response to the request for information submitted by Fundación Poder Ciudadano, the AGN declared that to strengthen the powers of the AGN would require a legal reform that would allow it to bring cases, and greater coordination with the parliamentary committees that monitor supervisory work. On a positive note, a Permanent Forum of Offices of Prosecutors of Administrative Investigations and Anticorruption Offices has been established for exchanging experience and information with a view to improving the anticorruption policies that these national and provincial agencies pursue in their respective jurisdictions, as Argentina has reported to the Committee of Experts.”*

[164] With respect to the second measure:

[165] *“The situation with the control agencies has not been strengthened, nor have the measures suggested by the Committee being implemented.”*

#### **4. MECHANISMS TO PROMOTE THE PARTICIPATION BY CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11 OF THE CONVENTION)**

##### **4.1. Mechanisms for access to information**

###### Recommendation 4.1.1.

*Institute legal norms supporting public access to government information.*

Sole measure suggested by the Committee in relation to the foregoing recommendation, which requires additional attention in the terms of the report from the second round.<sup>55</sup>

- *Developing procedures for acceptance of requests, for response to requests in a timely fashion, for appeal procedures in the case of denials, and for penalties concerning failure to comply with obligations to provide information.*<sup>56</sup>

<sup>54</sup> Document “Report of Civil Society for the Third Round of the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption”, presented by *Fundación Poder Ciudadano* with the collaboration of CIPPEC. Pages 15 to 17.

<sup>55</sup> See page 49 of that report, available at [http://www.oas.org/juridico/spanish/mesicic\\_II\\_inf\\_arg.pdf](http://www.oas.org/juridico/spanish/mesicic_II_inf_arg.pdf)

<sup>56</sup> With respect to this measure, in the report from the second round the committee took note of its satisfactory consideration, with regard to presidential decree 1172/03, the scope of which extends to the federal executive branch, which the Committee did not examine in substance. See page 49 of that report

[166] In its response,<sup>57</sup> the State under review presents additional information to that examined by the Committee in the report from the second round, with respect to the measure cited from the foregoing recommendation. Based on that information, the Committee notes the following measures as steps that contribute to progress in implementing the recommendation:

[167] - Actions taken by the Anticorruption Office, as the agency responsible for receiving complaints over noncompliance with the General Regulation on Access to Public Information for the National Executive Branch (Decree 1172/03, Article 19).

[168] - Issuance of joint resolution SG and RP 1/08 and FCA 3/08 of April 22, 2008, whereby the Parliamentary Relations Secretariat of the Cabinet Office and the Anticorruption Office approved the “*procedure for processing complaints for noncompliance with the obligations stipulated in the General Regulation on Access to Public Information for the National Executive Branch*”.

[169] - Actions taken by the Undersecretary for Institutional Reform and the Strengthening of Democracy, reporting to the Head of the Cabinet of Ministers, since mid-2008, to debate a draft bill on access to information which, as noted in the response from Argentina, “*will be submitted for consideration by academics, civil society organizations, journalists etc., with a view to submitting it to the National Congress.*”

[170] With respect to implementation of these measures of the recommendation, the civil society organization *Fundación Poder Ciudadano* (the Argentine chapter of Transparency International) in collaboration with the *Centro de Implementación de Políticas Públicas para la Equidad y el Crecimiento* (CIPPEC) states the following:<sup>58</sup>

[171] “*It is true that, as reported during the previous round, rules governing this right and facilitating its exercise have been issued in the federal government and in 12 provinces of Argentina, but our country still lacks a national law on access to public information that would be applicable in the different branches of state. During these years, the progress that Argentina has made in terms of access to information is due to implementation of Decree 1172/03, which instituted new actions to give effect to this right, and not to the discussion and adoption of new regulations at the national level.*”

[172] The Committee notes the steps taken by the State under review to move forward with implementation of the single measure from the foregoing recommendation, and the need for it to continue giving attention to that measure, with respect to the different spheres of the national government. The Committee also takes note of the information provided on the internal agencies that have participated in its implementation.<sup>59</sup>

## **4.2. Mechanisms for consultation**

### Recommendation 4.2.1.

*Institute procedures, where appropriate, that provide an opportunity for public consultation prior to the final approval of legal norms.*

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<sup>57</sup> Argentina’s Response to the Questionnaire, Annex 1, pages 16 to 19.

<sup>58</sup> Document “Report of Civil Society for the Third Round of the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption”, presented by *Fundación Poder Ciudadano* with the collaboration of CIPPEC. Pages 34 to 37.

<sup>59</sup> Argentina’s Response to the Questionnaire, Annex 1, at page 12.

Measures suggested by the Committee in relation to the foregoing recommendation, which were satisfactorily considered in the framework of the report from the second round.<sup>60</sup>

- *Publishing and disseminating the draft bills of legal norms, and elaboration of transparent processes in order to allow the consultation of interested sectors in relation to the drafting of laws, decrees or resolutions within the Executive branch.*
- *Holding public hearings to provide for public consultation in areas other than those concerning the public services framework, which have already been considered in the law.*

[173] As that report indicated, this measure by its nature requires continuity in its implementation. The Committee therefore looks forward to the country under review reporting on actions taken in this regard, in the annual progress reports called for by article 32 of the Committee's Rules of Procedure.

#### **4.3. Mechanisms to encourage participation in public administration**

##### Recommendation 4.3.1.

*Strengthening and further implementing mechanisms that encourage civil society and nongovernmental organizations to participate in public administration.*

Sole measure suggested by the Committee in relation to the foregoing recommendation, which requires additional attention within the framework of the report from the second round.<sup>61</sup>

- *Establishing mechanisms to encourage civil society and nongovernmental organizations to participate in efforts to prevent corruption and to develop public awareness of the problem; and promoting awareness of the mechanisms established for participation and explaining their use.*

[174] As that report indicated, this measure by its nature requires continuity in its implementation. The Committee therefore looks forward to the country under review reporting on actions taken in this regard, in the annual progress reports called for by article 32 of the Committee's Rules of Procedure.

#### **4.4. Mechanisms to encourage participation in the follow-up of public administration**

##### Recommendation 4.4.1.

*Strengthening and further implementing mechanisms that encourage civil society and nongovernmental organizations to participate in monitoring public administration.*

Measure suggested by the Committee in relation to the foregoing recommendation, which requires additional attention in the framework of the report from the second round.<sup>62</sup>

- *Promoting ways, where appropriate, for those who perform public functions to allow, facilitate, and assist civil society and nongovernmental organizations in developing activities to monitor their public acts*

<sup>60</sup> See page 50 of that report, available at [http://www.oas.org/juridico/spanish/mesicic\\_II\\_inf\\_arg.pdf](http://www.oas.org/juridico/spanish/mesicic_II_inf_arg.pdf)

<sup>61</sup> See page 51 of that report, available at [http://www.oas.org/juridico/spanish/mesicic\\_II\\_inf\\_arg.pdf](http://www.oas.org/juridico/spanish/mesicic_II_inf_arg.pdf)

<sup>62</sup> See page 52 of that report, available at [http://www.oas.org/juridico/spanish/mesicic\\_II\\_inf\\_arg.pdf](http://www.oas.org/juridico/spanish/mesicic_II_inf_arg.pdf)

[175] In its response,<sup>63</sup> the State under review presents no additional information to that examined by the Committee in the report from the second round, with respect to the measure cited from the foregoing recommendation. Accordingly, the Committee reiterates the need for the State under review to give additional attention thereto.

Measure suggested by the Committee in relation to the foregoing recommendation, which was satisfactorily considered, in the framework of the report from the second round.<sup>64</sup>

- *Designing and carrying out programs to publicize mechanisms for participation in monitoring public administration; and, where appropriate, training and enabling civil society and non-governmental organizations to have the necessary tools to use the mechanisms*

[176] As that report indicated, this measure by its nature requires continuity in its implementation. The Committee therefore looks forward to the country under review reporting on actions taken in this regard, in the annual progress reports called for by article 32 of the Committee's Rules of Procedure.

## **5. ASSISTANCE AND COOPERATION (ARTICLE XIV OF THE CONVENTION)**

Recommendations made by the Committee that were considered satisfactorily, in the framework of the report from the second round.<sup>65</sup>

### Recommendation 5.1.

*Review comprehensively the specific areas in which Argentina might need or could usefully receive mutual technical cooperation to prevent, detect, investigate, and punish acts of corruption; and that based on this review, a comprehensive strategy be designed and implemented that would permit Argentina to approach other States Parties and non-parties to the Convention and institutions or financial agencies engaged in international cooperation to seek the technical cooperation it needs.*

[177] As that report indicated, this measure by its nature requires continuity in its implementation. The Committee therefore looks forward to the country under review reporting on actions taken in this regard, in the annual progress reports called for by article 32 of the Committee's Rules of Procedure.

### Recommendation 5.2.

*Continuing the efforts of providing cooperation in areas where Argentina is already providing it.*

[178] As that report indicated, this measure by its nature requires continuity in its implementation. The Committee therefore looks forward to the country under review reporting on actions taken in this regard, in the annual progress reports called for by article 32 of the Committee's Rules of Procedure.

## **6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)**

[179] The Committee made no recommendations to the State under review in relation to this provision of the Convention because it noted with satisfaction that the Republic of Argentina had complied with article XVIII of the Convention by designating the Minister of Foreign Affairs, International Trade and

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<sup>63</sup> Argentina's Response to the Questionnaire, Annex 1, pages 7 to 9.

<sup>64</sup> See page 52 of that report, available at [http://www.oas.org/juridico/spanish/mesicic\\_II\\_inf\\_arg.pdf](http://www.oas.org/juridico/spanish/mesicic_II_inf_arg.pdf)

<sup>65</sup> See pages 52 and 53 of that report, available at [http://www.oas.org/juridico/spanish/mesicic\\_II\\_inf\\_arg.pdf](http://www.oas.org/juridico/spanish/mesicic_II_inf_arg.pdf)

Worship as the central authority for purposes of the international assistance and cooperation provided for in the Convention.

## **7. GENERAL RECOMMENDATIONS**

Sole general recommendation made by the Committee, which requires additional attention in the framework of the report from the second round:<sup>66</sup>

### Recommendation 7.1:

*Developing, where appropriate and where they do not already exist, procedures for assessing the effectiveness of systems and mechanisms mentioned in this report.*

[180] In its response, the State under review did not refer to the recommendation transcribed above which, as noted, requires additional attention in the framework of the report from the second round. Accordingly, the Committee reiterates the need for the Republic of Argentina to give additional attention to its implementation.

[181] With respect to implementation of this recommendation, the civil society organization *Fundación Poder Ciudadano* (the Argentine chapter of Transparency International) in collaboration with the *Centro de Implementación de Políticas Públicas para la Equidad y el Crecimiento* (CIPPEC) states the following:<sup>67</sup>

[182] *“On this question, the Argentine State provided no information in the progress reports submitted following the second round. If, in the context of the third round, no progress is reported on implementation of this recommendation from the first round, then we recommend that the Committee of Experts should take note of that circumstance and urge the Argentine State to take steps to implement the recommendation on a priority basis.”*

## **SECOND ROUND**

[183] The Committee offers the following observations with respect to the implementation of the recommendations made to the Republic of Argentina in the report from the Second Round, based on the information available to it:

### **A. COOPERATION WITH THE PROVINCIAL AND MUNICIPAL GOVERNMENTS**

#### Recommendation 1:

*To continue to undertake joint actions aimed at obtaining information on the implementation of the Convention, and strengthening the cooperation and coordination between the federal government and the provincial and municipal governments for its effective implementation, and at providing them with the technical assistance they may need to that end.*

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<sup>66</sup> See page 53 of that report, available at [http://www.oas.org/juridico/spanish/mesicic\\_II\\_inf\\_arg.pdf](http://www.oas.org/juridico/spanish/mesicic_II_inf_arg.pdf)

<sup>67</sup> Document “Report of Civil Society for the Third Round of the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption”, presented by *Fundación Poder Ciudadano* with the collaboration of CIPPEC. Page 22.

[184] The Committee has already noted the satisfactory consideration, by the country under review, of the recommendation similar to this one that was issued to it in the first round report.<sup>68</sup> Because the steps taken toward implementing that recommendation, as described by Argentina in Annex 1 of its reply,<sup>69</sup> constitute steps that also allow for a conclusion that the above recommendation has been satisfactorily considered, the Committee takes note of this fact and, taking into account that the recommendation, due to its nature, requires continuity with respect to its implementation, looks forward to the country under review reporting on the actions taken toward that end in the annual progress reports provided for by Article 32 of the Rules of Procedure.

## **B. CONCLUSIONS AND RECOMMENDATIONS APPLICABLE TO THE FEDERAL GOVERNMENT**

### **1. SYSTEMS FOR GOVERNMENT HIRING AND PROCUREMENT OF GOODS AND SERVICES (ARTICLE III(5) OF THE CONVENTION)**

#### **1.1. Systems for hiring public servants**

##### Recommendation 1.1.1:

*Strengthen the systems for hiring public servants in the federal Executive Branch*

##### Measures suggested by the Committee:

- a) *Advance even further with the preparation of job description manuals.*
- b) *Modify Article 15 of Annex I, Resolution ex-SFP No. 481/94, and the relevant provisions, so as to make the stages of the selection procedures, known as Work-experience Evaluation and Technical Evaluation, provided for in Articles 18 and 19 of that Resolution, mandatory.*
- c) *Continue adopting measures to avoid the use of the hiring regime regulated by Decree No. 1184/01, the purpose of which is to provide professional services on a personal basis, to hire persons who, based on their characteristics and in view of the nature of the functions to be performed, should be hired through a different regime.*
- d) *Continue to move forward with regularizing the position of public-sector employees, as the economic crisis that gave rise to the prohibition against filling vacancies in the public administration passes, adopting the measures necessary to ensure the effective use of merit-based selection procedures.*

[185] In its response, the State under review presented information<sup>70</sup> with respect to implementation of the foregoing recommendation. In this regard, the Committee notes the following step that leads it to conclude that measure b) thereof has been satisfactorily considered:

[186] - Decree 2098/08, approving the Collective Working Agreement for Personnel of the National Public Employment System (SINEP) and the Act of Accord and its Annex, dated September 5, 2008, article 35 of which includes among the mandatory stages of the selection process a technical and performance evaluation as referred to in measure b) of the foregoing recommendation.

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<sup>68</sup> See paragraph 143 of this Report.

<sup>69</sup> Argentina's Response to the Questionnaire – Annex 1, pages. 1 to 4.

<sup>70</sup> Argentina's Response to the Questionnaire, Annex 2, page 2.

[187] With respect to implementation of measure d) from that recommendation, the civil society organization *Fundación Poder Ciudadano* (the Argentine chapter of Transparency International) in collaboration with the *Centro de Implementación de Políticas Públicas para la Equidad y el Crecimiento* (CIPPEC) states the following:<sup>71</sup>

[188] *“The Office of the Auditor General has advised Fundación Poder Ciudadano, in the course of preparing this report, that it expects to achieve in 2009 a ratio of 80% of permanent staff and only 10% under full-time contract, and 10% under temporary contract. With respect to promotions and the filling of vacant managerial positions, the College of Auditors ordered the technical areas to design a system for filling positions through competition and promotion based on evaluations. The system must be compatible with existing legislation, and carry the agreement of the staff association.”*

[189] The Committee takes note of the satisfactory consideration by the State under review of measure b) of the foregoing recommendation, and the need for it to give additional attention to implementation of measures a), c) and d) thereof.

Recommendation 1.1.2:

*Strengthen the systems for hiring public servants in the federal Legislative Branch.*

Measures suggested by the Committee:

- a) *Amend, through the competent authority, Parliamentary Decree DP-43/97, in order to adopt a rule on Article 5 (e) of Law 24.600, so that no preference shall accrue to the status of temporary worker of the Congress of the Nation of applicants to positions on its permanent staff, abiding for that purpose by the principles of openness, equity, and efficiency provided in the Convention.*
- b) *Adopt, through the appropriate authorities, the terms and conditions for the competitive hiring processes referred to in the Rules of Procedure of the Honorable Chamber of Deputies of the Nation (Article 39(12) and Article 213), and in the Rules of Procedure of the Senate (Article 32(j)), observing the principles of openness, equity, and efficiency provided for in the Convention.*

[190] In its response, the State under review did not refer to the measures cited from the foregoing recommendation. Accordingly, the Committee notes the need for the Republic of Argentina to give additional attention to their implementation.

Recommendation 1.1.3:

*Strengthen the systems for hiring public servants in the federal Judicial Branch.*

Measure suggested by the Committee:

- *Establish guidelines, by the appropriate authority, with the level of detail required, so that the selection procedures used by the Courts of Appeals, pursuant to the delegation made thereto by the Supreme Court of Justice through the Ruling of March 3, 1958, are inspired by*

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<sup>71</sup> Document “Report of Civil Society for the Third Round of the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption”, presented by *Fundación Poder Ciudadano* with the collaboration of CIPPEC. Page 24.

*the principles of openness, equity, and efficiency provided for in the Convention; and that it adopts the measures needed for that authority to verify the adequate implementation of those guidelines, and the unification of criteria in that regard*

[191] In its response, the State under review did not refer to the measure cited from the foregoing recommendation. Accordingly, the Committee notes the need for the Republic of Argentina to give additional attention to its implementation.

Recommendation 1.1.4:

*Strengthen the systems for hiring public servants in the Public Ministry of the Nation.*

Measures suggested by the Committee:

- a) *Adopt, through the appropriate authority, a merit-based selection procedure prior to receiving applications from candidates for permanent employment in the career service corresponding to the Technical-Juridical, Technical-Administrative, and Auxiliary Services groupings of the Prosecutorial Public Ministry, bearing in mind the eminently technical nature of those positions.*
- b) *Adopt, by the appropriate authorities, the regulations for the designation and promotion of the officers and personnel of the Office of the Defender General of the Nation, to which reference is made in Article 65(e) of Organic Law No. 24,966, observing the principles of openness, equity, and efficiency provided for in the Convention.*

[192] In its response, the State under review did not refer to the measures cited from the foregoing recommendation. Accordingly, the Committee notes the need for the Republic of Argentina to give additional attention to their implementation.

**1.2. Systems for government procurement of goods and services**

Recommendation 1.2.1:

*Strengthen the systems for government procurement of goods and services in the federal Executive Branch.*

Measures suggested by the Committee:

- a) *Adopt the regulation of Delegated Decree No. 1023/01, as directed by Article 39 thereof, through the appropriate authority (federal Executive Branch), observing the principles established by the Decree, as well as those of openness, equity, and efficiency provided for in the Convention.*
- b) *Adopt the comprehensive regulation of electronic public-sector contracts, as directed by Article 22 of Delegated Decree No. 1023/01, through the appropriate authority (federal Executive Branch), addressing the aspects mentioned therein, and observing the principles established by the Decree, as well as those of openness, equity, and efficiency provided for in the Convention.*

- c) *Adopt, by the appropriate authority of the Federal Executive Branch, the measures to ensure that the use of direct contracting is a result of the strict application of the exceptions provided by law.*

[193] In its response, the State under review presents information<sup>72</sup> on implementation of the foregoing recommendation. In this regard, the Committee notes the following steps which contribute to progress in implementation of measure b) thereof:

[194] *“Unified local financial information system (SLU):*

*“Given the lack of a standardized procedure for carrying out the Annual Procurement Program, the Ministry of Economy and Production<sup>73</sup> conducted an experiment that involves sending notes to the different executing units of the government departments, after the budget for the next fiscal year has been approved by Congress. With this system of sending notes, the jurisdiction combines information on the procurement contracts for goods and services that will be managed throughout the fiscal year. This allows for better forecasting of expenditures and more efficient management of procedures, avoiding administrative irregularities by procurement officers, and permits timely and proper supply of inputs and services required by the areas to fulfill their purposes. Currently, the entry of data on procurement procedures is being harmonized into a single system known as the SLU (Unified Local Financial Information System). This will optimize and speed contracting procedures in economic and human resource terms, as it avoids repeat entries. Moreover, this unification is an essential step for the Annual Procurement Plan, to which we referred in the previous paragraph. The computerized procurement system created by the national executive branch is being installed in stages in the legislative branch (Chamber of Senators and Deputies). There are plans to address the Social Security agency (ANSES) by mid-2009 and, by the end of the year, to embrace all the agencies involved in the national procurement system.”<sup>74</sup>*

[196] - Decree 1818/2006, which provides that the entities and jurisdictions included in article 8 (a) of law 24,156 must conduct direct contracting through the “simplified procedure” stipulated in the Regulations for the Procurement, Disposal and Contracting of Goods and Services for the National State, for which use of the electronic system developed for this purpose is mandatory.<sup>75</sup>

[197] With respect to implementation of measure b) from the recommendation, the civil society organization *Fundación Poder Ciudadano* (the Argentine chapter of Transparency International) in collaboration with the *Centro de Implementación de Políticas Públicas para la Equidad y el Crecimiento* (CIPPEC) states the following:<sup>76</sup>

[198] *“The National Procurement Office has begun to implement the electronic procurement system. It is still at an embryonic stage, confined to the procurement of goods and the contracting of services by*

<sup>72</sup> Argentina’s Response to the Questionnaire, Annex 2, pages 6 to 11.

<sup>73</sup> Now the Ministry of Economy and Public Finances

<sup>74</sup> Argentina’s Response to the Questionnaire, Annex 2, page 9.

<sup>75</sup> In its response to the questionnaire, Annex 2 (pages 9 to 11) Argentina notes, among other things: “With issuance of Decree 1818/2006, the Electronic Public Procurement System (SECOP) was created, regulated by the National Procurement Office reporting to the Secretariat of Public Management of the Cabinet of Ministers, which is the body responsible for implementing it. This innovative system of procurement is a technological tool developed by the National Procurement Office for giving computerized support to the process of selecting contractors, excluding so-called “contracting”, i.e. the contractual execution part.”

<sup>76</sup> Document “Report of Civil Society for the Third Round of the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption”, presented by *Fundación Poder Ciudadano* with the collaboration of CIPPEC. Page.25.

*agencies of the National Public Administration that do not exceed 10,000 pesos (around US\$3000), which is a very low threshold (information published at the website [www.argentinacompra.gov.a](http://www.argentinacompra.gov.a)).*”

[199] The Committee takes note of the steps taken by the State under review to move forward in implementation of measure b) of the foregoing recommendation and the need to continue giving attention to it, as well as the need for additional attention to measures a) and c) of that recommendation.

Recommendation 1.2.2:

*Strengthen the systems of government procurement of goods and services in the federal Legislative Branch, the federal Judicial Branch, and the Public Ministry of the Nation.*

Measures suggested by the Committee:

- a) *Adopt, through the appropriate authorities of the federal Chamber of Deputies, the federal Judicial Branch, and the Public Ministry of the Nation, the regulation of Delegated Decree No. 1023/01, as directed by Article 39 of this Decree, so as to apply its regime in their respective jurisdictions, observing the principles established by the Decree, as well as those of openness, equity, and efficiency provided for in the Convention.*
- b) *Develop, through the appropriate authorities, the agreement entered into in 2005 by the federal Judiciary (Judicial Council) and the Office of the Auditor General of the Nation, to perform audits of the Judicial Branch in areas that entail procurement operations.*
- c) *Adopt, by the appropriate authorities of the Senate and Chamber of Deputies, the measures to ensure that the use of direct contracting is a result of the strict application of the exceptions provided by law.*

[200] In its response, the State under review did not refer to the measures cited from the foregoing recommendation. Accordingly, the Committee notes the need for the Republic of Argentina to give additional attention to their implementation.

[201] With respect to implementation of this recommendation, the civil society organization *Fundación Poder Ciudadano* (the Argentine chapter of Transparency International) in collaboration with the *Centro de Implementación de Políticas Públicas para la Equidad y el Crecimiento* (CIPPEC) states the following:<sup>77</sup>

[202] *“In its progress reports to the Committee of Experts following the second round, the Argentine State has not included information on implementation of recommendations concerning the legislative and judicial branches and the Attorney General's office.”*

Recommendation 1.2.3:

*Strengthen the systems for the procurement of public works in the federal Executive Branch, the federal Legislative Branch, the federal Judicial Branch, and the Public Ministry of the Nation, supplementing the provisions in that area.*

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<sup>77</sup> Document “Report of Civil Society for the Third Round of the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption”, presented by *Fundación Poder Ciudadano* with the collaboration of CIPPEC. Page 27.

Measure suggested by the Committee:

- *Consider the implementation of control systems particular to each public works contract which, taking into account its size, provide for intervention (interventoria) or direct supervision of the execution of the contract by the contracting entity or whoever it designates; make it possible to put civic oversight or citizen watchdog activities in place; impose the duty to render accounts periodically as the contract unfolds; and make it possible to determine whether the anticipated cost-benefit ratio was actually attained and whether the quality of the works was as agreed*

[203] In its response, the State under review presents information on implementation of the foregoing recommendation. In this regard, the Committee notes the following step which contributes to progress in implementation thereof:

[204] *“At the present time, the Anticorruption Office of the Republic of Argentina is conducting a diagnosis (in the framework of the Institutional Strengthening Project for the OA, supported by UNDP and the British Embassy), to evaluate the feasibility of applying the investigation methodology that this agency already used for preparing the “Map of Conditions for Transparency and Accessibility in Public Procurement”, to allow the Anticorruption Office to be aware of any elements for making a new map, in this case for the contracting of public works.”*

[205] With respect to implementation of this recommendation, the civil society organization *Fundación Poder Ciudadano* (the Argentine chapter of Transparency International) in collaboration with the *Centro de Implementación de Políticas Públicas para la Equidad y el Crecimiento* (CIPPEC) states the following.<sup>78</sup>

[206] *“In its progress reports to the Committee of Experts following the second round, the Argentine State has not included information on implementation of recommendations concerning public works in any of the branches of state (executive, legislative, judicial and the Attorney General's office).”*

[207] The Committee takes note of the step taken by the State under review to move forward in implementation of the foregoing recommendation and the need for it to continue giving attention thereto.

**2. SYSTEMS TO PROTECT PUBLIC SERVANTS AND PRIVATE CITIZENS WHO IN GOOD FAITH REPORT ACTS OF CORRUPTION (ARTICLE III, PARAGRAPH 8 OF THE CONVENTION)**

Recommendation 2.1:

*Strengthen the systems for protecting public servants and private citizens who in good faith report acts of corruption*

Measure suggested by the Committee:

- *Adopt, through the respective authority, a comprehensive regulation on protection of public servants and private citizens who in good faith report acts of corruption, including protecting their identity, in accordance with the provisions of the Constitution of Argentina and the*

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<sup>78</sup> Document “Report of Civil Society for the Third Round of the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption”, presented by *Fundación Poder Ciudadano* with the collaboration of CIPPEC. Page 27

*fundamental principles of its domestic legal order, which could include, among others, the following aspects:*

- *Protection for those who report acts of corruption that may or may not be defined as criminal offenses, but which may be subject to judicial or administrative investigation.*
- *Protective measures aimed not only at protecting the physical integrity of the informant and his or her family, but also at protecting their employment situation, especially in the case of public servants, especially in cases where the acts of corruption may involve his or her hierarchical superior or colleagues.*
- *Mechanisms to report the threats or reprisals to which the informant may be subjected, indicating the authorities that are competent to process the requests for protection and the offices or entities responsible for providing it.*
- *Mechanisms that facilitate international cooperation in the foregoing areas, when appropriate.*
- *Simplify the whistleblower protection application process*

[208] In its response, the State under review presents information on implementation of the measure cited from the foregoing recommendation. In this regard, the Committee notes the following step which contributes to progress in implementation thereof:

[209] *“In July 2008, the OA Transparency Policies Planning Directorate proposed an update and a new public discussion of the Draft Law on Protection of Whistleblowers, Informants and Witnesses of Acts of Corruption, which the office had prepared after a broad participatory procedure for preparing standards in 2003 (see Annual Report of the OA for 2003, point A.9, page 16). That draft is designed to improve the system for combating corruption in the Argentine State, and also to comply with the precepts of international conventions in this area. In this respect, recommendations have been made in the context both of the Mechanism for Follow-Up to the Inter-American Convention against Corruption (OAS) and of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions to the effect that Argentina should legislate in this matter. As well, the United Nations Convention against Corruption approved in our country by Law 26,097 (Official Gazette 9/6/06) also calls for the protection of witnesses, experts, victims, reporting persons and guilty persons who cooperate with the investigation (articles 32, 33 and 37). That draft is accessible at the website of the Anticorruption Office [www.anticorruptcion.gov.ar](http://www.anticorruptcion.gov.ar), by entering “políticas anticorruptción” / “proyectos normativos”, or via the link [http://www.anticorruptcion.gov.ar/politicas\\_02.asp](http://www.anticorruptcion.gov.ar/politicas_02.asp).”*

[210] With respect to implementation of this recommendation, the civil society organization Fundación Poder Ciudadano (the Argentine chapter of Transparency International) in collaboration with the Centro de Implementación de Políticas Públicas para la Equidad y el Crecimiento (CIPPEC) states the following:<sup>79</sup>

[211] *“From the response received from the Director of the Witnesses and Suspects Protection Program to the request for information submitted on February 23, 2009, dealing with implementation of the*

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<sup>79</sup> Document “Report of Civil Society for the Third Round of the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption”, presented by *Fundación Poder Ciudadano* with the collaboration of CIPPEC. Pages 28 and 29.

*recommendations, there does not appear to have been any progress. In his response, the Director merely referred to the existence of the National Witnesses and Suspects Protection Program already examined by the Committee during the second round. In 2007 the Argentine State informed the Committee of experts that it would be revising the draft bill prepared in 2003 on the Protection of Whistleblowers, Informants and Witnesses of Acts of Corruption to give it a parliamentary nature, but this has not occurred.”*

[212] The Committee takes note of the step taken by the State under review to move forward in implementation of the measure cited from the foregoing recommendation and the need for it to continue giving attention thereto.

### **3. ACTS OF CORRUPTION (ARTICLE VI OF THE CONVENTION)**

#### Recommendation 3.1:

*Modify and/or complement the following articles of the Criminal Code.*

#### Measures suggested by the Committee:

- a) Article 256 of the Criminal Code, which is related to paragraph (a) Article VI(1) of the Convention, could be complemented by the inclusion of the elements “solicitation” and “acceptance”, as well as “favors” and “advantages”, provided for by that paragraph.
3. Article 257 of the Criminal Code, amended by Article 33 of Law 25,188, which is related to paragraph (a) of Article VI(1) of the Convention, could be complemented by the inclusion of the elements “solicitation” and “acceptance”, as well as “favors” and “advantages” provided for by that paragraph.
4. Article 258 of the Criminal Code, modified by Article 34 of Law 25,188, which is related to paragraph (b) of Article VI(1) of the Convention, could be complemented by the inclusion of the elements “favors”, “promises”, or “advantages” provided for by that paragraph.

[213] In its response, the State under review did not refer to the measures cited from the foregoing recommendation. Accordingly, the Committee notes the need for the Republic of Argentina to give additional attention to their implementation.

[214] With respect to implementation of this recommendation, the civil society organization *Fundación Poder Ciudadano* (the Argentine chapter of Transparency International) in collaboration with the *Centro de Implementación de Políticas Públicas para la Equidad y el Crecimiento* (CIPPEC) states the following:<sup>80</sup>

[215] *“The government has not submitted any draft laws to Congress for reforming articles 256, 257 and 258 of the Criminal Code”.*

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<sup>80</sup> Document “Report of Civil Society for the Third Round of the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption”, presented by *Fundación Poder Ciudadano* with the collaboration of CIPPEC. Page 29.

#### 4. GENERAL RECOMMENDATIONS

##### Recommendation 4.1:

*Design and implement, when appropriate, training programs for public servants responsible for implementing the systems, provisions, measures, and mechanisms considered in this report, for the purpose of ensuring that the said systems, provisions, measures and mechanisms are adequately known, managed, and implemented.*

[216] In its response, the State under review presented information<sup>81</sup> with respect to implementation of the foregoing recommendation. In this regard, the Committee notes the following measures as steps that lead it to conclude that measure b) thereof has been satisfactorily considered:

[217] - The Distance Training System in Public Ethics (SICEP),<sup>82</sup> created as part of the Institutional Strengthening Project for the Anticorruption Office to publicize and provide training in transparency and anticorruption standards and tools for employees of the national public administration; the training courses offered under that project; and ethical training activities for preventing corruption, conducted under the project.

[218] The Committee takes note of the satisfactory consideration by the State under review of the recommendation transcribed above, which by its nature requires continuity in its implementation.

##### Recommendation 4.2:

*Select and develop procedures and indicators, when appropriate and where they do not yet exist, to analyze the results of the systems, provisions, measures, and mechanisms considered in this report, and to follow-up on the recommendations made herein.*

[219] In its response, the State under review presents information<sup>83</sup> on implementation of the foregoing recommendation. In this regard, the Committee notes the following steps as contributing to progress in implementation thereof:

[220] - A series of indicators developed by different agencies of the national public administration, which relate to the recommendations concerning strengthening procurement systems in the national executive branch, and strengthening systems for the contracting of public works in the national executive, legislative and judicial branch, and the Attorney General's office.

[221] The Committee notes the steps taken by the State under review to move forward with implementation of the foregoing recommendation, and the need for it to continue giving attention thereto.

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<sup>81</sup> Argentina's Response to the Questionnaire, Annex 2, pages 16 to 19.

<sup>82</sup> Argentina's Response to the Questionnaire (Annex 2, Page 18) advises: "for more information visit the website developed by the OA as the entry portal to the SICEP: <http://sicep.jus.gov.ar>".

<sup>83</sup> Argentina's Response to the Questionnaire, Annex 2, pages 19 to 21.

## ENDNOTES

<sup>i</sup> Article 38 of Law 20,628, referring to article 37, states that “*the income indicated in the previous article will not be demanded in the following cases: when the General Taxation Directorate presumes that the payments have been made to acquire goods; when the General Taxation Directorate presumes that the payments, by their amount etc., are insufficient to be earnings taxable in the hands of the beneficiary.*”

<sup>ii</sup> In its observations to the draft preliminary report, the country under review informed that the Federal Administration of Public Revenues has set criteria which allow for a determination of the scope to be given to the phrase, citing the following examples: Ruling 21/1997 of June 20, 1997, establishes: “*...the portion of the premium intended to cover the risk of death or invalidity can be considered related to the nature of the business in the understanding that it is a tool used by the company to attain increased efficiency in the pursuit of its corporate purpose, thus yielding a deductible expense on the tax balance as provided for in Article 87(a).*” – Ruling 26/2000 of April 6, 2000, states: “*Additionally, Article 87(a) provides that ‘From the earnings of the third category, and with the limitations set by this Law, the following may also be deduced:’ ... ‘expenditures and other outlays inherent to the business.’ – ‘As already stated in the previous point, the determination of spending on food for staff during the working day as an outlay inherent to the business, necessary to obtain, maintain, and preserve taxable income, cannot be refuted.’ – ‘Further, bear in mind that the tax law holds the following to be related to taxable income and, consequently, deductible as a supplement to remuneration: expenses incurred by the employer to assist the staff beyond the workplace (health care, school assistance, sports clubs fees, etc. See: Article 87(g), first paragraph). Citing the opinion of Enrique J. Reig (Impuesto a las Ganancias, Ed. Macchi, 1991, p. 429), such expenditure ‘is inherent to the business, in that it assists the better performance of duties by employees and is closely related to obtaining the income sought and, consequently, is deductible.’ – Ruling 73/2007 of October 10, 2007, stating: ‘From the foregoing, it is concluded that ‘...the portion of the premium intended to cover the risk of death or invalidity can be considered related to the nature of the business in the understanding that it is a tool used by the company to attain increased efficiency in the pursuit of its corporate purpose, thus yielding a deductible expense on the tax balance as provided for in Article 87(a).*”

<sup>iii</sup> Article 141 of Decree 1344/1998 provides the following with respect to this rule: “*For purposes of article 87 (i) of the law, representation expenses shall be deemed to mean any expenditure made or reimbursed by the company in recognition of its representation outside the sphere of its offices, premises or establishments or in relations intended to maintain or improve its market position, including those originated by travel, hospitality and courtesies related to those purposes. This definition does not cover outlays targeted at potential consumers, such as advertising expenses, or travel and accommodation expenses that, in the amounts recognized by the Federal Administration of Public Revenues, are paid to personnel by virtue of the nature of their tasks or to compensate them for the costs of performing those tasks. The deduction of representation expenses may not exceed the percentage established in article 87 (i) of the law, calculated on the basis of total employee remuneration, excluding the extraordinary bonuses and allowances referred to in section (g) of that article. The calculation must be backed by evidence that the expenditures were actually made and will be conditioned upon demonstration of the relationship of causality linking them to the earnings taxed and not reduced by exemptions. Representation expenses concerning travel may only be included to the extent they relate to the causality indicated above. In no case will consideration be given, for purposes of deduction, to the portion of such expenditures relating to travel by persons accompanying the company’s representative.*”

<sup>iv</sup> In its observations on the draft preliminary report for the third round, the country under review informed, that any criminal offense is included within the phrase “illicit operations” in its domestic legal system, based on “Ruling No. 182/1971 (Directorate of Technical and Legal Matters of the AFIP), which states that: “*The decision to apply income tax to income obtained through illicit activities, not allowing the offsetting of losses, is based on the fact that ‘were it no so, those who break the country’s laws would be receiving privileged fiscal treatment’ (Impuesto a los Réditos,*

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Marcos Rabinovich, Buenos Aires 1957, p. 100). *The official comment of Decree 14.338/46 says in this regard that the taxation of illicit operations is perfectly logical since attention is paid only to the income, regardless of whether it was obtained by licit or illicit means. This has also been seen as assisting the suppression of activities deemed to be illicit (Reig, Enrique, El impuesto a los réditos, 2nd Edition, p. 227).*”

[http://biblioteca.afip.gov.ar/gateway.dll/Jurisprudencia/Dictámenes/datyj/did\\_n\\_000182\\_1971\\_12\\_17.xml](http://biblioteca.afip.gov.ar/gateway.dll/Jurisprudencia/Dictámenes/datyj/did_n_000182_1971_12_17.xml).”

<sup>v</sup> Paragraph 2 of Decree 1344/1998 indicates that, when the circumstances of the case show that such outlays are to pay for services to obtain, maintain and conserve taxable earnings, the expenditure may be deducted in the tax balance, without prejudice to the tax referred to in article 37 of the law, which applies to such payments; paragraph 3 indicates that, in cases where, by the nature of the business or activity subject to the tax, there is a substantiated presumption that the outlays are not earnings taxable in the hands of the beneficiary, they may be deducted in the balance sheet and will not be subject to the tax referred to in the previous paragraph; paragraph 5 provides that the tax on undocumented outlays referred to in article 37 of the law will not apply where there is sufficient indication that they were intended for the purchase of goods, adding that, in this case, the outlay will be subject to the treatment provided by the law for the different types of goods, depending on how they are used by the taxpayer, and paragraph 6 establishes that the tax referred to in this article must be paid within the time limits set by the federal administration.

<sup>vi</sup> This article of law 11,683 adds, at the end of its first paragraph, that if the enforcement authority has not produced a resolution within 90 days, the Federal Administration may initiate the procedure described in the following paragraph, observing the safeguards established therein. The following paragraph provides that when the Federal Administration of Public Revenues, pursuant to this law, proves noncompliance with the clauses referred to in the first paragraph of this article it may consider, exclusively for tax purposes, that the tax benefits granted have lapsed wholly or in part, in which case, with 15 days notice to the respective enforcement agency, it shall proceed to assess and collect the taxes not paid by reason of the promotion granted, plus adjustments and interest.

<sup>vii</sup> Article 44 of the Commercial Code adds that, without prejudice to the fact that the businessperson must keep registered accounting books and documentation under an adequate accounting system which shall exhibit the importance and nature of his activities, the accounting records and documentation must clearly show his business managerial acts and net worth.

<sup>viii</sup> With respect to the Journal, article 46 of the Commercial Code states that “*if the businessperson keeps a cashbook, it is not necessary that he enter in the journal the payments which he makes or receives in cash. In that case the cashbook is considered an integral part of the journal.*” Article 47 provides that “*retail dealers must enter day by day in the journal the sum total of the cash sales, and separately, the sum total of the sales on credit.*”

<sup>ix</sup> Article 50 of the Commercial Code provides that “*retail dealers are not bound to make a general balance sheet more than once every three years*”, and article 51 states that “*all balance sheets must express the financial situation on their date accurately and exactly compatible with their purpose. Except where legal rules or regulations provide otherwise, their entries shall be made on the basis of the open accounts and in accordance with uniform criteria of valuation.*”

<sup>x</sup> Article 299 (2) of the Corporations Act provides: “2) [if they] *have corporate capital exceeding 500 Argentine pesos, which amount may be updated by the executive branch, as it deems necessary.*” (Nota Infoleg: article 1 of Disposition 6/2006 of the Undersecretary of Registry Affairs, BO 17/5/2006, sets the amount referred to here at 10 million pesos.”

<sup>xi</sup> Article 63 of the Corporations Act details the information that must be supplied in the general balance sheet, article 64 of that law identifies the information that must be revealed in the statement of earnings, and article 65 provides that, if the corresponding information is not contained in the accounting statements referred to in the previous articles and their notes, additional notes and tables must be supplied as part of those statements; that article then lists the aspects referred to in those notes. Those articles are transcribed fully at pages 11 to 14 of the Response of Argentina to the Questionnaire.

<sup>xii</sup> Article 66 of the Corporations Act provides that administrators must advise in the annual report on the status of the company in the various activities in which it has operated and their judgment on the projection of

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operations and other aspects they deem necessary to illustrate the current and future situation of the company. This article is fully transcribed at page 14 of the Response of Argentina to the Questionnaire

<sup>xiii</sup> Article 302 of the Corporations Act adds on this point: *“The latter may not exceed 355,600.47 australes in total, per infraction, and shall be graduated according to the severity of the infraction and the capital of the company. When they are applied to directors and auditors, the company may not assume responsibility for them. (Maximum fine substituted by article 1 of Resolution 601/88 of the Ministry of Justice, BO 17/11/1988). The government has the authority, through the Ministry of Justice, to update the amounts of fines semiannually, on the basis of the change recorded in the retail price index, general level, prepared by the National Statistics and Census Institute.”*

<sup>xiv</sup> Page 23 of the Response of Argentina to the Questionnaire refers to the different supervisory agencies, noting as follows: *“With respect to mechanisms for enforcing the respective rules and/or other measures, the different supervisory agencies (such as the office of the General Inspector of justice, the provincial directorates of legal persons, the National Securities Commission, the National Institute of Cooperatives and the Social Economy, the Central Bank, the Superintendency of Insurance, private oversight agencies such as the Bolsa de Comercio of Buenos Aires and other exchanges operating in the country, or tax collection agencies such as the Federal Administration of Public Revenues or the provincial or municipal tax collection directorates) have power of access to the accounting books and documentation of the legal forms and activities under which commercial or nonprofit activities are exercised in Argentina, and may establish monetary sanctions for deficiencies detected, and if necessary file criminal charges or undertake administrative proceedings for aspects that appear questionable as a result of their respective analyses. Within the realm of the Professional Councils of Economic Sciences there are ethics tribunals that act upon complaint from public agencies, private organizations or individuals questioning the professional action of economics graduates. From the viewpoint of accounting records and accounting documentation, this involves primarily the action of public accountants in their auditing specialties, justice officials, corporate and bankruptcy auditors. The sanctions that the Tribunal may impose, graduated by the severity of the case, consist of notice, private warning, public warning, suspension from exercise of the profession for one month to one year, or cancellation of the professional license.”*

<sup>xv</sup> Article 264 of Resolution IGJ 7/2005 provides that *“the respective technical resolutions of the Argentine Federation of Professional Councils of Economic Sciences 16, 17, 18, 19, 20 and 21, with their valid amendments introduced by the Professional Council of Economic Sciences of the Autonomous City of Buenos Aires, shall govern the presentation of the basic and supplementary statements and the information required in those technical resolutions, with the following exceptions: ...4. Pursuant to points 1.6 and 2.8 of technical resolution 21, the annual accounting statements of companies over which control, joint control or significant influence is exercised, used to apply the proportional equity method, as well as the consolidated accounting statements, must carry an audit report by an independent public accountant. When those accounting statements correspond to interim periods and must be presented to this agency as part of the documentation required for registering specific procedures, such as mergers, divisions or reductions in corporate capital pursuant to article 203 and 204 of Law 19,550, there must also be an audit report from an independent public accountant. 5. In no case will certifications by an independent public accountant be admitted for accounting statements presented to this agency.”*

<sup>xvi</sup> Article 282 of Resolution I GJ7/2005 provides: *“Records maintained by computers, mechanical, magnetic or other means (article 61, Law 19,550). For authorization to use computers, mechanical, magnetic or other means mentioned in article 61 of Law in 19,550, the following must be submitted: 1. Original notarized public or private instrument with the surety required by article 36 (1 and 2), containing a transcription of the resolution of the company's board of directors, requesting the authorization regulated in this article. If authorization is sought for a system on compact disc, other optical discs and microfilms, whether cards or rolls, the corporate resolution must expressly contain the commitment to preserve the possibility of reading the recording media during the legally required period, to expand on paper lists the records requested by any supervisory agency, court or other competent authority, and, in the case of technological progress, to maintain the validity of the reading machines during the required conservation period for the accounting records; or a commitment to transfer the necessary information to new recording media that incorporate the technology. 2. The following items signed by the legal representative or attorney with sufficient powers and by an independent*

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*public accountant, containing: a) a complete and accurate statement of the accounting records system to be used, indicating the purposes of the proposed modification; in the case of change or replacement of an earlier system, the reasons must be explained as well as the differences vis-à-vis that earlier system. The exact name of the records to be kept in the system must be included, and that of the books that are being replaced; b) flowchart, showing the administrative-accounting circuit for the records to be authorized; c) technical demonstration that the registrations to be made by the proposed system are inalterable; d) the system and periodicity of numbering of the records; e) the list of books and accounting records authorized at the date of presentation, indicating their data and the date of signature or authorization and the date and folio number of the last registration made; f) blank duplicate models and an example; g) chart of accounts. 3. Prequalification opinion of a public accountant.”*