

**QUESTIONNAIRE ON THE PROVISIONS OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION SELECTED IN THE SECOND
ROUND AND FOR FOLLOW-UP ON THE RECOMMENDATIONS
FORMULATED IN THE FIRST ROUND**

ARGENTINA
REPLY TO THE MESICIC-OAS QUESTIONNAIRE FOR THE SECOND ROUND
JULY 2006

INTRODUCTION

This reply seeks to reflect as succinctly as possible the current status in Argentina of the provisions selected at the Ninth Session of the MESICIC Committee of Experts for review in the second round. It consists of six documents, as follows:

Main document:

Reply to the questions on implementation of the Convention provisions selected for review in the second round. (Section I of the Questionnaire)

Annexes:

Annex 1. Follow-up on the recommendations formulated in the national report in the first review round (Annex: "Standard format for presentation of information on progress in implementation of recommendations formulated in the national report in the first review round") (Section II of the Questionnaire)

Annex 2. Annex to Chapter 1-1: Provincial Government Hiring Systems

Annex 3. Annex to Chapter 1-2: Provincial Government Procurement Systems

Annex 4. Annex to Chapter 3.1. Objective results obtained in application of the provisions of Article VI of the IACC.

Annex 5. List of Public Agencies, Provincial Governments and Nongovernmental Organizations Consulted by the Anticorruption Office of Argentina to prepare the Reply of Argentina to the Questionnaire on the Provisions of the Inter-American Convention against Corruption Selected in the Second Round.

We wish at the outset to clarify some methodological issues concerning the procedure followed in preparing this reply.

Bearing in mind the importance and the complexity of the issues under review in this round, preparation of the reply has required a significant effort in many areas of the Argentine State, the coordination of the various players involved, the compiling of legal, operational and statistical information, as well as analysis and processing of the information collected. We hope that all that effort is properly reflected in this reply.

With respect to government hiring and procurement systems, we must note that various regimes and systems coexist within Argentina, which means that, following the instructions in the Questionnaire, we have described only the principal existing systems, using as our selection guide the number of employees included in those systems or the proportion of the government budget that those systems represent.

On the other hand, we have followed strictly the order established in the Questionnaire approved by the Committee of Experts at its ninth session. In doing so, we have taken as our guide for the detailed treatment of the most important issues in each of the questions the Proposed Questionnaire that Jamaica, the United States and Argentina presented to the Committee during that session.

Another important point is the length of the reply. The complexity of the issues covered has generated somewhat lengthy responses, in an effort to reflect adequately the systems that exist in our country for the different issues under examination. In this case, the comprehensiveness of the reply will no doubt help to clarify the Committee's understanding. Too brief a summary would have required an excessive effort on the part of the experts and the secretariat, and the need for additional consultations and requests for supplementary information. Bearing in mind the great body of laws and regulations relating to the issues examined in this reply, we have prepared summary tables on each of the topics and, wherever possible, we have provided for each rule a hyperlink to a web page. It is true that provincial legislation does not always exist in digital format, but it is available to the experts for consultation and analysis.

With respect to requests for information, we asked for contributions from a great number of public organizations both at the national level (Executive Branch, Legislative Branch, Judicial Branch and Attorney General's Office) and at the provincial level. The responses were extremely useful. In some cases, agencies with specific responsibilities (for example the hiring and procurement systems of the National Executive Branch, for which there are several governing bodies) were able to provide data and statistics that helped to flesh out this response. At the same time, the oversight bodies (SIGEN and AGN) contributed some very important information on the topics under analysis. In certain other cases, the lack of concrete response from specific agencies meant that the reply has been confined to the legal and regulatory framework, because no statistical information was available.

The provinces present a special case. Virtually all of them responded to the request for collaboration, submitting great volumes of useful data. It must be recalled that, although Argentina has a federal structure of government and its provinces are autonomous, the Committee considered during the first round that the provisions of the IACC should be implemented by the subnational levels of government. It is hoped that the information on the provinces will be carefully examined by the Committee.

Finally, we must mention the participation of civil society in this process. As soon as the Questionnaire was received, notes were sent to the main nongovernmental organizations involved in issues of governance, transparency and the prevention of corruption, inviting

them to participate in the reply to the Questionnaire, as suggested by the Committee at the ninth session. In response, those organizations cooperated very actively, and the information available for preparing the reply was shared widely with them.

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION

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SECTION I

QUESTIONS ON IMPLEMENTATION OF THE CONVENTION PROVISIONS
SELECTED FOR REVIEW IN THE SECOND ROUND

CHAPTER ONE

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

1. GOVERNMENT HIRING SYSTEMS

a) Are there laws and/or measures in your country establishing government hiring systems? If so, briefly describe the main systems, indicating their characteristics and principles and list and attach a copy of the related provisions and documents.

Also describe how the above systems ensure openness, equity and efficiency in your country.

In relation to the above, refer, among others, to the following aspects:

- i. Governing or administrating authorities of the systems and control mechanisms.*
- ii. Access to the public service through a merit-based system.*
- iii. Advertisement for the selection of public servants, indicating the qualifications for selection.*
- iv. Ways to challenge a decision made in the selection system.*
- v. Relevant exceptions to the above.*

b) In relation to question a), state the objective results obtained, including any available statistical data.¹

c) If no such laws and/or measures exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen government hiring systems, in accordance with Article III (5) of the Convention.

REPLY OF ARGENTINA

a) Existence of laws and/or other measures

Argentina has laws and various other measures establishing systems for the hiring of public officials.

BASIC LEGAL FRAMEWORK:

¹ In accordance with the methodology adopted by the Committee, the information on results will seek to center on the last two years, in connection with this and the other provisions of the Convention selected for review in the framework of the second round, with the exception of information relating to the acts of corruption foreseen in Article VI (1) of the Convention, for which it will seek to center on the last five years.

NATIONAL EXECUTIVE BRANCH		
Legal Instrument	Title / Subject:	Accessible at:
Law 25.164	Framework Law governing National Public Employment. Legal framework and application authority. Entry requirements and impediments. Nature of the employment relationship. Rights and duties. National System for the Administrative Profession. Disciplinary system. Judicial recourse. Grounds for dismissal. Permanent training and labor requalification fund.	http://infoleg.mecon.gov.ar/infolegInternet/anexos/60000-64999/60458/norma.htm
Decree 1421/2002	Regulations to the Framework Law Governing National Public Employment Approved the regulations to Law N° 25.164	http://infoleg.mecon.gov.ar/infolegInternet/anexos/75000-79999/76700/norma.htm
Law 24.185	Law on Collective Labor Agreements for employees of the National Public Administration. Established provisions governing collective bargaining between the National Public Administration and its employees.	http://infoleg.mecon.gov.ar/infolegInternet/anexos/0-4999/583/norma.htm
Decree 214/2006	General Collective Labor Agreement for the National Public Administration. Ratified the General Collective Labor Agreement signed between the government and the unions, valid as of March 2, 2006 for two years. Replaced that approved by Decree 66/99.	http://infoleg.mecon.gov.ar/infolegInternet/anexos/110000-114999/114315/norma.htm
Decree 66/1999	First General Collective Labor Agreement for the National Public Administration. Ratified the General Collective Labor Agreement signed between the government and the unions, valid from January 1, 1999 to December 31, 2000 .	http://infoleg.mecon.gov.ar/infolegInternet/anexos/55000-59999/56235/texact.htm
Decree 993/1991 (t.o. Resolution 299/1995 of the former Secretaría de la Función Pública)	National System for the Administrative Profession. Approved the National System for the Administrative Profession (SINAPA), which consists of three groups: General, Scientific and Technical, and Specialized.	http://infoleg.mecon.gov.ar/infolegInternet/anexos/25000-29999/26908/norma.htm
Decree 1669/2003	Reform of the State. Established guidelines for the selection and hiring of permanent staff.	http://infoleg.mecon.gov.ar/infolegInternet/anexos/15000-19999/15328/texact.htm
Resolution 481/1994 former Secretaría de la Función Pública	Manual of rules governing the SINAPA personnel selection system.	http://www.sgp.gov.ar/sitio/empleo/concursos/docs/manualeleccion.pdf
Resolution 48/2002 of the Secretaría de la Gestión Pública	Regulatory Framework for National Public Employment. Approved guidelines for application of the hiring system stipulated in Law 25.164, with the exception of temporary staff..	http://infoleg.mecon.gov.ar/infolegInternet/anexos/80000-84999/81239/texact.htm

Law 11.672 - Cap. VII (t.o. Decree 1110/05)	Permanent Supplementary Budget Law. Empowered the Head of the Cabinet to issue a system of contracting personal services for the National Public Sector, excluding the Labor Contract Law (Article 64).	http://infoleg.mecon.gov.ar/infolegInternet/anexos/20000-24999/24541/texact.htm
Decree 1184/2001	Contracting System. Approved the System for Contracting Personal Services introduced by the Permanent Supplementary Budget Law.	http://infoleg.mecon.gov.ar/infolegInternet/anexos/65000-69999/69034/texact.htm
Decree 707/2005	National Public Employment. Provided that contracts for monthly remuneration of less than \$1.512 must conform with Article 9° of the Annex to Law 25.164.	http://infoleg.mecon.gov.ar/infolegInternet/anexos/105000-109999/107256/norma.htm
Law 20.744	Labor Contract System. regulated the labor contract and the working relationship in private activity. Specifically not applicable to employees of the National Public Administration, except where they are expressly included in this Law or in the collective labor agreements system.	http://infoleg.mecon.gov.ar/infolegInternet/anexos/25000-29999/25552/texact.htm
Law 23.396	Agreement with UNDP. Approved a Development Agreement between Argentina and the United Nations Development Program, signed in Buenos Aires on February 26, 1965.	N/A
UNDP Manual for the Management of Technical Cooperation Projects Ch. III	Manual for Management of Technical Cooperation Projects Executed by the Government. Established rules for directors of technical cooperation projects financed by UNDP for the hiring of human resources.	http://www.undp.org.ar/proyectos/index_html_manual
Law 23.283 - Art. 4° para. d) and e)	Technical and Financial Cooperation System. Established the legal framework for the national executive branch to sign technical and financial cooperation agreements with private sector entities.	N/A
Law 25.520 Title VII	National Intelligence Law. Established the legal, organizational and functional basis of the National Intelligence System and guidelines governing the staffing system of the Intelligence Bureau (Secretaria de Inteligencia).	http://infoleg.mecon.gov.ar/infolegInternet/anexos/70000-74999/70496/norma.htm
Decree 1088/2003	Personnel Statute for the Intelligence Bureau of the Office of the President of the Nation and Civilian Intelligence Personnel of the Intelligence Agencies of the Armed Forces.	N/A
Law 19.101	Military Personnel Law. Established procedures for the recruitment, promotion and retirement of military personnel of the Argentine Army, Navy and Air Force.	http://infoleg.mecon.gov.ar/infolegInternet/anexos/15000-19999/19875/texact.htm
Law 24.848 - Title III	Armed Forces: Fundamental Principles. Established the fundamental political, organizational and functional basis for restructuring the Armed Forces.	http://infoleg.mecon.gov.ar/infolegInternet/anexos/50000-54999/50229/norma.htm
Law 26.102 – Title II Ch. V.	Airport Security Law. Established the legal, organizational and functional basis of the Airport Security System. Established the duties and functions	http://infoleg.mecon.gov.ar/infolegInternet/anexos/115000-119999/117238/norma.htm

	of the Airport Security Police and their professional regime.	
Law 21.965	Personnel Law of the Argentine Federal Police. Regulated police personnel of the Argentine Federal Police.	http://infoleg.mecon.gov.ar/infolegInternet/anexos/45000-49999/45954/texact.htm
Decree 1866/1983	Regulations to Law 21.965	http://infoleg.mecon.gov.ar/infolegInternet/anexos/20000-24999/21716/texact.htm
Law 19.349 – Title IV	Organic Law of the National Gendarmerie. Established the legal, organizational and functional basis of the National Gendarmerie and its personnel regime.	N/A
Law 18.398 - Title III	General Law on the Argentine Naval Prefecture. Established the legal, organizational and functional basis of the Argentine Naval Prefecture and its personnel regime.	http://infoleg.mecon.gov.ar/infolegInternet/anexos/45000-49999/46324/texact.htm
Law 20.416 – Title III	Federal Penitentiary Service Law. Established the legal, organizational and functional basis of the Federal Penitentiary Service and its personnel regime	N/A
Law 24.660 – Cap. XVI	Law on the Execution of Prison Sentences. Established the basic principles and procedures for execution of prison sentences and minimum rules for the selection of institutional and non-institutional personnel and privatized services .	http://infoleg.mecon.gov.ar/infolegInternet/anexos/35000-39999/37872/texact.htm 6
Law 20.957	National Foreign Service System. Governs personnel belonging to the Argentine diplomatic corps.	http://infoleg.mecon.gov.ar/infolegInternet/anexos/15000-19999/18795/texact.htm
Law 19.549	National Law on Administrative Procedures	http://infoleg.mecon.gov.ar/infolegInternet/anexos/20000-24999/22363/texact.htm
Decree 1759/1972	Regulations to the National Law on Administrative Procedures	http://infoleg.mecon.gov.ar/infolegInternet/anexos/20000-24999/21715/texact.htm

NATIONAL LEGISLATIVE BRANCH

Legal Instrument:	Title / Subject:	Accessible at:
Resolution N° 2019/96 of Dec. 26, 1996 from the President of the Chamber of Deputies	By-laws of the National Chamber of Deputies.	http://www.hcdn.gov.ar
Resolution DR-1388/02 of Dec. 18, 2002 (entered into force on Mar. 3, 03) as amended by Resolution DR-198/03 of July 2, 03 from the President of the National Senate.	By-laws of the National Senate	http://www.senado.gov.ar
Law 24.600	Statute and classifications for staff of the National Congress.	http://infoleg.mecon.gov.ar/infolegInternet/anexos/30000-34999/31305/norma.htm
Law 24.284 and amending Law 24.379	Law creating the Office of the Public Defender	http://www.defensor.gov.ar/institucion/Law-sp.htm
Regulation on Organization and Functioning of the Office of the Public Defender.		http://www.defensor.gov.ar/institucion/organizacion-sp.htm
Law 24.156	Law on Government Financial Administration and Oversight Systems.	http://www.agn.gov.ar/body-financiera.htm

Basic Rules for Functioning of the AGN (Federal External Audit Office)		http://www.agn.gov.ar/body-normas-basicas.htm
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NATIONAL JUDICIAL BRANCH		
Legal Instrument:	Title / Subject:	Accessible at:
Decree-Law 1285/58 - Art. 12 to 15	Reorganization of the National and Federal Judiciary. Provided that the Supreme Court of Justice would regulate the entry, promotion and removal of officials and employees of the National Judiciary.	http://www.infoleg.gov.ar/infolegInternet/anexos/35000-39999/37915/texact.htm
Decision of the Supreme Court of Justice of Dec. 17, 1952	General Regulations for the National Judiciary. Regulated various aspects of the national justice administration and established the requirements, disqualifications and procedures for appointment and promotion of officials and employees.	N/A
Decision of the Supreme Court of Justice of Mar. 3, 1958	Authorized the Courts of Appeal to appoint and remove personnel within their jurisdiction.	N/A
Decision of the National Civil Appeals Court – Ch. IV	Regulation of the National Civil Judiciary. Regulated various administrative aspects of the National Civil Appeals Court and established the background assessment and examination procedure for filling vacancies.	http://www.pjn.gov.ar/getobj.php?id=16868
Resolution of the Judicial Council N° 396/05.	Barred the employment of non-salaried appointees in the Judicial Branch.	http://www.pjn.gov.ar/getobj.php?id=13398

FEDERAL ATTORNEY GENERAL'S OFFICE (MINISTERIO PÚBLICO DE LA NACIÓN)		
Legal Instrument:	Title / Subject:	Accessible at:
Law 24.946	Organic Law of the Attorney General's Office. Organization and composition. Functions and activities	http://www.mpf.gov.ar/Lawpag1.htm
Resolution PGN N° 2/2006	Basic rules governing officials and employees of the Federal Prosecutor General's Office	http://www.mpf.gov.ar/Novedades/PGN%202-06.pdf

PROVINCES		
Legal Instrument:	Title / Subject	Accessible at:
BUENOS AIRES		
Constitution	Provincial Constitution	http://www.gob.gba.gov.ar/legislacion/constitucion/cpppal.htm
Law 10.328	Statute for permanent staff of the Roads Department of the Province of Buenos Aires	http://www.gob.gba.gov.ar/dijl/DIJL_buscaid.php?var=47
Law 10.384	Statute and classification for staff of the Sanitation Works Department of the Province of Buenos Aires	http://www.gob.gba.gov.ar/dijl/DIJL_buscaid.php?var=53
Law 10.430	Statute and classification for personnel of the Public Administration.	http://www.gob.gba.gov.ar/legislacion/legislacion/l-10430.html
Law 10.449	Regime governing printing staff and personnel performing tasks in the Public Administration of the Province of Buenos Aires	http://www.gob.gba.gov.ar/dijl/DIJL_buscaid.php?var=75
Law 10.471	Regime governing professional hospital	http://www.gob.gba.gov.ar/dijl/DIJL_buscaid.php?var=10912

	workers.	
Law 10.579	Teachers' Statute of the Province of Buenos Aires	http://www.gob.gba.gov.ar/dijl/DIJL_buscaid.php?var=1689
Law 11.612	Provincial Education Law	http://www.gob.gba.gov.ar/dijl/DIJL_buscaid.php?var=281
Law 12.268	Regime governing artistic, technical and complementary activities	http://www.gob.gba.gov.ar/dijl/DIJL_buscaid.php?var=717
Law 13.201	Police personnel statute of the province of Buenos Aires	http://www.gob.gba.gov.ar/dijl/DIJL_buscaid.php?var=1861
Law Nacional 22.140	Regime governing lottery and casino workers	http://infoleg.mecon.gov.ar/infolegInternet/anexos/15000-19999/16169/norma.htm
Decree 1797/80	Regulations to the regime governing lottery and casino workers	N/A (No disponible)
Decree 3291/04	Police Statute Buenos Aires 2	http://www.gob.gba.gov.ar/dijl/DIJL_buscaid.php?var=20573
Decree 1766/05	Statute governing police support staff	http://www.gob.gba.gov.ar/legislacion/legislacion/05-1766.html
Decree 2197/05	Statute governing police support staff	http://www.gob.gba.gov.ar/legislacion/legislacion/05-2197.html
Decree-Law 9688/81	Scientific and technological research profession	N/A
Decree-Law 9.578/80	Personnel regime of the penitentiary service	http://www.gob.gba.gov.ar/dijl/DIJL_buscaid.php?var=1474
CATAMARCA		
Constitution	Provincial Constitution	http://www.diputados-catamarca.gov.ar/datos/conti-prov.pdf
Law 3276/77	Statute governing civilian personnel of the public administration	http://www.diputados-catamarca.gov.ar/Law/consul.asp?numero=3276
Law 3198	Classification of civilian personnel of the provincial public administration	http://www.diputados-catamarca.gov.ar/Law/consul.asp?numero=3198
Law 5161	Health Workers' profession	N/A
CHACO		
Constitution	Provincial Constitution	http://www.chaco.gov.ar/legislatura/Constitucion/Const%20Prov%20Frame.htm
Law 2017	Statute governing personnel of the provincial public administration	http://legislatura.chaco.gov.ar/InformacionLegislativa/Lawes_tramite_legislativo_2sinfondo.asp?Letfdc=1&Letfno=2017&Letfano=0
CHUBUT		
Constitution	Provincial Constitution	http://www.sup-trib-delsur.gov.ar/sup-trib-delsur/cbconst.htm
Decree-Law 1987	Statute governing personnel of the provincial public administration	https://sistemas.chubut.gov.ar/digesto/sistema/consulta.php?idile1=10823
Law 3158	Classification of	https://sistemas.chubut.gov.ar/digesto/sistema/consulta.php?idile1=6883

	personnel of the Department of Minors and the Family	
Law 4237	Classification of Personnel of the Office of the Provincial General Accountant	N/A
Decree-Law 1820	Statute governing teaching personnel	N/A
Law 2152	Statute governing intermediate and senior school teaching personnel	N/A
Decree-Law 1561	Police statute and classification of the Province of Chubut	N/A
CORRIENTES		
Constitution	Provincial Constitution	http://www.hcdcorrientes.gov.ar/Constituciones-Ctes/Constitucion-1993-D.htm
Law 4067	Public employees statute	http://www.hcdcorrientes.gov.ar/Lawes-texto/Law4067.doc
Law 4044	Provincial Penitentiary Service Law	http://www.hcdcorrientes.gov.ar/Lawes-texto/Law4044.doc
Law 2987	Police Personnel Law	http://www.hcdcorrientes.gov.ar/Lawes-texto/Law2987.doc
ENTRE RÍOS		
Constitution	Provincial Constitution.	http://www.entrierios.gov.ar/constitucion.pdf
Law 3289	Public employees statute.	N/A
Decree 5703/98	Regulations to the public employees statute	N/A
Law 5143	Statute and classification of judicial workers	N/A
Law 9190	Hospital workers' profession	N/A
Decree 4167/05	Procedure for service and works contracts	http://www.hcder.gov.ar/DV/50/T030416715072005.rtf
LA PAMPA		
Constitution	Provincial Constitution	http://www.legislatura.lapampa.gov.ar/Lawes/PDF/CONSTITUCION%20DE%20LA%20PROVINCE%20DE%20LA%20PAMPA.pdf
Law 643	Statute governing provincial public administration employees of the executive and legislative branches	N/A
LA RIOJA		
Constitution	Provincial constitution	http://www.larioja.gov.ar/servicios/documentos.htm
Law 3870	Statute governing provincial and municipal public administration employees, with	N/A

	amending and regulatory laws and Decrees	
Decrees 008/98	Provincial system of positions with strategic functions	N/A
Decrees 225/98	General regime governing candidate selection for positions with strategic functions	N/A
Law 2425	Organic Law of the Judicial Function	N/A
MENDOZA		
Constitution	Provincial Constitution.	http://www.mendoza.gov.ar/Paginas/Lawes/constmza/constmza.htm
Law 5126	Classification of public employees	http://200.32.111.68/busqueda/Lawes/5126
Law 5241	Statute governing personnel of the Social Welfare Ministry	http://200.32.111.68/busqueda/Lawes/5241
Law 5465	Statute governing personnel of the Social Welfare Ministry	http://200.32.111.68/busqueda/Lawes/5465
Law 6722	Regime governing the provincial police	http://200.32.111.68/busqueda/Lawes/6722
Law 7162	Classification of park and zoo staff	http://200.32.111.68/busqueda/Lawes/7162
Law 6980	Single Registry of professional services	http://200.32.111.68/busqueda/Lawes/6980
MISIONES		
Constitution	Provincial Constitution.	http://www.misiones.gov.ar/legal/constitucion.htm
Law 1556	Basic legal regime governing the provincial public administration	http://www.misiones.gov.ar/legal/Lawes/1556.htm
Law 67	Teachers' statute	http://www.misiones.gov.ar/legal/Lawes/67.htm
Law 3200	Disqualification for positions in the provincial public administration	http://www.misiones.gov.ar/legal/Lawes/3200.htm
NEUQUÉN		
Constitution	Provincial Constitution.	http://www.neuquen.gov.ar/constitucion2006.htm
Law 5	Duty to submit a sworn statement of assets	http://www.legislaturneuquen.gov.ar/main/Consultas.asp?mostrar=4
RÍO NEGRO		
Constitution	Provincial Constitution	http://www.legisrn.gov.ar/const_prov.htm
Law 3487	General and basic statute governing personnel of the public administration	http://www.legisrn.gov.ar/detallado_Law.php?ejecutar=DOCU.SECU%3D3695&tablas=leddocu+as+DOCU http://www.legisrn.gov.ar/despliego.php?cual=L/L03487.html
Law 3966	Regime governing entry of temporary personnel into the	http://www.legisrn.gov.ar/detallado_Law.php?ejecutar=DOCU.SECU%3D7196&tablas=leddocu+as+DOCU http://www.legisrn.gov.ar/despliego.php?cual=L/L03966.html

	permanent staff of the provincial public administration	
Law 3052	Regime governing the civil service and restructuring of the State	http://www.legism.gov.ar/detallado_Law.php?ejecutar=DOCU.SECU%3D3053&tablas=leddocu+as+DOCU http://www.legism.gov.ar/despliego.php?cual=L/L03052.html
SALTA		
Constitution	Provincial Constitution	http://www.camdipsalta.gov.ar/conprov.htm
Law 5546	Statute governing public employees	N/A
Decree 1178/96		N/A
Law 6583	Economic, financial and administrative emergencies law	http://www.camdipsalta.gov.ar/LAWES/Lawes/6583.htm
SANTA FE		
Constitution	Provincial Constitution	http://www.santa-fe.gov.ar/gbrn/noticias/constitucion.htm
Law 8525	Statute governing the provincial public administration	N/A
Decree 2695/83	Classification of civilian personnel of the provincial public administration	http://www.santa-fe.gov.ar/gbrn/sin/resultados.php?pnro=2695&panio=1983&porpagina=10&firstrow=1
Decree 3924/87	Freezing of vacancies	http://www.santa-fe.gov.ar/gbrn/sin/resultados.php?pnro=3924&panio=1987&porpagina=10&firstrow=1
Decree 0088/87	Hiring and promotion system	http://www.santa-fe.gov.ar/gbrn/sin/resultados.php?pnro=0088&panio=1987&porpagina=10&firstrow=1
TIERRA DEL FUEGO, ANTÁRTIDA E ISLAS DEL ATLÁNTICO SUR		
Constitution	Provincial Constitution	http://www.legistdf.gov.ar/sitio/documentos/conspro/
Prov. Law 23.775	Provincialization of the Territory of Tierra del Fuego, Antártida e Islas del Atlántico Sur.	http://www.legistdf.gov.ar/sitio/documentos/Lawesnacionales/
Prov. Law 331	Territorial Public Administration: Application of National Law N° 22.140 and Decree 1.428/73.	http://www.legistdf.gov.ar/sitio/lp/Lawes/cd%20Lawes/Lawest/LAWT331.html
Nat. Law 22.140	Basic legal regime governing the public service	http://www.legistdf.gov.ar/sitio/documentos/Lawesnacionales/
Prov. Law 661 Title II	General Expenditure and Revenue Budget of the Public Administration, Fiscal Year 2005.	http://www.legistdf.gov.ar/sitio/lp/Lawes/cd%20Lawes/LAWESP/Law661.htm

Brief description of the principal systems

In Argentina there are distinct systems for hiring public employees. The first distinction derives from Article 1 of the National Constitution, according to which Argentina has adopted a federal republican representative form of government.

Consequently, there are two levels of authority in the nation: the Federal Government and the Provincial Governments. Both are subject to the "division of powers" among the legislative, executive and judicial branches.

Moreover, Article 14 of the Constitution enshrines, among other workers' rights, "the stability of public employment" and "free and democratic labor union organizations, recognized by simple registration in a special registry".

It must be noted that both of these constitutional rights are thoroughly reflected in the public service hiring systems referred to above.

Following is a description of the principal systems for hiring public officials in the National Executive, Legislative and Judicial Branches and in the Attorney General's Office (*Ministerio Público*), at the federal level, and also the systems prevailing in various provinces that responded to the consultation conducted by the National Anticorruption Office, the agency that acts as the focal point for Argentina in MESICIC.

Note: To consult the list of Public and Provincial Agencies and Nongovernmental Organizations consulted by the National Anticorruption Office for preparing the reply to this Questionnaire, see Annex 5 to this Reply.

I. SYSTEMS OF THE NATIONAL EXECUTIVE BRANCH

a) Brief Description of the Principal Systems

Within the National Executive Branch (hereafter NEB) there are distinct systems for the hiring of public officials, both as permanent and as nonpermanent staff, and these are established in various statutes and special occupational group classifications (*escalafones*), collective labor agreements, and other regulations applicable to public-sector personnel.

Nevertheless, there are two levels of legislation that, with some exceptions, cover the entire spectrum. At the first level we find the basic Governing Rules (*Normas Rectoras*, hereafter the Governing Rules): the Framework Law 25,164 Regulating National Public Employment (*Ley Marco*, hereafter the Framework Law), its Regulatory Decree 1421/02 (*Decreto Reglamentario*, hereafter the Regulatory Decree), which covers a broad range of public officials (some 45,000), and the General Collective Labor Agreement for the National Public Administration (*Convenio Colectivo*, hereafter the Collective Agreement) approved by Decree 214/06 of February 27, 2006. At the second level, we find a series of other provisions (Sectoral Collective Agreements, Occupational Classifications, Administrative Provisions, Resolutions, etc.) issued on the basis of those Governing Rules or on the basis of the rules that prevailed before the Governing Rules were approved.

The career systems established in the different career streams and sectoral collective agreements present a variety of modalities and characteristics. Nevertheless, we can identify a series of convergent traits derived from their similarity or homogeneity in many of the functions performed within the NEB, in particular since approval of the Collective Agreement, which, because of its higher ranking, takes precedence in any conflict of rules with the sectoral agreements. This collective agreement deepens and expands the one approved by Decree 66/99 (the First Collective Labor Agreement for the National Public Sector), which it replaced upon approval of Law 24,185.

Law 24,185 complements the Framework Law, in that the public workers' rights enshrined by the Framework Law constitute minimum rights that cannot be withdrawn to the prejudice of public-sector workers in the course of negotiating the sectoral contracts. Similarly, but with greater specificity than Law 24,185, the Collective Agreement² also

² It should be noted that, as declared at the outset by the parties signatory to the Collective Agreement in their statement of principles, "They shall pursue the strengthening of:

- A culture of competent, honest, frugal and effective work needed for the organization and functioning of a modern, high-quality public administration.
- Harmonious and mutually respectful labor relations, in a climate free of labor violence, and supportive of the principle of nondiscrimination and of equality of opportunity and treatment.
- Development and application of modern administrative career systems based on access, permanence, training and professional development in the public service, organized to guarantee suitability and equality of opportunities in accordance with Article 16 of the national Constitution, and recognition of the professionalism and dignity of workers, as well, when appropriate, as a system for hiring nonpermanent staff consistent with these guidelines."

complements the Framework Law, and consequently these may be considered "Governing Rules".

The Governing Rules, as described below, establish entry conditions, selection procedures, and enforcement and administrating authorities, etc., that guarantee openness, equity and efficiency in the hiring of public officials of the NEB.

Next in rank to the Governing Rules come the sectoral agreements and classifications that govern the civil-service career within the various occupational groups included in the NEB. Together with their regulatory Resolutions, they give effect to the principles of suitability, equity, transparency and professional responsibility defined in the Governing Rules.

For purposes of visualizing the way these principles are made operational in the hiring of NEB officials, we shall describe and analyze below the main occupational group in this sphere, namely the National Administrative Profession System (hereafter SINAPA), which applies to more than 27,000³ public servants. This system was created by Decree 993/91 and, pursuant to Decree 1669/93, is applicable in a subsidiary manner to all statutes and classifications of personnel of the National Public Administration, either centralized or decentralized, that do not have specific procedures for competition or selection in the hiring of human resources.

These objectives acquire special importance since, under the terms of the Collective Agreement, "it is agreed that the institutes for interpretation and application of the agreement, when called upon to issue opinions on matters regulated and on any gaps to be filled by interpretation, shall start from the statement of principles and shall seek to resolve situations in a manner favorable to those principles."

³ [See next page]

[footnote 3]

OCCUPATIONAL GROUPS (by decreasing number of positions)	
National Administrative Profession System	27,571
Civilian Staff of the Armed Forces	21,322
Scientific and Technical Staff of the National Science and Technology Council	6250
Contract Employees of the National Social Security Administration	5427
National Institute of Agricultural Technology	3521
National Roads Department	2798
National Atomic Energy Commission	1872
Resident Physicians	1694
National Foreign Service	983
Hospital and Research Physicians (Decree 277/91)	908
General Directorate of Military Production	889
National Institute of Industrial Technology	882
Civilian Teachers in the Armed Forces	709
Employees of the National Directorate of Port Constructions and Navigable Waterways	603
Civilian Intelligence of SIDE and the Armed Forces	543
Artistic groups (orchestras, choruses and ballet)	464
Scientists of the Armed Forces	447
Inspector General's Office (<i>Sindicatura General</i>)	314
National Institute of Industrial Property	286
National Parks Wardens Corps	286
National Agency for the Administration of State Property	274
National Communications Commission	257
Nuclear Regulatory Authority	197
Government Administrators Corps	165
National Transport Commission	158
Superintendency of Labor Risks Administrators	137

National Space Commission	122
National Gas Regulatory Board	117
National Securities Commission	113
National Social Security Administration Managers (not covered by collective agreement)	103
Naval Transport Services	100
National Airports Regulator	90
National Electricity Board	79
INIDEP fishery workers	62
National Foreign Trade Commission	51
National Waterworks and Sanitation Board	49
Dam Safety Regulatory Agency	30
Printshop personnel	30
OTHER OCCUPATIONAL GROUPS:	
General Directorate of Taxation	14,144
National Customs Administration	4574
TELAM S.E.	780
National Lottery S.E.	585
Superintendency of Retirement and Pension Fund Administrators	430

Source: <http://www.sgp.gov.ar/sitio/empleo/salarios/main.html>

Moreover, and notwithstanding the interrelationship between all the mechanisms that make up the systems, we may note that the guarantees relating to the suitability of public officials are focused on the requirements and conditions for entry into the public service; the guarantees relating to equity and transparency are for the most part covered in the selection procedures; and the guarantees as to efficiency and professional responsibility are taken care of in the training and performance evaluation mechanisms.

Despite what is reported in the specific section on exceptions to the system, we may note that the Framework Law and Law 24,185 (which governs collective bargaining) are expressly not applicable to officials who may be considered "political authorities" such as the President and Vice President of the Nation, the Head of the Cabinet (*Jefe de Gabinete de Ministros*, in effect the head of the civil service), Ministers, Secretaries and Undersecretaries, the senior authorities of decentralized agencies and the members of the collegial bodies, and persons exercising functions at a level of seniority equivalent to such positions.

They also exclude other officials or occupational groups that, on the basis of certain special characteristics of their jobs, have traditionally been excluded from the rules governing public employment, such as military and security personnel of the Armed Forces, the National Gendarmerie, the Naval Prefectures, the Federal Police, the Federal Penitentiary Service and similar organizations; diplomatic personnel covered by the Foreign Service Law; and the Official Clergy (*Clero Oficial*).

In the case of officials deemed Political Authorities, their exclusion reflects the nature of their function, the legitimacy of which stems from the system for electing the President and Vice President and for appointing the Head of Cabinet and Ministers, and from the powers granted under the Constitution to the President, as head of government with political responsibility for the country's general administration (Article 99 (1)); to the Head of Cabinet, responsible for exercising the general administration of the country and overseeing the appointment of employees of the administration (Article 100 (1 and 3)); and to ministers, who are responsible for matters relating to the economic and administrative affairs of their respective departments (Article 103).⁴

With respect to other civil servants excluded from application of the Governing Rules, those belonging to special bodies (Armed Forces, Security Forces, Foreign Service, Official Clergy), the specific regimes for each of these functions also contain entry conditions, selection procedures, and competent authorities, thus guaranteeing compliance with the principles of openness, equity and efficiency.⁵

⁴ That is not to say, however, that there are no provisions to ensure openness, equity and efficiency in the appointment of such officials. Such mechanisms include Law 25,188 on ethics in the civil service, which expressly applies to these officials. Moreover, the President and Vice President are elected by direct popular vote, in accordance with the principle of popular sovereignty. Nevertheless, in order to confine this response to the purview of Article III (5) of the Convention, it will focus on the systems in place for hiring "non-political" public servants.

⁵ The mechanism regularly used in these cases requires new entrants to meet certain basic requirements (including, as necessary, an entrance examination), after which they are incorporated into the respective

Finally, while the Governing Rules do not exempt them expressly, the national universities have the power to issue their own personnel statutes and bylaws, by virtue of the university autonomy enshrined in Article 75 (19) of the Constitution.⁶ As well, they all have mechanisms to ensure suitability, transparency and efficiency in the hiring of their staff: these mechanisms include background assessments and examinations for the appointment of teachers.

Regimes stipulated in the Governing Rules

According to Article 7 of the Framework Law and its regulatory Decree, there are three basic modalities for civil service jobs paid from the budget: the "Stability Regime", the

career group as candidates and then receive specific instruction and training in designated institutes or schools.

⁶ NATIONAL UNIVERSITIES:

Universidad de Buenos Aires. *Edicto Ereccional* 08/12/1821. www.uba.ar; Universidad Nacional de Catamarca. Law N°19.831 of 09/12/1972. www.unca.edu.ar; Universidad Nacional de Córdoba. Founded in 19/06/1613. Nationalized 09/11/1856. www.unc.edu.ar; Universidad Nacional de Cuyo. Law 12.578 of 03/21/1939. www.uncu.edu.ar; Universidad Nacional de Chilecito. Decree NEB N° 2.615 of 12/16/2002. Law N° 25.813 of 11/05/2003. www.undec.edu.ar; Universidad Nacional de Entre Ríos. Law N° 20.366 of 05/10/1973. www.uner.edu.ar; Universidad Nacional de Formosa. Law N° 23.631 of 09/28/1988. www.unf.edu.ar; Universidad Nacional de General San Martín. Law N° 24.095 of 06/10/1992. www.unsam.edu.ar; Universidad Nacional de General Sarmiento. Law N° 24.082 of 05/20/1992. www.ungs.edu.ar; Universidad Nacional de Jujuy. Law N° 20.579 of 11/13/1973. www.unju.edu.ar; Universidad Nacional de la Matanza. Law N° 23.748 of 09/29/1989. www.unlm.edu.ar; Universidad Nacional de la Pampa. Law N° 20.575 of 04/12/1973. www.unlpam.edu.ar; Universidad Nacional de la Patagonia Austral. Law N° 24.446 of 12/23/1994. www.unpa.edu.ar; Universidad Nacional de la Patagonia San Juan Bosco. Law 22173 of 02/25/1980. www.unp.edu.ar; Universidad Nacional de la Plata. Law N° 4.699 of 08/12/1905. www.unlp.edu.ar; Universidad Nacional de la Rioja. Law N° 24299 of 01/05/1994. www.unlar.edu.ar; Universidad Nacional de Lanús. Law N° 24.496 of 06/07/1995. www.unla.edu.ar; Universidad Nacional de Lomas de Zamora. Law N° 19.888 of 10/13/1972. www.unlz.edu.ar; Universidad Nacional de Luján. Decree Law N° 20.031 of 12/20/1972. www.unlu.edu.ar; Universidad Nacional de Mar del Plata. Law N° 21139 of 09/30/1975. www.mdp.edu.ar; Universidad Nacional de Misiones. Law N° 20.286 of 04/16/1973. www.unam.edu.ar; Universidad Nacional de Quilmas. Law N° 23.749 of 09/29/1989. www.unq.edu.ar; Universidad Nacional de Río Cuarto. Law N° 19.020 of 05/01/1971. www.unrc.edu.ar; Universidad Nacional de Rosario. Law N° 17.987 of 11/29/1968. www.unr.edu.ar; Universidad Nacional de Salta. Law N° 19.633 of 05/11/1972. www.unsa.edu.ar; Universidad Nacional de San Juan. Law N° 20.367 of 05/10/1973. www.unsj.edu.ar; Universidad Nacional de San Luis. Law N° 20.365 of 05/10/1973. www.unsl.edu.ar; Universidad Nacional de Santiago del Estero. Law N° 20.364 of 05/16/1973. www.unse.edu.ar; Universidad Nacional de Tres de Febrero. Law N°24.495 of 06/07/1995. www.untref.edu.ar; Universidad Nacional de Tucumán. Nationalized Law N° 11.027 of 1921. www.unt.edu.ar; Universidad Nacional de Villa María. Law N° 24.484 of 05/04/1995. www.unvm.edu.ar; Universidad Nacional del Centro de la Provincia de Buenos Aires. Law N° 20.753 of 10/09/1974. www.unicen.edu.ar; Universidad Nacional del Comahue. Law N°19.117 of 07/15/1971. www.uncoma.edu.ar; Universidad Nacional del Litoral. Law N°10.861 of 10/17/1919. www.unl.edu.ar; Universidad Nacional del Nordeste. Decree Law N° 22.299 of 12/16/1956. www.unne.edu.ar; Universidad Nacional del Noroeste de la Provincia de Buenos Aires. Decree NEB N° 2.617 of 12/16/2002. www.unnoba.edu.ar; Universidad Nacional del Sur. Decree NEB N° 154 of 01/05/1956. www.uns.edu.ar; Universidad Tecnológica Nacional. Law N° 14855 of 10/14/1959. Amended by Laws N° 15.948 and 16712. www.utn.edu.ar.

"Contractual Regime", and the "Ministerial Appointments (*Personal de Gabinete*) Regime". There is also a special modality known as "Ad Honorem Personnel", used on an exceptional basis for certain advisory positions that are not remunerated in any way.⁷

The Stability Regime, defined in Article 8, covers positions corresponding to the "administrative streams" of each agency. This regime provides the strictest conditions for entry and exit of public officials. Within the NEB, it represents concrete application of the constitutional guarantee of "stability of public employment" (Article 14 bis of the Constitution).

It also provides that the administrative streams must apply criteria that incorporate the principles of transparency, publicity and merit in selection procedures to determine suitability for the position to be filled; promotion or career advancement based on an evaluation of efficiency, effectiveness, work performance and training requirements consistent with the needs of the tasks or functions to be performed; and introduction of career advancement systems based on officers' merit and capacity.

The Contractual Regime, defined in Article 9, is used to cover temporary human resource needs. It provides for the contracting of fixed-term personnel to provide services that are strictly temporary or seasonal, that are not included in the essential functions of the career in question, and that cannot be covered by full-time staff.⁸

In no case may the personnel contracted under this regime exceed in number the percentage established in the agency's collective⁹ or sectoral agreement, which bears directly on the number of workers that make up the agency's permanent staff. In addition, contract personnel are assigned to the same levels and grades as permanent staff, which means that their pay is equivalent to that received by permanent personnel performing similar tasks.¹⁰

The Ministerial Appointments Regime, described in Article 10, allows the political authorities to appoint advisers at pleasure during their term in office. This means that those advisers cease their functions simultaneously with the officials who appoint them, or whenever the latter so decide. Every year's budget sets a fixed amount for each

⁷ The "Ad Honorem" modality is used in agencies or programs that involve interaction with representatives of civil society, and it represents a valuable tool for channeling citizen participation. One example can be found in the Advisory Council to the National Institute against Discrimination, Xenophobia and Racism (Article 14 of Law 24,515. See <http://infoleg.mecon.gov.ar/infolegInternet/anexos/25000-29999/25031/texact.htm>).

⁸ Resolution SGP 48/02 establishes guidelines for contracts of this type in the various jurisdictions and agencies of the NEB. While these guidelines are similar to those set by Decree 1184/01 for the contractual regime (see below, in the section dealing with exceptions), it is important to distinguish clearly between these regimes: the fundamental difference is that the first regulates a situation of "public employment" (a relationship of dependency), while the second regulates "consulting contracts" (independent professionals).

⁹ Article 156 of that agreement sets the percentage at 15%.

¹⁰ Administrative Decisions 3/04 and 657/04 establish and clarify the guidelines for such equivalency. Available at: <http://infoleg.mecon.gov.ar/infolegInternet/anexos/90000-94999/92097/norma.htm> and at: <http://infoleg.mecon.gov.ar/infolegInternet/anexos/100000-104999/101990/norma.htm>).

political official, depending on his rank, to pay his in-house advisers. This implies an indirect limit on the number of advisers that each official may appoint to his office.

With the exception of "ad honorem personnel" and "ministerial advisers", the Collective Agreement covers all personnel situations included in the Framework Law, in that they embrace all employees of the NEB Central Administration. The collective agreement also covers the situation of staff hired under normal labor legislation, Law 20,744 on labor contracts (*Ley de Contrato de Trabajo*, hereafter the LCT), which applies to certain employees of decentralized agencies and regulatory boards.

Article 18 of the Collective Agreement establishes two broad categories of public servants: Permanent and Nonpermanent. The first category covers "public employees" who enter under the administrative career regime for the corresponding jurisdiction or agency, and who therefore enjoy stability of position (Article 19); and also persons contracted under the LCT for as long as they fulfill this condition, although it does not give them the constitutional guarantee of stability (Article 23).¹¹

The second category, "nonpermanent personnel", covers public employees incorporated into temporary staff with a term appointment, or contracted under the Contractual regime of the Framework Law, and because they do not enjoy stability in their position their appointment may be canceled at any time by substantiated decision. It also includes persons contracted for a fixed term under the LCT (Article 30).¹²

As noted above, the Governing Rules are exactly the same for all employees, although they are consistent for the great majority. The Collective Agreement does not apply to non-career staff in general, whether "ad honorem" or "ministerial appointments", unless they are covered by the Framework Law. Except in a few respects,¹³ the Framework Law does not apply to personnel hired under the LCT, unless they are covered by the Collective Agreement. Nevertheless, the two Governing Rules coincide with respect to "permanent staff" under the stability regime and to "nonpermanent staff" under the contractual regime.

For the sake of simplicity in this report, we shall henceforth use the term "System" (upper case), to refer to all the contractual regimes covered by any of the Governing Rules, and we shall use the term "system" (lower case) for particular regimes and their various contractual modalities.

Openness, equity and efficiency in the rules of the System:

¹¹ The terms of LCT Chapter I "General Principles" of Title III, "Labor Contract Modalities" apply here. According to Article 90 of that Law, the labor contract is deemed to be of indefinite duration, unless its own terms or the nature of the tasks imply a limited duration.

¹² LCT Chapters II, "Fixed Term Labor Contracts", III "Temporary Labor Contracts", and IV "Eventual Labor Contract" of Title III, "Labor Contract Modalities" apply. (Available at: <http://infoleg.mecon.gov.ar/infolegInternet/anexos/25000-29999/25552/texact.htm>).

¹³ In general, the requirements and disqualifications of Chapter II apply.

The Governing Rules contain a series of provisions to guarantee openness and equity in NEB hiring. These provisions relate for the most part to the various aspects included in the public service entry procedures (requirements and conditions, selection or competition mechanisms, appointment by the competent authority),¹⁴ although they are also to be found in other institutions of the System, such as training and procedures for advancement and promotion.

Later in this report, under section "1.a) ii: Access to the public service through a merit-based system" and "1.a) iii: Advertisement for the selection of public servants, indicating the requirements of selection", we shall provide a deeper analysis of the way the System guarantees equity and openness in contracting, with particular reference to the SINAPA.

The efficiency of employees who enter and remain in the System is guaranteed by the sound balance that exists between the entry and promotion procedures described and the evaluation and training mechanisms.¹⁵

The SINAPA establishes three administrative career streams or "groupings": General, Scientific and Technical, and Specialized. These groupings are subdivided vertically into six classification "levels" (A, B, C, D, E and F), ranked according to the complexity, responsibility and training requirements of the position, with the exception of the Specialized stream which has only two levels (A and B). In turn, each level is disaggregated horizontally into different "grades", the number of which varies depending on the level in question, and they are also ranked according to complexity, responsibility and training taken at the respective level.

¹⁴ Collective Agreement Decree 214/06

"Article 11. Entry into the jurisdictions and entities covered by this Article shall be subject to prior demonstration of the following minimum conditions:

(...) Conditions of conduct and suitability for the position, which shall be demonstrated through the regimes established for selection or competition, as appropriate, ensuring the principle of publicity, transparency and equality of opportunity and treatment in access to the public service. Labor associations shall participate in and oversee compliance with the selection and evaluation criteria, through the corresponding oversight mechanisms stipulated in this contract, in order to guarantee effective implementation of the principles indicated above."

¹⁵ Collective Agreement Decree 214/06

Article 24. Pursuant to Law 25,164, stability is granted on the following conditions are met:

- a) Effective provision of services during the probation period, which shall extend for 12 months. For this purpose, one month of effective service is deemed to be the period in which the worker has worked the number of days corresponding to the nature of the service, including any regular annual leave taken.
- b) Demonstration of suitability during probation through satisfactory evaluations and approval of training activities, as established by the relevant career system. For this purpose, the unions shall exercise the oversight stipulated in this contract, during the respective evaluation processes.
- c) Certification of psychophysical aptitude for the position or function, in accordance with the relevant national legislation.

At the end of the term established in paragraph a), the competent authority shall expressly ratify the appointment. If 30 days have elapsed since the expiry of that term without the issuance of such ratification, the appointment shall be deemed effective, and the employee will acquire the right to stability as of the day following the end of the term stipulated in paragraph a).

For personnel covered by the Labor Contracts Law, the probation period shall be that stipulated by that Law, provided the conditions of paragraphs b) and c) of this Article are met.

For administrative career positions the SINAPA also distinguishes "executive" functions, which imply leadership responsibilities in sectors that have an impact on the management of public policies or essential community services, or that have a high impact on the handling of budgetary resources, or that involve control over organizational units below the level of Department or the equivalent.

Thus, the employee's career is the result of his progress up the classification ladder, by promotion through the various levels and grades, and his access to functions classed as "executive", under the terms of the SINAPA, within the respective jurisdiction or agency.

i) Governing or administrating authorities of the systems and control mechanisms

The Undersecretary of Public Management¹⁶ (hereafter SGP), who reports to the Head of Cabinet, fulfills the function of Governing Authority with respect to public employment. As such, he is empowered to issue interpretations, supplements and clarifications under the Framework Law and its regulations. He also represents the federal government in negotiating labor agreements between the State and its employees.

To assist him in this task, the SGP is supported by the National Office of Public Employment (hereafter ONEP), the primary purpose of which is to assist the Undersecretary for Public Management in the design and implementation of policies for modernizing the State, with respect to the development of labor and contractual arrangements, and the strategic administration of the people working in the public administration.

The SGP is also supported by the National Institute of Public Administration (hereafter INAP), which is the governing body for the training of NEB employees, through the National School of Government, and which has a specialized research and documentation center on the National Public Administration.

The highest authorities of the NEB jurisdictions (the Head of Cabinet, the Ministers and the Secretaries of State) and those of their decentralized agencies are politically responsible for the System's administration. To this end, they have Personnel or Human Resource Areas or Units, which are responsible for administrative aspects of personnel management.

¹⁶ Framework Law 25,164 and Regulatory Decree 1421/02

“Article 2. The Executive Branch shall establish the governing body responsible for public employment and the authority for enforcing and interpreting the provisions of this regime, operating under the Head of Cabinet.

“Article 2. The Undersecretary for Public Management of the Office of the Head of Cabinet is the governing authority for public employment and for the enforcement and interpretation of the provisions of Law 25,164 and its regulations, with powers to issue the corresponding interpretations, supplements and clarifications.

“Each jurisdiction and decentralized agency shall report twice yearly on enforcement of the Law regulated by this Decree, at the request of the governing authority, who in turn shall report to the Head of Cabinet so that any necessary steps can be taken.”

The Human Resource Units are headed by career officers¹⁷ who maintain institutional relationships with the SGP, the ONEP and the INAP for the proper functioning of the System and, as such, advise senior officials of their respective jurisdictions and agencies on matters relating to personnel administration.

The System has a number of control mechanisms for overseeing the most critical aspects. For example, with respect to access there is a procedure according to which, before the political authority makes a formal appointment to a position, a collegial body must select the candidates on the basis of objective criteria established before the opening is announced.

To ensure that the selection panels operate objectively, the System requires that in no case may they be comprised exclusively of personnel from the jurisdiction or agency offering the position to be filled, and that no more than 60% of their members may be of the same sex. Moreover, when it comes to the more important positions in the administrative streams, or those that require technical or professional qualifications, the selection panels must comprise specialists of recognized prestige belonging to institutions related to the specialty required (national academies, universities etc.).

The selection panels must draw up a merit-based ranking, which the political authority must respect in making the appointment. However, in the case of management or executive positions, a shortlist of candidates may be proposed, from which the competent authority may choose the person for appointment.¹⁸

In this respect, Resolution SFP 481/94 created a Central Advisory and Monitoring Unit for Personnel Selection Procedures, under the ONEP, and Annex 1 to that Resolution

¹⁷ The position profile may be consulted at:

http://www.sgp.gov.ar/sitio/empleo/facilitadores/seleccion/docs/Director_General_de_Personal.pdf

¹⁸ Collective Agreement Decree 214/06

“Article 56. Personnel shall be selected through systems that reliably demonstrate suitability, merit, competence and working attitudes adequate for the exercise of their functions.

“Article 58. The State, as employer, shall establish common profiles containing the minimum requirements, and designed to demonstrate a basic set of knowledge, skills and aptitudes, to cover vacancies of a similar or equivalent functional nature. The vacancy profile must specify the psychophysical skills and aptitudes necessary for performance of the work, in order to facilitate candidacy applications by workers with disabilities.

“Article 61. Appointment. The appointment of personnel shall be based on the approved merit-based ranking. When selecting candidates for executive, management, or senior coordination positions, the respective sectoral agreements may contain clauses enabling the competent authority to select from among candidates on a shortlist.

“Article 64. Selection panels. Selection panels for filling management positions or those that require technical or professional qualifications shall be comprised of representatives of national academies, councils, colleges or professional associations, or recognized specialists belonging or not to universities and research centers, national or foreign, related to the required specialty. In no case may the selection panels be comprised exclusively of personnel from the jurisdiction offering the position to be filled, jurisdiction being understood to mean the Office of the Head of Cabinet, a Ministry, the Secretariat of the Office of the President of the Nation, or a decentralized agency, nor may more than 60% of their members be of the same sex.”

regulates the selection process for regular SINAPA positions. That unit has the following functions:

- a) To compile and update information on the status of selection procedures for filling vacant posts.
- b) To help disseminate calls for candidacies.
- c) To provide technical assistance to the selection panels of public administration jurisdictions and entities in the proper application of personnel search and selection procedures.
- d) To perform the evaluation called for in Title VI of Annex 1 to the Resolution.
- e) To examine, prepare, adapt and propose methodologies and techniques for personnel search and selection for filling vacant posts.
- f) To help enforce the rules governing procedures for selection and filling of posts.
- g) To contribute to training for officers involved in the personnel selection process.
- h) To organize and keep up-to-date the Central Registry of Rankings by Merit.

When it comes to the selection panels, Article 1 of the Annex establishes that the Jurisdictional Delegation of the Permanent Career Commission shall serve as the Staff Selection panel, with its membership composed in the following manner:

1. The head of the respective human resources unit or its equivalent, or by delegation a specialist of that unit with a degree in one of the following disciplines: personnel administration, administration, occupational psychology, labor relations, industrial relations, human relations, human relations-oriented sociology, or any other professional with training or experience specific to personnel selection procedures.
2. The head of the National Directorate, General Directorate or equivalent that owns the vacant position. In the case of positions reporting directly to a political authority, the selection panel shall include that directorate or a person designated by it.
3. A representative of the Treasury Prosecutor's Office (*Procuración del Tesoro*), when filling vacancies in the Government Legal Corps.
4. A representative of the SGP, when filling vacancies at levels A and B.
5. An expert in a field related to the specialty required by the position to be filled, if this is at level A, B or C, with rights to the Additional Training Bonus, and in those cases where, in the judgment of the President of the Jurisdictional Delegation of the Permanent Career Commission, the nature of the position so requires. If such an expert is not

available within the jurisdiction, personnel from other offices may be invited to participate, or experts may be brought in from outside the national administration.

6 If the selection panel considers it necessary to go through the personality evaluation stage, it must include a specialist with a degree in psychology.

Proceedings will be observed by representatives of the National Council of Women and the National Advisory Commission on the Integration of Persons with Disabilities (agencies under the Office of the President responsible for defending the rights of women and of persons with disabilities), and of the National Union of Civilian Personnel and the Association of Government Workers (recognized public service unions).

If it is necessary for the selection panel to include persons who are not members of the National Public Administration, those persons must not be affected by any of the prohibitions on entry into the public service established in the Framework Law.

Political authority for ratifying the appointment of selected candidates currently lies with the President of the Nation, as head of the NEB, and with the Head of Cabinet, for certain contracts that do not exceed specified amounts of monthly pay.

Pursuant to Decree 491/02,¹⁹ the NEB has reassumed direct control of all permanent and nonpermanent staff appointments within its jurisdiction. According to that Decree, the Legal Service of the agency making the proposal, the ONEP, and the Legal Service of the Office of the President must be consulted in advance.

Decree 577/03²⁰ amends the foregoing in part, by delegating to the Head of Cabinet the power to approve contracts signed by the various jurisdictions and entities of the central and decentralized administration that do not exceed \$2000 monthly.

Finally, the governing bodies of the internal and external control system stipulated in Law 24,156 on Financial Administration and Control Systems in the National Public Sector, respectively the Inspector General's Office (SIGEN) and the Auditor General's Office (AGN) are competent to exercise controls over certain aspects of the hiring systems and their governing and administrating authorities.

¹⁹ Decree 491/02

“Article 1. Any appointment, assignment of duties, promotion and reinstatement of personnel within the public administration, centralized and decentralized, within the meaning of Article 2 of Decree 23 of December 23, 2001, to permanent or nonpermanent positions, including temporary and contract personnel, by whatever modality and source of financing, shall be done by the National Executive Branch at the proposal of the corresponding jurisdiction or entity.”

²⁰ “Article 1. Any contract negotiated within the provisions of Decree 491/02 and its regulations shall be approved by the Head of Cabinet, where the agreed monthly remuneration or pay is equal to \$2000 or more.

This Decree includes personal service contracts signed pursuant to Decree 1184/01, contracts for the use of intellectual property provided in a personal capacity pursuant to Decrees 1023/01 and 436/00, and contracts governed by Law 25,164, as well as contracts for national and international technical cooperation projects or programs financed bilaterally or multilaterally.”

As the internal control body of the NEB, the SIGEN has included in its 2006 work plan projects for optimizing management and control of the organization's system, embracing among other things the review and update of policies on personnel selection, rotation, dispute settlement, job description revisions, career advancement, and skills-based performance evaluation, as well as the review of mechanisms for productivity bonuses and other incentives.

We may note that the rulings issued by the SIGEN and its control activities have led to recommendations to strengthen government hiring systems and to guarantee their equity and efficiency. Because those reports have been published at the SIGEN web page, they are publicly known and they contribute to the system's transparency.²¹

ii) Access to the public service through a merit-based system

As noted earlier, the System contains a series of provisions to guarantee access to the public service on the basis of candidates' merit, and this constitutes a fundamental guarantee of equity in the System.

Such provisions are to be found both in the requirements and conditions imposed by the Governing Rules and in the respective classifications of the jurisdictions and agencies, as well as in the selection and promotion procedures within the administrative career. The Governing Rules demand that aptitude and suitability for the position be demonstrated through such procedures, which must guarantee the principle of equality.

It is appropriate to note as well that, according to the Governing Rules, these conditions and requirements include provisions relating to public ethics, in particular Law 25,188 on public service ethics and Decree 41/99 approving the Civil Service Code of Ethics, which applies throughout the NEB.

Moreover, if persons are appointed without fulfilling the requirements or in violation of established procedures in the Governing Rules, their appointments may be declared null and void at any time, without affecting the validity of decisions made and actions taken during their exercise of those functions.

In appreciating the importance of the merit-based procedures for selection and promotion in the administrative career, it must be recognized that there are classification levels covering all the positions necessary for the efficient functioning of the respective dependencies. These classifications define the primary duties and responsibilities of each position in advance of the respective selection or promotion procedure, which must always be conducted by competition, ensuring equity among candidates and objectivity in the final appointment.

²¹ SIGEN rulings, planned control activities, and the reports with their recommendations are available at www.siggen.gov.ar

With respect to selection by competition, the system calls essentially for an objective evaluation of background, experience, knowledge etc. by a selection panel that must not be composed exclusively of persons belonging to the jurisdiction or agency offering the position to be filled, and a merit-based ranking must be prepared as the basis for the appointment.

In order not to repeat the discussion in the preceding sections, we offer below a selection of the most important rules governing the conditions for candidacy and the selection procedures, which in effect speak for themselves. First we present the conditions for access to the civil service established in the Governing Rules, which apply to permanent and to nonpermanent personnel alike. Second, we detail the rules governing selection procedures for stable employment and, in particular, access to the SINAPA. Finally, we provide details on the rules governing entry for contractual personnel.

Provisions governing merit-based access. Selection.

1. Entry conditions

Framework Law 25,164 and Regulatory Decree 1421/02

Chapter II. Conditions of Entry

Article 4. Entry into the National Public Administration shall be subject to prior demonstration that the following conditions are satisfied:

- a) Candidates must be Argentine citizens by birth, option or naturalization. The head of Cabinet may waive this requirement upon specific and substantiated request of the applicant jurisdiction.
- b) Conditions of conduct and suitability for the position, as demonstrated through the established selection procedures, which must respect the principle of equality of access to the civil service. The collective labor agreement must provide for mechanisms of participation and control by union associations in enforcing the selection and evaluation criteria in order to guarantee effective equality of opportunity.
- c) Psychophysical aptitude for the position.

Article 4. Compliance with the conditions stipulated for access to the National Public Administration must in all cases be demonstrated prior to appointment to the position. The senior authority of the jurisdiction or decentralized agency that owns the position to be filled shall be responsible for verifying compliance with these requirements, as well as the relevant provisions of the rules governing ethics in the exercise of public duties, as contained in the Code of Ethics approved by Decree 41 of January 27, 1999, and in Law 25,188 and its amendments, or in any texts that may replace it.

To this end, the heads of human resource units must attach to the corresponding appointment proposal the background and certifications necessary to demonstrate compliance with the entry requirements and to demonstrate that the candidate is not subject to any of the disqualifications of Article 5 of the Annex to the Law regulated by this Decree. Such compliance and demonstration must be reflected in the justification for the proposed appointment. In addition, in all cases there must be an affidavit that the candidate is not affected by any of the disqualifications and conflicts of interest stipulated in Chapter V of Law 25,188 and its amendments, nor by the prohibitions established by Article 5 of the Annex to the Law regulated by this Decree, or in other applicable provisions. With respect to the rules on ethics in the exercise of public duties, and their application to this Article, the competent body established therein shall issue binding interpretations or clarifications within five days, upon request by the jurisdiction or decentralized agency.

Where required, newly appointed officials must submit a sworn declaration of assets, and attach occupational background records pursuant to Article 12 of Law 25,188 and its amendments. The Head of Cabinet shall determine the conditions under which the requirements of this Article are to be fulfilled, and may delegate this duty to the governing body established in Article 2. The enforcement authority shall establish the system for comprehensive administration of the single personnel file, which must be opened in the agency hiring the officer, and the heads of the human resource units shall be responsible for its update and conservation. Those heads and staff, duly authorized for this purpose, shall have access to the personnel file and are responsible for maintaining the confidentiality of the protected data. The files must be kept in the agency to which the employee belongs and must contain, among other data, certification of services provided in the various dependencies. The employee may periodically verify the incorporation of data and certifications in his file. The enforcement authority shall institute the Central Personnel Registry of Law 25,164, as an integral part of the Human Resource Management Information System, created by this Decree for staff covered by Law 25,164, and the heads of human resource units are required to provide to that system any updated information available. That system must offer the authorities information adequate to the needs of planning, administration and monitoring of personnel management policies. The appointed staff member must assume his duties within 30 days after notification of his appointment.

- a) The application for exemption from the nationality requirement contained in the Law regulated by this Decree must fulfill the following conditions:
- i) It must be requested by the highest authority of the jurisdiction or decentralized agency.
 - ii) It must be submitted prior to the appointment. With respect to personnel covered by the stability regime, this procedure must begin upon completion of the process of evaluating candidates' merits and background, as a result of which the interested person might be selected.
 - iii) The file must also contain demonstration that the other requirements of this Article have been met, and evidence that the applicant is not affected by the prohibitions of Article 5 of the Annex to the Law regulated by this Decree.

b) Notwithstanding the system for demonstrating the conditions of conduct established by the Head of Cabinet, or by the application authority pursuant to Article 2 above, the following situations shall be deemed grounds for rejecting such request:

- i) If a former agent has resigned pursuant to Article 22 (2) of the annex to the Law regulated by this Decree and if, as a result of investigatory proceedings, he would have been punished by dismissal had he remained in service.
- ii) If a former agent has not respected the exclusion period stipulated in Article 24 of this regulation, or in other legislation, with respect to the prohibitions established in Article 24 of the Annex to the Law regulated by this Decree.

In both situations, the Head of Cabinet is authorized, subject to the favorable opinion of the application authority, to qualify the candidate, taking into account the background of the case and the time elapsed.

c) No appointment may be made without the corresponding certification of psychophysical aptitude.

Article 5. Without prejudice to the preceding Article, the following persons shall not be eligible:

- a) Persons convicted of a crime, unless they have served their prison sentence, or the penalty has expired.
- b) Persons convicted of offenses against the National, Provincial or Municipal Public Administration.
- c) Persons against whom judicial proceedings are pending that could result in conviction for the offenses listed in paragraphs a) and b) above.
- d) Persons who have been disqualified from holding public office.

e) Persons sanctioned by dismissal (*cesantía*) or discharge (*exoneración*) from the national, provincial or municipal public administration, unless they have been rehabilitated pursuant to articles 32 and 33 of this Law.

f) Persons who have reached retirement age in accordance with welfare legislation, or who are receiving retirement benefits, except for persons of recognized aptitude, who may not be incorporated into the stability regime.

g) Persons found in violation of laws governing elections and military service, under the conditions stipulated in Article 19 of Law 24,429.

h) Persons with outstanding federal tax debts, for as long as this situation persists.

i) Persons who have committed acts of violence against the institutional order and the democratic system, pursuant to Article 36 of the Constitution and Article X of the Criminal Code, even if they have been pardoned or their sentence suspended.

Article 5. The Head of Cabinet may rehabilitate persons who have been dismissed or discharged, after receiving a substantiated and specific favorable opinion from the enforcement authority, at the request of the interested party, once the time limits stipulated in Article 32 and 33 of the Annex to Law 25,164 have elapsed.

The Head of Cabinet, with the favorable opinion of the enforcement authority, may authorize reinstatement of the persons covered by paragraph f) above under the conditions established therein, upon the substantiated proposal of the head of the jurisdiction or decentralized agency.

In all cases, administrative decisions ordering rehabilitation or authorization for reinstatement must be published in the Official Gazette (*Boletín Oficial*, BO).

Collective Agreement Decree 214/06

Title II. Conditions of Entry

Article 11. Access to the jurisdictions and entities included in this agreement shall be subject to prior demonstration that the following minimum conditions have been met:

a) Candidates must be Argentine citizens by birth, option or naturalization. The head of Cabinet may waive this requirement upon precise and substantiated request of the applicant jurisdiction.

b) Conditions of conduct and suitability for the position, as demonstrated through the established selection procedures, which must respect the principle of equality of access to the civil service. The collective labor agreement must provide for mechanisms of participation and control by union associations in enforcing the selection and evaluation criteria in order to guarantee effective equality of opportunity.

c) Psychophysical aptitude for the position.

Article 12. Without prejudice to the provisions of the preceding Article, the following persons shall not be eligible:

a) Persons convicted of a crime, unless they have served their prison sentence, or the penalty has expired.

b) Persons convicted of offenses against the National, Provincial or Municipal Public Administration.

c) Persons against whom judicial proceedings are pending that could result in conviction for the offenses listed in paragraphs a) and b) above.

d) Persons who have been disqualified from holding public office.

e) Persons sanctioned by dismissal (*cesantía*) or discharge (*exoneración*) from the national, provincial or municipal public administration, unless they have been rehabilitated pursuant to articles 32 and 33 of this Law.

f) Persons who have reached retirement age in accordance with welfare legislation, or who are receiving retirement benefits, except for persons of recognized aptitude, who may not be incorporated into the stability regime.

g) Persons found in violation of laws governing elections and military service, under the conditions stipulated in Article 19 of Law 24,429.

h) Persons with outstanding federal tax debts, for as long as this situation persists.

i) Persons who have committed acts of violence against the institutional order and the democratic system, pursuant to Article 36 of the Constitution and Title X of the Criminal Code, even if they have been pardoned or their sentence suspended.

2. Civil service selection procedures

Regulatory Decree 1421/2002

Chapter III. Nature of the Employment Relationship

Article 8. The general selection methods for guaranteeing the principle of suitability as the basis for entry, promotion in the administrative career, and the assignment of leadership functions shall be established by the enforcement authority and, jointly, with the heads of the decentralized agencies that have such powers by reason of their charter. The general selection mechanisms must respect the principles of the competition system.

As well, minimum requirements shall be established for filling career positions of similar or equivalent functional nature, designed to demonstrate a basic set of knowledge, skills and aptitudes; the corresponding performance evaluation systems shall be determined, as well as guidelines for the design, certification and evaluation of training required for employees' career development.

The rules issued pursuant to the preceding paragraphs of this Article shall guarantee enforcement of the principles of equality of opportunity, transparency and openness in procedures, notwithstanding any other relevant requirements agreed in the context of collective bargaining.

When persons are appointed to career positions within the National Public Administration without following the selection systems established for the prevailing classifications, such appointments shall in no case be considered permanent nor shall they generate any right to incorporation into the stability regime.

Collective Agreement Decree 214/2006

Title VI, "Personnel Career (*Carrera del Personal*)", Chapter 1: General Principles

Article 50. The concept of the civil service career is intended to facilitate the hiring and development of human resources that will allow the organs of the National Executive Branch to fulfill their objectives and responsibilities effectively.

Article 51. The civil service career shall be guided by the following principles:

1. Equality of opportunities.
2. Transparency in procedures.
3. Hiring of personnel through selection systems.

4. Evaluation of capacities, merits and performance for career advancement in light of the terms established in each sectoral agreement.
5. The responsibility of each employee for the progress of his individual career.
6. The assignment of duties in accordance with the officer's level of career advancement.

Title VI, "Civil Service Career", Chapter III: Selection

Article 56. Personnel shall be selected through systems that reliably demonstrate suitability, merit, competence and working attitudes adequate for the exercise of their functions.

Article 57. Procedures must respect the principles of equality of opportunities, openness and transparency, and specifically equality of treatment on grounds of gender or disabilities, as well as proper competition among candidates. They shall respect the provisions of Laws 22,431 and 23,109, and any future legislation establishing conditions for entry into the National Public Administration.

Article 58. The State, as employer, shall establish common profiles containing the minimum requirements, and designed to demonstrate a basic set of knowledge, skills and aptitudes, to cover vacancies of a similar or equivalent functional nature. The vacancy profile must specify the psychophysical skills and aptitudes necessary for performance of the work, in order to facilitate candidacy applications by workers with disabilities.²²

Article 60. Procedures. The personnel selection processes approved by the government, after consultation with the unions that are signatories to the Collective Agreements, in the context of the joint interpretation and enforcement bodies established in those agreements, and for purposes of ensuring compliance with the guarantees enshrined in this chapter, shall provide systems for the objective evaluation of background, relevant experience, knowledge, skills and aptitudes. Training courses to qualify candidates for entry may also be agreed.

Article 61. Appointment. The appointment of personnel shall be based on the approved merit-based ranking. When selecting candidates for executive, management, or senior coordination positions, the respective sectoral agreements may contain clauses enabling the competent authority to select from among candidates on a shortlist.

Article 62. Types of competition. Sectoral agreements may not restrict the provisions for holding open public competitions for certain categories or levels of employment. Restricted competitions must as a minimum be open to personnel covered by the respective sectoral agreement.

Article 63. Oversight. The labor side shall oversee selection procedures, and must record its observations. Those observations shall be presented to the head of the jurisdiction or entity and considered before the final decision.

Article 64. Selection panels. Selection panels for filling management positions or those that require technical or professional qualifications shall be comprised of representatives of national academies, councils, colleges or professional associations, or recognized specialists belonging or not to universities and research centers, national or foreign, related to the required specialty. In no case may the selection panels be comprised exclusively of personnel from the jurisdiction with the position to be filled, jurisdiction being

²² For example, we may cite the work of SIGEN in defining the Internal Auditor Profile, approved by Resolution SIGEN 17/06. Internal auditors are appointed by the President of the Nation, on the proposal of the head of the jurisdiction or agency in which they are to work, and with the prior opinion of the SIGEN as to compliance with the requirements of knowledge, expertise and experience contained in the Government Audit Standards, which the candidate must meet pursuant to Resolution SIGEN 17/06. Available at: <http://infoleg.mecon.gov.ar/infolegInternet/anexos/110000-114999/114243/norma.htm>

understood to mean the Office of the Head of Cabinet, a Ministry, the Secretariat of the Office of the President of the Nation, or a decentralized agency, nor may more than 60% of their members be of the same sex.

SINAPA (Decree 993/01 pursuant to Resolution 299/95 of the former Ministry of the Public Service, now the SGP)

Article III, Selection Systems²³

Chapter I. General Provisions

Article 18. This system establishes general guidelines for procedures intended to assess the knowledge, skills and aptitudes of candidates, consistent with the job profile in question, and to establish a merit ranking for filling vacancies at the various levels or for appointment to "executive" functions.

Chapter II. Filling of Vacancies

Article 21. Depending on the origin of the candidates, selection systems may be general or open:

a) General:

These are open to all permanent employees of the national, provincial or municipal administration. They are also open to nonpermanent members of contractual or temporary staff of the jurisdiction in which the vacancy is to be filled, if they meet the required conditions.

This system shall be used to fill positions at levels A, B, D and E; it shall also apply to level C, if the vacancy announcement does not stipulate a university or advanced degree.

Positions vacated by employees of the national administration shall be deemed funded and selection proceedings may be announced to fill them.

b) Open:

The selection proceedings are open to all candidates from the public and private sectors who meet the required conditions.

This system shall be used for filling positions at level C, where the vacancy announcement stipulates a university or advanced degree, as well as for level F, for entry into the Specialized Grouping, and when a general selection proceeding has been declared fully or partially void.

In all cases, among candidates of equal merit preference will be given to employees of the national administration.

When candidates for the Specialized Grouping must undertake specific training activities for which they have been selected, whether or not it is included in the Training Grants Program for Advanced Professional Specialization created by Article 62 of this Annex, higher functions will be temporarily assigned to those

²³ It should be noted that, notwithstanding the particular features of the jurisdictions or agencies to which they apply, certain statutes and classifications contain express exemptions from the SINAPA selection systems, without prejudice to the provisions of Articles 8 and 11 of Decree 1669/03:

Article 8. Permanent staff positions of the National Public Administration, for which the classification systems have been approved by Decree, must without exception be filled through competition or selection systems.

Article 11. When the rules governing the various personnel statutes or classifications of the National Public Administration, centralized or decentralized, do not contain specific procedures for competition or selection, the system established by Title III of the National Administrative Profession System approved by Decree 9093/91 shall apply by default.

who are entitled to stability and must complete such training activities. If the candidate is at the same level as the vacancy, he will be granted special leave with pay, which may not be denied. In the case of candidates covered by Article 50 of the Basic Legal Regime of the Public Service, a temporary appointment will be arranged.

The allocation of higher functions or special leave established in this Article will be canceled automatically when the employee completes the activities mentioned in this Article. If those activities are not completed satisfactorily, the candidate will be classified "Deficient" in the annual performance evaluation or the relevant legal equivalent.

Candidates for vacancies in the Specialized Grouping who must take specific training as part of the selection process, and who are not members of the national administration, shall be appointed to temporary staff positions for this purpose.

Article 22. The announcement of the selection procedure shall be issued by the President of the Jurisdictional Delegation of the Permanent Career Commission.

Article 23. The selection shall be made by a panel, the characteristics of which shall be established by Resolution of the Secretary of the Civil Service in the Office of the President of the Nation.²⁴

Article 24. Members of the selection panel shall be appointed by the authority that ordered the competition, with the prior consent of the head of the area, in the case of employees coming from another jurisdiction.

They may be fully or partially relieved of the duties of their assigned function, depending on the requirements of their task.

Article 26. The selection panel shall have the following powers:

- a) To determine the specific procedures for the selection system, consistent with the requirements of the level to be filled.
- b) To evaluate candidates' background and the outcome of the selection instruments used, and to determine all the qualifications of each candidate.
- c) To prepare a provisional merit-based ranking and submit this with the respective documentation to the authority empowered to make the appointment.
- d) To rule on any challenges filed.

Article 27. Members of the selection panel may be challenged or excused only on substantiated grounds. In such cases, the provisions of Article 17 and 30 of the National Code of Civil and Commercial Procedures, the rules of which must be published jointly with the notice of competition.²⁵

²⁴ These characteristics are established by Resolution SFP 481/94, as indicated earlier in the section on governing and administrating authorities.

²⁵ National Code of Civil and Commercial Procedure:

Article 17. Objection with statement of grounds. The following shall be legal grounds for objection:

1. Relationship of consanguinity to the fourth degree and of affinity to the second degree with any of the parties, their agents or attorneys.
2. If the judge or his relations within the degrees expressed in the preceding paragraph have an interest in the suit or in a similar case, or are partners of any of the litigants, agents or attorneys, except in the case of a joint stock corporation.

Article 31. Once the provisional order of merit has been ratified or rectified, the selection panel shall submit it, together with full background including any observations of the overseer, to the authority that ordered the competition. That authority shall assess the observations and approve the definitive order of merit within five days, providing notice to the interested parties.

Article 34. Upon expiry of the time limit for submitting or resolving any administrative appeals, the authority that ordered the competition shall issue an official announcement of the appointments or promotions, in accordance with the priority established in the resulting order of merit.

Resolution of the Former Secretary of the Public Service 481/94

Title III. Stages of the Selection Process

Article 15. Stages. The selection process may consist of the following stages:

1. Assessment of Background.
2. Occupational Assessment.
3. Technical Assessment.
4. Personal Assessment.

Background shall be assessed in all proceedings, but the selection panel shall determine whether the occupational and technical assessments are required.

Article 16. The selection panel shall in each case establish the order of the evaluation stages. Candidates shall be declared to have completed each stage successfully or unsuccessfully, and the stages shall be exclusive in successive order. The selection panel shall record its reasons for rejecting candidates.

Article 17. Assessment of background. In this compulsory stage, the information provided in the candidacy forms and in the curriculum vitae, as appropriate, shall be assessed.

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3. If the judge has a lawsuit pending with the challenger.
 4. If the judge is a creditor, better or guarantor of any of the parties, except for official banks.
 5. If the judge has filed a complaint against the challenger, or if the challenger has filed a complaint against the judge before the case begins.
 6. If the judge has been reported by the challenger under the terms of the law on the impeachment of magistrates, provided the Supreme Court has allowed the complaint.
 7. If the judge has served as attorney for any of the parties, or has issued an opinion or ruling or given recommendations relating to the suit, before or after proceedings have begun.
 8. If the judge has received significant consideration from any of the parties.
 9. If the judge has a relationship of close familiarity or frequent dealings with any of the parties.
 10. If the judge bears enmity, hatred or resentment against the challenger, as demonstrated in known acts. In no case may a challenge be brought for attacks or offenses attributed to the judge after he has begun to hear the case.

Article 30. Excusal. A judge against whom any of the grounds for challenge mentioned in Article 17 have been alleged must be excused. The judge may also be excused on other grounds that require him to abstain from hearing the case, for serious reasons of propriety or decency. A relationship with other officials who intervene in the performance of their duties may never be grounds for excusal.

Article 18. Occupational assessment. This stage shall include at least one interview to assess the occupational training and experience of the candidate in relation to the requirements of the position. The interviews shall be conducted by at least two examiners.

Article 19. Technical assessment. Using technical evidence, the panel will analyze the candidates' knowledge and abilities and their capacity to apply these to concrete situations, consistent with the typical requirements of the position. They shall be defined on the basis of proposals by the specialist stipulated in Article 1 (5), who will inspect the results of these tests. This assessment may be done jointly with the occupational assessment.

Article 20. Personality assessment. The selection panel may, if it deems necessary, order testing to determine whether the candidate's personal traits are consistent with the requirements of the position.

3. Processes for hiring nonpermanent staff

Regulatory Decree 1421/02

Article 9. The contractual regime covers fixed term contracts and temporary appointments, and shall be subject to the following provisions:

- a) Personnel shall be assigned exclusively to temporary or seasonal activities necessary to fulfill the activities and responsibilities assigned to each jurisdiction or decentralized entity. Temporary activities refer to the provision of services, specialized technical advice, coordination and comprehensive development of work programs or special projects, or to deal with temporary increases in tasks. In the case of special work programs or projects, the sponsoring official must submit a report and certification justifying the objectives and the schedule of the program or project, the quantity and profile of the tasks to be performed by the requested staff, the total cost and the planned financing. Seasonal activities refer to tasks that are performed periodically and only at a certain time of year. In these cases, personnel may be incorporated into the temporary or term staff complement, the characteristics of which shall be regulated by the enforcement authority.
- b) Before any hiring, the necessary profiles and candidate requirements must be established, consistent with the regime established by the enforcement authority. In all cases, articles 4 and 5 of this regulation must be observed.
- c) Contracts must contain, as a minimum:
 - i) The functions covered by the contract, the results to be achieved or the standard to be met, and the manner and place in which the services are to be provided.
 - ii) The equivalent classification, depending on the minimum requirements established for each level or position.
 - iii) The duration of the contract.
 - iv) A clause relating to ownership of the results of studies or research conducted on behalf of the State, without prejudice to recognizing the contacted person as the author of the work and awarding him such appropriate economic compensation as may be agreed.
 - v) Termination clause in favor of the National Public Administration.
- d) Personnel subject to the contractual regime and incorporated into temporary staff do not enjoy stability and their contract or their incorporation into temporary staff may be canceled at any time.

e) Personal fixed term contracts and appointments to temporary staff shall be made as necessary by the competent authorities in accordance with prevailing legislation.

f) The Head of Cabinet shall issue supplementary provisions as necessary for application of this regime. He may also authorized exceptions to paragraph c (ii), by substantiated decision at the request of the head of the jurisdiction or decentralized agency, in the case of functions that represent a critical specialty in the labor market.

Resolution SGP 48/02

Guidelines for Application of the Contractual Personnel Regime, Law 25,164

The Contract Request

Article 1. Requests to contract personnel must be submitted by a competent authority with the rank of Undersecretary or higher, or head of a decentralized entity, or, by express delegation, the head of the organizational unit responsible for personnel affairs, with at least the rank of Director, or his immediate superior if that person has the rank of National or General Director or higher, or the superior authority responsible for the financial administration service.

The request must be submitted with a report containing:

- a) The reasons for signing the contract and the nature of the services to be provided:
 - i) Seasonal, in which case the characteristics and reasons of the seasonality must be described, or
 - ii) Temporary, indicating whether this relates to:
 - 1) An unusual increase in the tasks of the jurisdiction, agency or dependency, or
 - 2) Lack or unavailability of permanent staff that can be assigned to those services.

As well, the request must explain in detail why it is impossible to obtain the services, activities or results expected from the proposed contract, using the permanent staff of the jurisdiction or decentralized agency, as the case may be, after consultation with the head of the corresponding human resources unit.

- b) The general and specific objectives, activities, interim and final results to be obtained, using the appropriate quantitative and qualitative standards and the timetable of the work program to be performed by the person contracted.
- c) The proposed profile of requirements that the contacted person must meet, which must be consistent with the proposal in the preceding paragraph and presented in the format shown in the Annex to this Article.
- d) The precise name of the equivalent function or position or the one that best describes the nature of the tasks to be performed. The following terms must be used, depending on the type of services to be provided:
 - i) services that do not require further qualifications;
 - ii) support services or maintenance of goods and equipment;
 - iii) administrative support services;
 - iv) specialized technical services;
 - v) professional services;
 - vi) specialized technical or professional advisory services to management;
 - vii) coordination of work programs or special projects; or
 - viii) other services, to be specified.
- e) The proposed level of pay, and its equivalency in the pay scale for the agency's permanent staff. This equivalency must take into account the minimum requirements established in the permanent staff regime for the corresponding classification, and the level of responsibility, independence and complexity of the tasks or services to be contracted.
- f) Certification by the administrative services manager that the required funding is available.

In no case may a contract be proposed if its term would exceed that of the current fiscal year.

Article 3. In all cases, the head of the human resources unit or the senior authority who exercises maximum responsibility over the administrative services of each jurisdiction or decentralized agency must certify that the proposed contract would not cause the percentage established in Article 9 (2) of the Annex to Law 25,164 to be exceeded. For this purpose, information must be provided on the budgeted quantity of permanent staff positions and the quantity of temporary and contractual positions, by level and category. Similarly, the report must allow the senior authority of the jurisdiction or decentralized agency to certify that the proposed contract is not intended to replace a position or function that has been eliminated, within the meaning of Article 14 (2) of Annex 1 of Decree 1421/02.

Personnel eligible for contract

Article 4. In addition to the requirements inherent in the tasks or services to be performed, as established in the Annex to Article 1 (c) above, the persons proposed for contracting must satisfy the requirements for access to the comparable classification level or category.

Note that compliance with the requirements of articles 4 and 5 of the Annex to Law 25,164 and its regulations must be demonstrated before the contract is signed and must be confirmed by the head of the human resources unit in accordance with Article 4 (2) of Annex 1 to Decree 1421/02.

iii) Advertisement for the selection of public servants, indicating the qualifications for selection.

The advertising of openings in the NEB is an essential aspect of the system, and is guaranteed by the Governing Rules. As noted above, Article 8 of the Framework Law provides that the basic administrative career and the specific streams must apply criteria that respect the principles of transparency, publicity and merit in selection procedures.

As well, Article 59 of the Collective Agreement, which guarantees the principle of publicity, requires the publication of vacancy notices. To this end, the government must provide interested parties with full information on the openings available, and labor associations must publicize the openings in all their spheres of activity.

Following is a description of the manner in which positions in the SIGEN and other classifications are advertised. Whenever an agency of the National Public Administration needs to fill a position it must publish and notice in:

- At least one daily newspaper of national circulation (in the case of open competitions).
- In the Official Gazette.
- On the notice board of human resources units or their equivalent in each jurisdiction or agency.

The announcement must also be publicized through:

- The web page of the SGP.

- The notice board in the entry hall of the SGP, Av. Roque Saenz Peña 511 P.B., Buenos Aires.
- The notice boards of the National Union of Civilian Personnel (UPCN) and the Association of Government Workers (ATE).

This announcement must provide information on:

- The jurisdiction, agency or dependency offering the vacancy to be filled.
- The number of positions to be filled, broken down by:
 - name of position;
 - classification and pay level;
 - working hours and address;
 - basic requirements of the position, appropriately weighted;
 - indicate whether the competition is open or general;
 - the order and procedure of the established evaluation stages;
 - place, time and deadline for filing applications;
 - place, time and date for notifying the list of eligible candidates.

In addition, the rules governing the selection process and the decisions issued by the selection panel must be posted in the human resources units and on an official notice board.

Positions must be advertised for at least 10 days before the first day for filing candidate applications, and the filing period must extend for at least five working days. This means that there is a window of 15 working days during which the competition is to be publicized.

With respect to advertising via the SGP web page, the ONEP reserves a space on that page for advertising all openings in the SINAPA classification. For other classifications, openings are advertised in the web pages of the respective agencies and, optionally, at the SGP web page: <http://www.sgp.gov.ar/contenidos/onep/concursos/concursos.html>

Rules on the advertising of openings. Selection

Resolution 481/94: selection process for SINAPA employees

Article 3. In addition to the functions established in Article 26 of Annex 1 to Decree 993/91, the Personnel Selection Panel has the duty to:

(...)

g) Ensure adequate publicity for information on selection processes to fill vacancies, and to coordinate organization of candidate applications. The aspects mentioned in paragraphs a), b), c) and d) of this Article must be approved by decision of the selection panel, prior to issuance of the notice.

Article 7. Contents of the notice. The notice for applications must contain at least the following information:

- a) Jurisdiction, agency and dependency that owns the vacancy.
- b) Number of positions to be filled, broken down by name of position, classification level, pay level, working hours and address, and basic requirements for the position, appropriately weighted.

- c) Applicable selection system (general or open).
- d) Order and procedure of the evaluation stages.
- e) Place and time for submitting applications, and closing date for applications.
- f) Place, time and date at which the list of eligible candidates will be notified.

Form A in Annex A to this Resolution may be used for these purposes. The selection panel must provide the required information to the Undersecretary of Public Management, within two days, for purposes of Article 4 (a) of this Annex.

Article 8. Supplementary information. This Resolution, supplementary rules, and decisions of the selection panel shall be made available to candidates for consultation in the human resources units or their equivalent, and at the official notice board.

Article 9. Advertising. When the requirements of Article 6 above have been completed, the openings must be advertised for at least 10 days prior to the first day for the submission of candidate applications.

Article 10. The human resources unit or its equivalent will initiate the publicity process, making the opening known to other jurisdictions, agencies and dependency is. It must also be publicized:

- a) In the Official Gazette.
- b) On official bulletin boards or in visible places within the jurisdiction or entity.

In open selection systems, the notice must also be published in at least one printed medium of national circulation, without restriction on the use of other mass communication media. In all cases, labor associations of the jurisdiction or agency in question must be informed.

iv) Ways to challenge a decision made in the selection system

The means for challenging decisions of the selection panels and of the authorities responsible for appointments are the same as those available against any administrative act. They are governed by Article 1 of Decree 772/96, according to which the procedures established by National Law 19,549 on Administrative Procedures, and by the Regulation on Administrative Procedures approved by Decree 1759/72, are uniquely applicable within the centralized and decentralized National Public Administration, in the absence of express exceptions. The Regulation on Administrative Procedures provides for the following forms of recourse: *Recurso de Reconsideración*, *Recurso Jerárquico*, and *Recurso de Alzada*, as explained below.

The *Recurso de Reconsideración* ("appeal for reconsideration") may be brought against any definitive administrative act or one that completely terminates the processing of the candidate's claim or complaint, as well as any interlocutory acts or purely procedural decisions that violate a subjective right or legitimate interest. This appeal is filed before the same body that issued the challenged decision, and that body must decide the appeal. If it rejects the appeal, the matter is then referred to *Recurso Jerárquico*, without any express action by the appellant.

The *Recurso Jerárquico* ("appeal to a higher authority") may be brought against any final administrative act or one that completely terminates the processing of the candidate's claim or complaint, and does not have to be preceded by an appeal for reconsideration. This appeal is filed before the authority that issued the challenged act, which must submit it to the Ministry or Secretariat within whose jurisdiction it operates. The heads of those

ministries and secretariats make the final decision on appeals of this kind unless the matter relates to their own acts, in which case the matter is resolved by the President of the Nation. It should be noted that such Resolutions, although susceptible to appeal for reconsideration, "exhaust administrative channels", a necessary step for turning to the courts.

In the case of autonomous entities and agencies, the remedies provided in their respective statutes are applicable. However, the appellant has the option of appealing through *Recurso de Alzada* or of taking court action against final administrative acts or ones that completely terminate the processing of the candidate's claim or complaint, issued by the senior body of those autonomous entities, including the national universities. This recourse must be decided by the head of the Ministry or Secretariat in whose jurisdiction the autonomous entity or agency operates.

With respect to challenges provided for in SINAPA selection procedures, a distinction must be made between the bodies that prepare the "provisional merit ranking" and those that prepare the "definitive merit ranking". In the first case, candidates may file challenges, and the overseers may submit observations, to the selection panels, which will either correct or confirm the merit ranking and the submit it to the authority that ordered the competition (Minister or Secretary).

In turn, this authority must evaluate the challenges and observations made and approve the definitive merit ranking. Once the definitive merit ranking is approved, that authority must notify it in a reliable manner²⁶ to the interested parties, after which they may pursue the administrative remedies described above (*Reconsideración* or *Jerárquico*), which circumstance must also be included in the notification.

Selection of legal provisions relating to challenges

SINAPA (Decree 993/01 t.o. according to Resolution 299/95 of the former Secretariat of the Public Service, currently SGP)

²⁶ According to Article 41 of the Regulation on Administrative Procedures, "Notification may be made by any means that provides certainty as to the date of receipt of the instrument in which the notification was received and the contents of the sealed envelope, if such as used. It may be made:

- “a) By giving the interested party, his agent or legal representative direct access to the file, expressly confirmed and with prior proof of identity of the person notified; a full copy of the act will be certified, if requested.
- b) Upon spontaneous presentation of the interested party, his agent or legal representative, demonstrating irrefutable knowledge of the respective act;
- c) By *cédula* (certificate or warrant), which shall be handled in a manner similar to that provided in articles 140 and 141 of the Code of Civil and Commercial Procedure;
- d) By telegram, with notice of delivery;
- e) By stamped notice, with express certification and confirmation of receipt; in this case the notice and the attached documents must be exhibited in an open envelope to the authorized postal official, before delivery, who shall seal them together with the copies, which shall be added to the file;
- f) By documentary letter;
- g) By any means indicated by the postal authority, through its licensees, consistent with postal regulations".

Title III. Selection Systems

(...)

Article 30. The provisional merit ranking must be communicated to interested parties in the manner established by the Resolution of the Secretary of the Public Service of the Presidency of the Nation. Within five working days of notification, candidates may challenge that ranking before the selection panel, which must take a decision within five working days after the close of the time limit for challenge by the last candidate notified.

(...)

Article 32. Within five working days after the definitive merit ranking has been notified, appeals may be brought before the authority that issued the approving decision, which must decide the matter within 10 working days after the close of the time limit for challenge by the last candidate notified. This remedy exhausts the administrative route.

Article 33. Appointments and promotions may not be formalized until any appeals lodged have been definitively resolved.

Law 19,549 on Administrative Procedures and Regulation of Administrative Procedures Decree 1759/71 (t.o. 1991).

Recurso de reconsideración

84. The *Recurso de Reconsideración* ("appeal for reconsideration") may be brought against any definitive administrative act or one that completely terminates the processing of the appellant's claim or complaint, as well as any interlocutory acts or purely procedural decisions that violate a subjective right or legitimate interest. This appeal must be filed within 10 days after the act was notified, before the same body that issued the act, and that body is competent to decide the appeal, pursuant to article 82.

85. If the act has been issued by delegation, the appeal shall be decided by the delegated body, without prejudice to the delegating body's right of *avocación* (i.e. to reclaim proceedings). If the delegation has ceased at the time the appeal is decided, it shall be resolved by the delegating body.

(...)

88. An appeal for reconsideration against definitive acts or the equivalent implies appeal to a higher authority. If the reconsideration has been expressly or tacitly rejected, proceedings must be referred to the higher authority within five days, ex officio or at the request of a party, depending on whether or not there has been an express decision to deny. Within five days after receipt by the higher body, the interested party may improve or expand upon the justification for the appeal.

Recurso jerárquico

89. The *Recurso Jerárquico* ("appeal to a higher authority") may be brought against any final administrative act or one that completely terminates the processing of the appellant's claim or complaint. It does not have to be preceded by an appeal for reconsideration; if there been such, it is unnecessary to provide further substantiation for the resort to higher authority, without prejudice to the last portion of the preceding article.

90. The *Recurso Jerárquico* must be filed with the authority that issued the challenged act, within 15 days after notification, and must be referred ex officio within 5 days to the Ministry or Secretariat within whose jurisdiction the issuing body operates. The Minister or Secretary shall make the final decision on the appeal; if the contested act was issued by a Minister or Secretary, it shall be decided by the National Executive Power (i.e. the President of the Nation), and in either case administrative channels are thereby exhausted.

(...)

93. Except where expressly stated to the contrary, appeals relating to autonomous entities shall be governed by the general rules established in their regulations.

Recurso de alzada

94. The appeal through *Recurso de Alzada* or court action may be initiated, at the option of the appellant, against final administrative acts or ones that completely terminate the processing of the appellant's claim or complaint, issued by the senior body of an autonomous entity.

95. The choice of the judicial route closes off the administrative route, but the filing of the *recurso de alzado* appeal does not prevent it from being withdrawn at any stage in favor of judicial action, nor does it preclude judicial action once the administrative appeal is decided.

96. The Minister or Secretary in whose jurisdiction the autonomous entity operates shall be competent to resolve the appeal definitively.

v) Relevant exceptions to the above aspects

1. Contractual Regime: Decree 1184/01

One of the principal exceptions to the above-mentioned system is the Contractual Regime instituted by Article 64 of Law 11,672, the Standing Budget Bylaw (t.o. 2005), implemented by Decree 1184/01, which governs contracts for hiring services performed on a personal basis by independent professionals.

This regime covers the "gray zone" between contracting for private services and the employment of personnel in a relationship of dependency, and consequently, in light of the definition of "public function" contained in Article 1 of the Convention, and by virtue of the "performance on a personal basis", it is included in this first section of the reply to the Questionnaire, and not in the subsequent section on the procurement of goods and services.²⁷

The regime requires that remuneration for such contracts must be on a level with the SINAPA pay scales, and that they may in no case exceed the pay stipulated for the highest category of that classification.

It is appropriate to note as well that this modality is also used to contract local or international technical assistants and consultants for special projects or programs financed by international or multilateral lending organizations by virtue of specific agreements signed for that purpose (for example, with the World Bank).²⁸

²⁷ Decree 1184/01 provides that expenditures under these contracts must be posted to Paragraph 1, Budgeted Personnel Expenses. As well, it does not apply to contracts for intellectual work provided on a personal basis, which must comply with Decree 436/00 and 1023/01 on systems for the procurement of goods and services, unless such contracts derive from externally financed technical cooperation programs and involve outlays for the national government.

²⁸ With respect to the contracting of consulting services, the World Bank has established Guidelines for the Selection and Employment of Consultants by World Bank Borrowers, Chapter V of which deals with the selection of individual consultants. <http://siteresources.worldbank.org/INTPROCUREMENT/Resources/ConGuid-05-04-sv1.doc>

With respect to the governing authorities and those responsible for administration and oversight of the system, the political official with final responsibility over the technical and administrative services of each Ministry, Secretariat or decentralized agency and the National Trust Fund is responsible for administration and oversight of the regime. Those officials must ensure that the list of persons contracted is available at the web page of the jurisdiction or entity in question, and that this information is provided to the SGP.²⁹

The regime requires that the official sponsoring the contracting of a professional under its terms must submit a report to those authorities containing: the reasons for signing the contract; the objectives to be achieved; a work program and estimated timelines for execution; the proposed remuneration and the anticipated financing. That report, with all relevant background information, is to be retained by the human resources unit of the jurisdiction or entity in question.

In terms of the efficiency of such contracts, the regime provides that the official who requested the contract is responsible for its execution and for achievement of the objectives within the established time limits; he must approve any interim and final reports; and he must report to the highest authority of the jurisdiction on the results achieved, the degree of compliance with the proposed goals, and an evaluation of the work performed by the persons contracted.

Finally, for purposes of having this system function properly and ensuring that it is not used to cover situations that actually involve a relationship of dependency, Decree 707/05 sets a minimum floor of remuneration (\$1,512 per completed assignment) beyond which contracting must be done through the Contractual Regime of Article 9 of the Framework Law.

2. Cooperation Agreement with the United Nations Development Program (UNDP)

The Cooperation Agreement with UNDP, approved by Law 23,396, sets forth the basic conditions by which that agency provides assistance to Argentina in executing development projects.

The agreement applies to all UNDP assistance and, in particular, to agreements signed with the UNDP (or other agencies that channel a portion of their assistance through the UNDP, such as the World Bank and the Inter-American Development Bank), for defining in greater detail the modalities of such assistance and the respective responsibilities of UNDP and the government. These agreements typically call for an execution agency, or project executing unit, to be established in some dependency or agency of the administration, either centralized or decentralized.

By virtue of this agreement, the UNDP may provide assistance in the form of (i) advisers and consultants, including consulting firms or organizations, selected by the UNDP or by

²⁹ The SGP has been processing this information annually, and preparing annual reports on certain characteristics of the Contractual Regime stipulated in Decree 1184/01. The latest report can be consulted at: http://www.sgp.gov.ar/contenidos/onep/informes_estadisticas/docs/informecontratados2004.pdf

the executing unit, and responsible to them; (ii) operational experts selected by the executing unit to perform operational, executive or administrative tasks as employees of the government or of the entities designated by the government; and (iii) services of United Nations Volunteers.

It is important to differentiate between the contracts signed with advisers and consultants under this regime and those signed by virtue of Decree 1148/01, particularly in the case of World Bank projects. Projects financed or co-financed by the World Bank may or may not be governed by the contractual regime of Decree 1182/01, depending on the conditions applicable for each program or project in particular,³⁰ while projects supported by the UNDP without the World Bank are in no case covered by that regime.

The terms of each specific project agreement must respect the rules of the Management Manual for Technical Cooperation Projects Executed by the Government, Chapter 4 of which establishes specific procedures for the selection of domestic and international consultants.³¹

In the latter case, it requires that contracts must have a maximum duration of one year and that the executing unit must perform a search and evaluation of at least three candidates meeting the requirements for each function, and must preselect one candidate for contracting. Background documentation on this process of search and evaluation must be kept on file and made available to auditors. This selection procedure is not applicable in the case of renewal of a contract for the same project, or for continuation of the original project.

3. Technical and Financial Cooperation Systems: Law 23,283 and related provisions

Another exception that pertains within certain NEB jurisdictions and agencies (for example the Ministry of Defense and the Ministry of Justice) relates to technical and financial cooperation based on legal agreements between the national government and certain private-sector entities, whereby the NEB delegates to such entities the performance of certain tasks and the collection of the corresponding charges or fees, in exchange for support received from them in the form of material, human or financial resources. In these cases, the State retains its regulatory and administrative policing powers in the matters at issue.

Tasks delegated in this way generally involve the registration of certain property (weapons, automobiles etc.) where the high degree of geographic and demographic dispersal makes it advisable to delegate these matters to nonprofit civilian entities, such as business or labor organizations, that are familiar with local users.

³⁰The UNDP Project Management Manual (Chapter 2, Operating Framework, Annexes) establishes the rules applicable to projects co-financed by the World Bank (available at <http://www.undp.org.ar/img/Manual/02DA1.pdf>) and by the Inter-American Development Bank (available at <http://www.undp.org.ar/img/Manual/02DA2.pdf>).

³¹ Available at: <http://www.undp.org.ar/img/Manual/03-Cap3.pdf>.

When it comes to human resources, as with the contractual regimes described above (under the Framework Law and Decree 1184/01), these systems provide for selection mechanisms that establish personnel needs and profiles prior to contracting, and in which the respective human resources units are also involved. In contrast to those other regimes, however, the contract is normally approved by the head of the corresponding jurisdiction and not by the President of the Nation or the Head of Cabinet.

Another fundamental difference is that liabilities emerging from these employment contracts (for example with respect to pension contributions, layoff compensation, etc.) lie not with the jurisdictions or agencies in which the service is performed but with the entity that supplies the human resources. Because of this, the link between these public officials³² and those entities is governed by ordinary law, the LCT or the Civil Code, depending on whether the contract involves a labor relationship or the supply of services or works.

4. National Intelligence System: Law 25,520

Another relevant exception is to be found in the National Intelligence System, consisting of the Secretariat of Intelligence of the Presidency, the National Directorate of Criminal Intelligence of the Internal Security Secretariat of the Ministry of the Interior, and the National Directorate of Strategic Military Intelligence of the Ministry of Defense, as well as the National Intelligence School.

Notwithstanding the particular features that characterize this area in comparative law, Argentine legislation establishes guidelines intended to ensure equity, openness and efficiency in the hiring of personnel involved in this system.

In this respect, we may point to the restrictions contained in title II and Article 23³³ of title VII intended to protect the rights and guarantees of inhabitants, and the requirement to publish the Special Statutes issued by the President of the nation, with the duties, rights, remuneration system, categories, disciplinary regime, retirement and other rules inherent in the labor regime for personnel covered by this law.

³² As long as these persons are performing activities in the service of the government, they are deemed public officials in accordance with the definitions of "public function" and "public official" in Article 1 of the Convention.

³³ Title VII. Personnel and Training. Article 23. Officials or members of an intelligence agency shall be Argentine citizens by birth, naturalization or option, of adult age, who meet the conditions established in this law and its regulations and who by their conduct and public life offer adequate guarantees that they will respect the national Constitution and existing legal and regulatory provisions. The following persons may not serve as officials or members of any intelligence agency:

1. Persons with records involving war crimes, crimes against humanity, or human rights violations, contained in the files of the Department of Human Rights of the Ministry of Justice and Human Rights, or any other agency or dependency that may replace that Department in the future.
2. Persons included among the disqualifications established in statutes governing the personnel of the respective intelligence agencies.

In terms of the guidelines governing these special statutes, in the case of the Intelligence Secretariat, Article 24 provides that its personnel consist of "permanent staff" (at the levels or categories established by regulation); "contractual staff" (providing temporary or occasional services under a fixed term contract) and "executive appointments" (*Personal de Gabinete*, temporary personnel appointed by the head of the Intelligence Secretariat to provide advisory services, whose number may not exceed 2% of the total permanent staff complement of that Secretariat, and who may perform their functions only for the duration of the mandate of the person who appointed them).

In terms of permanent staff, there is a Statute for Personnel of the Intelligence Secretariat and for Civilian Intelligence Personnel of the Intelligence Agencies of the Armed Forces, approved by Decree 1088/03, according to which appointments of such personnel must be made by the Secretary of Intelligence and the Heads of Agencies of the Armed Forces.

With respect to contractual personnel, Decree 777/02 exempts the Intelligence Secretariat from the scope of Decree 491/02, which means that such contracts do not require intervention by the President of the Nation.

b): Objective results obtained, including available statistical data.

Following is a description of the principal projects carried out by the Enforcement Authority³⁴ during 2005 in relation to point (a):

1. Objective. To make operational the contractual personnel regime.

Achievements: reorganization of the personal services contracts regime. This helped to update and modernize the systems for contracting personnel, contributing thereby to bringing personnel management into line with the needs of a modern state.

Systems of contracts with a relationship of dependency implemented in approximately 300 cases. Systems of contracts without a relationship of dependency implemented in approximately 400 cases. Some 180 consultations by ministries and agencies were received and handled, with respect to the implementation of these contracts.

2. Objective: to optimize transparency in personnel management.

Achievements: regime on concurrent positions and incompatibilities. Directives have been issued to the various agencies to eliminate situations of incompatibility and to avoid the repetition of such cases in the future, thereby improving management in this area.

The validity of the rules of the concurrent positions regime (dating from long ago in most cases) were confirmed and made compulsory. Standard and objective criteria were set for examining the various situations presented, in constant consultation with the Anticorruption Office.

³⁴ For further information, consult the following page of the SGP, which provides access to various reports and statistics from ONEP: <http://www.sgp.gov.ar/sitio/empleo/informes/main.html>

With respect to incompatibilities and concurrent positions, approximately 160 reports were prepared on alleged incompatibilities detected by the Anticorruption Office, the National Public Employment Office, or through individual complaints. In relevant cases, the agencies involved were instructed to take the measures necessary to put an end to these incompatibilities.

3. Objective: to prepare standard job profiles corresponding to cross-jurisdictional support areas.

Achievements: approval of job descriptions. Helped to improve comprehensive and integrated management of personnel in the National Public Administration, and to introduce new concepts in the area of personnel management, thereby achieving greater transparency and objectivity in the selection process.

Thirty standard profiles were prepared for the finance and administration, personnel, and legal areas. They were posted at the web page of the Department of Public Management. Twenty personnel managers were trained in preparing and using job profiles. Approximately 20 agencies were given technical assistance in preparing some 42 specific profiles for use in the selection process.

4. Objective: to generate proposals for inclusion in the redesign of selection systems and/or improvements in the application of existing systems.

Achievements: proposals for a new selection regime and support materials for existing regimes. Helped to generate relevant and rational criteria and procedures among the various players involved in the process, thereby improving personnel management. A comparison was done among five selection regimes for different classifications for line jobs and executive functions. A new Directory of Labor Skills was proposed for the National Public Administration, and published at the Department's web page. 16 skills were identified and the performance associated with each level was defined and described. Approximately 20 agencies were given technical assistance in using the skills dictionary and in preparing technical tests for evaluating skills, and specific training was provided for 20 personnel managers.

5. Objective: statistical monitoring of the personnel selection process for the national public sector.

Achievements: report on "Staff Selection Processes in the National Administrative Profession System Decree 993/91 t.o. 1995 (SINAPA). Significant characteristics of the staffing actions taken between January 1, 1993 and December 31, 2005". This helped to document knowledge on the quantity and characteristics of competitions to fill permanent staff positions within the NPA.

Description of information on selection competitions covered by the National Administrative Profession System (Decree 993/91 t.o. 1995) between January 1993 and

December 2005. During this time 8,820 competitions were held, accounting for about one-third of budgeted positions. The greatest percentage of competitions occurred during the first two years (1993 and 1994).³⁵

6. Objective: to create an Integrated System of Information (SINFO) on Persons Employed and Contracted in the National Public Sector, nonmilitary civilians, and the Public Financial Sector, so as to coordinate the existing personnel information systems, which are incomplete and incompatible.

Achievements: creation of the central personnel registry. This helped to update the functioning of the previous registry, and to increase information by incorporating other variables. It will facilitate access by the agencies involved to information in the registry, thereby assuring transparency and proper control.

The new system for the Personnel Registry of the National Administrative Profession System (REFER-SINAPA) created by Resolution SGP 15/2005 has been redesigned and is being implemented (50% of agencies, i.e. 26 agencies, have 80% of the variables registered). As the first stage in the Integrated Information System (SINFO), the new SINAPA Personal Registry articulates the existing information systems within the SINAPA, which will subsequently be rolled into the Integrated Information System. The new system, known as SIREPEVA, is online and available to the agencies that make up the SINAPA Personnel Registry for the permanent updating of information.

³⁵ Available at: http://www.sgp.gov.ar/contenidos/onep/informes_estadisticas/docs/Informe_Final_Seleccion_31-3-06.pdf

II. SYSTEMS OF THE NATIONAL LEGISLATIVE BRANCH

a) Brief Description of the Principal Systems

Within the National Legislative Branch, appointments of permanent and temporary staff are made by the President of the Chamber (Chamber of Deputies or Senate), who issues the respective administrative order.

The Regulations of the Chamber of Deputies (Resolution 2019/96)³⁶ establishes (Article 39 on powers and duties of the President): ... 12. To appoint all employees of the chamber, with the exception of secretaries and *prosecretarios*. Vacancies for which appointments fall within the purview of the President in accordance with this paragraph shall be filled, whenever possible, by promotion within the respective categories, taking into account competence, demonstrated aptitudes and seniority of employment. When new positions are created, they will be filled through a selection competition, the rules of which will be established by the authorities of the chamber".

Chapter XXIV, "Employees and parliamentary police" of that regulation stipulates (Article 211): "The Secretariat shall be served by officials and other employees as budgeted by the chamber. They will report directly to the secretaries and their functions will be determined by the President". Article 212: "The President shall propose to the chamber in the respective budget the funding required for all the employees mentioned in the preceding article". And Article 213: "Employees of the Parliamentary Information Office shall enter the Secretariat of the Chamber through a selection competition, the rules of which will be established by the President of the Chamber. They must also have command of two foreign languages, including English or German."

In virtually identical terms, Article 32 of the Bylaws of the Senate (approved by Resolution DR-1388/02)³⁷, referring to "Powers and Duties of the President", establishes: ...j) To appoint all employees, in accordance with existing provisions, and to dismiss them for ineptitude, laxity or disobedience, and to turn them over to the justice system, with full background information, in case of criminal behavior. Vacancies shall be filled by promotion within the respective categories, taking into account competence, demonstrated aptitudes and seniority of employment. When new positions are created, they shall be filled through a selection competition, the rules of which will be established by the authorities of the chamber".

Article 229 of those bylaws provides: "All the powers of the President and secretaries with respect to the appointment, promotion or removal of personnel, as well as the creation of new positions, shall be consistent with the provisions of Law 24,600".

³⁶ Text available at: <http://www.hcdn.gov.ar>

³⁷ Text available at: <http://www.senado.gov.ar>

Law 24,600,³⁸ the "Statute and Classification for Personnel of the National Congress", is applicable to individuals who by virtue of an administrative act of the competent authority provide remunerated services within the National Legislative Branch. Article 3 provides: "The personnel covered by this statute are known as legislative employees and shall be either permanent or temporary staff, depending on the respective administrative appointment". This law does not apply to national legislators, secretaries and pro-secretaries of the Chamber of Deputies, the Senate, and the Auditor General's Office (Article 2).

Entry requirements for permanent staff include: "...e) suitability for the function or position, demonstrated by means of selection criteria as established for each case by regulation; and f) the employee shall enter at the lowest level of the classification, with the exception of positions that require qualifying office or title, in which case priority will be given in selection to permanent staff who demonstrate sufficient conditions to perform the task. The requirements indicated must be demonstrated prior to appointment, and must be expressly recorded as a condition for the validity of that appointment (Article 5)."

Permanent legislative employees are entitled, other things, to "stability of employment" and "administrative career", pursuant to Article 8 of the law. Those rights are intended to secure efficiency and suitability in appointments through the various selection procedures.

Law 24,284 (and its amending Law 24,379)³⁹ created within the national legislative branch the Office of the Ombudsman (*Defensoría del Pueblo*). Article 33 provides that the functional and administrative structure of this office is to be established by its head (i.e. the Ombudsman) and approved by the Bicameral Committee referred to in Article 2 (a). Officials and employees of the Ombudsman's Office are to be appointed by the Ombudsman, in accordance with its bylaws and within budgetary limits. As well, the Ombudsman may propose to the presidents of the two chambers a list of staff members of either chamber for appointment to functions within his office.

The regulations governing organization and functioning of the Ombudsman's Office⁴⁰ provide (VII, "Staff of the Ombudsman's Office") that "the Ombudsman shall select personnel to operate under his orders, establishing the corresponding statutory rules and classifications within the budgetary limits of the institution, and with due regard to the provisions of Article 33 of Law 24,284, as amended by Law 24,379 (Article 16). Staff shall exercise their functions on an exclusive or part-time basis, as decided by the Ombudsman in light of the needs of the service (Article 17).

³⁸ Statute and Classification of Staff of the National Congress, available at: <http://infoleg.mecon.gov.ar/infolegInternet/anexos/30000-34999/31305/norma.htm>.

³⁹ Text available at: <http://www.defensor.gov.ar/institucion/ley-sp.htm>.

⁴⁰ Text available at: <http://www.defensor.gov.ar/institucion/organizacion-sp.htm>

The Auditor General's Office (AGN, *Auditoría General de la Nación*) was created by Article 116 of Law 24,156 on federal financial administration and control systems,⁴¹ as the external control entity for the national public sector, reporting to Congress.

Its personnel are appointed in accordance with the basic rules for the functioning of the AGN⁴² and, on a subsidiary basis, the Basic Legal Regime of the Public Service (Law 25,164).

That legislation calls for personnel to be selected through a process of public competition and examinations, to ensure openness, equity and efficiency as required by the Convention. This system achieves efficiency by recruiting highly qualified staff and assuring equality of opportunities.

i) Governing or administrating authorities of the system and control mechanisms

Among the governing or administrating authorities of the selection system for personnel of the national legislative branch is the Permanent Parity Commission created by Article 56 of Law 24,600, which is responsible for application, regulation and interpretation of the legislative employees' statute.

The presidents of the two chambers also play a key role in staff appointments and in implementing selection decisions.

ii) Access to the public service through a merit-based system

1. Conditions for entry

Law 24,600, "Statute and Classification for Personnel of the National Congress", provides in Title II, "Permanent Staff", Chapter 1, "Entry" (Article 4): "Permanent staff are those contracted to meet the permanent needs of the legislative branch, and consequently they enjoy the rights of employment stability and progress in the administrative career. Persons included in the permanent staff must be expressly appointed by administrative act."

Article 5 establishes the eligibility requirements for the permanent staff. Candidates must be:

- a) Argentine citizens of at least four years' standing, by birth, by option or naturalization.
- b) 18 years of age.
- c) In good health and with psychophysical aptitude for the duties to be performed, as certified by the designated medical organization.
- d) Primary school or general basic education.
- e) Suitability for the function or position, as demonstrated by the selection criteria established in each case by regulation.

⁴¹ Text available at: <http://www.agn.gov.ar/body-financiera.htm>.

⁴² Text available at: <http://www.agn.gov.ar/body-normas-basicas.htm>.

f) New employees shall be appointed at the lowest level of the classification, with the exception of positions that require specific qualifications, in which case priority shall be accorded permanent staff members who meet the necessary conditions.

These requirements must be demonstrated prior to appointment, as a condition for the validity of such appointment.

Article 7 establishes prohibitions on candidates for the permanent staff of the legislative branch:

- a) Persons who have been discharged from the national, provincial or municipal public administration and have not been rehabilitated.
- b) Persons declared bankrupt, when the bankruptcy has been ruled fraudulent.
- c) Persons awaiting criminal trial.
- d) Persons disqualified for public office, for the duration of their disqualification.
- e) Persons who have been definitively dismissed from any branch of government at the national, provincial or municipal level, until two years have elapsed since their dismissal.
- f) Persons affected by disqualification or incompatibility in accordance with this statute.
- g) Contractors or suppliers of the national, provincial or municipal governments

2. Stability

Article 9 of Law 24,600 provides that "permanent legislative staff members are entitled to keep their employment and their current classification level and the attributes inherent therein. Stability is acquired after one year of uninterrupted work after the beginning of service. Stability in place and position supplements the right to stability of employment. In the case of a transfer, change of working hours or change of duties for reasons of the service's requirements, the employee shall be notified 72 hours in advance, and must not be affected either morally or materially. (Section vetoed by Article 1 of Decree 895/95 BO December 18, 1995. Article 1 of Decree 929/95 BO December 18, 1998 sustained that veto).

iii) Advertisement for the selection of public servants, indicating the qualifications for selection

iv) Ways to challenge a decision made in the selection system.

Although the specific legislation (Law 24,600) makes no provision for challenging decisions taken in the selection system within the legislative branch, the remedies stipulated in Law 19,549 on Administrative Procedures⁴³ and in Law 25,164⁴⁴ apply by default.

⁴³ Text available at: <http://infoleg.mecon.gov.ar/infolegInternet/anexos/20000-24999/22363/texact.htm>

⁴⁴ Text available at: <http://infoleg.mecon.gov.ar/infolegInternet/anexos/60000-64999/60458/norma.htm>

v) Relevant exceptions to the above

1. Exceptions to the merit principle

Law 24,600, "Statute and Classification of Personnel of the National Congress", Title III, "Temporary Staff", Article 49 provides: "Temporary staff are those persons contracted to fulfill functions upon the orders of a national legislator, in a party faction, or political advisory functions in a permanent or special committee of one or both chambers. In no case may temporary staff perform tasks pertaining to permanent staff."

Article 50: "Persons employed at the orders of a national legislator must be appointed by the president of the chamber, upon that legislator's recommendation. The persons so appointed shall have the right to keep their employment until any of the following circumstances intervenes:

- a) Resignation.
- b) Death.
- c) Absolute and permanent incapacity.
- d) Dismissal or discharge.
- e) Cancellation of the appointment, or at the request of the legislator who requested the appointment.
- f) Termination of the mandate of the legislator who requested the appointment."

Article 51: "Persons employed by a political faction shall be appointed by the president of the chamber, upon that faction's recommendation. Each chamber shall regulate the category and number of employees for each parliamentary faction, in light of the number of seats it holds. Employees of the faction shall have the right to keep their employment until any of the following circumstances intervenes:

- a) Resignation.
- b) Death.
- c) Absolute and permanent incapacity.
- d) Dismissal or discharge.
- e) At the request of the leader of the faction.
- f) Reduction in the number of members of the faction."

Article 52: "Persons employed as advisers to a permanent or special committee of either chamber shall be appointed by the president of the corresponding chamber, on the recommendation of the committee's authorities. In bicameral committees, the appointment shall be made by joint resolution of the presidents of the two chambers, again upon the recommendation of the authorities of the committee. Employees appointed to a committee for advisory functions shall have the right to keep their employment until any of the following circumstances intervenes:

- a) Resignation.
- b) Death.
- c) Absolute and permanent incapacity.
- d) Dismissal or discharge.
- e) At the request of the Committee authorities.
- f) Termination of the mandate of the Committee authorities."

Article 53: "The rules of title II of this statute shall apply to temporary staff, with the exception of those relating to stability of employment and administrative career".

Article 54: "Temporary staff who leave their position for the reasons indicated in Articles 50, 51 and 52 shall not be entitled to any compensation for their departure. All temporary staff are entitled to a monthly allowance equal to 3% of their total remuneration. (Section vetoed by Article 1 of Decree 895/95 BO December 18, 1995. Article 1 of Decree 929/95 BO December 18, 1998 sustained that veto).

Article 55: "In no case may temporary personnel postpone their annual vacation leave beyond April 30 following year".

b): Objective results obtained, including any available statistical data.

III. SYSTEMS OF THE NATIONAL JUDICIAL BRANCH

a) Brief description of the principal systems

Decree-Law 1285/58 makes the Supreme Court of Justice, the highest body of the national judiciary, responsible for all administrative aspects of the national judiciary, including the hiring of personnel to provide services in its component courts and tribunals.

These powers were partially amended by the constitutional reform of 1994, with creation of the Judiciary Council, which is responsible for selecting judges and for administration of the judicial branch (Article 114 of the national Constitution), with powers to "administer the resources and execute the budget allocated to the administration of justice", and "to issue regulations on organization of the judiciary and on all aspects necessary to assure the independence of judges and the efficient provision of justice services."

By means of Order of December 17, 1952, the Supreme Court issued the Regulation for the National Justice System (hereafter the Regulation). That regulation, which has undergone various amendments over the years but remains valid, regulates various aspects relating to the proper functioning of the courts of justice, from court working days, the manner of keeping files, and the obligations of employees and judges, to the functioning of the courts of appeals and the courts of first instance.

The regulation also contains certain basic provisions relating to openness, equity and efficiency in personnel hiring, and these are supplemented with specific regulations issued by the courts of appeals, which are responsible for appointing and removing their personnel as well as employees of the lower courts.

Article 11 establishes a series of requirements for the appointment of officials and employees, designed to ensure their suitability for the position.

For example, the Regulation of the Civil Court of Appeals of the Federal Capital⁴⁵ provides (Article 180) that access is reserved to persons who are Argentine citizens, are 18 years of age, have completed secondary school and have obtained a health certificate from the Medical Certification Service of the National Judiciary. The candidate must present a report from the National Registry of Recidivism and Criminal Imprisonment Statistics. Persons meeting these requirements are appointed on a provisional basis, until they pass an examination of typing, drafting and spelling skills, without prejudice to any other requirements for positions that require specific knowledge. The examination is supervised by the Superintendency Tribunal. The appointment will lapse if the candidate fails to pass the examination within six months after the provisional appointment.

Persons may be appointed only to the level of "administrative assistant", except in the case of appointments of secretaries of the appeals courts or the courts of first instance, pro-secretaries of the appeals courts, pay clerks, librarians, and court rapporteurs or private secretaries (Article 181).

Article 161 provides an option for appointments to positions that require legal qualification: "The judge or court directly responsible for the vacancy may opt for one of the following regimes: 1) direct proposal, which must comply with the contents of Article 162; and 2) competition (background assessment) and examination following the guidelines of articles 163 and following".

Under the direct proposal option, the candidate for appointment as secretary of a higher court must have three years' experience as secretary of a court of first instance or pro-secretary of a court.

The same length of experience is required for appointment as court secretary in the general offices (General Secretaries 1 and 2, Secretary of Jurisprudence and Judicial Information Center). The candidate may be appointed directly by the court with the

⁴⁵ Text available at: <http://www.ccc.pjn.gov.ar/reglamento/indice.htm#capitulo4>

concurrence of an absolute majority of its members (Article 11); otherwise, he must go through the competition and examination process.

To be appointed as pro-secretary of the senior court, the candidate must have worked for two years as secretary of a court of first instance or as pro-secretary in the general offices of the court.

To be appointed as pro-secretary in the general offices, the requirements are the same as for the appointment of a secretary of first instance, with the concurrence of an absolute majority of the members of the court, without which the candidate must go through the competition and examination process.

To be appointed as a secretary of first instance, the candidate must have completed university studies at least one year ago and must have worked as a court employee within the jurisdiction for three years, regardless of his seniority.

The head of the court that owns the vacancy will submit the proposed appointment, together with the candidate's curriculum vitae, to the Superintendency Tribunal, which will conduct a written test involving the drafting of two judicial resolutions (Articles 161, 163 and 164 of the Civil and Commercial Procedures Code).

The corresponding agencies will be asked to provide information on the proposal, sending to the judges a copy of the reports, the curriculum vitae, the written examination, and the report of the General Secretariat 2, with any relevant items from the file. The proposal will be considered at the following plenary session (Article 162).

i) Governing or administrating authorities of the system and control mechanisms

For the option of competitive appointment by background assessment and examination, Article 163 of the Civil Court Regulations provides that an advisory commission shall be established:

a) To appoint court secretaries or pro-secretaries, or equivalent positions, the advisory commission shall consist of the president of the court, a judge of the court selected by lot, and a lawyer representing the Argentine Federation of Lawyers.

b) For the appointment of secretaries of first instance, the advisory commission shall consist of the president of the court, a judge of first instance selected by lot, and a lawyer representing the Argentine Federation of Lawyers.

The advisory commission shall be chaired by the president of the court or his alternate. Judges to whom the vacant positions would report may not be members of the commission.

The general secretary in charge of Secretariat 1 will serve as secretary of the advisory commission. If he is prevented from doing so, he will be replaced by the head of the General Secretariat 2, by the Secretary of Jurisprudence, or by the Chamber Secretaries.

The advisory commission must operate in the presence of all its members, and shall take decisions by a majority of votes.

ii) Access to the public service through a merit-based system

For purposes of ensuring transparency in the hiring of staff for the judicial branch, the Civil Court Regulation established competitive entry by background assessment and examination.

Article 167, "Background for competitive assessment", provides: "Eligible background for competitive assessment shall include: a) prior service as a civil magistrate in any court of the land; b) prior service as a judicial official or employee, in any civil court in the land, for at least two years; c) effective exercise of the legal profession for at least two years, for which registration alone shall not be sufficient evidence; d) service as a university teacher, production of legal publications and works, delivery of lectures, university extension studies, and awards or distinctions, preferably relating to civil law or civil procedure."

Article 168: "At the end of the time limit established in Article 166, the advisory commission shall evaluate the background of the candidates and shall determine, with justification, those that may not be examined, which exclusion must be notified personally or by certified correspondence. The examinations shall be both written and oral. The written examination is mandatory, and the oral examination is optional, at the discretion of the advisory commission."

Article 169: "After the background assessment, if there is to be an oral examination, dates will be set for selecting 10 topics, at random, from the program approved by the court, five dealing with civil law and five dealing with civil procedure, and for conducting the oral examination, which not may not be held less than three days after the topics are drawn. All of this shall be notified, personally or by registered correspondence, to persons deemed to have adequate background to take the examination."

"The oral examination shall be conducted in a public hearing, at which competitors not eligible for the examination may not attend. The advisory commission shall question candidates freely on the topics drawn. The test will be scored on a scale of zero to 75" (Article 170).

Article 171: "If there is an oral examination, the results will be reported before the written examination, which may be taken only by those who have received at least 50 points on the oral examination. The written examination must be administered in a single session, the length of which shall be determined by the advisory commission, and will consist of drafting one or more judicial resolutions (Articles 161, 163 and 164 of the Civil

and Commercial Procedures Code). To this end, the necessary files or photocopies will be supplied. The written examination will be scored on a scale from zero to 75. If there has been an oral examination, the two scores will be averaged.

“Background will be assessed against a scale of 25 points, at the discretion of the advisory commission in each case. Eligible background shall include: performance as a judge of first or second instance, member of the Public Ministry of Chambers, Official of the Public Ministry of First Instance, court secretary, Chamber secretary, or official of equal rank. Consideration will also be given to exercise of the legal profession for at least two years, and performance as a judicially employed lawyer under similar conditions. As well, university teaching activities in law faculties, publications, relevant juridical works, lectures, professional development courses, and awards or distinctions shall be considered.

“In all cases, the scoring shall pay particular attention to experience in civil matters and civil procedure.”

The definitive rating of each competitor is not subject to appeal, and will be included in the reports prepared to this effect. Decisions are to be taken by majority, and the minority may record its opinion. If no majority can be reached, the vote of each member of the advisory commission will be recorded. In this case, the rating given by the president of the court will prevail (Article 172).

Article 174. "Once the competitors have been ranked, the advisory commission will prepare a merit list, consisting of those who have obtained the three highest scores, provided they are not less than 50 points. If this minimum is not achieved, the competition will be canceled. If competitions are called simultaneously to fill several vacancies of equal category, the list of candidates will be expanded to at least the number produced by adding two vacancies to the number announced. Once the merit listing is completed, the reports of the competition will be sent to the court and the advisory commission will be disbanded."

Article 175. "Candidates who have obtained scores of at least 55 points on their examinations will automatically retain this classification in competitions of the same category during the next two years, and they may reregister if they wish to improve their scores. Persons who so request will be deleted temporarily or definitively from the permanent list."

Article 176. "The opinion of the advisory commission shall be reported through the General Secretariat 1 to the head of the court or tribunal that owns the vacancy, who will remit the proposal within 10 working days. The selection shall be made among the candidates included in the merit list prepared by the advisory commission, excluding candidates whose withdrawal has been accepted by the Chamber, in which case they will be replaced by the next-ranking candidates. By absolute majority of its members' votes, the Chamber will decide the proposed appointment."

iii) Advertisement for the selection of public servants, indicating the qualifications for selection

Pursuant to Article 165 of the Regulation of the Civil Court of Appeals, when there is a vacancy the Superintendency Tribunal of the Chamber shall hold a competition, appoint members of the advisory commission, and order publication of the competition for one day in the Official Gazette.

The General Secretariat 1 will notify the competition to the candidates recorded in the registry, personally or by registered correspondence to their home addresses, and will issue a notice to all publicly known professional organizations of the federal capital.

If new vacancies should arise during the competition they may be added to that process, if their status so permits, and the registration time limit will be extended by five days, following publication of a new notice.

iv) Ways to challenge a decision made in the selection system

No challenge is allowed to the assessment of background, the competition report, or the weighting of the examinations (Article 173).

v) Relevant exceptions to the preceding aspects

One relevant exception to the public competition system relates to interim appointments, which are governed by Article 177 of the Civil Court Regulation: "When a vacancy arises in any of the positions that must be filled by competition, the Superintendency Tribunal, at the proposal of the court or the judge, shall appoint an interim replacement until the new incumbent is named. Interim performance shall not be taken into account in assessing candidates' background."

b) Objective results obtained, including any available statistical data.

IV. SYSTEMS OF THE FEDERAL ATTORNEY GENERAL'S OFFICE (MINISTERIO PUBLICO)

a): Brief description of the principal systems

The Attorney General's Office is an independent body with functional and financial autonomy, with the function of instituting judicial proceedings in defense of legality and the general public interest. It fulfils its functions with unity of action and independence, and in coordination with the other national authorities, but is not subject to direction or instructions from any outside source.

The Attorney General's Office comprises the Prosecutor General's Office (*Ministerio Público Fiscal*) and the Government Defender's Office (*Ministerio Público de la Defensa*). Consequently, the principle of "unity of action" must be understood without prejudice to the autonomy that attaches to the specific functions of public prosecutors, defenders and guardians and custodians.

The Prosecutor General's Office consists of the following magistrates:

- a) Prosecutor General of the Nation (hereafter PGN).
- b) Prosecutors before the Supreme Court Justice and the National Attorney for Administrative Investigations.
- c) General Prosecutors before the collegial courts, the courts of appeals, the courts of second instance, the courts of sole instance, the attorneys of the Prosecutor General's Office and those of Administrative Investigations.
- d) Assistant General Prosecutors before the courts and agencies listed in paragraph c.
- e) Prosecutors before the courts of first instance: prosecutors of the Prosecutor General's Office and Prosecutors of Administrative Investigations.
- f) Assistant Prosecutors to the prosecutors of first instance and the Prosecutor General.

The Government Defender's Office consists of the following magistrates:

- a) National Government (hereafter DGN).
- b) Official Defenders before the Supreme Court of Justice.
- c) Public Defenders of Minors and Incapacitated Persons before the courts of second instance, of cassation, and the oral tribunals for criminal cases and their assistant defenders; and Official Public Defenders before the Chamber of Criminal Cassation, Assistant Defenders before the Chamber of Criminal Cassation, the Oral Courts for Criminal Cases, courts of first and second instance in the interior of the country, the Federal Courts of the Federal Capital, and those of the Office of the Government Defender.
- d) Assistant Public Defenders of Minors and Incapacitated Persons of second instance, and Assistant Public Defenders of Second Instance, and Assistant Official Defenders of the Office of the Government Defender.
- e) Public Defenders of Minors and Incapacitated Persons of First Instance and Official Defenders before the Judges and Courts of Appeals.

f) Auxiliary Defenders of the Government Defender's Office.

Public Guardians and Custodians are part of the Government Defender's Office, and are regulated by law 24,946.

The Attorney General's Office has a hierarchical organization according to which each member supervises the performance of his subordinates and those who assist him, and assigns disciplinary powers and responsibilities recognized by this law to the various magistrates or officials who comprise it.

The PGN and the DGN, within their respective areas, are in charge of governance and of general and financial administration of the Attorney General's Office. To this end, they have the following duties and powers, with respect to their governance functions:

- a) To represent the Attorney General's Office in its dealings with the other national authorities.
- b) To issue general and financial regulations dealing with supervision, functional organization, personnel, discipline, and other matters necessary to the functions assigned the Attorney General's Office by the Constitution and by law.
- c) To sign contracts as required for the operation of the Attorney General's Office.
- d) To coordinate the activities of the Attorney General's Office with other national, provincial or municipal authorities when they request its collaboration.
- e) To submit an annual written report to the joint committee of Congress created by this law on performance of the functions assigned to the Attorney General's Office.
- f) To organize and run an office of human resources and the administrative-financial service, in accordance with the rules established by the Ministry of Economy.

Nevertheless, in order to guarantee its financial independence, the Attorney General's Office has its own budgetary appropriation, funded from general revenues and specific resources. The PGN and the DGN prepare the draft budget and submit it to Congress for consideration, through the Ministry of Economy, which may formulate observations but may not amend its content, and is required to incorporate it into the proposed general national budget.

Pursuant to its governance powers, the PGN issued Resolution 2/06 which establishes the basic regime for officials and employees of the Attorney General's Office, and regulates the classification structure of the department, covering all employees deemed to be "permanent" and applying to them the principles of stability, training and administrative career. "Nonpermanent" employees are subject to the specific characteristics of their service.

The structure includes three groupings: "Technical Legal", which covers all duties that require a lawyer's license; "Technical Administrative", which includes staff engaged in direction, execution, supervision and advisory services in issues relating to human resources, accounting and finance, information processing, expert and technical testimony, and to perform principle, auxiliary or supplementary administrative functions;

and "Auxiliary Services", which covers persons engaged as drivers, security staff, cleaning and maintenance, or in the forwarding of files, documents or notices, delivery of correspondence and general procedures with public or private agencies that do not require specialized procedures or knowledge, and the duties of servants or laborers.

The regime also includes the Corps of Advisors of the Prosecutor General and Rapporteurs and Private Secretaries. This corps includes all employees who are excluded from the classification groupings of the Prosecutor General's Office, and are subject only to general entry requirements. The advisers to the Prosecutor General automatically cease their functions upon termination of the mandate of the prosecutor who appoints them, or by his express decision, and revocation of appointment entails no compensation.

By Article 98 of the regime, officials and employees may be either permanent or nonpermanent. Permanent staff are those who have been appointed without a fixed term for their functions, which means that they can continue to perform those functions until they retire.

Permanent staff enjoy stability of function, understood as the right to retain their acquired employment and classification level during good conduct, and until they meet the legal requirements to be eligible for the maximum pension. It includes the right to remain in the position awarded upon designation, which means that they cannot be transferred to other jurisdictions without their express consent and respect for their rank. Stability is lost only on grounds of ineptitude or misconduct, and personnel may be removed only by a formal administrative decision following a hearing of the interested party.

Nonpermanent staff are those in any of the following situations:

Interim employees: appointed to fulfill functions that are accidentally required for the normal functioning of any office, where the duration cannot be determined exactly. Interim employees also include persons assigned to occupy a vacant position until their appointment is revoked or until the permanent incumbent is appointed.

Alternates or substitutes: persons appointed to a position that the incumbent is temporarily unable to fill.

Seconded personnel: persons belonging to another entity of the national, provincial or municipal government who are seconded from their own functions for temporary duty in some dependency of the Prosecutor General's Office.

Temporary staff: persons appointed to functions for a fixed term, and who automatically lose their status as employees or officials of the Attorney General's Office once that term expires. Temporary staff includes both persons hired by administrative appointment and those who have signed a fixed-term service contract under a relationship of dependency.

Ad hoc staff: persons who are temporarily assigned functions or appointed to provide services in any dependency of the Prosecutor General's Office without compensation, i.e. they receive no salary or financial remuneration of any kind.

Permanent staff appointed temporarily to another position, or temporarily assigned other functions, retain their status as permanent employees but they are deemed nonpermanent with respect to the functions they perform during that time. Once those functions are over, if they were excused from fulfilling permanent functions while performing temporary functions, they return to their permanent job.

Moreover, permanent staff of the Prosecutor General's Office may not sign service contracts, whether or not subject to a relationship of dependency, except when they take special leave without pay for the duration of such service contract.

i) Governing or administrating authorities of the system and control mechanisms

According to Article 65 (e) of Law 24,946, the PGN and the DGN are the governing authorities for the appointment and promotion of officials and personnel of the Attorney General's Office. In this respect, Article 35 of the Basic Regime of the Attorney General's Office provides that the PGN shall appoint, promote and contract all officials and employees of the Attorney General's Office, and may delegate this power to the Prosecutors before the Supreme Court, the National Prosecutor of Administrative Investigations, or the General Prosecutor as he sees fit.

Notwithstanding the foregoing, both the PGN and the DGN have their respective General Directorate of Human Resources, run by technical and administrative staff who have direct responsibility for personnel management. In addition, the PGN and the DGN may delegate powers to other supervisory authorities.

ii) Access to the public service through a merit-based system

As noted above, officials or employees of the Prosecutor General's Office may be permanent or nonpermanent. Pursuant to Articles 18 and 22 of the basic regime, only permanent staff are entitled to equality of opportunity for covering vacancies within the hierarchy, and they may progress through the hierarchy through procedures that respect their qualifications, inefficiency and seniority. Those procedures are governed by Chapter III, Appointments and Promotions, of that regime.

Article 38 requires that candidates for employment must:

- a) Be Argentine citizens of at least 18 years of age. Any exception to the citizenship requirement must be decided by the Prosecutor General in each case (Resolution PGN 81/01).
- b) They must have no judicial record that would make them unsuitable for performance in the Prosecutor General's Office.

- c) They must have appropriate physical aptitude, as demonstrated by the corresponding health certificate.
- d) All candidates for the Technical Administrative Group and the Corps of Rapporteurs and Private Secretaries must have completed secondary school, and must also demonstrate knowledge and mastery of typing, spelling and basic IT concepts, without prejudice to other requirements that may be demanded for tasks where special knowledge is necessary.
- e) The preceding requirements are not demanded of persons entering the auxiliary services, for whom it is sufficient to have completed primary school or general basic education.

Evidence of the conditions required in paragraphs d) and e) must be presented in the form of a primary or secondary school certificate, while the other conditions must be demonstrated through a background assessment and examination submitted to the appropriate authority, with notification of the respective labor association.

In the case of the Technical Legal group, candidates seeking to enter the Prosecutor General's Office as undersecretaries of the Office of the Prosecutor General or the Prosecutor of Administrative Investigations or as specific categories of legal secretary must not only meet the conditions of the basic regime but must also comply with the specific conditions of paragraphs b) and c) of Article 38. They must also demonstrate that they have a law degree by submitting their diploma to the appropriate supervisory authority, which shall keep a certified copy of that diploma.

In proposing a candidate for any grouping within the Prosecutor General's Office, the proposing magistrate or official must supply documentation demonstrating the conditions required in Article 38. The examination of competence must be conducted by the authorities identified by the PGN, once the proposal is received.

Persons entering the Prosecutor General's Office as permanent staff in any of the positions covered by Article 6 (paragraphs 7 to 14) and in the auxiliary services group (Article 7, paragraphs 1 to 7) may do so only at the lowest respective position, unless they enter through competition. Persons entering the Technical Legal Grouping and the Corps of Advisers of the Prosecutor General and of Rapporteurs and Private Secretaries of the Prosecutor General's Office do not have to belong to the Attorney General's Office or to the judicial branch.

When the General Directorate of Human Resources makes observations on any proposed appointment or promotion, it will be returned to the sponsoring prosecutor or official for further precision, or for a new proposal. Promotions or proposals must be consistent with the classification and the system stipulated in Article 53,⁴⁶ and any proposal that would

⁴⁶ Conditions for promotion. Article 53. Candidates for promotion must be sought first from among officials and employees in the category immediately below the position to be filled within the Prosecutor General's Office, departments or prosecution offices in question, taking into account candidates' aptitude and formal qualification, their suitability and conduct as demonstrated in previous positions, duly recorded and qualified, and their seniority within the Attorney General's Office or in the national justice system and

involve passing over staff with significantly greater seniority or hierarchy must be substantiated. It should be noted that proposals returned with observations to the sponsor and resubmitted with further substantiation are not binding on the PGN. In addition, the head of the dependency must attach to the appointment proposal an affidavit declaration that the candidate is not disqualified by family relationship.

iii) Advertisement for the selection of public servants, indicating the qualifications for selection

iv) Ways to challenge a decision made in the selection system

As noted earlier, Article 18 of the Basic Regime of the Prosecutor General's Office gives permanent and nonpermanent staff alike the right to submit queries (paragraph f) and to lodge appeals (paragraph g).

Article 26 provides that personnel have the right to submit questions, in writing and through the appropriate hierarchical channel, on general aspects relating to their functions, and these must be answered within a reasonable time by the Prosecutor General or his delegated authority.

Article 27 provides that employees who consider their rights to have been violated may lodge appeals with the respective supervisory authority, under the general regime for challenging administrative acts in the National Public Administration (see Law 19,549 quoted above). When administrative remedies have been exhausted, the way is open to judicial proceedings.

v) Relevant exceptions to the above aspects

c) Objective results obtained, including any available statistical data

Note: In response to the comments of the MESICIC Committee of Experts in its Report on Implementation in Argentina of the Convention Provisions Selected for Review and the Framework of the First Round (February 2003), in Chapter III (Conclusions and Recommendations), Point A, "Anticorruption Activities and Preventive Measures at the Provincial and Local Levels", Argentina has included in

in their position. Preference may be given to candidates of the respective jurisdiction and dependency, among candidates in an otherwise similar condition. The lack of formal qualification or aptitude for the position to be filled justifies selection of a candidate from among those holding immediately inferior position in other dependencies of the Attorney General's Office or the judicial branch, applying identical parameters. The concept of "immediately inferior" category is determined by the actual staff structure and complement of the dependency at the time the vacancy occurs. On an exceptional basis, if the officer of the dependency in which the vacancy occurs is not in a condition for promotion and no officer from another dependency meets the requirements, the identical selection procedure may be used to propose candidates working in the next category. With respect to the parameters that make up the objective conditions of candidates, these criteria must be weighted, and a candidate may not be proposed exclusively on the basis of one such criterion.

its reply to Chapter I.1 information on government hiring systems in the provinces, contained in Annex 2, Provinces, attached to the Reply of Argentina to the Questionnaire.

CHAPTER ONE-2

2. GOVERNMENT SYSTEMS FOR PROCUREMENT OF GOODS AND SERVICES

a. Are there laws and/or measures in your country establishing government systems for procurement of goods and services? If so, briefly describe the main systems, indicating their characteristics and principles and list and attach a copy of the related provisions and documents.

Also describe how the above systems ensure openness, equity and efficiency in your country.

In relation to the above, refer, among others, to the following aspects:

- i. Procurement systems with a public tender and without a public tender.*
- ii. Governing or administrating authorities of the systems and control mechanisms.*
- iii. Register of pre-approved contractors.*
- iv. Electronic methods and information systems for government procurement.*
- v. Public works contracts.*
- vi. Identification of the selection criteria for contractors (e.g. price, quality and expertise).*
- vii. Ways to challenge a selection.*

b. In relation to question a), State the objective results obtained, including any available statistical data (e.g. percentage of contracts awarded through public tender; sanctions imposed on contractors).

c. If no such laws and/or measures exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen government systems for procurement of goods and services, in accordance with Article III (5) of the Convention.

a) Existence of laws and/or other measures

Introduction

The incorporation into domestic law of the Inter-American Convention against Corruption, by means of Law 24,759,⁴⁷ stressed the importance of transparency in government activity, and the rules specifically relating to public procurement include concrete provisions to prevent and detect corruption in the contracting of goods and services. The most notable example of this tendency is Decree 1023/2001 establishing the general system of procurement in the national public administration.

With the incorporation into domestic law of the United Nations Convention against Corruption, by means of Law 26,097, a major step was taken towards implementation of efficient public procurement systems.⁴⁸ The UN Convention (like the Inter-American

⁴⁷ Sanctioned in December 1996 and published in the Official Gazette on January 17, 1997.

⁴⁸ For more detail on measures taken by the OA under the United Nations Convention against Corruption, readers may consult the book published by the OA in October 2004, entitled: *Convención de las Naciones Unidas contra la Corrupción. Nuevos paradigmas para la prevención y combate de la corrupción en el escenario global*

one) has legal precedence over domestic laws, pursuant to Article 75 (22) of the Argentine Constitution.

We shall refer here primarily to the provisions for the prevention of corruption, since the Argentine delegation focused its work on these aspects during negotiations of the text of the [UN] Convention, particularly its Chapter II, "Preventive Measures", which contains Articles 5 to 14.

Article 9 [of the UN Convention], "Public procurement and management of public finances", contains an extensive list of concrete measures to prevent corruption and to make procurement more transparent.

It should be noted, in the first place, that these provisions are mandatory, as demonstrated in use of the words "shall ... take" in the first part of the lead paragraph,⁴⁹ and "shall address" relating to measures listed at the end of the section.

Second, the principles established by the Article are, in our view, highly appropriate, for they sustain transparency, competition and objective criteria for taking decisions as the basis for efficient procurement processes.

With respect to internal rules, policies for transparency coupled with efficiency in government procurement are also the main objectives of the "New Procurement System" incorporated into the National Plan for Modernization of the National Public Administration (Decree 103/01) and in the Letter of Commitment to the Citizenry, Article 4 (g) of Decree 229/00.

In turn, the requirement for impartial guidelines applicable to the various procurement stages is one of the best instruments for preventing corruption, since the possibility for bidders to know in advance the criteria that will be used for the award of public contracts is essential as an element of certainty, and for avoiding corruption linked to arbitrary decisions.

Law 25,188 on Ethics in the Public Service (Article 2.e) makes it a duty of persons subject to that Law "to justify their acts and demonstrate the greatest transparency in decisions taken, without restricting information, unless this is clearly required by law or by the public interest."

Law 24,156⁵⁰ on Financial Administration and Control Systems in the National Public Sector establishes and regulates financial administration and control systems in the national public sector.

("United Nations Convention against Corruption. New paradigms for preventing and combating corruption worldwide"), available at the web page of the office: www.anticorrupcion.gov.ar, click "*publicaciones de la OA*".

⁴⁹ "Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:..."

To this end, it provides that financial administration embraces all the systems, organs, rules and administrative procedures that make it possible to obtain public funds and to use them for the fulfillment of State objectives.

Pursuant to that Law, four governing bodies have been established for different systems that are interrelated: the National Budget Office for the budget system, the National Office of Public Credit for the public credit system, the National Treasury General for the treasury system, and the General Accounting Office, for the accounting system. However, the creation of two further systems with their corresponding governing bodies (State Contracting and State Property Administration) has been left pending.

For this reason, Article 137 (a) of the law retained the validity of articles 55 to 64 inclusive of Decree Law 23354/1956 on government procurement.

It was considered necessary to put in place mechanisms for issuing general rules and policies that would apply to procurement contracts throughout the national public sector, in order to make such purchasing efficient and to facilitate ex-post control.

To this end, it was deemed appropriate to create an integrated procurement system with a management body responsible for setting general policies and rules, and also for supervising the system.

It was for this purpose that Decree 1545/1994 was issued, creating the Procurement System for the National Public Sector and the National Procurement Office as the governing body.

Brief description of the principal systems

In order to appreciate the impact that the procurement regimes listed below have on federal government spending, it may be noted that total government expenditure in 2004 amounted to 65.6 billion pesos, and procurement expenditure was distributed as follows:

Table: Public Procurement Expenditure⁵¹

Procurement Regime		Expenditure, in billions of pesos	% of Total Public Expenditure
Public works	13.064	1.7	2.6%
Goods and services	1.023/01 and others	3.4	5.2%

In fact, government procurement regimes are based on various pieces of legislation, depending on their area of application (some are general and others are specific to certain agencies). Following are the main systems for the procurement of goods and services:

⁵⁰ Promulgated in October 1992.

⁵¹ Source: "Economic Classification of Government Expenditure. Fiscal Year 2004", National Institute of Statistics and Census, <http://www.indec.gov.ar/>.

BASIC LEGAL FRAMEWORK

NATIONAL EXECUTIVE BRANCH		
Legal Instrument:	Title / Subject:	Accessible at:
Law N° 24.759	Inter-American Convention against Corruption	http://infoleg.mecon.gov.ar/infolegInternet/verLegalInstrument
Law N° 26.097	United Nations Convention against Corruption	http://infoleg.mecon.gov.ar/infolegInternet/buscarLegalInstrument
Financial Administration Law	Financial Administration and Control Systems General Provisions for Financial Administration and Control Systems. Budgetary Systems	http://infoleg.mecon.gov.ar/infolegInternet/buscarLegalInstrument
Public Ethics Law	Ethics in the Exercise of Public Functions. Legal Regime. Duties, Prohibitions and Incompatibilities Applicable without Exception to All Persons Working in the Public Service	http://infoleg.mecon.gov.ar/infolegInternet/verLegalInstrument
Law 13064	Public Works Law	http://www.infoleg.gov.ar/infolegInternet/buscarLegalInstrument
Law 20705	State Owned Corporations	http://infoleg.mecon.gov.ar/infolegInternet/buscarLegalInstrument
Law 19550	Business Corporations Law	http://infoleg.mecon.gov.ar/infolegInternet/buscarLegalInstrument
Delegated Decree 1023/2001	Government Contracts. General Regime. Electronic Public Procurement. Procurement of Goods and Services	http://www.infoleg.gov.ar/infolegInternet/buscarLegalInstrument
Decree 436/2000	Government procurement. Regulations: approval of regulations for the procurement, disposal and contracting of goods and services by the national government	http://infoleg.mecon.gov.ar/infolegInternet/buscarLegalInstrument
Decree 666/2003	Procurement Regime for the National Administration. Amendment to the General Regime Established by Decree 1023/2001	http://infoleg.mecon.gov.ar/infolegInternet/buscarLegalInstrument
Decree N° 1545/1994	Public Sector Procurement System	http://infoleg.mecon.gov.ar/infolegInternet/buscarLegalInstrument
Disposition 297/2003	Procurement Regime for the Federal Administration of Public Revenues	http://www.afip.gov.ar/seccion_LegalInstrument.asp
Resolution 135/2003 – Resolution 218/2003	Procurement Regime for the National Social Services Institute for Retirees	http://www.pami.org.ar/compras/manual.htm

NATIONAL LEGISLATIVE BRANCH		
Legal Instrument:	Title / Subject:	Accessible at:
Decree N° 5720/1972 Regulations to Decree Law N° 23.354, ratified by Law N° 14.467	Accounting Law. Regulation of Government Procurement	http://www.hcdn.gov.ar
Decree of the President of the National Senate N° 632/2002	Regulations to Decree N° 1023/01, for that Cámara.	http://www.senado.gov.ar/web/acts/administrativa/contrataciones/

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NATIONAL JUDICIAL BRANCH

Legal Instrument:	Title / Subject:	Accessible at:
Decree N° 5720/72	Accounting Law. Regulation of Government Procurement	http://www.pjn.gov.ar/

FEDERAL ATTORNEY GENERAL'S OFFICE

Legal Instrument:	Title / Subject:	Accessible at:
Decree N° 5720/72	Accounting Law. Regulation of Government Procurement	http://www.mpf.gov.ar/Lawpag1.htm http://www.mpd.gov.ar/Lawpag1.htm

PROVINCES

BUENOS AIRES

Constitution		http://www.gob.gba.gov.ar/legislacion/constitucion/cpppal.htm
Law 7764/71	Accounting Law	http://www.gob.gba.gov.ar/dijl/DIJL_buscaid.php?var=1396
Law 12874	General budget of the provincial administration	http://www.gob.gba.gov.ar/dijl/DIJL_buscaid.php?var=1323
Decreets787/04	Amended the Procurement Regulations	http://www.gob.gba.gov.ar/dijl/DIJL_buscaid.php?var=24722
Decree 2698/04		http://www.gob.gba.gov.ar/dijl/DIJL_buscaid.php?var=18571
Decree 1153/04	Unified Public Tenders for the Procurement of Computer Equipment	http://www.gob.gba.gov.ar/dijl/DIJL_buscaid.php?var=25867
Decree 2754/04	Standard Procurement Terms and Conditions	http://www.gob.gba.gov.ar/dijl/DIJL_buscaid.php?var=18761
Decree 1676/05	Uniform general terms and conditions for the procurement of goods and services	http://www.gob.gba.gov.ar/dijl/DIJL_buscaid.php?var=30435
Decree 2334/06	Update of Limits in Article 26 and Related Provisions of the Accounting Law	http://www.gob.gba.gov.ar/dijl/DIJL_buscaid.php?var=17218
Decree 728/06	Amending the values established in Article 26 of the Accounting Law	http://www.gob.gba.gov.ar/dijl/DIJL_buscaid.php?var=33361

CATAMARCA

Constitution		http://www.diputados-catamarca.gov.ar/datos/conti-prov.pdf
Law 2730	Public Works	http://www.diputados-catamarca.gov.ar/Law/consul.asp?numero=2730
Law 3559	Code of Administrative Procedures	http://www.diputados-catamarca.gov.ar/Law/consul.asp?numero=3559
Law 4621	Organic Law of the Court of Accounts	http://www.diputados-catamarca.gov.ar/Law/consul.asp?numero=4621
Law 4938	System for the Procurement of Goods and Services	http://www.diputados-catamarca.gov.ar/Law/consul.asp?numero=4938
Law 5038	Provincial Preferences in Purchasing and Contracting	http://www.diputados-catamarca.gov.ar/Law/consul.asp?numero=5038
Decree 1208	Regulation of the Provincial Registry of Public Works Contractors and	N/A

	Bidders	
Decree 1697	Regulations to the Public Works Law	N/A
Decree Order 152/98		N/A
Decree order 2175/80	Regulations to Law 4938	N/A
Regulatory decree 1122/01		N/A
Regulatory decree 445/02		N/A
CORRIENTES		
Constitution		http://www.corrientes.gov.ar/pdfs/Constitucion%20Provincial.pdf
Law 5571	Financial Administration Law	http://www.hcdcorrientes.gov.ar/Lawes-texto/Law5571.doc
Law 3757	Organic Law of the Court of Accounts	http://www.hcdcorrientes.gov.ar/Lawes-texto/Law3757.doc
Law 5375	Amended Law 3757	http://www.hcdcorrientes.gov.ar/Lawes-texto/Law5375.doc
CHACO		
Constitution		http://www.chaco.gov.ar/legislatura/Constitucion/Const%20Prov%20Frame.htm
Law 4787	Organization and Functioning of the Financial Administration of the Provincial Public Sector	http://legislatura.chaco.gov.ar/InformacionLegislativa/Lawes_tramite_legislativo2sinfondo.asp?Letftdc=1&Letfnro=4787&Letfano=0
Law 4990	Public Works	http://legislatura.chaco.gov.ar/InformacionLegislativa/Lawes_tramite_legislativo2sinfondo.asp?Letftdc=1&Letfnro=4990&Letfano=0
Decree 3566/77	Procurement Regime	http://legislatura.chaco.gov.ar/InformacionLegislativa/Lawes_tramite_legislativo2sinfondo.asp?Letftdc=2&Letfnro=3566&Letfano=1977
CHUBUT		
Constitution		http://www.sup-trib-delsur.gov.ar/sup-trib-delsur/cbconst.htm
Law 5447	Financial Administration Law	http://www.legischubut.gov.ar/Law5447.htm

ENTRE RÍOS		
Constitution		http://www.entrierios.gov.ar/constitucion.doc
Law 5140	Law on the Financial Administration of Property and Procurement	N/A
Decree 795/96	Regulations to the Law on Financial Administration of Property and Procurement	http://www.hcder.gov.ar/consultalegislacion/buscarro.php
Law 9353	Bidding Preferences for Provincial Firms and Products	http://www.hcder.gov.ar/consultalegislacion/buscarro.php
FORMOSA		
Constitution		http://www.legislaturaformosa.gov.ar/documentos/constitucion%202003.htm
Law 1180	Financial Administration Law	http://www.legislaturaformosa.gov.ar/Legislacion/Aetallepornro.asp
Decree Law 959/80	Legal Regime Governing Public Works	N/A
LA PAMPA		
Constitution		http://www.legislatura.lapampa.gov.ar/Lawes/PDF/CONSTITUCION%20DE%20LA%20PROVINCIA%20DE%20LA%20PAMPA.pdf
Law 38	General Law on Public Works	N/A
Decree 1155/59	Regulations to the General Law on public Works	N/A
Decree 1062/01	Amendments to the General Law on Public Works	N/A
Decree 270/05		N/A
Law 951	Administrative Procedures Law	N/A
Decree 1684/79	Regulations to the	N/A

	Administrative Procedures Law	
Decree Law 513/69	Organic Law of the Court of Accounts	N/A
Decree 2546/93	Functioning of the Permanent Registry of Bidders	N/A
LA RIOJA		
Constitution		http://www.larioja.gov.ar/servicios/documentos/constitucion2002.pdf
Law 3462		N/A
Law 3648		N/A
Law 3870	Provincial and Municipal Public Administration	N/A
Law 4828	Organic Law of the Provincial Court of Accounts	N/A
Law 4044	Administrative procedures	N/A
Law 6425	Financial Administration Law	N/A
Decree 120/04		N/A
Decree 332/88	Regulations to the Public Works Law	N/A
Decree 654/06	Registry of Public Works Contractors	N/A
Decree 9429/60		N/A
Decree Law 21.323/63	Public Works Law	N/A
MISIONES		
Constitution		http://www.misiones.gov.ar/legal/constitucion.htm
Law 83	Public Works	http://www.misiones.gov.ar/legal/Lawes/83.htm

Law 257	Municipal Organization Law	http://www.misiones.gov.ar/legal/Lawes/257.htm
Law 2303	Provincial Accounts Law	http://www.misiones.gov.ar/legal/Lawes/2303.htm
Law 2970	Law of Administrative Procedure	http://www.misiones.gov.ar/legal/Lawes/2970.htm
Decree Law 1214	Organic Law of the Court of Accounts	N/A
NEUQUEN		
Constitution		http://www.neuquen.gov.ar/
Law N° 2141	Law on Financial Administration and Procurement Control	http://www.neuquen.gov.ar/
Law N° 687	Public Works Law	http://www.neuquen.gov.ar/
Law N° 1284	Law of administrative procedure	http://www.neuquen.gov.ar/
Disposition 73/04	General Accounting Office: Suppliers' Registry	http://www.neuquen.gov.ar/
RÍO NEGRO		
Constitution		http://www.legismn.gov.ar/const_prov.htm
Law 3619	Prioritized contracts with individuals and corporations based in the province	N/A
Law 3186	Financial Administration Law	N/A
Law 286	Public Works	N/A

	procurement system	
Law 4002	Law on Ministries	N/A
Law 3.709	Provincial Registry of Consulting Services	N/A
Law 286	Public Works Law	N/A
Decree 188/04	Procurement regulations	N/A
Decree 189/04	Authorization and Approval of Expenditures	N/A
SALTA		
Constitution		http://www.camdipsalta.gov.ar/conprov.htm
Law 6838	Procurement of Goods and Services	http://www.camdipsalta.gov.ar/LAWES/Lawes/6838.htm
Decree 1448	Regulations to Law 6838	http://www.camdipsalta.gov.ar/LAWES/Lawes/Decree%201448%20Regalmenta%206838.htm
SANTA FE		
Constitution		http://www.santa-fe.gov.ar/gbrn/noticias/constitucion.htm
Law 10204	Law on Administrative Procedures	N/A
Law 12105	"Buy Santa Fe"	http://www.santafe.gov.ar/gobierno/tecnica/Law12105.htm
Law 12489	Accounting Law	http://www.santafe.gov.ar/gobierno/tecnica/Law12489.htm
Law 5188	Public Works	N/A
Decree 082/04	Regulation, Contracting, Purchases, Sales	http://www.santa-fe.gov.ar/gbrn/sin/resultados.php?pnro=0082&panio=2004&porpagina=10&firstrow=1
Decree 1008/01	Regulation, Contracting, Purchases, Sales	http://www.santa-fe.gov.ar/gbrn/sin/resultados.php?pnro=1008&panio=2001&porpagina=10&firstrow=1
Decree 2807	Preparation of	N/A
Decree 2808	bidding	N/A

Decree 2809	documents and procurement conditions	N/A
Decree 3226/05	Procurement and Contracting Powers	http://www.santa-fe.gov.ar/gbrn/sin/resultados.php?pnro=3226&panio=2005&porpagina=10&firstrow=1
Decree 4504	Requests for Procurement under the SIPAF system	N/A
Decree 5100	Functions of the Provincial Directorate of Procurement and Supply	N/A
SAN JUAN		
Constitution		http://www.legsanjuan.gov.ar/Legal Instruments/Constitucion_ProvincialN.pdf
Law 2139/59	Accounting Law	N/A
Law 2153/59	Accounting Law	N/A
Law 6905/98	Financial administration Law	http://www.legsanjuan.gov.ar/indexLaw/LAWES/1998/LAW6905.DOC
Law 7212/01	Amendments to the Financial Administration Law	http://www.legsanjuan.gov.ar/indexLaw/LAWES/2001/LAW7212.DOC
Law 7347/02	Amendments to the Financial Administration Law	http://www.legsanjuan.gov.ar/indexLaw/LAWES/2002/LAW7347.DOC
SANTIAGO DEL ESTERO		
Constitution		http://www.sde.gov.ar/jefaturadegabinete/constitucion.php
Law 3742	Accounting Law	N/A
Law 6655	Financial Administration Law	N/A
Law 2092	Public Works contracts	http://www.jussantiago.gov.ar

Decree orders Series B 83/78	Regulations governing public and private bidding procedures	N/A
Decree Orders Series B 84/78		N/A
TIERRA DEL FUEGO, ANTÁRTIDA E ISLAS DEL ATLÁNTICO SUR		
Constitution		http://www.tierradelfuego.gov.ar/
Regulatory Decree N° 1505/02	Law of Administrative Procedures	http://www.tierradelfuego.gov.ar/
Decree N° 1289/02		http://www.tierradelfuego.gov.ar/
Resolution N° 6/02	General Accounting Office of the Province	http://www.tierradelfuego.gov.ar/
Law N° 278	Selection criteria	http://www.tierradelfuego.gov.ar/
Law N° 50,	Court of Accounts	http://www.tierradelfuego.gov.ar/
TUCUMÁN		
Constitution		http://www.tucuman.gov.ar/legislacion/Aocs/constituciondetucuman.pdf
Law 6970	Financial administration Law	http://www.tucuman.gov.ar/fiscalia/buscar.asp?nroLaw=6970
Decree Order 11/1	Duties and functions of the General Directorate of Procurement and Contracting	N/A
Decree 49/17	Regulation of Procurement and Contracting	http://www.tucuman.gov.ar/gobierno/docs/reglamentodecompras.doc

Brief description of the principal systems

Delegated Decree 1023/2001, "Procurement Regime of the National Administration", regulated by Decrees 436/2000 and 666/2003

Delegated Decree 1023/2001 constitutes the general regime for the National Executive Branch, and was issued through delegation of legislative powers to that branch, in matters relating to its administration and resulting from the public emergency, pursuant to Law 25,414.

It applies to procurement procedures to which the national administration is party (at the centralized and decentralized levels).⁵²

It governs all contracts signed by the administration, as mentioned in Article 4 of the Law, such as supply and services, as well as all contracts not expressly excluded. Title 1 applies directly to public works contracts, public works concessions, public services concessions, and licenses.

It does not apply to public employment contracts, petty cash purchases, and contracts with foreign governments, international organizations, or multilateral lending institutions, or to contracts that are wholly or partially financed with funding from such institutions.

With respect to the national universities, and notwithstanding the terms of the Higher Education Act,⁵³ subsequent to the constitutional reform of 1994 which gave them independence and autonomy to adopt their own regime, they have adhered to the regime of this Decree.

The national Senate is also governed by Decree 1023/01, but because it is a separate branch of government it has issued its own regulations to that regime, although the changes are not substantial.

Law 13,064 on public works

Public works are governed by Law 13,064, to which the provisions of Title 1 of Decree 1023/01 also apply when they are not contrary to the provisions of that Law. Consequently they include all the rules contained in that Decree for proper operation of the Administration.

As to its scope of application, Article 1 provides that any construction or work or industrial service performed with funds from the national treasury (with the exception of

⁵² Scope of application determined by Article 8 (a) of Law 24,156 and its amendments.

⁵³ Law 24,521, Article 59. "National university institutions have economic and financial independence, which they shall exercise within the regime of Law 24,156 on Financial Administration and Control Systems of the National Public Sector. Within that framework, such institutions may: ...
f) apply the general regime for procurement, financial responsibility, and property management, with the exceptions established by regulation".

those performed with grants, which are governed by special law) shall be deemed national public works.

Articles 55 to 64 of the Accounting Law, regulated by Decree 5720/1972

The National Judicial Branch, the Attorney General's Office and the Chamber of Deputies within the National Legislative Branch, as well as the Autonomous City of Buenos Aires, apply the procurement procedures of the still-valid articles of the Accounting Law⁵⁴ and its Regulatory Decree 5720/72.

Disposition AFIP 297/2003, "General Regime for the Procurement of Goods, Services and Public Works of the Federal Administration of Public Revenues (AFIP)".

By virtue of Decree 1399/2001, which provided that the procurement system of the Federal Administration of Public Revenues shall be decided by the Federal Administrator, with the consent of the Ministry of Economy and Production, that agency approved its general procurement regime by means of Disposition AFIP 297/2003.

Resolution INSSJP 135/2003, "General Procurement Regime (BO August 19, 2003)

Title II of Decree 486/2002 exempts the PAMI from the provisions of Decrees 436 of May 30, 2000 and 23 of August 13, 2001, and empowers the agency to issue its own procurement procedure for the duration of a health emergency, guaranteeing the principles of transparency, free competition, and equality among bidders.

The Public Enterprise Sector

The government has made use of a certain kind of decentralized entity for the provision of public services and for the pursuit of commercial or industrial activities. It has done so through various laws, such as Law 13,653 (approved in 1949), which regulated the so-called "State-owned enterprise". Its mixed regime, under public and private law, evolved gradually toward greater administrative control, and was amended by Law 15,023 which applied to it the Accounting and Public Works Laws.

On the other hand, neither of those laws applies to State-owned corporations under Law 20,705, which was adopted in 1974, for they conduct their contracting in accordance with the Business Corporations Act, Law 19,550. This is the legal form adopted by the National Lottery S.E., the Corporation that administers and regulates the games-of-chance market, and by TELAM S.E.⁵⁵, responsible for the administration, operation and

⁵⁴ Decree Law 23,354 was issued in December 1956. Chapter VI regulated government procurement. That Decree was ratified by Law 14,467 (1958), and the chapter mentioned was regulated in August 1972 by Decree 5720. Then, with approval of the Financial Administration Act by Article 137, it maintained in force Articles 55 to 64 of the Accounting Law, and Decree 1545/94 created the National Procurement Office as the governing body of that system.

⁵⁵ Created under the Communications Media Secretariat of the Presidency by Decree 2507/02.

development of journalism services and the News and Advertising Agency (*Agencia de Noticias y de Publicidad*).

During the 1990s, most of these enterprises that were engaged in providing public services were transformed into corporations and were privatized. In recent years, new business forms have emerged with other characteristics, which we shall call "State Corporations" (*Sociedades Anónimas del Estado*), such as the Post Office (*Correo Oficial de la República Argentina S.A.*)⁵⁶. These are governed by Law 19,550 and are "transitional companies", with a new legal regime and more than one owner, but all are State-controlled. The intention is to re-privatize them. Other examples include LAFSA, Banco Entre Rios, and more recently AySA⁵⁷ (although here the government ownership option appears to be final) and the *Empresa Argentina de Soluciones Satelitales Sociedad Anónima (AR-SAT, "Argentine Satellite Solutions Enterprise")*.⁵⁸

Provincial Procurement Systems

Argentina has a federal form of government, which means that power over the territory is divided between a central administration and a series of local administrations.

Consistent with Article 5 of the national Constitution, each province enacts its own constitution and its own local laws in all matters that have not been delegated to the federal government. Consequently, each province regulates the procurement and contracting regime that its various branches of government are to apply.

I. SYSTEMS OF THE NATIONAL EXECUTIVE BRANCH

Openness, equity and efficiency in Delegated Decree 1023/2001

Article 3 of Decree 1023/01 establishes the characteristics that must be observed in the management of procurement and contracting by the public administration, namely openness, equity and efficiency, as analyzed below.

According to that Article, the general principles that must govern procurement from the outset to finalization of the contractual relationship, and which form the basis for interpreting any question arising therefrom, are the following:

- The project must be reasonable and the procurement process efficient enough to serve the public interest and to achieve the expected results.
- Interested parties must be encouraged to bid, and there must be competition among bidders.
- Procedures must be transparent.
- The process must be advertised and publicized.

⁵⁶ Decrees 1075/03, 721/04, 635/05, and 1785/05 provided for the government to take over the service temporarily, and that status has been successively extended until today.

⁵⁷ Decree 304/2006.

⁵⁸ Created by Law 26,092, and regulated by the Business Corporations Act.

- Public officials who authorize, approve or manage procurement are liable for their actions.
- All interested parties and all bidders must be treated equally.

Article 8, as regulated by articles 10, 11 and 12 of Decree 436/2000 institutes a consultative procedure known as *tramite de las observaciones* (roughly "call for comments") whereby, before the call for tenders is published, the proposed specific terms and conditions are to be made available for public comment, for a specified period of time, and the procurement system is to include a prior step wherein interested parties can analyze the bidding documents. This "call for comments" may be used for contracts involving large amounts and complex objectives. Comments may relate to technical as well as financial, administrative and legal aspects.

This measure is designed to enlist the cooperation of all sectors in preparing the draft procurement documentation, so as to ensure not only that they are technically satisfactory but also that interested parties may advise the administration of any clauses that would undermine the essential principle of competition.

In this respect, Article 9 of the Decree allows for real and effective community participation and social control over government procurement, with a view to guaranteeing transparency and openness.

Moreover, Article 10, the so-called "anticorruption clause", prohibits the offer or gift of inducements, and any individual or business related to procurement management at any step may be held liable under this clause. The Law in fact treats as an act of corruption any illicit conduct regardless of the outcome or the intention to obtain a benefit. Thus it penalizes not only the act of corruption but also the attempted act.

Among the active subjects of such conduct are public officials and employees as well as those who have indirectly committed the acts mentioned on behalf of a contractor, as representative, administrator, partner, attorney, manager, factor, employee, business agent, trustee, or any other physical or legal person.

With respect to the penalty, the Law provides that the delivery or offer of money or any inducement to the competent officials to perform or desist from performing any act relating to their functions in connection with that procurement is grounds for rejection of the bid or cancellation of the contract, if already signed (see Article 10).

Article 18 provides that proceedings must be revoked if it is demonstrated that the requirements of prior advertising and publicity have not been fulfilled or that clauses are included that would favor a given party or bidder.

In order to prevent the drafting of "directed terms and conditions", the above-mentioned Article calls for revocation of the procurement procedure if the terms and conditions have been prepared in a manner that is "directed" towards one or several physical or legal persons, and that would thereby eliminate or unreasonably restrict competition, which is

an inherent principle in government procurement. The Law describes such behavior as the act of formulating or including technical specifications or contractual clauses in the tender documents by persons responsible for managing an agency's procurement of goods and services.

Article 19, which finds its precedent in Article 62 of regulation 436/00, broadens the concept of social control to authorize any person who can demonstrate a legitimate interest in the action to observe all stages, from the beginning of the process until the contract is completed, with the exception of the bid evaluation stage.

Notwithstanding this facility, bidders may also challenge the final documents, pursuant to Law 19,549 on Administrative Procedures.

Finally, with the Amendment to Article 7 of Law 19,549 and the "direct" application of the provisions of the administrative acts regime to administrative contracts, such contracts are now covered by the safeguards of validation and nullification.

With respect to advertising and publicity as guarantees of transparency in public procurement, in addition to the wording of Article 32, we may note that, as a logical corollary of publicizing government acts, any individual has the right to access administrative information and documentation.

i) Procurement systems with and without public tenders

With respect to the selection of suppliers, Article 24 of the above-cited Law establishes the general principles that this should be done through public bidding or competition, and that selection may be made via public auction or private tendering or direct contracting only under the specific assumptions of Article 25. Exceptional procedures of this kind may only be used, then, when one of the established requirements is met.

The procedure to be used is determined as follows:

- a) Public bidding or public competition. Because they constitute the general rule, they may be used in any case, but they are mandatory if the estimated amount of the procurement exceeds \$300,000.⁵⁹
- b) Private tendering. When the amount of the contract is less than \$300,000, and the call for tenders is addressed to entities registered in the SIPRO, notwithstanding which bids from uninvited entities will also be considered.
- c) Direct contracting. This procedure is used in exceptional cases when it would be impossible to hold a public tender. Note that, under nearly all circumstances (as described specifically below), the rule requires that at least three regular suppliers be invited, except in cases where the nature of the exception (e.g. exclusivity, speciality, sole supplier) makes this unfeasible:

⁵⁹ Article 22 of the Annex to Decree 436/00.

1. When the amount of the transaction does not exceed \$75,000.
2. For the performance of scientific, technical or artistic works that must be entrusted to firms, artists or specialists that are unique in their field (specialty).
3. The procurement of goods and services that may be sold only by certain authorized persons, or a single individual or company, provided there are no reasonable substitutes. A trademark does not by itself provide grounds for exclusivity. (Exclusivity).
4. Where the bidding or competition has been declared void or aborted.
5. When objectively demonstrated reasons of urgency or emergency prevent the use of another selection procedure (this must be documented in the file).
6. When the National Executive Branch has declared the operation secret for reasons of national security or defense (an exceptional power that cannot be delegated).
7. Repairs to machinery, vehicles, equipment or motors.
8. Contracts signed by jurisdictional entities of the federal government among themselves or with provincial or municipal agencies or those of the Autonomous City of Buenos Aires, where the purpose of such services relates to security, logistics or health (interagency contracts).
9. Contracts signed between jurisdictions and entities of the national government and the national universities.
10. Contracts that, with prior notice to the Ministry of Social Development, are signed with individuals or businesses registered in the Registry of Local Development and Social Economy (Contracts of the Ministry of Local Development and Social Economy).

Direct contracting may be used only where one of the above grounds can be demonstrated.

ii) Governing authorities of the systems and control mechanisms

Governing body

The National Public Sector Procurement System was created in 1994 by Decree 1545, to establish policies and rules for the effective and efficient procurement of goods and services. Its governing body is the National Procurement Office (*Oficina Nacional de Contrataciones*, ONC),⁶⁰ which proposes policies and establishes rules, systems and procedures governing the management of procurement; disseminates, trains and advises

⁶⁰ The purpose of the ONC is detailed in decrees 1545/1994 and 624/2003 and in Resolution 20/2004 of the Head of Cabinet.

the agencies involved in the process; and prepares and organizes procurement statistics and information, which it makes available to the various participants and to the general public.

Control mechanisms

Article 3 of Law 24,156 on Financial Administration and Control Systems of the National Public Sector indicates that control systems include internal and external control structures in that sector, which is taken to include the Central Administration, Decentralized Agencies, and Social Security Institutions; State-Owned Enterprises and Companies; Inter-State Entities; the National Universities; the Trust Funds; other entities that, while belonging to the National Nonfinancial Public Sector are not State-owned enterprises or companies and are not included in the national budget; and by the National Financial Public Sector, which consists of the official banking system and other public financial institutions.

Article 7 provides that the Federal Inspector General's Office (*Sindicatura General*, SIGEN) and the Federal Auditor General's Office (*Auditoría General*, AGN) shall be the governing bodies, respectively, of the internal and external control systems.

Article 116 created the Federal Auditor General's Office as the external control body for the public sector, reporting to Congress. It began operations in 1993, and was enshrined in the amended Constitution of 1994, Article 85 of which makes the AGN responsible for “control over the legal aspects, management and auditing of all activities of the centralized and decentralized administration, however organized, as well as the other functions granted it by law”.

The AGN is defined as a technical advisory body of Congress, with functional autonomy, comprised as established by the law regulating its creation and operation, which must be approved by an absolute majority of the members of each house.

With respect to its functions, it exercises external oversight over the information and control systems; the efficiency and effectiveness of programs and operations; proper compliance with prescribed regulations and policies and/or reasonable standards for financial statements and performance reports designed to reveal current conditions and the results of past operations of an agency or program.

In particular, for auditing agencies' procurement, the AGN performs a series of tasks such as examining the organic structure, missions and assigned functions, operations management, and applicable legislation; verifying the existence of and respect for annual procurement plans, as well as the administrative process for acceptance and payment. At a second stage, it is required to select a sample of documents, which must be as representative as possible.

With respect to internal control, Law 24,156 (Article 86) created the Federal Inspector General's Office (SIGEN), as the internal control body reporting to the National

Executive Branch, which exercises disciplinary and ex-post control over the procurement of goods and services within the context of that law.

In pursuit of these activities, a number of internal audit units have been created within each jurisdiction, and their work is coordinated technically by the SIGEN. Those units issue reports on their inspections, with observations and recommendations that must be transmitted to the agencies audited. The observations will relate to any departures from the rules or from reasonable practice detected during the analysis of procurement issues. At the same time, the auditor may make recommendations to correct any shortcomings detected and to improve the systems and management reports, and thereby enhance the efficiency and effectiveness of the agency and of its internal control mechanism.

The Anticorruption Office was created by Law 25,233 (Article 13), within the Ministry of Justice and Human Rights, and its powers and attributes are set forth in Articles 26, 45 and 50 of Law 24,946.

As noted in the introduction, Decree 1023/2001 marked an important step toward transparency in government procurement. In this respect it must be recalled that its text resulted from a "participatory rule-making procedure" organized jointly by the Undersecretary of Public Management of the Head of Cabinet and the Anticorruption Office.

Decree 102/99 (articles 2.i and 12.c) establishes the powers and functions of the Transparency Policy Planning Division of the Anticorruption Office. These include advising government agencies on the implementation of policies and programs for preventing acts of corruption.

Prevention has focused on generating mechanisms and tools to foster transparency in public decision-making, with a view to creating, maintaining and strengthening procurement systems that are consistent with the principle of transparency, and enhancing the efficiency and quality of procurement management.

In particular, the Anticorruption Office oversees procedures for the procurement of goods and services financed from different sources and governed by different rules. In going about this work, staff of the procurement area of the Office's Transparency Division analyze the terms and conditions documents and make suggestions and recommendations, stressing in particular the aspects of openness and publicity that will achieve the greatest possible degree of competition, as well as the clarity and objectivity of the evaluation criteria contained in that documentation.

The procurement system governed by Delegated Decree 1023/01 is subject to various control mechanisms, relating primarily to price, advertising, IT standards, and social security and tax obligations. Decree 856/98 establishes a series of technological policies relating to computerization and electronic communications, considering the impact of these technologies on administrative systems and the economic cost of acquiring them. It empowers the Public Service Secretariat to intervene and advise on projects for

purchasing or leasing computers and electronic communication goods and services in the national administration, centralized and decentralized, before tenders are called, so that a proper evaluation can be made. Finally, it establishes criteria for exemption from such intervention, including limitations on amounts and types of technology.

We must also mention the National Technologies Office, which is responsible for preparing and updating technological standards governing the public administration's procurement of computer equipment.

When it comes to control over taxation, customs and social security obligations, bidders must obtain a Tax Certificate for Contracting, issued by the national tax collection office, the Federal Administration of Public Revenues. This is required of all bidders other than public agencies that participate in procurement procedures conducted under Decree 1023/01, where the amount of the bid exceeds \$50,000. As a condition for obtaining the certificate, applicants must not be in arrears on their obligations to the taxation, customs or social security systems, and must not have been convicted of past violations of these aspects.

With respect to control over the prices paid by contracting agencies, Resolution 79/2005 of the Inspector General's Office, regulating the final portion of Article 26 of Decree 558/1996, requires that purchases and contracts negotiated by ministries, secretariats and decentralized agencies must be assessed against the "benchmark price" (*Precio Testigo*) system maintained by the Inspector General's Office. That system uses a survey of market prices, cost structures, and market conditions to determine values and parameters that jurisdictions must observe to ensure that they make efficient use of their allocating resources.

The Decree also establishes a procedure for procurement based on price ceilings or reference prices, which requires presentation of the bidding terms and conditions and documented evidence that such prices have been obtained. The control body must issue a report containing sufficient analysis and elements of judgment to assess the documentation and sources used by the contracting agency to determine the ceiling or reference price, as well as clarifications and adaptations to the methodology used.

iii) Register of pre-approved contractors

The Centralized Public Administration has a Supplier Information System created by Article 137 of Decree 436/2000, which is administered by the National Procurement Office and is intended, among other things, to centralize information on suppliers as provided by the procurement units.

The system may be considered a negative safeguard, since it does not "approve" suppliers, but rather bans those that have been sanctioned from doing business with the government.

To join this system, suppliers must submit with their bid data on the firm, its corporate charter and amendments, the persons responsible for its administration, its latest financial statements, a list of its principal clients for the last three years, and sworn statements of eligibility to contract and of litigation with the national government. When registration is requested by a natural person, the requirement to submit corporate documentation is waived. Such information is different in the case of cooperatives, mutual societies, public agencies, and business groupings.

In the absence of a clear rule, doctrine has held that if any bidder declares that it is involved in litigation against the national government, that circumstance may not be taken as grounds to disqualify the bid, since the bidder can still exercise the right of defense.

The required documentation must be presented only once, either when submitting bids in any of the jurisdictions subject to this procurement regime, or through the pre-registration procedure described in the preceding paragraph. The contracting agencies are responsible for updating information reported by suppliers.

The Decree provides that, when submitting substantiating documentation with a bid, any formal defects may be corrected within five days after notification by the Evaluation Commission. Otherwise, the bid may be rejected, and the bid guarantee forfeited.

In order to encourage competition, the rules also allow bidders to submit offers even if they were not previously included in the system, but it will still be necessary to demonstrate that the supplier is registered in the system before the contract is awarded.

It should also be noted that the web site of the National Procurement Office offers a procedure for pre-registration whereby any party can register in the system and present itself as a supplier to the national government before submitting a bid. The main feature of this procedure is its simplicity: in effect, it offers an efficient alternative for both individuals and companies. To this end, interested persons must complete the pre-registration forms with their basic data; this will be subsequently confirmed, and they will then be eligible to bid for the first time in tenders called by the national government. When the bids are opened, the contracting agency will verify the documentation submitted by the pre-registered bidder who, if approved, will then become a registered supplier in the Government Supplier Information System.

With respect to noncompliant suppliers, the National Procurement Office receives from each agency's head of financial administration services all administrative acts ordering the revocation of awards and the cancellation of contracts on grounds of supplier noncompliance. On the basis of this information, the governing body may impose on individuals or companies two classes of sanctions, suspension or disqualification, depending on the severity and number of violations. A supplier who is disqualified or suspended may not be awarded new contracts with the national public administration, but is not thereby prevented from completing contracts already underway. Unless there are

grounds to the contrary, suppliers sanctioned in this manner are automatically reinstated after five years.

iv) Electronic methods and information systems for government procurement

Decree 1023/01 establishes the publicity requirements that must govern selection procedures. Calls for public tender must be published for two days running in the Official Gazette, at least 20 days before the date for the opening of bids. That period of time will be extended by reason of the size or complexity of the procurement contract, or when other circumstances make this necessary, and it will also be extended for international bidding, in which case notice must be published in the respective foreign countries.

In the case of government tenders where the amount exceeds 5 million pesos, advertisements must be published in private newspapers of major circulation within the country.

The existing rules require the publication of calls for tender and the associated draft terms and conditions on the web page of the National Procurement Office at the same time as advertisements are placed, or when invitations are issued.

As well, contracting agencies must send communications to associations representing potential suppliers, manufacturers and vendors.

Contracts negotiated within provincial or municipal jurisdictions must be published at the official site of such jurisdiction.

Finally, there is the option of sending invitations to regular suppliers or to those who because of their importance must be made aware of the tender in the case of private bidding and certain exceptions stipulated for direct contracting are compulsory, in addition to the requirement of publication in the news bulletin of each contracting agency. [*Translator's note: some words may be missing in this sentence/paragraph.*]

v) Public works contracts

Although Title 1 of Decree 1023/01 applies to the Public Works Law 13,064, this constitutes a procurement system in its own right, and the reader is referred to the analysis of that system in particular.

vi) Identification of the selection criteria for contractors

Article 15 of Decree 1023/01 establishes bid selection criteria and provides that the bid that is most favorable to the contracting agency must be selected, with due regard to price, quality, suitability of the bidder, and other conditions of the bid.

That Article explains further that, in the case of a good or service that is standard or in common use, the technical characteristics of which can be unequivocally specified and identified, the most favorable bid will be deemed, in principle, to be the one offering the lowest price.

When it comes to preferences, existing rules require that priority be given to the procurement of goods of national origin. Law 25,551, the "Buy Argentina Law", provides for a 5% margin of preference for domestic suppliers when comparing bids of identical quality and terms, and that margin is increased to 7% in the case of small and medium-sized enterprises.

In other words, there are two main systems governing the selection of government contractors: the lowest price system, which can be applied automatically, and the most advantageous offer, which involves an assessment of how best to serve the public interest.

With respect to the legal nature of the concept of "most favorable bid", we are in effect dealing with so-called "indeterminate legal concepts", which empower the judge responsible for overseeing administrative activity to select the bid he deems most favorable.

For the proper application of an "indeterminate legal concept", for example to determine what is "the most favorable bid", the administration must resort to "criteria of value or experience". What we have, then, is a "process of judgment or estimation",⁶¹ and it admits nothing more than a fair solution. That is to say, there is a margin for interpretation, but not for discretion. Thus, the task of integrating an indeterminate legal concept requires a judgment of appropriateness which will lead via that rule to the desired solution. This incorporates the concept without prejudging its result, but keeps it unique and certain. [??Translator is stumped by this sentence].

Thus, the most advantageous bid is the one that contains the most favorable price, while respecting scrupulously the requirements, demands or specifications of the terms and conditions.

On another point, it must be noted that the terms and conditions contain precise rules of award,⁶² since in approving them the administration will have already decided which items will be determinant.

⁶¹ GARCIA DE ENTERRIA, Eduardo, "La lucha contra las inmunidades del poder", p. 35, Ed. Civitas, Madrid, 1979

⁶² Article 21 of the Standard General Terms and Conditions for the Procurement of Goods and Services by the National Government, approved by Resolution 834/00 of the Ministry of Economy. "Award. The award shall go to the bid that is most favorable to the contracting agency, bearing in mind the price, the quality, the suitability of the bidder and the other conditions of the bid; the purchase order must be issued within the time limit for maintenance of bid, and the contract must be finalized upon notification of the award to the winning bidder. In the case of a good or service that is standard or in common use, the practical characteristics of which can be unequivocally specified and identified, the most favorable bid will be deemed, in principle, to be the one at the lowest price."

The Evaluation Commission

This commission is responsible for the comprehensive evaluation of bids submitted, and for issuing a non-binding opinion that will give the competent authority the basis for issuing the award.

Such commissions are established ad hoc, and must have at least three members. The commission may appoint a technical expert or it may consult specialized agencies when the complexity of the matter so requires.

Decree 436/00⁶³ provides that the commission shall consist of:

- The manager of the contracting unit.
- The head of the program or project execution unit.
- An official appointed by the agency.

Finally, when the complexity or the length of the contract so requires, the public bidding or competition must be conducted according to the multiple stages procedure,⁶⁴ allowing the government to perform an initial qualification of bidders on the basis of their legal capacity, technical suitability and financial strength, before moving on to an evaluation of the economic offer.

vii) Ways to challenge a selection

Article 30 provides that regulation must determine which actions are subject to observations or challenges, the procedure to be followed with them, and the requirements for their formal acceptance.

The regulation (Decree 436/2000) to which this Article refers establishes the following grounds for observations and challenges:

- Stage prior to publication of the call for tenders (Articles 10 and 11).
- General observations and challenges (Article 48).
- Challenges to the evaluation report (Article 80).
- Observations on envelope “A” in multiple stage proceedings (Article 106)
- Challenges to prequalification, also in multiple stage proceedings (Article 108).

Articles 10, 11 and 12 provide for a consultative procedure known as *tramite de las observaciones* (roughly "call for comments") whereby, before the call for tenders is published, the proposed specific terms and conditions are to be made available for public comment, for a specified period of time, and the procurement system is to include a prior step wherein interested parties can analyze the bidding documents. This "call for

⁶³ Article 77.

⁶⁴ Article 26, Decree 1023/01.

comments" may be used for contracts involving large amounts and complex objectives. Comments may relate to technical as well as financial, administrative and legal aspects. This approach allows for prior control by private stakeholders in the system.

Secondly, the same Article of Decree 1023/01 provides that any action taken (an observation or challenge) that is not in accordance with government procurement regulations will not suspend the effects of the act in question, and must be processed separately from the respective file.

This solution is consistent with Article 12 of the Law on Administrative Procedures, according to which the filing of appeals does not suspend the execution or the effects of the act, except where legislation expressly provides otherwise.

Article 36, by amending Article 7 of the Law on Administrative Procedures and thereby making Title III of the Law directly applicable to contracts, licenses, and administrative concessions, authorizes challenges against the final terms and conditions of tenders as well as the administrative acts relating to signature, execution, amendment or termination of contracts, in accordance with the Law 19,549⁶⁵ on Administrative Procedures and its Regulatory Decree 1759/1972.

Thus we have noted that the general tender clauses have a regulatory nature,⁶⁶ and any challenge to them must take the form of the so-called "*reclamo impropio*" referred to in Article 24 (a) of the Law on Administrative Procedures, or if appropriate it must be pursued through the appeal channels against any particular acts of application. Particular tender clauses have the nature of administrative acts of particular scope, and as such can be challenged through the administrative appeals system.

b) Objective results obtained, including any available statistical data

The following statistics are available on procurement effected through the system established by Decree 1023/01 and reported to the National Procurement Office:

Table. Use of Procurement Procedures in 2003, 2004 and 2005, by the Number of Procedures Conducted⁶⁷:

Type of Procedure	2003		2004		2005	
	Number of procedures	%	Number of procedures	%	Number of procedures	%
Direct Contracting	5,918	67.11	18,410	71.45	22,054	71.50
Private Competition	225	2.55	49	0.9	49	0.16
Public Competition	33	0.37	6	0.02	13	0.04
Private Bidding	1,578	17.89	4,210	16.34	5,518	17.89

⁶⁵ Law 19,549, Title IV, "Judicial Challenge to Administrative Acts".

⁶⁶ CSJN, Decisions 316-2:3157.

⁶⁷ Source: "Cantidad de procedimientos por tipo" 2003, 2004 y 2005, Oficina Nacional de Contrataciones, <https://www.argentinacompra.gov.ar/prod/onc/p8081/estadisticas/GrafEst/COMAPRHIS2003.gif> and <https://www.argentinacompra.gov.ar/prod/onc/p8081/estadisticas/GrafEst/COMAPRHIS2004.gif> and <https://www.argentinacompra.gov.ar/prod/onc/p8081/estadisticas/GrafEst/COMAPRHIS2005.gif>

Public Bidding	1,064	12.06	3,092	12.00	3,209	10.40
Public Auction	1	0.01	0	0.00	1	0.00
Total	8,819	100	18,567	100	30,844	100

Table. Use of Procurement Procedures in 2004 and 2005, by the Volume of Expenditure⁶⁸.

Type of Procedure	2003		2004		2005	
	Billions of pesos	%	Billions of pesos	%	Billions of pesos	%
Direct Contracting	244	40.92	363.1	34.80	568.7	36.6
Private Competition	2,4	0.42	1.1	0.11	2.1	0.13
Public Competition	8	1.33	0.8	0.70	35.2	2.27
Private Bidding	68	11.38	127.4	12.21	168.6	10.85
Public Bidding	274	45.96	551.1	52.81	778.9	50.14
Public Auction	0	0.00	0	0.00	0.0	0.00
Total	596.3	100	1.043.5	100	1,553.5	100

Number of State suppliers⁶⁹:

	2003	2004	2005
Number of State suppliers	3667	4716	5890

Number of suppliers sanctioned⁷⁰:

Historically	21
Suppliers currently under sanction	18
Total	39

PUBLIC WORKS

Questions 2.a) i. to vii.

As noted above, it must be recalled that Decree 1023/01 affects Law 13,064, the National Public Works Law, in two different ways:

a) The broader and more important aspect has to do with applicability of Title 1 of Decree 1023/01 to all matters except those excluded by prescriptions of the specific body

68 Source: "Montos de O.C. por tipo de procedimiento" 2003, 2004 y 2005, Oficina Nacional de Contrataciones, <https://www.argentinacompra.gov.ar/prod/onc/p8081/estadisticas/GrafEst/COMPROHIS2004.gif> and <https://www.argentinacompra.gov.ar/prod/onc/p8081/estadisticas/GrafEst/COMPROHIS2003.gif> and <https://www.argentinacompra.gov.ar/prod/onc/p8081/estadisticas/GrafEst/COMPROHIS2005.gif>

69 Source. "Situación jurídica de la cartera de proveedores" 2004 y 2005, Oficina Nacional de Contrataciones, <https://www.argentinacompra.gov.ar/prod/onc/p8081/estadisticas/GrafEst/PROJURHIS2003.gif> and <https://www.argentinacompra.gov.ar/prod/onc/p8081/estadisticas/GrafEst/PROJURHIS2004.gif> and <https://www.argentinacompra.gov.ar/prod/onc/p8081/estadisticas/GrafEst/PROJURHIS2005.gif>

70 Source of information: Reply from the ONC sent in writing to the OA in June 2006.

under examination, which means explicitly renewing the general principles governing the procurement and concessions of public works (Law 17,520 and amendments), introducing express provisions on transparency, anticorruption and contractual procedures control, as well as procedural formalities and the powers and obligations of the parties, among the main provisions. While there are no major changes to the bid selection rule ("most favorable bid", LNOP Article 18 and Decree 1023/01 Article 15), there are many changes to its configuration and a limitation is introduced with respect to disqualifying antecedents of any kind, provided they are found in a database of public agencies (Article 16, Decree 1023.01, "Eligibility") and independent of specific aptitude (Standard Regulations for Public Works Constructions, LNOP Articles 13 and 20 and regulatory provisions), such as lack of the Tax Certificate for Contracting (General Resolution AFIP 1814/05 and Circular ONC 18).

b) Other specific modifications affected the exemptions to public bidding (LNOP Article 9, pursuant to Article 33, Decree 1023/01), in particular with respect to the terminology and lack of definition of amounts (variables to be regulated by the NEB)

In analyzing the provisions, and in light of Article 1, we find that "public works" is defined very broadly to mean any construction, work or industrial service that is publicly funded. Here we must note that subsidies must be interpreted in abstraction from their scope of application, in light of the frequent use that is made today of external financing sources, and even of trust funds created by the "special laws" indicated in the original text.

At the present time there is no special contractual regime covering military constructions.

The competition rule established in Article 2, then, is today reflected in successive delegations to the Minister of Federal Planning, Public Investment and Services and the Secretary of Public Works, within the scope of that portfolio.

Article 4 makes it mandatory, before issuing any call for tenders, to prepare the project and its respective budget, including the terms and conditions, and even the text of the contract to be signed "in case of direct contracting", although usage has extended its inclusion in a generalized manner. Its final paragraph already accepted at that time the "comprehensive project tenders" that are common today.

As a unique feature of this contract, Article 5 outlines three contracting (i.e. bidding) systems: unit of measure (or detailed itemization); total price; and "cost plus" (*coste y costa*), use of which is restricted to cases of justified emergency or demonstrable advantage.

Article 7 made explicit the obligation to have a legally constituted credit reserved within the corresponding budgetary items, something that is the general rule today for all expenditures by jurisdictions and entities of the national government, pursuant to Articles 32, 33, 35 and 36 of Law 24,156, the Financial Administration and Management Control Act.

Article 9 establishes the general procurement principle of public bidding (text according to Article 33, Decree 1023/01), taken in concordance with the current Article 24 (1) of Decree 1023/01 and goes on to enumerate various exceptions that justify direct contracting, supplemented *mutatis mutandis* with the lists in Article 25 (d) of the Delegated Decree.

With respect to advertising as required in the public Works Law, Article 10 provides that public tenders must be announced in the national Official Gazette and in a similar publication of the provincial or territorial government where the work is to be executed. Bearing in mind the funds involved in public works, a special publication system was established, depending on the amount of the budget, which is progressively updated. The following table illustrates the timing and duration of publication, according to current regulations:

Budgeted amount	Days in advance	Publication run (days)
Up to \$110.000	5	5
From \$110.001 to \$260.000	15	10
Over \$260.000	20	15

Also peculiar to this regime is the signature of a contract (Article 21) instead of a purchase order or similar formula.

The procedural rules, their *intuitu personae* (Article 23) and nontransferable nature, the prerogatives of direction and control (articles 27 and 28), the *ius variandi* (articles 29 and 30, plus the limitation of Article 53) show similarities, except as to timing and concepts, to the rules of articles 12 and 13 of Decree 1023/01.

As particular features of this contract, we may also indicate the provisions on materials (articles 32 and 33), suspensions and delays, whether or not they result in fines or penalties (articles 34 and 35), the safeguarding of employee wages (Article 36) with respect to unforeseen disruptions in the progress of work and/or certification and payment.

We should also note the liability of the contractor with respect to proper interpretation of the plans and their defects (Article 26), improper use of patented materials, construction systems or instruments (Article 27), maintenance of quoted prices, which cannot be changed for error or omission on the contractor's part (Article 37), the inability to claim for losses or damages caused by the contractor's fault (Article 39), maintenance of the surety bond given to the administration pending final approval of the works, and reparations for damages and injuries caused (Article 44), and the prohibition on claims for interest for delays caused by the contractor (Article 48).

It is useful here to point out that, notwithstanding the continuing prohibition on indexation of debts in public contracts (see Articles 18 and 19 of Law 25,561), Article 48 still includes (despite the replacement by Article 8 of Law 21,392) the right to claim interest at the BNA rate for discounts on work certificates occasioned by payment delays. Decree 1295/2002, which established the "methodology for recalculating contract prices for public works" and its amendments deserve separate examination.

With respect to provisions for ensuring transparency in procurement, in addition to all the pertinent rules of Decree 1023/01, we may indicate the following with respect to the subcontracting of administrative contracts:

Decree 1023/01 prohibited transfer or subcontracting without express authorization of the administrative agency. This legal principle is not new: it reflects traditional doctrine.

Similarly, Law 13,064 provides for cancellation through the fault of the co-contractor, when the latter transfers the contract wholly or in part, associates with others for the construction, or subcontracts with a prior authorization (Article 50 (d)).

This safeguard is intended to avoid vitiating the selection procedure through transfers to persons who do not meet the suitability requirements of the original award.

Finally, Chapters VIII (Articles 49 to 54) and IX (Articles 55 to 58) round out the law with provisions on cancellation and the establishment of administrative jurisdiction for all questions relating to its interpretation or execution, unless submitted to arbitration by mutual agreement.

II. SYSTEMS OF THE NATIONAL LEGISLATIVE BRANCH, THE NATIONAL JUDICIAL BRANCH AND THE ATTORNEY GENERAL'S OFFICE

The systems established by Articles 55 to 64 of the National Accounting Act, regulated by Decree 5720/1972, applies to purchases and contracts by the Chamber of Deputies, the National Judiciary and the Attorney General's Office (*Ministerio Público*).

The Senate applies Decree 1023/01, regulated by the Decree of the President of the Senate, as explained in the chapter on the system used by the National Executive Branch.

Decree 5720/72 (Article 55) provides that any purchase or sale on behalf of the Nation, as well as any rental, lease, work or supply contract, must as a general rule be preceded by public bidding.

In the administrative sphere, this list has been interpreted as merely indicative, and the public bidding rule was applicable for the selection of contractors under any type of contract signed by the government.

Nevertheless, the Supreme Court Justice has held that bidding is not mandatory outside the cases legally stipulated.⁷¹

The provisions of this regime governing openness, equity and efficiency include the following:

Directed terms and conditions. To prevent illegitimate favoritism towards a specific bidder, the regulations to Article 61 of the National Accounting Law (which declare that tender documents must promote competition) establishes (paragraph 32.b) that the respective contracting offices must prepare the terms and conditions by determining the characteristics, avoiding the detailed transcription of text from brochures, catalogs or informative budgets. If it is demonstrated that a call for tenders has been formulated with specifications or clauses that can be fulfilled only by a given person or entity, and is thus deemed to be "directed" in favor of particular situations, this will be grounds for immediate cancellation at the stage reached in the proceedings, which must start anew, and for immediate administrative action to determine liabilities.

On the other hand, section d) of that same paragraph of the regulation to Article 61 establishes the presumption of contract splitting on the part of officials who issued the respective authorizations, if contracts are awarded without prior justification to members of the same group within three months. Purchases of perishable goods constitute an exception to this rule.

In terms of the equity that must govern public procurement, the principle is that the administrative act must meet all the requirements of validity and effectiveness, as stipulated in paragraph 30, which details the requirements for initiating proceedings and declares that these must justify any request for goods or services other than the ordinary ones, or that tends to restrict competition among bidders. In other words, the law states clearly the need to substantiate any specification that could limit competition.

With respect to openness, Article 62 of the Accounting Law requires that the call for tenders must be published in the Official Gazette, in addition to any other media approved by the senior government authorities.

When the estimated amount of the contract exceeds \$5 million, the announcements must run for eight days, 12 days in advance of opening date. If the amount is below that ceiling, those periods are reduced to two days and four days respectively.

The regulations provide that announcements or invitations must clearly state the name of the tendering organization, the object of the contract, the place where the terms and conditions can be obtained or consulted, the place for submission of bids, and the day and time at which bids will be opened.

In addition, public tenders must be announced with the same advance notice and number of publications in the Official Gazette of the province in which the supply or service is to

⁷¹ "Meridian Versus General Ports Administration" case, April 24, 1979.

be affected, unless that province has no Official Gazette or if it will not be published during the advance-notice period, in which case the announcements will be made through a newspaper in the provincial capital.

All the time limits set here are deemed minimum thresholds, and consequently if the contract so merits, because of its importance or nature, or the number of items being tendered, or their overall or individual value, the advance-notice period must be extended, and notice must be published as well in newspapers of the capital city or of places where there are assumed to be interested parties, or via some other method of dissemination.

i) Procurement systems with and without public tendering

The regulation makes public bidding a general principle, but Article 56 establishes the following exceptions:

Contracts may be let:

- Through private bidding when the estimated value does not exceed \$1 million.
- At public auction, in the case of goods authorized by the competent authority, in accordance with jurisdictional regulations issued to that effect.
- Directly, in the following cases:
 - a) when the amount does not exceed \$100,000;
 - b) the purchase of real properties at public auction, if a maximum price has been set in advance;
 - c) secret transactions;
 - d) urgent transactions, when unforeseen circumstances make it impossible to wait for bidding;
 - e) aborted tenders or inadmissible offers;
 - f) scientific, technical or artistic works that must be entrusted to specialized firms or individuals;
 - g) goods of exclusive manufacture or sale, for which there is no substitute;
 - h) purchases or rentals that must be made in foreign countries, where bidding is impossible;
 - i) contracts between public entities;
 - j) a clear shortage on the local market for the goods to be acquired, as certified by the competent technical offices;
 - k) sale of perishable goods and items intended to foster economic activity in the country or to meet health requirements;
 - l) repairs to vehicles and motors; and
 - m) purchase of livestock by selection.

In all cases, if direct contracting is to be used, invitations must be sent to at least three regular suppliers, except where the nature of the exception makes this impossible (e.g., specialty, sole supplier).

The National Senate, through Article 32 of its regulations to Decree 1023/01, has incorporated this requirement specifically, indicating that "in direct contracting procedures, invitations must be sent through reliable channels to at least three suppliers registered in the list that the procurement office of the Senate must compile. Invitations will be sent simultaneously to all invitees, at least 10 days in advance."

iii) Register of pre-approved contractors

Government Supplier Registry. This is called for in the regulations to Article 61, where it is indicated that the List of Suppliers and Record of Sanctions must include all individuals or companies that do business with the government.

The National Chamber of Deputies has not mandated a Registry of suppliers, which means that any bidder may respond to a call for tenders if he meets the requirements set by Decree 5720/72.

As noted above, the Senate applies Decree 1023/01. It uses the Supplier Information System (SIPRO) run by the National Procurement Office of the National Budget Department of the Federal Executive Branch for crosschecking information on the status and situation of suppliers, for it has adhered to the system, pursuant to Article 12 of Decree P 632/02. Nevertheless, the Purchasing Office maintains a regularly updated Registry of suppliers in which it records any sanctions or penalties imposed.

iv) Electronic methods and information systems for government procurement

It must be noted that, as this regime is applied in different branches of government, the information systems for public procurement will vary.

For example, the Federal Chamber of Deputies (www.hcdn.gov.ar)⁷² publishes all calls for tender at its web page, including those for public bidding, direct contracting or other approach, and it is also possible to download the bidding documents and to consult the record of bid-opening proceedings.

As for the Senate, we mention it because it is part of the Legislative Branch, but as noted earlier it applies the system established in Decree 1023/01 for its procurement, and is therefore regulated by Decree of the Presidency 632/2002.

Nevertheless, it should be noted, with respect to public procurement information systems, that the Senate publishes its calls for tender at its web page, www.senado.gov.ar. The decisions qualifying the bids received in each procurement process may also be consulted there.

v) Public works contracts

⁷² Within this page, click on "Administracion/Licitaciones".

In the case of the Chamber of Deputies, the rules of Decree 5720/72 are used for minor works. For major works, Law 13,064 on Federal Public Works is applied, including its provisions for the registration of contractors.

The same is true of the Senate when it comes to public works, for it also applies Law 13,064, pursuant to Article 1 of Decree P 632/2002.

vi) Identification of the selection criteria for contractors

Article 76 of Decree 5720/72⁷³ requires the pre-award to go to the proposal that is most favorable to the contracting agency, with due regard to quality, price, suitability of the bidder and other conditions of the bid. In other words, price is only one among several elements to be borne in mind, and the most important consideration is the quality of the product.

The Pre-Awards Commission

In contrast to Decree 436/00 establishing the Evaluation Commission, Decree 5720/72 does not specify which officials must comprise this commission. It is ad hoc in nature and must have at least three members.

vii) Ways to challenge a selection

All administrative acts, whether relating to the pre-selection mechanism or to the final award, may be challenged through the channels offered at all levels by the federal law on administrative procedures.⁷⁴

Decree 5720/72, in regulating Article 62 of the Accounting Law, provides (paragraph 45.c) that specific clauses of the bidding documents must indicate the deadline for challenging the pre-award.⁷⁵

Paragraph 79 provides that interested parties may challenge the pre-award within the terms set in the specific clauses, which may not be less than three days after expiry of the terms set for the announcements.

Challenges are to be resolved by the authority responsible for approving the contract, before deciding the award. During this time all the steps that comprise the tender process

⁷³ Amended by Decree 827/88 which introduced the rule that price is only one component of the bid.

⁷⁴ Law 19,549 and the Administrative Procedures Regulation, Decree 1759/72 t.o. 1991 and its amendments.

⁷⁵ Paragraph 78. Pre-awards must be announced for at least three days running, in the case of public bidding; at least two days, in the case of private bidding; and at least one day in the case of direct contracting, except in the case of section c) of paragraph 3 of Article 56 of the law, in one or more visible places of the tendering agency's premises accessible to the public. The same procedure must be followed when the competent authority modifies the pre-award recommended by the pre-awards commission. In these cases it must expressly and properly advise the bidder whose pre-award has been modified. This advice must be given before the deadline for initiating the announcements.

must be made available for inspection by bidders. This point is particularly important for those bidders who are eliminated, for example, upon opening of the first envelope, for otherwise they would lose any possibility of participating further in the tender process, and their hopes of being selected would be definitively preempted at this moment.

III. SYSTEMS OF THE FEDERAL ADMINISTRATION OF PUBLIC REVENUES (AFIP)

Disposition AFIP 297/2003, "General Regime for the Procurement of Goods, Services and Public Works of the AFIP"

The Decree of Necessity and Urgency, 618/97 (BO July 14, 1997) established the organization and powers of the Federal Administration of Public Revenues (AFIP), pursuant to Decree 1156/96 (BO October 16, 1996), which created that body through the merger of the National Customs Administration and the General Directorate of Taxation.

The AFIP is an independent entity within the Ministry of Economy, and its organization and powers are set by Decree 618/97.

It is also the entity for executing federal taxation and customs policy and enforcing the corresponding legal rules. It has the functions and powers of the merged organizations referred to above, in addition to those conveyed by other provisions:

a) Application, receipt and supervision of taxes and other revenues governed by the respective legal provisions, and in particular:

1. Taxes on transactions executed within the national territorial and maritime limits, to which the national taxation power applies in whole or in part.
2. Taxes on the import and export of merchandise and other transactions governed by customs laws and rules that are or have been entrusted to it.
3. Social security revenues corresponding to:
 - i) The national retirement and pension systems for dependent or independent workers.
 - ii) Family subsidies and allowances.
 - iii) The National Employment Fund.
 - iv) Any other contributions that by law must be collected on the payroll.
4. Fines, charges, interest, guarantees and any other item emerging for any reason from the enforcement of legal provisions.

b) Control over international traffic in goods, pursuant to the respective legal provisions.

c) Customs classification and evaluation of goods.

d) All other functions that arise from its mission and those necessary for its internal administration.

The General Regime instituted by Disposition AFIP 297/2003 applies to all procurement procedures involving as a party the AFIP and its units with contracting powers.

The purpose of that regime is to ensure that works, goods and services may be obtained in a timely manner and at the least possible cost, and that the sale of goods may be made to the highest bidder, with the presumption that any contract is administrative in nature, unless by its characteristics it is subject to the rules of private law.

The general principles that must be observed in the management of procurement, and on the basis of which any procurement question must be resolved, are the following:

- a) The project must be reasonable, useful or necessary.
- b) The procurement process efficient enough to serve the public interest and to achieve the expected results.
- c) Interested parties must be encouraged to bid, and there must be competition among bidders.
- d) Procedures must be transparent.
- e) The process must be public.
- f) Public officials who authorize, approve or manage procurement are liable for their actions.
- g) All participants must conduct themselves correctly.
- h) All must be treated equally.

Each stage of the contracting process takes place in a setting of transparency based on advertising and publicity for the activities involved in applying this regime. Information technologies will be used to enhance the efficiency of proceedings and to facilitate access to information about all aspects of the selection process, thereby enabling social control (Article 10).

Demonstration that a call for tenders has omitted the requirements of prior advertising and publicity in cases where those requirements apply, or that specifications or clauses have been formulated that could be met only by a given party or bidder, and are thus deemed to be "directed" in favor of particular situations, this will be grounds for immediate cancellation of the procedure, at whatever stage it has reached. (Article 16)

The modalities of the process of selection or execution of the contract will be determined by one or more of the following circumstances, notwithstanding others not expressly stated:

- a) Contribution to meeting the objective of Article 4 9a) of Law 24,156 with respect to economy, efficiency and effectiveness in the use of public resources.
- b) Characteristics of the goods or services to be procured.
- c) Marketing conditions and market configuration (Article 25 (1)).

i) Procurement systems with and without public tenders

Selection procedures (Article 21):

Public bidding. When the call for tenders is issued to an indeterminate number of possible bidders with the capacity to commit themselves; applicable when the estimated amount of the procurement exceeds the minimum established for such purpose in this regulation, without prejudice to the other requirements in the bidding documents.

Public auction. This may be used in the following cases:

1. Purchase of movable and immovable properties and/or livestock.
2. Sale of property of the AFIP.

Private bidding. This refers to goods where a limited group of bidders is invited, and is used in the following cases:

1. When the expected amount of the contract does not exceed that established in the valid jurisdictional regime.
2. When there are demonstrated objective grounds of urgency or emergency that would make it impractical to use a different selection procedure.

Direct contracting: this is used in the following cases:

1. When a tendering procedure has been declared canceled or void.
2. For the performance of scientific, technical or artistic works.
3. The provision of technical or professional services.
4. The procurement of goods or services that may be sold only by certain authorized persons, or that belong to a single individual or company, and/or there are no reasonable substitutes.
5. When there are demonstrated objective grounds of urgency or emergency that would make it impractical to use a different selection procedure.
6. When the federal administrator has declared a procurement transaction secret for reasons of security.
7. In the case of repairs to machinery, vehicles, equipment or motors.
8. Contracts with public jurisdictions, entities and agencies.
9. When the amount of the contract does not exceed that established in the valid jurisdictional regime for this type of procurement.

iv) Electronic methods and information systems for government procurement

1. Electronic procurement. Procurement covered by this regime may be done with a digital medium and signature, using the corresponding selection procedures and modalities, and digital notifications and signatures are deemed valid in procedures regulated by the framework law.

Electronic documents, digitally signed in accordance with applicable legislation, will have the same legal force as paper documents signed by hand, and will be considered as a means of proof for the information contained therein.

All calls for tender, regardless of the selection procedure used, are to be published over the Internet or any successive electronic medium of equal scope.

To give effect to the principle of transparency, calls for tender, the draft terms and conditions that the jurisdictional authority submits for public consideration, the terms and conditions themselves, the awards, and the purchase orders are all disseminated via the agency's web site, www.afip.gov.ar.

vi) Identification of the selection criteria for contractors

The award must go to the bid that is most favorable for the AFIP, taking into account price, quality, suitability of the bidder, and other conditions of the bid.

In the case of a good or service that is standard or in common use, the technical characteristics of which can be unequivocally specified and identified, the most favorable bid will be deemed, in principle, to be the one at the lowest price.

vii) Ways to challenge a selection

Bidders may challenge the award within five days after it is notified, and must deposit cash equivalent to 5% of the value of their bid, which will be returned to the challenger if the challenge is favorably received, and will be forfeited if the challenge is denied.

The challenge will be resolved by the appropriate jurisdictional authority. If it is denied, the Federal Administrator may be asked to review that decision within five days, without the need for any additional deposit.

In no case will the challenge or the review have suspensive effect, notwithstanding the possibility that AFIP may suspend the procedure for reasons of timing, merit or convenience, by a substantiated decision.

Once the administrative channel has been exhausted, bidders may use the procedure of Article 94 of the Regulation on Administrative Procedures⁷⁶, i.e. appeal to a higher body (*alzada*), or judicial action, at the option of the interested party.

IV. NATIONAL INSTITUTE OF SOCIAL SERVICES FOR RETIREES AND PENSIONERS (PAMI)

The National Institute of Social Services for Retirees and Pensioners is an agency that provides medical and social care to retirees and pensioners in Argentina. It is a "nongovernmental public person" created in 1971 by law 19,032.

⁷⁶ Decree 1759/72, t.o. 1991 and amendments.

The INSSJP has rules governing the procurement of goods and services, based on Resolution 135/03 (General Procurement Regime) and Resolution 218/03 (Standard Terms and Conditions).

i) Procurement systems with and without public tenders

According to those rules, the Institute regulates the procedures for selecting contractors (public bidding or competition, private bidding or competition, public auction, electronic procurement, simplified procedures: see Article 19 Resolution 135/03), as well as the modalities for such procedures (price, open purchase order, consolidated purchases, submission of bids in successive stages, prequalification of bidders: see Article 25, Resolution 135/03).

The general procurement system is supplemented by Resolution 355/03 (referring to the centralized procedures applicable to procurement by the Institute's local management units); Resolution 990/04 (on authorization ceilings and officials competent to authorize an award the agency's contracts) and Resolution 573/05 (requirements for validity of notifications).

In adopting these procedures, the Institute has adjusted its regulations to the general principles of transparency and free competition. Thus, public bidding is currently the general principle applied in procurement. "Direct contracting" has been eliminated. If necessary, for reasons of emergency or a threat to the life or health of a member, the "simplified" procedure may be followed (Article 19 Resolution 135/03 which, as with the general regime of the National Public Administration, requires advertising, is governed by documentation, allows bids from especially invited suppliers, and all others who bid spontaneously, etc.).

ii) Governing authorities of the systems and control mechanisms

Depending on the amount of each transaction as stipulated in Resolution 990/04, the enforcement authority will be the Administrative Manager and the Deputy Manager of Procurement or the specific procurement units. For purchases between \$5,000 and \$30,000 (depending on the number of members covered in each case) the local management units are empowered to authorize tenders and award contracts (see Resolution 355/03 and its annex).

iii) Register of pre-approved contractors

The fact that bids can be submitted by interested parties, whether or not they have been invited to bid and regardless of whether they are registered in the suppliers registry, is evidence of the concrete tools that have been adopted to promote free competition. For further information on the INSSJP suppliers registry, consult Resolution 218/03, Article 12.

iv) Electronic methods and information systems for government procurement

Proceedings are published at the web page of the Institute (www.pami.org.ar), in the Federal Official Gazette, and under certain circumstances in newspapers of nationwide distribution, as a means of effectively publicizing the procurement process.

v) Public works contracts

In light of its purposes and specific functions, the Institute does not engage in public works for its own account or for third parties. Any works undertaken will involve upgrades to its installations, and will be of modest scope.

vi) Identification of the selection criteria for contractors

The general regime established in Resolution 135/03 provides a mechanism for evaluating bids, headed by a collegial body, the Evaluation Commission, the members of which are appointed by the highest authority of the Institute, for each procurement transaction (see Article 60 Resolution 135/03). The weighting criteria to be used are detailed in that Resolution (Article 56). While the specific rules are attached to this reply, we may point out, for the sake of brevity, that price and quality of the products are the lead factors in ranking bids. Nevertheless, in some cases involving technological components or complicated medical aspects, the technical qualifications of the bidders and their market history and track record will also be taken into account.

vii) Ways to challenge a selection

The general regime makes no specific provision for challenge and review of decisions taken in the context of tenders and of procurement in general. However, Article 24 of Resolution 135/03 provides a mechanism whereby bidders may submit observations and may request reports from the senior authority of the Institute once the award is made.

b) Objective results obtained, including any available statistical data

Achievements. The OA intervenes actively through the DPPT in the Institute's procurement proceedings, given the agency's great social importance in the country. It has intervened in various procurement proceedings, with consistently positive results, as overseer or to provide advice on tools for promoting transparency. By way of example we may mention Public Tender 17/2004 (supply of hearing aids, audiological studies and adaptation); Public Tender 4/05 (supply of prosthetics and orthopedic implants); Public Tender 28/05 (purchase of hearing aids) and Public Tender 15/2005 (pacemakers, single and double chamber, bipolar and epicardial catheters).

The OA is currently working with the Institute, as part of the UNDP project for Institutional Strengthening of the Anticorruption Office, to develop a training course, using the E-learning approach, on "transparent procurement", designed to optimize human and physical resources for the procurement of goods and services and to

familiarize officials and employees throughout the country with the essential transparency policies that will produce openness, equity and efficiency.

Statistical data on contracts awarded in recent years, classified by modalities and selection procedure.

Table: Number of Simplified Procedures conducted per year

	2004	2005
Simplified procedures	2440	2493

Table: Number of Public Bidding Procedures conducted per year

	2004	2005
Public bidding	23	67

Table: Number of Private Competitions conducted per year

	2004	2005
Private competitions	0	2

Table: Number of Private Bidding Procedures conducted per year

	2004	2005
Private bidding	0	4

Table: Number of sanctions imposed on suppliers

	2004	2005
Sanctions imposed	66	80

Note: In response to the comments of the MESICIC Committee of Experts in its Report on Implementation in Argentina of the Convention Provisions Selected for Review and the Framework of the First Round (February 2003), in Chapter III (Conclusions and Recommendations), Point A, "Anticorruption Activities and Preventive Measures at the Provincial and Local Levels", Argentina has included in its reply to Chapter 1.2 information on government procurement systems in the provinces, contained in Annex 3, Chapter 1.2, Provinces, attached to the Reply of Argentina to the Questionnaire.

CHAPTER TWO

SYSTEMS FOR PROTECTING PUBLIC SERVANTS AND PRIVATE CITIZENS WHO, IN GOOD FAITH, REPORT ACTS OF CORRUPTION (ARTICLE III (8) OF THE CONVENTION).

Are there laws and/or measures in your country establishing systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities? If so, briefly described them and list and attached a copy of the related provisions and documents.

REPLY OF ARGENTINA

a) Existence of laws and/or other measures

Argentina has laws and various measures that establish systems to protect public officials and private citizens who in good faith report acts of corruption, including protection of their identity.

BASIC LEGAL FRAMEWORK

Legal instrument	Title / Subject:	Accessible at:
Decree 102/99	Anticorruption Office. Purpose and scope of application. Powers and functions. Structure and organization. Final reports to the Minister of Justice and Human Rights on each investigation. Repeal of Decrees 152/97 and 7/97	http://www.anticorruccion.gov.ar/102-99.pdf
Resolution of the Minister of Justice and Human Rights N° 749/00.	Internal Bylaws of the Investigations Department of the Anticorruption Office .	http://www.anticorruccion.gov.ar/documentos_relacionados/Reglamento%20DIOA.pdf
Law 25.764	National Program for the Protection of Witnesses and Suspects	http://infoleg.mecon.gov.ar/infolegInternet/anexos/85000-89999/87581/norma.htm
Law 25.241	Acts of terrorism. Definitions. Reduction of penalties for suspects who collaborate effectively with the investigation. Scope. Protection measures.	http://www.infoleg.gov.ar/infolegInternet/anexos/60000-64999/62516/norma.htm
Law 23.737	Amendments to the Criminal Code. Narcotics.	http://www.infoleg.gov.ar/infolegInternet/anexos/0-4999/138/texact.htm
Law 26.097	Approval of the United Nations Convention against Corruption, adopted in New York on October 31, 2003.	http://www.infoleg.gov.ar/infolegInternet/anexos/115000-119999/116954/norma.htm
Law 23.984	Code of Criminal Procedure	http://www.infoleg.gov.ar/infolegInternet/anexos/0-4999/383/texact.htm

ANONYMOUS REPORTING AND PROTECTION OF IDENTITY REPORTING:

Anticorruption Office, Ministry of Justice and Human Rights:

Any person may file anonymous reports or identity protection reports with the Anticorruption Office.

Those provisions are covered in the following instruments:

- Decree 102/99 (Article 3) accessible at: <http://www.anticorrupcion.gov.ar/102-99.pdf>
- Internal Bylaws of the Investigations Department of the Anticorruption Office, Approved by Resolution of the Minister of Justice and Human Rights 749/00 of August 11, 2000, Article 1 (a).
(http://www.anticorrupcion.gov.ar/documentos_relacionados/Reglamento%20DIOA.pdf)

The identity protection stipulated in the Investigation Bylaws of the Anticorruption Office is designed to protect persons who, by alerting the authorities to an act of corruption, could suffer threats of reprisals.

Reporting crimes under the Narcotics Law:

Narcotics legislation provides that persons reporting any crime covered by that Law or by Article 866 of the Customs Code (smuggling) will remain anonymous (Law 23,737, Article 34 bis).

PROTECTION OF WITNESSES, INFORMANTS AND SUSPECTS

Code of Criminal Procedure:

Article 79 of the Code of Criminal Procedure (referring to the rights of victims and witnesses) provides that for the duration of any criminal proceeding, the national government must guarantee full respect for the following rights of the victims of the crime and of the witnesses called to testify in court:

(...)

(c) protection of physical and mental integrity, including that of their family.

National Program for Protection of Witnesses and Suspects:

On July 23, 2003 the National Congress approved the law creating the National Program of Protection for Witnesses and Suspects (Law 25,764).

That Law is available at the following web site:

<http://infoleg.mecon.gov.ar/infolegInternet/anexos/85000-89999/87581/norma.htm>

The National Program for Protection of Witnesses and Suspects relates primarily to crimes against individual liberty and kidnapping (Articles 142 bis and 170 of the

Criminal Code), as well as crimes relating to drug trafficking (Law 23,737) and acts of terrorism (Law 25,241).

Illegal drug trafficking and terrorism are both closely related with corruption, and indeed the first point is made expressly in the eighth paragraph of the preamble to the Convention ("... the steadily increasing links between corruption and the proceeds generated by illicit narcotics trafficking...").

The second paragraph of Article 1 of Law 25,241 extends those assumptions to certain crimes of corruption, when there is a relationship to organized crime (an assumption also explicitly included in the fourth paragraph of the preamble to the Convention).

Article 1 of Law 25,764 provides:

“(...) The National Program for Protection of Witnesses and Suspects is hereby created, to implement measures that will safeguard the security of suspects and witnesses who are at risk to their lives or physical safety and who have cooperated significantly and effectively in a federal judicial investigation into the crimes referred to in Articles 142 bis and 170 of the national Criminal Code and those covered by Laws 23,737 and 25,241.

“Notwithstanding the above, at the request of the judicial authority, the Minister of Justice, Security and Human Rights may include other cases not covered in the preceding paragraph when they involve offenses linked to organized crime or institutional violence and where the overriding criminal policy interest of the investigation makes this advisable.”

Argentina also has Law 25,241 of February 23, 2000, referred to above, which provides for the reduction of penalties and for protection measures for suspects who collaborate effectively with the investigation of acts of terrorism. That federal law also provides measures of protection for such collaborators (measures described in Law 25,764):

Law 25,241, Article 7: "If it may be presumed that the suspect who has cooperated in the investigation is at risk thereby to his personal safety or that of his family, the necessary protection measures shall be taken, including the provision of the resources necessary to change occupation and to substitute a new identity".

Various articles of Law 23,737 (on drug trafficking) refer to the protection of informants and witnesses (as discussed in the following section).

In relation to the above, refer, among others, to the following aspects:

i. Mechanisms for reporting (e.g. anonymous reporting, protection of identity reporting)

Anticorruption Office, Ministry of Justice and Human Rights:

Preliminary investigations conducted by the Anticorruption Office (OA) are confidential (*reservado*) in nature (Decree 102/99⁷⁷, Article 3). This provision protects the security of the informant, who also has the possibility of filing a report with protection of identity (Internal Bylaws of the Investigations Department of the Anticorruption Office, approved by Resolution of the Minister of Justice and Human Rights 749/00 of August 11, 2000, Article 1 (a)).⁷⁸

The informant is thereby entitled to ask the OA to keep his identity secret, in a sealed envelope. That information will be revealed only to the judge, upon request, when the preliminary investigation is formally submitted to the court as a complaint or charge.

This means that during the investigation the identity of the informant will not be known to the suspects, but at the same time the OA can still consult them [*sic: should be "him/the informant"??*] if necessary to expand on the information provided earlier.

A further possibility is that citizens may make anonymous reports to the OA (DIOA bylaws, Article 1 (a)). That report may be submitted by any method without the need for the author to include data that would identify him.

Reporting of offenses relating to the Narcotics Law:

Law 23,737, Article 34 bis. Persons who report any offense stipulated in this Law or in Article 866 of the Customs Code shall remain anonymous.⁷⁹

ii) Mechanisms for reporting threats or reprisals

National Program for Protection of Witnesses and Suspects, Law 25,764:

As noted above, the Minister of Justice may by substantiated decision include in the National Program for Protection of Witnesses and Suspects any persons who are at risk to their life or physical safety if they collaborate significantly and effectively with the judicial investigation into offenses other than those specifically covered in the Law, provided they are related to organized crime or to institutional violence, and the overriding criminal policy interest of the investigation makes this advisable.

⁷⁷ Decree 102/99: <http://www.anticorruccion.gov.ar/102-99.pdf>

⁷⁸ Bylaws of the DIOA: http://www.anticorruccion.gov.ar/documentos_relacionados/Reglamento%20DIOA.pdf.

⁷⁹ Article 866 of the Customs Code refers to the smuggling of narcotics.

National Criminal Code:

Articles 149 bis and ter of the Criminal Code specify the crime of simple threats and coercive threats.

“Article 149 bis. Whosoever makes use of threats to alarm or intimidate one or more persons shall be punished by imprisonment of six months to two years. The penalty shall be imprisonment of one year to three years if weapons are employed or if the threats are anonymous. Whosoever makes use of threats to force another person to perform, not to perform, or to tolerate any act against his will shall be punished by two years to four years in prison or penitentiary.”

“Article 149 ter. In the last case cited in the preceding paragraph, the penalty shall be:

1. From three years to six years in prison or penitentiary if weapons are used or if the threats are anonymous.
2. From five years to 10 years in prison or penitentiary in the following cases:
 - a) If the threats were intended to obtain any measure or concession from any member of a public authority.
 - b) If the threats were intended to compel a person to leave the country, a province, or his normal place of residence or work.”

Federal Code of Criminal Procedure

When the Prosecuting Attorney is aware that a crime has been committed, provided it is not subject to private action or private instance, he must initiate the respective prosecution actions.

Informants may present themselves at any police station or directly before a prosecutor or judge.

They may also present themselves before the Anticorruption Office where, as noted earlier, they have the option of submitting their report anonymously or with protection of identity, and in cases where the offense reported relates to any threat or reprisals against the informant, the matter will be turned over to the judicial authority, retaining the protection of identity previously granted and continuing the corruption investigation.

The protection of identity stipulated in the Investigation Bylaws of the Anticorruption Office is designed to protect any person who, by bringing an active corruption to the attention of the authorities, could thereby suffer threats or reprisals.

Public action

“Article 5. Public criminal action shall be exercised by the prosecuting attorney, who must initiate it at his own initiative if it is not subject to private action. This jurisdiction

may not be suspended, interrupted or terminated except in cases expressly provided by law”.

Action dependent on private instance

“Article 6. Criminal action dependent on private instance may not be exercised if the persons authorized by the Criminal Code do not make a report to the competent authority.”

iii) Witness protection mechanisms

Code of Criminal Procedure:

Article 79 of the Code of Criminal Procedure (referring to the rights of victims and witnesses) stipulates that:

“For the duration of any criminal proceeding, the national government must guarantee full respect for the following rights of the victims of the crime and of the witnesses called to testify in court:

(...)

(c) protection of physical and mental integrity, including that of their family.”

National Program for Protection of Witnesses and Suspects

Law 25,764 (National Program for Protection of Witnesses and Suspects) describes the different kinds of protection available to persons susceptible to threats, as well as any persons living with them. In particular, Article 5 declares:

“Article 5. Special protection measures, when circumstances so allow and make advisable, may consist of:

- a) Personal or domiciliary custody.
- b) Temporary removal to an undisclosed place.
- c) Change of domicile.
- d) Provision of economic means for accommodation, transportation, food, communication, health care, removal, re-employment, procedures, security systems, outfitting of living accommodation, and other unavoidable expenses, within or outside the country, for as long as the beneficiary is unable to obtain them through his own means. In no case shall such economic assistance be granted for more than six months.
- e) Assistance with handling procedures.
- f) Assistance with the return to employment.
- g) Provision of documentation proving identity under an assumed name for purposes of concealing the location of the protected person and his family.”

Anticorruption Office, Ministry of Justice and Human Rights:

The OA provides protection for witnesses to the system described above for receiving protection of identity reports.

Reporting offenses under the Narcotics Law:

Various articles of **Law 23,737** (drug trafficking) refer to the protection of informants, witnesses, suspects and undercover agents, as in the following cases:

“Article 31 bis. During the course of an investigation and for purposes of demonstrating the commission of any offense under this Law or Article 866 of the Customs Code, for preventing its commission, for identifying or arresting the perpetrators, accomplices or accessories, or for obtaining and securing the necessary evidence, the judge, in a substantiated ruling, and if the aims of the investigation cannot be achieved in any other way, may order officers of the security forces, acting undercover:

- a) To infiltrate criminal organizations whose aims include committing offenses under this Law or under Article 866 of the Customs Code; and
- b) To participate in any of the acts covered by this Law or by Article 866 of the Customs Code.

“The record of appointment must show the true name of the officer and the false identity under which he will act in the case, and must be kept separate from proceedings and under proper security.

“Any information obtained by the undercover agent must be placed immediately before the judge. The appointment of an undercover agent must be kept strictly secret. When it is absolutely unavoidable for personal information on the undercover agent to be adduced as evidence, the agent will testify as a witness, without prejudice to the adoption, where appropriate, of the measures provided for in Article 31 *quinques*.”

“Article 31 Ter. An undercover agent who, as a necessary consequence of the assignment entrusted to him, is compelled to commit an offense shall not be liable to punishment provided the offense does not entail risk to the life or physical safety of any individual, or serious physical and mental suffering to any individual.

“If the undercover agent is indicted in any proceedings, he must in confidence divulge his status to the judge, who will privately obtain the relevant information from the appropriate authority.

“Where a case involves the situation provided for in the first paragraph of this Article, the judge will rule on the case without revealing the true identity of the accused.”

“Article 31 *quinques*. If the safety of a person who has acted as an undercover agent is threatened as a result of the disclosure of his true identity, he may opt either to remain in employment or to retire, regardless of his number of years of service. In the latter case,

he shall be granted a retirement credit equal to that due to a person whose rank is two grades higher than his own.

“The provisions of Article 33 bis shall apply as appropriate.”

“Article 31 sexies. Any public employee or official who wrongfully reveals the real or the new identity of an undercover agent or, where applicable, the new identity or address of a protected witness or suspect is liable to imprisonment from two to six years, a fine of 10,000 to 100,000 pesos, and perpetual disqualification.

“Any public employee or official who, through carelessness, negligence or disregard for the duties of his position, allows or provides the opportunity for another person to obtain such information shall be punished by imprisonment of one to four years, a fine of 1000 to 30,000 pesos, and specific disqualification for three to 10 years.”

“Article 33 bis. If the circumstances of the case give reason to assume a certain risk to the life or physical safety of a witness or of a suspect who has cooperated in the investigation, the court shall order such special protection measures as appropriate. These measures may include changing the identity of the witness or suspect and the financial assistance necessary for obtaining a new address and occupation, if necessary. The relevant formalities shall be the responsibility of the Ministry of Justice.”

“Article 34 bis. Any persons who report an offense under this Law or under Article 866 of the Customs Code shall have their anonymity preserved.”⁸⁰

Law 25,241. Acts of terrorism:

Article 7. If it may be assumed that a cooperative suspect is at risk to his personal safety or that of his family, the necessary protective measures shall be taken, including the financial assistance necessary to change his occupation and his identity.

Law 26,097. Approval of the United Nations Convention against Corruption:

Argentina's approval of the UN Convention against Corruption marks a great step forward in the protection of witnesses, experts and victims of acts of corruption, in that many articles of that Convention deal with this matter (Articles 32, 33, etc.).

Proposed legal norms:

Anticorruption Office, Ministry of Justice and Human Rights

In mid-2003 the Anticorruption Office launched a project, involving participation by all sectors of society, to develop legal norms.⁸¹ That exercise resulted in the Draft Law on

⁸⁰ Article 866 of the Customs Code refers to the smuggling of narcotics.

⁸¹ In accordance with the recommendation B. 4.2.1 of the MESICIC Committee of Experts (Country Report on Argentina, February 2003.)

Protection of Informants and Witnesses of Acts of Corruption. In compliance with Article III of the Inter-American Convention against Corruption, the Anticorruption Office prepared a draft bill on the protection of informants and witnesses of acts of corruption. That project, which was financed by a grant from the World Bank (IDF 027282), has been submitted for consideration of the Minister of Justice for referral to Congress.

The bill is designed to provide protection from measures taken against persons who report or provide information on acts of corruption, or who provide evidence in criminal proceedings relating to the investigation of acts of corruption. Given the specific features of reprisals against informants and witnesses of this kind of act, the bill provides measures of protection not only for the physical safety of the protected person but also to cover any repercussions on his occupation, whether he belongs to the public administration or to the private sector.

To ensure that the bill is consistent with our cultural context, compatible with the rights and guarantees recognized in law, and capable of effective implementation, the project was designed in three stages.

The first stage involved research into comparative law and proposed national laws in this area, national legislation relating to issues that must be covered in the bill, consultations and examination of national and foreign case law, and interviews with persons who had practical experience in this matter. With sufficient knowledge in hand about the aspects that the bill should cover, a draft bill was prepared.

In the second stage, that draft was submitted to consultations (Participatory Rule-Setting Procedure) involving officials of the executive, legislative and judicial branches, the Attorney General's Office, NGOs and academics with recognized expertise in this area. During the process, many valuable comments and suggestions were received and requests from a wide variety of sectors and perspectives were considered.

The consultation procedure was conducted by means of a three-day seminar to discuss the various matters dealt with in the draft bill. Finally, in the third stage, the outcome from this participatory process was analyzed, and the suggestions received were introduced as amendments to the draft.

The web site of the OA contains the following documents:

Draft Bill:

<http://www.anticorrupcion.gov.ar/Anteproyecto%20de%20Ley-Proteccion%20Testigos.pdf>

Invitation to debate the draft bill:

[http://www.anticorrupcion.gov.ar/TEXTO%20INTRODUCTORIO%20WEB%20\(II\).pdf](http://www.anticorrupcion.gov.ar/TEXTO%20INTRODUCTORIO%20WEB%20(II).pdf)

Final version of the Bill:

<http://www.anticorrupcion.gov.ar/Proyec%20Testigo.pdf>

Rationale for the final version of the Bill:

<http://www.anticorrupcion.gov.ar/Fundamentos%20proyecto%20de%20ley.pdf>

Legislative branch:

Since 1988 at least half a dozen bills have been submitted on this topic:

Senate:

Bill 1852-S-98.

Sponsored by: Antonio Tomas Berhongaray.

Title: Protection of labor rights of informants or witnesses of crimes and irregularities committed against the national administration, whether they are permanent, temporary or contractual employees in any category within that administration.

Bill 2676-S-00.

Sponsored by: Nestor Daniel Rostan.

Title: Regime for the protection of informants and witnesses of acts of corruption.

Bill 2081-S-02.

Sponsored by: Mario J. Colazo.

Title: Law on labor protection for persons who report crimes and irregularities against the national administration.

Bill 3278-S-02.

Sponsored by: Mabel H. Müller.

Title: Law to protect the rights of persons who report acts of corruption, or witnesses of such acts, whether public employees or private citizens.

Bill 3375-S-03.

Sponsored by: Jorge Capitanich.

Title: Criminal Code on unconventional crimes.

Chamber of Deputies:

Bill 5952-D-03.

Sponsored by: María J. Lubertino Beltrán. – Eduardo D. J. García. – Héctor T. Polino. – Rubén H. Giustiniani. – Jorge Rivas. – José A. Roselli. – Fernando C. Melillo. – María E. Barbagelata. – Patricia C. Walsh. – Marcela A. Bordenave. – Alicia A. Castro. – Lilia Puig de Stubrin. – José A. Vitar. – Margarita O. Jarque. – Mario A. H. Cafiero.

Title: Protection of informants and witnesses of acts of corruption.

b) In relation to question a), state the objective results obtained, including any available statistical data.

Anticorruption Office, Ministry of Justice and Human Rights:

From January 2000 until June 30, 2006, the Anticorruption Office received a total of 5,696 reports, of which 1,439 were anonymous and 122 were submitted with protection of identity.

National Program for Protection of Witnesses and Suspects:

Under this program, 22 cases are currently being processed, involving 31 protected persons (witnesses and suspects) and their families. Of these cases, nine have to do with narcotics-related offenses, seven with kidnapping and extortion, two with institutional violence, three with organized crime, and one with terrorism.

c. If no such laws and/or measures exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen systems for protecting public servants and private citizens who, in good faith, report acts of corruption, in accordance with Article III (8) of the Convention.

CHAPTER THREE

ACTS OF CORRUPTION (ARTICLE VI OF THE CONVENTION)

1. *Criminalization of acts of corruption provided for in Article VI (1) of the Convention:*

Does your country criminalize the acts of corruption provided for in Article VI (1) of the Convention transcribed in this chapter of the questionnaire? If so, describe briefly the laws and/or measures regarding them, indicating to which of the particular aforesaid acts of corruption they refer, including sanctions, and attach a copy of them.

- Acts of corruption provided for in Article VI (1) of the Convention:

- i. The solicitation or acceptance, directly or indirectly, by a government official or a person who performs public functions, of 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.*
- ii. The offering or granting, directly or indirectly, to a government official or a person who performs public functions, of 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.*
- iii. Any act or omission in the discharge of his duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or for a third party.*
- iv. The fraudulent use or concealment of property derived from any of the acts referred to in this article.*
- v. Participation as a principal, co-principal, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the acts referred to in this article.*

REPLY OF ARGENTINA

a) Existence of laws criminalizing the offenses provided for in Article VI (1) of the IACC

As requested in Chapter Three, point 1, the following section lists and describes the provisions of Argentine criminal law relating to the conduct described in Article VI (1) of the Convention.⁸²

⁸² The principal source of information for responding to this chapter of the Questionnaire is the analysis by Dr. Andres José D'Alessio published in the book, "*Adaptando la Legislación Penal de Argentina a la Convención Interamericana contra la Corrupción*", OAS Secretariat for Legal Affairs, Department of Legal Cooperation, 2001 (JL969.5.C6 A3 2001 -Arg- /// OEA/Ser.D/XIX.3 Add.6). That publication contains the reports of the workshop held in Buenos Aires, October 10 and 11, 2000, as part of the Project on "Support for *Ratification and Implementation of the IACC*" (under the cooperation agreement between the OAS and IDB, signed on 03/26/99). The workshop was organized by the OAS, the IDB and the

i. The solicitation or acceptance, directly or indirectly, by a government official or a person who performs public functions, of 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.

This conduct relates to various criminal offenses, namely:

a) Passive bribery. Article 256 of the Criminal Code, as amended by Article 31 of Law 25,188, reads:

"Any public official who personally or through another party receives money or any other gift or gives a direct or indirect promise to perform, to delay or to abstain from performing any act relating to his functions shall be punished by imprisonment of one to six years and special perpetual disqualification."⁸³

The offense known as "**passive bribery**" requires action of another person ("necessary co-delinquency"), since the active party (the public official) cannot receive or accept unless something is given, offered or promised to him.

This rule punishes any official who receives or accepts, either directly or through other parties, money, gifts of any kind, or promises thereof, in order to perform, delay, or abstain from performing any act relating to his functions.⁸⁴

In other words, beyond the status of public official (which also includes public employees), the offense takes into account the nature of the corrupt act, in that, for bribery to exist, it must relate to an act pertaining to functions.

The offense is consummated upon receiving (entering into physical possession of the object) or accepting (when the official agrees to receive what is offered or promised in the future).⁸⁵

b) Bribery of a judge or prosecutor.

Anticorruption Office of Argentina. The complete proceedings of the workshop are available at the OA web site, www.anticorrupcion.gov.ar, by entering "actuación internacional" / "OEA".

⁸³ Law 25,188 has replaced the heading of Chapter VI of Title XI of Book II of the Criminal Code (previously "Bribery") by "Bribery and Influence Peddling". Article 256 increased the severity of the penalty. Moreover, Article 256 bis has been added, making influence peddling a separate crime.

⁸⁴ National case law has held that "in the crime of bribery, the legal good protected is the morality and propriety that must prevail in the public administration, and it applies whenever an official seeks to obtain for himself a sum of money by agreeing to sell acts of authority that by the nature of his office he is required to perform." (CNCrim. y Correc, sala I, 18/9/96, "Wowe, Carlos y otro", publ. In La Ley, 1998- F, p. 838.)

⁸⁵ "What characterizes bribery (Article 256, Criminal Code) is the illicit commitment that constitutes its content; when this pact is performed, the offense is committed. And it is only the acceptance of the illicit treatment by the official bribed that produces consummative effects" (CNCrim. y Correc., sala VII, 31/8/82, "B., J. y otros", publ. in ED, 103-377).

Another situation that relates to the IACC Article is that covered by Article 257 of the Criminal Code, as amended by Article 33 of Law 25,188, which provides:

“Any judge (*magistrado del Poder Judicial*) or prosecutor (*magistrado del Ministerio Público*) who personally or through another party receives money or any other gift or gives a direct or indirect promise to issue, delay or refrain from issuing a resolution, ruling or verdict in matters subjected to his jurisdiction shall be punished by imprisonment of four to twelve years and special perpetual disqualification”.

This is an independent offense that applies when the active party to the bribe is a judge or prosecutor and engages in any of the conduct described in the Law. To determine who may be held guilty of this special offense we must turn to Article 1 of the National Justice Regulations and to Articles 3 and 4 of Law 24,946 on the Attorney General’s Office (*Ministerio Público*).⁸⁶

When an official receives a gift in relation to an act that does not involve issuing, ordering, delaying or refraining from issuing a resolution, ruling or verdict, or if any other element of the offense is missing, the criminal act will be covered by Article 256 of the Criminal Code.

c) Illegal exactions

Another offense that relates to the IACC rule under analysis is that of illegal exactions. The basic offense is defined in Article 266 of the Criminal Code:

“Any official who, in abuse of his position, improperly solicits, demands or causes payment or delivery, for himself or another party, of a contribution, a fee (*derecho*) or a gift or who charges more than the corresponding fee shall be punished by imprisonment of one to four years and special disqualification for one to five years.”

The distinctive feature of this offense is the "abuse of function" by an official in order to obtain an improper benefit. Exaction is the act of demanding or “exacting”, as applied to taxes, benefits, fines and debts.⁸⁷ It relates to something that can only be received by the State, in whose name the official acts.

Moreover, in this offense there is a demand for the thing improperly received, which distinguishes it from bribery. The passive party makes delivery unwillingly, constrained

⁸⁶ The first reads: "In this regulation, ‘magistrates’ refers to judges at all levels; ‘officials’ to secretaries of first and second instance and other employees of national courts who receive equal or higher salaries; and ‘employees’ refers to the remaining personnel", while the latter articles cited distinguish between magistrates, officials and other employees.

⁸⁷ "Action and effect of demanding, with application to taxes, benefits, fines, debts, etc.". Also defined as something "levied with severity and injustice" (Diccionario de la Lengua Española, Real Academia Española, Vigésima edición, Madrid, 1984)

by fear⁸⁸ of the official, who coerces the individual's will. Unlike bribery, it does not involve an illicit agreement between the parties.⁸⁹

d) Aggravated exactions:

Article 267 of the Criminal Code, dealing with aggravating circumstances, provides:

"If intimidation is used or if a higher order, commission, judicial mandate or other legitimate authorization is invoked, the prison sentence may be increased to four years and the disqualification to six years."

e) Extortion (*concusión*)

If any of the preceding situations is compounded by appropriation of the proceeds from the exactions to the private benefit of the official or a third party, the offense is deemed to constitute extortion, covered by Article 268 of the Criminal Code:

"Any public official who appropriates to his own benefit or that of a third party the exactions expressed in the preceding articles shall be punished by imprisonment of two to six years and absolute perpetual disqualification."

This offense occurs when, instead of devoting the proceeds to the purpose described to the passive party, the official decides not to deposit them to the administration but to retain them in his own assets or those of another party.

This is a complicated offense, for it presupposes the acts described in Article 266 or 267, compounded by appropriation of the exactions to the benefit of the perpetrator or of another party. The perpetrator consummates the crime upon disposing of the proceeds or not depositing them to the account of the State, if there is a time limit on that duty.

f) Simple acceptance of gifts

Finally, the simple acceptance of gifts, which already goes beyond the framework of the IACC, is covered by Article 259 of Criminal Code:

⁸⁸ "The difference between passive bribery and extortion (*concusión*) lies in the fact that bribery involves an illicit agreement, while in extortion there is no agreement: the victim provides a gift through fear of the public authority, or because he is induced by the official's abuse of authority, or by a third party. Consequently, the criminal punishment targets the receiving official, in the absence of consent on the part of the victim", Tribunal Oral en lo Criminal N° 12, June 9, 1999, "Wowe, Carlos", publ. in La Ley, Suplemento de Jurisprudencia Penal, September 27, 1999, p. 11.

⁸⁹ "If there was no prior agreement whereby the official was to perform or omit some act pertaining to his functions, but the official made a demand in an intimidating manner, the offense involved is that of illegal exaction and not of bribery" (CNCrim. y Correc., Sala II, 18/4/89, "Bello, Oscar", publ. in La Ley, 1989- B, p. 555).

“Any public official who accepts gifts delivered in consideration of his office while he remains in exercise of his position shall be punished by imprisonment of one month to two years and absolute disqualification for one year to six years. The person presenting or offering the gift shall be punished by imprisonment of one month to one year.”

What distinguishes this offense from the previous ones is the lack of illicit agreement among the parties to the offense. There must be no link between the gift and an act or omission by the official, for if there were the offense would amount to bribery. The notion applies generally to complimentary gifts received by an official in recognition of his position.

ii. The offering or granting, directly or indirectly, to a government official or a person who performs public functions, of 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.

a) Active bribery

Article 258 of the Criminal Code provides that:

“Any person who directly or indirectly gives or offers gifts to induce any of the acts prohibited by Article 256 and 256 bis, first paragraph, shall be punished by imprisonment of one to six years. If the gift is made or offered for the purpose of inducing any of the acts prohibited in Article 256 bis, second paragraph, and Article 257, the penalty shall be imprisonment of two to six years. If the guilty party is a public official, he shall also be liable to special disqualification for two to six years in the first case, and for three to 10 years in the second”.

Here, it is not necessary for there to be prior collusion with the public official (the illicit agreement that was indispensable for passive bribery), for the offense consists in the simple act of giving or offering, provided the purpose was to induce one of the acts prohibited by Articles 256, 256 bis and 257.

iii. Any act or omission in the discharge of his duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or for a third party.

The wording of this paragraph is rather imprecise, rendering a comparative analysis with our legislation difficult, because, by treating as an act of corruption "any act or omission in the discharge of his duties by a government official", the definition may relate to more than one of the offenses stipulated in our criminal legislation. Nevertheless, we shall examine below some of the offenses specified in our legislation that would constitute such conduct.

a) Fraud to the prejudice of the public administration.

We may begin our analysis of this provision by noting, first, what is called "fraud to the prejudice of the public administration", covered by Article 174 (5) of the Criminal Code:

“Any person who commits fraud to the prejudice of any public administration shall be liable to imprisonment of two to six years; if the guilty person is a public employee, he shall be liable as well to perpetual special disqualification”.⁹⁰

There is agreement in Argentine doctrine that this offense can be constituted either by acts of fraud or by manipulations that constitute an abuse of trust or of situations to defraud the administration. The particular feature of this offense is that the fraud committed must have harmed the interests of the public administration, understood in its broad meaning. The active parties to this offense may be public officials, employees, or private individuals.

We should note that the Criminal Code includes among the terms "public official" or "public employee" any person who is involved occasionally or permanently in the exercise of public functions, whether by popular election or through appointment by the competent authority (Article 77).⁹¹ The prevailing view is that the code has adopted a broad criterion in this matter, accepting the terms "official" and "employee" as synonymous.

b) Breach of Trust (*Administración infiel*, “Unfaithful administration”)

Such conduct can also be related to that described in Article 173 (7) of the Criminal Code, which describes a special case of fraud that is subject to the penalty of Article 172 (from one month to six years imprisonment):

“Any person who, by disposition of law, authority, or legal act, is responsible for the management, administration or care of another’s property or interests and who, in order to obtain an improper benefit for himself or for another person or to cause damage, in violation of his duties, prejudices the interests entrusted to him or improperly obligates their owner...”.

This offense is known as "unfaithful administration", and is a form of fraud in which abuse of trust predominates. The conduct of the active party, in violation of his duties, prejudices the entrusted interests or improperly obligates their owner. The agent must have power over the property or interests of others, deriving from law, (e.g. legal representation), authority (e.g. judicially awarded custody) or any other juridical act (e.g. the director of a corporation). The perpetrator must be responsible for the management,

⁹⁰ The situations covered by Article 174 of the Criminal Code are those of aggravated fraud and embezzlement (*estafas y defraudaciones agravadas*). Article 174 provides a penalty of 2 to 6 years, while Articles 172 and 173 carry a penalty of one month to six years.

⁹¹ Article 77 of the Criminal Code: "In interpreting the text of this code, the following rules shall apply: ... the terms ‘public official’ and ‘public employee’ used in this code mean any person who is involved occasionally or permanently in the exercise of public functions, whether by popular election or through appointment by the competent authority."

administration or safekeeping of the property or interests of others, and his action constitutes a violation of the duties and entrusted to him. The subjective element of the offense is that the agent's manipulations must be designed to achieve an improper benefit for himself or for a third party.

c) Dealings incompatible with the exercise of public functions.

In addition to these two offenses, that stipulated in Article 265 bears some relationship:

“Any public official who, directly, through an intermediary, or by simulated act, takes an interest in any contract or transaction in which he is involved by reason of his position, with a view to deriving benefit for himself or a third party, shall be punished by imprisonment for one to six years and perpetual special disqualification. This provision shall be applicable to arbitrators, conciliators, experts, accountants, guardians, custodians, executors, trustees and liquidators, with respect to the functions they perform as such”.

It is argued that the object protected by this provision is the interest that the State has in the faithful and proper performance of the functions of the administration in their broad sense, such that the action of State bodies must not only be impartial but removed from any suspicion of partiality. It involves cases where an official becomes involved in a contract or operation as an agent of the State and as an interested party. He must also take part in the transaction by reason of his official duties. The offense lies in the simple fact that an official has an interest in an affair in which he is involved by reason of his office. A reading of the article shows that it covers not only public officials but also the persons specified in the second paragraph who constitute clear examples of incidental participation in a public function.

iv. "The fraudulent use or concealment of property derived from any of the acts referred to in this Article".

This rule relates to the offense of concealment:

“1. Any person shall be punished by imprisonment of six months to three years if, after another person has committed a crime in which he was not involved:

(...)

- c) He acquires, receives or conceals money, things or effects deriving from a crime.
 - d) Aids or abets the perpetrator or participates in securing the proceeds of the crime.
2. The minimum and maximum penalty shall be doubled if:
- a) The predicate deed was an especially severe crime, for which the minimum penalty exceeds three years imprisonment.
 - b) The perpetrator has acted for gain.
 - c) The perpetrator has a habit of concealment.

v. Participation as a principal, co-principal, instigator, accomplice or accessory after the fact, or in any other manner in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the acts referred to in this Article.

This rule can be analyzed in light of various provisions in our legislation:

a) Criminal participation.

The provisions of Book One, Title VII of our basic code, referring to criminal participation, are fully consistent with the Convention, as it relates to principal, co-principal, instigators and accomplices.

Article 45 of the Criminal Code:

“Any person who takes part in the execution of a deed or provides the principal or principals with assistance or cooperation without which the deed could not have been committed shall be liable to the penalty established for the offense. Those who have directly induced another person to commit the offense shall be liable to the same penalty.”

The cases of secondary complicity are described by Article 46 of the Criminal Code:

“Persons who cooperate in any other manner in the execution of the deed and those who provide any subsequent assistance in fulfillment of previous promises shall be punished with the penalty corresponding to the offense, reduced by one-third to one-half”.

b) Concealment.

The Argentine Criminal Code covers this offense in Chapter XIII, Title 11, as "concealment and laundering of assets of criminal origin". The crime of concealment was recently modified by Law 25,246 (approved April 13, 2000, promulgated on May 5, 2000, published in the Official Gazette on May 11, 2000), and Law 26,087 (approved on March 29, 2006 and promulgated on April 21, 2006), which amended the wording of Articles 277 and 278 (see table below).

c) Illicit Association and conspiracy

The crime of illicit association is defined by Article 210 of the Criminal Code:

“Any person who takes part in an association or gang (*banda*) of three or more persons for the purpose of committing crimes shall, by the mere fact of being a member of such association, be liable to imprisonment of three to 10 years. For the leaders or organizers of such association the minimum penalty shall be five years in prison or penitentiary”.

This rule punishes the mere existence of a gang or association formed for the purpose of committing crimes. The simple existence of such an organization disturbs the public

peace, not only through the social disruption caused but also through the danger it implies for the preservation of the established and legally protected social order.

The code employs "gang" and "association" as synonymous, and it must consist of at least three members. There must be agreement among its members to commit crimes, but the defining feature of the offense is the simple fact of taking part in the association or being a member of the organization. No material activity is required on the part of the subject: it is sufficient that he has consciously entered into the association and has knowingly agreed with the other members on its criminal objectives.

With respect to conspiracy, this is covered by Law 23,737 on narcotics and psychotropic substances, Article 29 bis of which reads:

“Any person who takes part in a conspiracy of two or more persons to commit any of the crimes [listed below] shall be liable to imprisonment of one to six years:

(...)

“Conspiracy shall be punishable as of the moment any of its members performs an act that clearly reveals the common decision to execute the crime for which they have conspired.

“Any person who reveals the conspiracy to the authorities before execution of the crime for which it was formed has begun, and any person who spontaneously prevents the plan from being carried out, shall be exempt from punishment.”

We may note that this is a situation in which the law extends punishment to preparatory acts. It includes participation in a stage prior to the crime, something that is distinct from the illicit association discussed above.

Note. In order to complete its reply to this point and to systematize the information, Argentina has provided the following table that lists and compares the provisions of Article VI of the Inter-American Convention against Corruption and Argentine legislation.

IACC	CRIMINAL CODE OF ARGENTINA
<p>Art. VI (1. a) <i>“The solicitation or acceptance, directly or indirectly, by a government official or a person who performs public functions, of 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.”</i></p>	<p>Art. 256, amended by Art. 31 of Law 25.188 PASSIVE BRIBERY “Any public official who personally or through another party receives money or any other gift or gives a direct or indirect promise to perform, to delay or to abstain from performing any act relating to his functions shall be punished by imprisonment of one to six years and special perpetual disqualification.”⁹²</p>
	<p>Art. 257, amended by Art. 33 of Law 25.188 BRIBERY OF A JUDGE OR PROSECUTOR “Any judge (<i>magistrado del Poder Judicial</i>) or prosecutor (<i>magistrado del Ministerio Público</i>) who personally or through another party receives money or any other gift or gives a direct or indirect promise to issue, delay or refrain from issuing a resolution, ruling or verdict in matters subjected to his jurisdiction shall be punished by imprisonment of four to twelve years and special perpetual disqualification”⁹³.</p>
	<p>Art. 266, amended by Art. 37 of Law 25.188 ILLEGAL EXACTIONS ““Any official who, in abuse of his position, improperly solicits, demands or causes payment or delivery, for himself or another party, of a contribution, a fee (<i>derecho</i>) or a gift or who charges more than the corresponding fee shall be punished by imprisonment of one to four years and special disqualification for one to five years.”⁹⁴.</p>
	<p>Art. 267 (not changed by Law 25.188) AGGRAVATED EXACTION ““If intimidation is used or if a higher order, commission, judicial mandate or other legitimate authorization is invoked, the prison sentence may be increased to four years and the disqualification to six years”.</p>
	<p>Art. 268 (not changed by Law 25.188) EXTORSION “Any public official who appropriates to his own benefit or that of a third party the exactions expressed in the preceding articles shall be punished by imprisonment of two to six years and absolute perpetual disqualification.”.</p>

⁹² Law 25,188 has replaced the heading of Chapter VI of Title XI of Book II of the Criminal Code (previously "Bribery") by "Bribery and Influence Peddling". Article 256 increased the severity of the penalty. Moreover, Article 256 bis has been added, making influence peddling a separate crime.

⁹³ The previous wording of the article included only judges.

⁹⁴ The only change from the previous wording is a slight increase in the penalty.

EXCEEDS THE PROVISIONS OF THE IACC	<p>Art. 259 SIMPLE ACCEPTANCE OF GIFTS “Any public official who accepts gifts delivered in consideration of his office while he remains in exercise of his position shall be punished by imprisonment of one month to two years and absolute disqualification for one year to six years. The person presenting or offering the gift shall be punished by imprisonment of one month to one year”.</p>
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IACC	CRIMINAL CODE OF ARGENTINA
<p>Art. VI (1. b) “The offering or granting, directly or indirectly, to a government official or a person who performs public functions, of 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”.</p>	<p>Art. 258, amended by Art. 34 of Law 25.188 ACTIVE BRIBERY “Any person who directly or indirectly gives or offers gifts to induce any of the acts prohibited by Article 256 and 256 bis, first paragraph, shall be punished by imprisonment of one to six years. If the gift is made or offered for the purpose of inducing any of the acts prohibited in Article 256 bis, second paragraph, and Article 257, the penalty shall be imprisonment of two to six years. If the guilty party is a public official, he shall also be liable to special disqualification for two to six years in the first case, and for three to 10 years in the second”⁹⁵.</p>
<p>NO PROVISION IN THE IACC</p>	<p>Art. 259 SIMPLE OFFER OF GIFTS IN CONSIDERATION OF OFFICE “...The person presenting or offering the gift shall be punished by imprisonment of one month to one year”. (see above text)</p>
<p>Art. VI (1. c) “Any act or omission in the discharge of his duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or for a third party.”</p>	<p>According to Dr. Andrés D' Alessio, this provision may relate to more than one crime in Argentine legislation:</p>
	<p>Art. 174 (5) FRAUD TO THE PREJUDICE OF THE PUBLIC ADMINISTRATION “Any person who commits fraud to the prejudice of any public administration shall be liable to imprisonment of two to six years; if the guilty person is a public employee, he shall be liable as well to perpetual special disqualification”.⁹⁶</p>
	<p>Art. 173 inc. 7 BREACH OF TRUST (“UNFAITHFUL ADMINISTRATION”) As a special case of fraud that is subject to the penalty of Article 172 (from one month to six years imprisonment):</p>

⁹⁵ The penalties of Law 16.648 have been increased, and officials of the Attorney General’s Office are now covered by the aggravated form.

⁹⁶ The situations covered by Article 174 of the Criminal Code are those of aggravated fraud and embezzlement (*estafas y defraudaciones agravadas*). Article 174 provides a penalty of 2 to 6 years, while Articles 172 and 173 carry a penalty of one month to six years.

	<p>“Any person who, by disposition of law, authority, or legal act, is responsible for the management, administration or care of another’s property or interests and who, in order to obtain an improper benefit for himself or for another person or to cause damage, in violation of his duties, prejudices the interests entrusted to him or improperly obligates their owner...”.</p>
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	<p>Art. 265, amended by Art. 35 of Law 25.188 DEALINGS INCOMPATIBLE WITH THE EXERCISE OF PUBLIC FUNCTIONS “Any public official who, directly, through an intermediary, or by simulated act, takes an interest in any contract or transaction in which he is involved by reason of his position, with a view to deriving benefit for himself or a third party, shall be punished by imprisonment for one to six years and perpetual special disqualification. This provision shall be applicable to arbitrators, conciliators, experts, accountants, guardians, custodians, executors, trustees and liquidators, with respect to the functions they perform as such”⁹⁷.</p>
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IACC	CRIMINAL CODE OF ARGENTINA
<p>Art. VI (1. d) “The fraudulent use or concealment of property derived from any of the acts referred to in this Article”.</p>	<p>The crime of CONCEALMENT has recently been modified by Laws 25.246 (sanc. 4/13/00, prom. 5/5/00, publ. in Boletín Oficial on 5/11/00) , and 26.087 (sanctioned 03/29/06 and promulgated on 04/21/06), with consequent amendments to the wording of Arts. 277 and 278.</p> <p>Art. 277: “1. Any person shall be punished by imprisonment of six months to three years if, after another person has committed a crime in which he was not involved: (...) c) He acquires, receives or conceals money, things or effects deriving from a crime. d) Aids or abets the perpetrator or participates in securing the proceeds of the crime.</p> <p>2. The minimum and maximum penalty shall be doubled if: a) The predicate deed was an especially severe crime, for which the minimum penalty exceeds three years imprisonment. b) The perpetrator has acted for gain. c) The perpetrator has a habit of concealment.</p>

⁹⁷ The phrase “with a view to deriving benefit for himself or a third party “ has been added to the previous wording.

	<p>Point 4° is replaced: “Those who have acted on behalf of a spouse, or of a relative to the fourth degree of consanguinity or the second degree of affinity, or of an intimate friend or person to whom special gratitude is owed shall be exempt from criminal liability. This exemption shall not apply in the cases of points 1° e) and 3°, b) and c)”</p> <p>Art. 278: Point 5° is added: "The exemption of point 4 of Art. 277 shall not apply in any of the cases covered by this article."</p> <p><u>According to Dr. Andrés D'Alessio:</u> <i>“It is clear that, with these amendments, the newly defined crime exceeds the requirements of the IACC”.</i></p> <p>As well, Law 25.246 has criminalized the laundering of assets of criminal origin, which means that the conduct described in IACC Art. VI. (1. d) is fully covered by Argentine law.</p>
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IACC	CRIMINAL CODE OF ARGENTINA
<p>Art. VI (1. e)</p> <p>“Participation as a principal, co-principal, instigator, accomplice or accessory after the fact, or in any other manner in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the acts referred to in this Article”.</p>	<p>The provisions of Book One, Title VII of our basic code, referring to criminal participation, are fully consistent with the Convention, as it relates to principal, co-principal, instigators and accomplices.</p> <p>Article 45 of the Criminal Code: “Any person who takes part in the execution of a deed or provides the principal or principals with assistance or cooperation without which the deed could not have been committed shall be liable to the penalty established for the offense. Those who have directly induced another person to commit the offense shall be liable to the same penalty.”</p> <p><u>Dr. Andrés D'Alessio:</u> This article covers various situations:</p> <ul style="list-style-type: none"> - In its first part it refers to the direct principal (the person who executes the crime described), as well as the co-principals (whether several persons have committed the crime, or have divided the tasks among themselves, such that each of them makes an essential contribution to commission of the act). - This first part also includes the necessary or primary accomplices (those how, while not principals, provide assistance or cooperation without which the deed could not have been committed). - The mention in the second part of “Those who have directly induced another person to commit the offense” refers to direct authorship (when the agent uses another who does not execute the conduct), of mediated authorship (when he uses another who does not act

	<p>illegally), and instigation (when he induces another to commit an offense)⁹⁸.</p> <p>The cases of secondary complicity are described by art. 46 del Criminal Code: “Persons who cooperate in any other manner in the execution of the deed and those who provide any subsequent assistance in fulfillment of previous promises shall be punished with the penalty corresponding to the offense, reduced by one-third to one-half...”.</p> <p>CONCEALMENT Chapter XIII, Title XI, amended by Law 25.246: “Concealment and laundering of assets of criminal origin” (see text on preceding page)</p> <p>Art. 210: ILLICIT ASSOCIATION “Any person who takes part in an association or gang (<i>banda</i>) of three or more persons for the purpose of committing crimes shall, by the mere fact of being a member of such association, be liable to imprisonment of three to 10 years. “For the leaders or organizers of such association the minimum penalty shall be five years in prison or penitentiary”.</p>
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b) Briefly state the objective results that have been obtained in enforcing the above provisions, and provide the pertinent information available in your country on which those results are based, such as judicial proceedings undertaken and their outcome, referring, as far as possible, to the last five years.

Note. Argentina's response to this section b) is found in Annex 4, Chapter 3.1, included as an attachment to the Reply of Argentina to this Questionnaire. That Annex provides a database reflecting the objective results that Argentina has obtained through application of the provisions under review.

c) If the aforementioned acts of corruption are not criminalized, what steps is your country taking to criminalize these acts.

2. Application of the Convention to acts of corruption not described therein, in accordance with Article VI (2)

a. Has your State entered into any agreements with other States Parties to apply the Convention to any act of corruption not described therein, in accordance with Article VI (2)? If so, briefly describe the respective agreements or conventions and attach a copy of the related documents.

⁹⁸ On this point, see ZAFFARONI, Eugenio Raúl, "Tratado de Derecho Penal- Parte General", tomo IV, Ed. Ediar, Buenos Aires, 1997.

b. If the above answer was in the affirmative, briefly state the objective results that have been obtained in the application of the respective agreements or conventions, and provide the pertinent information available in your country on which those results are based, such as judicial proceedings undertaken and their outcome, referring, as far as possible, to the last five years.

ARGENTINA

ANNEX 1

INFORMATION ON PROGRESS IN IMPLEMENTATION OF RECOMMENDATIONS FORMULATED IN THE NATIONAL REPORT IN THE FIRST REVIEW ROUND

REPORT OF THE MESICIC COMMITTEE OF EXPERTS⁹⁹

A. ANTICORRUPTION ACTIVITIES AND PREVENTIVE MEASURES AT PROVINCIAL AND LOCAL LEVELS

1. Recommendation:

1. ...consider promoting with the provinces and the autonomous city of Buenos Aires and municipalities, the relevant cooperation mechanisms to secure information on issues related to the Convention from those levels of governments and to provide technical assistance for the effective implementation of the Convention.

A) Measures:

In this case, the Committee did not suggest any measures. Nevertheless, in order to comply adequately with that recommendation, Argentina, through the Transparency Policy Planning Department of the Anticorruption Office, has designed and implemented a plan, described in the following section, for assessing the situation with respect to preventing and combating corruption at the subnational levels of government, and cooperating in the implementation of policies designed to fulfill the provisions of the IACC. This project has been called the *Plan Provincias*.

ACTIONS TAKEN BY ARGENTINA

- ***PLAN PROVINCIAS***

General objective: to provide assistance and technical cooperation for implementing the IACC in the provincial and municipal governments.

Specific objectives:

⁹⁹ Hereinafter, references to the "Report of the MESICIC Committee of Experts" will be understood as reference to the Report entitled: "Committee of Experts of the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption: Report on Implementation in Argentina of the Convention Provisions Selected for Review in the Framework of the First Round", approved by the Committee pursuant to Articles 3 and 26 of its rules of procedure during the plenary session held on February 13, 2003 within the framework of its third meeting, held on February 10-13, 2003 at OAS headquarters, Washington DC.

- To inform the citizens in the provinces and to generate awareness of the importance of implementing the IACC.
- To cooperate with or assist provincial governments in implementing the obligations flowing from the IACC.
- To provide training for public officials who must enforce the rules and systems arising from implementation, as well as the citizens and their organizations, so that they can improve their capacity to demand information from the provincial government and to evaluate and monitor the processes and results.

The Plan was designed in light of the recommendation of the Committee of Experts, bearing in mind the fact that the great majority of public officials are employed at the provincial and municipal levels,¹⁰⁰ and recognizing the legal and political organization of Argentina, a federal country where the provinces and municipalities are autonomous but have delegated external relations to the federal government. Thus, with Argentina's ratification of the Convention, the provinces and municipalities are also bound by the treaty.

The *Plan Provincias* was initially implemented as a pilot project with financial support from the World Bank (IDF 027282), until October 2004. Activities were pursued through the signature of cooperation agreements between the provincial governments and the national office. These agreements reflect the political will of the provincial authorities to move forward on this issue with the assistance of the Anticorruption Office.

The pilot phase involved implementing the three component stages of the project in the provinces of Chubut, Corrientes, Entre Rios and Mendoza:

- Diagnostic stage. National universities locally headquartered in each province were selected to cooperate in preparing a Provincial Diagnosis Report. These reports contain an evaluation of factors deemed relevant for preventing corruption: the structure of the public administration, the oversight bodies, the legal framework, and the behavior and attitude of social stakeholders with respect to promoting transparency and controlling corruption. These topics were established in advance by the OA, to reflect provincial strengths and weaknesses and identify areas where further work was necessary. The findings were debated in the subsequent stage by qualified social representatives. In this way, they constituted input for subsequent preparation of policy recommendations in this area. The first stage focused on the four provinces that participated in this phase of the plan.

The Provincial Diagnosis Reports (IDP) clearly constitute an information gathering tool that fully meets the Committee's recommendation on cooperating with subnational levels of government "to secure information on issues related to the Convention".

¹⁰⁰ Roughly 80% of public officials are provincial or municipal. Moreover, more than half of the taxes collected nationally flow to the provinces or municipalities.

- Validation of IDP findings. The local stakeholders were invited to participate in regional seminars on transparency and corruption control. Their objective was to disseminate the transparency tools and to debate the situation at the local and regional level, based on the findings from the Provincial Diagnosis Reports (IDP). The three seminars attracted more than 1000 people from among provincial authorities, officials of the various levels of provincial government, nongovernmental organizations, universities and research centers, and the local communications media. Because of their regional nature, they also constituted a way of expanding cooperation to other jurisdictions.
- The technical assistance stage. Local experts were selected to draw up a Provincial Implementation Plan (PIP), based on the IDP and on the conclusions of the regional seminars, to establish ways for articulating the transparency tools (financial disclosure forms, policies on conflict of interest, transparency and procurement, mechanisms for civil society participation, mechanisms for access to information) within the local setting. To that end, two implementation plans have been prepared to date, for the provinces of Mendoza and Chubut.

Highlights of the plan:

- It was carried out in four provinces: Mendoza, Chubut, Corrientes, Entre Rios, and the city of Córdoba.
- All provincial stakeholders were included: civil society organizations, universities, the communications media, public officials.

Output:

- Four Provincial Diagnosis Reports.
- Three Regional Seminars involving more than 1000 persons from 15 provinces.
- Two dissemination seminars: Entre Rios (250 people), Córdoba (150 persons).
- Two Provincial Implementation Plans.

The pilot phase was deemed a success, in terms of the scope, the impact and the results obtained. Based on that experience, and with local financing, work is continuing with the plan, incorporating new phases and improving certain practices. A new phase has been incorporated, prior to the three stages described above, for the purpose of highlighting and disseminating the issue of corruption so as to place it squarely on the agenda of civil society and government. As well, some methodological aspects have been reformulated in order to improve the diagnosis reports. Finally, a further stage has been added, for transferring capacities to the citizenry and to public officials through technical and practical training (through courses, case studies, visits to the Anticorruption Office, etc.).

In this context, agreements have been signed with the Government Security Department of the City of Buenos Aires and the Municipality of Córdoba, and an agreement is now being negotiated with the Ministry of Government of the Province of Santa Fe. A special

case involves the inclusion of a national independent agency, the National Viniculture Institute, for application of the *Plan Provincias* methodology, given its significant presence in the regional economy of the Cuyo district.

Full information on the *Plan Provincias* can be found at the web site of the Anticorruption Office: http://www.anticorruccion.gov.ar/politicas_09.asp.

- **PERMANENT FORUM OF ADMINISTRATIVE INVESTIGATION BUREAUS AND ANTICORRUPTION OFFICES**

The Permanent Forum of Administrative Investigation bureaus and Anticorruption Offices¹⁰¹ is an initiative for exchanging experience and information with a view to improving the anticorruption policies that these national and provincial organizations implement within their respective jurisdictions. For a detailed explanation of this initiative, see point 3.1, Recommendation VI, of this Questionnaire.

B) Difficulties observed in the process of implementation:

Given the independence of the provinces and municipalities, implementation of the policies recommended in the Provincial Implementation Plans (PIP) is the exclusive responsibility of local governments. This does not pose a problem in itself, but it is a factor to be considered in the working relationship between the national and local governments. The work of the national government focuses on producing the inputs needed for defining policies in this area, and transferring capacities to the officials responsible for their implementation.

Progress reports on the plan are available at the web page of this office: www.anticorruccion.gov.ar (click on “plan provincias”).

C) Domestic agencies that participated in implementing the recommendations. Specific technical assistance and other needs in connection with implementation of the recommendation:

The public agencies that have cooperated with the Anticorruption Office in pursuing the *Plan Provincias*, in accordance with the recommendation of the Committee of Experts, are:

- The authorities of the provincial governments that participated in the pilot project (Chubut, Corrientes, Entre Ríos and Mendoza);
- The authorities and professional staff of the Universidad Nacional de Cuyo, the Universidad Nacional del Litoral, the Universidad Nacional del Nordeste and the Universidad Nacional de la Patagonia San Juan Bosco.

¹⁰¹ Comprising representatives of Anticorruption Offices of the Nation, the Provinces of Chubut and Entre Ríos and the *Fiscalías de Investigaciones Administrativas* of the Nation, of the Provinces of Río Negro, La Pampa, Mendoza, Catamarca and Chaco and the *Fiscalía de Estado* of Tierra del Fuego.

Particular note should be made of the participation by local nongovernmental organizations in validating the findings of the IDP, as well as the role played by the local communications media in disseminating them.

With respect to the Forum, the participating agencies are:

- The Anticorruption Offices of the Nation, the Provinces of Chubut and Entre Ríos
- The *Fiscalías de Investigaciones Administrativas* of the Nation and the Provinces of Río Negro, La Pampa, Mendoza, Catamarca and Chaco.
- The *Fiscalía de Estado* of Tierra del Fuego

B. CONCLUSIONS AND RECOMMENDATIONS FOR THE FEDERAL LEVEL

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

1.1. Standards of conduct intended to prevent conflicts of interest and enforcement mechanisms:

At the federal level, Argentina has considered and adopted measures intended to establish, maintain, and strengthen standards of conduct to prevent conflicts of interest and enforcement mechanisms, among them Law 25,188, the "Public Ethics Law", and its regulations in the framework of the national public administration, including the establishment of the Anticorruption Office and the results it has obtained.

II. RECOMMENDATION:

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

A) Measures:

- *Ensuring more effective enforcement of Law 25,188 for all government employees and officials, including those of the legislative and judicial branches and the Prosecutor 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 nonexistence 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 directed 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.*

ACTIONS TAKEN BY ARGENTINA

- **DRAFT AMENDMENTS TO LEGISLATION ON PUBLIC ETHICS**

With a view to promoting implementation of the recommendations and measures of section 1.1.1 of the Report of the MESICIC Committee of Experts, a comprehensive reform of the Law on Public Service Ethics (Law 25,188) has been proposed.

The Anticorruption Office, as the enforcement authority for the law, with more than three years of experience as such, identified a series of critical points that it feels should be reviewed for possible amendment (many of them were also noted by the MESICIC Committee of Experts).

In this respect, with a view to reforming that Law, the OA prepared a draft and initiated a Participatory Rule-setting Procedure for public debate. This draft calls for significant amendments in order to improve the efficiency of the law as well as the framework of preventive measures for acts of corruption, and the enforceability of the Law. The reforms cover the following topics:

- a) Chapter VIII of Law 25,188: National Public Ethics Commission.
- b) Chapter IV of Law 25,188: employment history and prior analysis of conflicts of interest.
- c) Chapter V of Law 25,188: conflicts of interest.
- d) Articles 3, 8, 9 and 17 of Law 25,188: sanctions.
- e) Chapter III of Law 25,188: system of sworn declarations.

The agenda for the Participatory Rule-setting Procedure followed in debating the draft reforms to the Law on Public Service Ethics prepared by the Anticorruption Office was the following:

Workshops. Three workshops were held, of four hours each.

Workshop 1:

Date: Wednesday, April 9, 2003.

Participants: officials of the national public administration, the Auditor General's Office, and the Inspector General's Office.

Workshop 2:

Date: Thursday, April 10, 2003.

Participants: officials of the Judicial Branch and the National Legislative Branch, the Attorney General's Office and the Public Defender's Office.

Workshop 3:

Date: Tuesday, April 22, 2003.

Participants: Academics, educational institutions, NGOs, professional associations, law offices, consultants and members of the Commission for Monitoring Compliance with the IACC.

Dissemination via the communications media. Institutional notices were published in the newspaper *La Nación*.

Dissemination via the Internet. The draft reforms were posted for the attention of interested parties at the web site of the Anticorruption Office (www.anticorruccion.gov.ar, click on "políticas anticorrupción" / "proyectos normativos").

To consult the complete draft of reforms to Law 25,188 prepared by the OA, visit the web site (<http://www.anticorruccion.gov.ar>)

- **NATIONAL COMMISSION ON PUBLIC ETHICS. ACTIONS TAKEN BY THE NATIONAL EXECUTIVE BRANCH:**

The National Commission on Public Ethics (CNEP) was created by Law 25,188 on Public Service Ethics (Articles 23 to 25). It is to function as an independent body with functional economy, under the National Congress, which has prime responsibility for its composition.

Article 24 of the Law provides that the Commission shall consist of 11 members with recognized credentials and public prestige, who may not belong to the body that appoints them, and who shall serve for four years, with the possibility of being reappointed for one more turn. They shall be appointed in the following manner:

- a) one by the Supreme Court;
- b) one by the executive branch;
- c) one by the Prosecutor General's Office;
- d) eight citizens selected by joint resolution of both houses of Congress by two-thirds of the members present, two of whom shall be recommended by the Public Defender and the Auditor General.

Actions taken by the NEB

In 2000, the Anticorruption Office opened a file (MJyDH No. 127.874) with a view to implementing a procedure for selection and appointment of a citizen to represent the NEB on the CNEP, in accordance with the guidelines established by Law 25,188.

Subsequently, the Minister of Justice and Human Rights nominated Dr. Fernando Augusto Storni Dolan, a Jesuit priest, as the NEB representative on the CNEP, and on January 28, 2002 a draft Decree was submitted for consideration by the President of the Nation.

The draft Decree was examined by the Technical Department of the Presidency, which noted that the CNEP had not been created within the Congress, as prescribed by Law 25,188, and that therefore in technical terms there was no vacancy to be filled.

The failure to create the CNEP within the Congress, in accordance with Article 23 of Law 25,188, and as recognized by the Chamber of Deputies in Resolution 1415-D-00, remains an obstacle to the formal appointment of an NEB representative to the Commission.

Notwithstanding this situation, on the understanding that the failure to create the CNEP does not constitute an obstacle to enforcing the Public Ethics Law (as expressed by the MESICIC Committee of Experts), the NEB has internal implementation mechanisms embracing all aspects of that Law (sworn statements, analysis of conflicts of interest and incompatibilities, gifts to public officials, investigative proceedings, etc.).

As well, with respect to membership of the CNEP, and given the time that has elapsed without its creation, the Anticorruption Office has prepared a bill for the eventual appointment of an NEB representative, the most notable aspects of which are:

- I. The establishment of an honorary selection tribunal or committee.
- II. That committee would comprise three members representing, respectively, the Inspector General's Office, the Head of Cabinet, and the Ministry of Justice and Human Rights.
- III. Public invitation for nominations to membership of the CNEP, representing the NEB.
- IV. Publication of the list of all nominations.
- V. Public challenge (non-binding) of nominations.
- VI. Analysis of challenges and of the background of each nominee by the selection committee.
- VII. Personal interview of nominees by the selection committee.
- VIII. Selection of three to five nominees for submission to the President of the Nation, who shall choose one of them.

B) Difficulties observed in the process of implementation

Two difficulties have been observed in establishing the CNEP: the fact that the legislative branch has still not implemented it; and the decision of the Supreme Court of Justice (*Acordada* 1/2000) holding that it is not obliged to appoint a representative to the CNEP, and that on the contrary to do so would violate the division of powers established by the Constitution.

**C) Domestic agencies that participated in implementing the recommendations.
Concrete technical assistance and other needs in connection with implementation of the recommendation:**

- Ministry of Justice and Human Rights.
- Anticorruption Office.
- National Auditor General's Office.
- National Inspector General's Office.
- National Public Defender's Office

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

At the federal level, Argentina has considered and adopted measures intended to establish, maintain, and strengthen standards of conduct to ensure the conservation and proper use of resources entrusted to public officials in the performance of their functions, as indicated in Chapter II, Section B, part 1.2 of this report.

III. RECOMMENDATION:

1.2.1. Strengthening the internal and external control systems and utilizing effectively the information generated during audits.

A) Measures:

- *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.*
- *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.*

ACTIONS TAKEN BY ARGENTINA

- **CONGRESSIONAL CONTROL OVER THE EXPENDITURE OF PUBLIC FUNDS:**
 - **DRAFT AMENDMENTS TO THE NATIONAL INTELLIGENCE LAW**

With a view to "ensuring that an effective control system exists for congressional oversight of the expenditure of public funds", the Anticorruption Office proposed draft amendments to the National Intelligence Law (Law 25,520).

A similar initiative was presented for the first time in 2000, as a contribution to the preparation of what was then the draft of the Intelligence Law. In 2003 a new draft was proposed, calling for reform of the Law (Resolution OA 219/03). In 2004 the Anticorruption Office again requested that Congress take up the draft bills containing this initiative and it proposed other reforms, such as the publication of secret laws and amendments to the budgetary technique used with the reserved funds (Resolution OA/DI 849).

Since May 2005 the OA has been participating in meetings of the dialogue forum between the representatives of the NEB and the Active Memory Association, which represents victims of the attack on the Asociación Mutual Israelita Argentina. Those meetings have been held in the context of a friendly settlement between the Argentine government and that organization under the auspices of the Inter-American Commission on Human Rights, pursuant to Article 41 of its rules of procedure. Point 5 of that agreement calls for regulatory reforms with a view to: a) bringing transparency to the use of reserved funds for the Intelligence Office; b) facilitating access to intelligence information by judges in investigations of terrorist acts.

Finally, in November 2005, the OA submitted to the Minister of Justice and Human Rights a draft bill prepared by the office's two departments, with the cooperation of certain civil society organizations,¹⁰² to reinforce the accountability and institutional control mechanisms contained in Law 25,520.

That reform proposes, among other things, that the Bicameral Committee should produce an annual public report that, while safeguarding any information that might pose a risk to national security, would report to the public on control activities and their outcomes; that registration mechanisms be updated to give effect to the tasks of the comptroller; and that a distinction be drawn, in preparing the national budget, between those items that must be kept strictly secret and those involving expenditures analogous to items for any public entity (within the oversight ambit of Law 24,156).

As well, it would prohibit delegation of the legislative branch's power to allocate and reassign the amounts budgeted for intelligence activities.

It also proposes that Decree S 5315/56 and Law S 18,302 should be repealed once the budgetary issues relating to national security-earmarked reserved funds have been settled.

¹⁰² The OA proposal was discussed on June 23, 2005 with experts of the Centro de Estudios Legales y Sociales, Centro para la Implementación de Políticas Públicas para la Equidad y el Crecimiento, Asociación por los Derechos Civiles and the Instituto de Estudios Comparados en Ciencias Penales y Sociales.

○ **NATIONAL AUDITOR GENERAL'S OFFICE**

The Anticorruption Office, which is Argentina's focal point in the MESICIC and as such is responsible for replying to this Questionnaire, consulted the Auditor General's Office about progress with the actions and measures recommended by the Committee of Experts. Following is the full text of the AGN's response to that request:

With respect to previous responses, we may note that there seems to be a greater level of response by the executive branch to the reports approved by the Auditor General (AGN).

Previously, once the reports were approved by the AGN, there was a lengthy process involved before the executive branch responded to requests for information submitted by Congress on the basis of the audit reports.

In the last two years there has been a change in the information channels: acting through the Head of Cabinet, the Executive Branch now gives a formal reply to the observations as soon as it receives the final report from the AGN. This change has enhanced the timeliness of observations relating to the expenditure and management of public funds, and has made control more effective.

To illustrate this point, we report below the quantitative record of responses received from the executive branch (Head of Cabinet):

[Figure, page 11]

Responses from the Head of Cabinet to the final reports of the AGN

Number of responses

2004 2005 2006 (first 6 months)

Year

.....

• **PUBLICATION OF THE REPORTS OF CONTROL AGENCIES:**

The reports of the Inspector General's Office (SIGEN) are public, and are available at the agency's web site: www.sigen.gov.ar

With respect to the Auditor General's Office (AGN), from the legal viewpoint there have been no new developments since the 2003 report. With respect to publication of reports, Disposition 151/02 still prevails, whereby:

"Article 1. Audit reports approved by the Auditor General may be published at the web pages of the agency once they have been notified to the Mixed Parliamentary Accounts Committee, unless the College of Auditors General decides, for substantiated reasons, to restrict the report. This is without prejudice to the power of that committee pursuant to

Article 119 (f) of Law 24,156 relating to the annual report of that agency, mentioned in paragraph (e) of the Law."

What is new in this field is that there has been no regulatory retrenchment in terms of access to the reports, reflecting a growing conviction in public opinion in support of the decision not to retreat in this field.

AGN: participatory planning¹⁰³. As a way to enhance the impact of audit reports on public opinion in general and on the activity of civil society organizations in particular, a participatory planning mechanism has been instituted. As reported in 2003, since 2002 the AGN has been holding informal annual meetings with CSOs to receive their suggestions on audit subjects or areas to be incorporated into the annual action plan. On September 21, 2005 an important grouping of CSOs (ACIJ, Poder Ciudadano, CELS, CIPPEC, ADC and INECIP) asked the AGN to formalize this participatory mechanism. In its *Secesión* of February 8, 2006 (point 23) the College of Auditors General responded favorably to this request, and participation by civil society organizations in the planning process is now institutionalized.

AGN: public notice of audits underway at the web page. Since 2004, as a means of facilitating legislative and citizen oversight of the national public sector, the Auditor General's Office has been publishing the list of audits underway, at its web page¹⁰⁴. This represents a tool for accountability on the part of the AGN itself, in terms of the tasks it is pursuing.

It should also be noted that the Anticorruption Office receives and examines reports from both SIGEN and AGN. The OA investigations department has opened 84 investigations on the basis of SIGEN reports, and seven on the basis of AGN reports.

The Anticorruption Office is continuing to improve the information it discloses at its web site (<http://www.anticorrupcion.gov.ar>), where all its activity reports can be found (<http://www.anticorrupcion.gov.ar/gestion.asp>) as well as its resolutions relating to conflict of interest cases (http://www.anticorrupcion.gov.ar/politicas_03.asp) and on presumed incompatibilities (http://www.anticorrupcion.gov.ar/politicas_04.asp). There is also a listing available of the cases in which the OA is a party to litigation, describing the latest developments, and there is a listing of the significant complaints laid by the OA investigations department (http://www.anticorrupcion.gov.ar/denuncias_03.asp).

- **EFFECTIVE ENFORCEMENT SYSTEM AND STABILITY AND INDEPENDENCE FOR INTERNAL AUDITORS**

¹⁰³ This step also relates to recommendations 3.1.1 ("Strengthening the oversight bodies... political and social support"), 4.3 and 4.4 ("Mechanisms to encourage participation in public administration" and "Mechanisms for participation in the follow-up of public administration ") of the MESICIC Committee of Experts.

¹⁰⁴ [http://www.anticorrupcion.gov.ar/\(gestion.asp\)](http://www.anticorrupcion.gov.ar/(gestion.asp)), click on "Auditorias en Curso"

With respect to the measures recommended by the Committee of Experts, in terms of "establishing an effective enforcement system for violations of law or regulations found during the course of an audit" and "ensuring the highest degree of stability and independence of internal auditors", a number of ideas have been put forward to implement the so-called "Draft Plan of Action for Implementing the Recommendations Formulated to Argentina by the MESICIC Committee of Experts" (available at: http://www.anticorruccion.gov.ar/internacional_02.asp)

This draft was prepared in the context of the "Memorandum of Understanding for Execution of a Technical Cooperation Project in Argentina to facilitate implementation of the recommendations formulated by the MESICIC Committee of Experts", signed by the OAS General Secretariat and the Anticorruption Office. The project has been supported financially by the Canadian International Development Agency (CIDA).

With respect to the Auditor General's Office, Law 24,156 on Financial Administration does not provide any mechanism whereby the AGN may sanction public officials. In the 2003 report, we indicated progress following approval by the College of Auditors General (Minute 41, December 15, 2003) of the proposal of the Legal and Institutional Secretariat to amend the Agency's document control system to enable downloading and consultation of information on complaints filed by the AGN with the Prosecutor General, the Administrative Investigation bureau, the Criminal Court or competent body, as well information on the handling of such complaints.

This progress has been reinforced through the submission of regular reports by the Legal and Institutional Secretariat to the College of Auditors General on the "Status of litigation to which the AGN is party and criminal proceedings originating from audit reports, and analyzing those reports".

B) Difficulties observed in the process of implementation:

C) Domestic agencies that participated in implementing the recommendations. Specific technical assistance and other needs in connection with implementation of the recommendation:

- Ministry of Justice and Human Rights.
- Anticorruption Office.
- National Auditor General's Office (AGN).
- National Inspector General's Office (SIGEN).
- National Congress

1.3. Measures and systems requiring public servants to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.

At the federal level, Argentina has considered and adopted measures intended to establish, maintain, and strengthen standards of conduct and mechanisms concerning

measures and systems requiring public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware, as noted in section 1.3, part B, Chapter II of this report.

IV. Recommendation

1.3.1. Strengthening the mechanisms that Argentina has for requiring public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.

A) Measures:

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

ACTIONS TAKEN BY ARGENTINA

As noted in the MESICIC Committee of Experts' report, Argentina has legislation establishing the obligation of public officials to report to the competent authorities any acts of corruption of which they become aware, including those mentioned in Article 177 of the Code of Criminal Procedure and in Article 31 of the Public Ethics Code (Decree 41/99) applicable to the National Public Administration. Failure to submit such report is punished by Article 277 of the Criminal Code with imprisonment of six months to three years.

Article 177 of the Code of Criminal Procedure was regulated, with respect to the NEB, by Decree 1162/00, which provided that officials must comply with their legal duty by reporting any suspected offenses to the Anticorruption Office. This office was also given the responsibility of laying before the courts any facts that, as a result of its investigations, could constitute crimes.¹⁰⁵

Since December 1999, the Anticorruption Office has received 509 reports submitted by government officials and public agencies, of which (following the investigations stage) some were laid before the courts and others were referred to other agencies for administrative investigations and sanctions,¹⁰⁶ as indicated in the following table:

¹⁰⁵ Decree 102/99, Article 2 (f).

¹⁰⁶ Information from the OA Affairs Monitoring System, to June 1, 2006.

Distribution of cases Outcome	Status	
	Pending	Resolved
Closed.		103
Administrative complaint.		2
Criminal charges.		128
Dismissed.		60
Under study.	46	
Investigations.	25	
Litigation.	29	
Referral to public agencies.		62
Referral to the courts (insignificance).		31
Referral to the courts (lack of jurisdiction)		23
Total	100	409

Investigations and complaints:

Between February 1, 2003 (the date of the report of the MESICIC Committee of Experts on Argentina) and May 31, 2006, the Investigations Department of the Anticorruption Office (DIOA) examined 3,383 cases resulting from complaints submitted by individuals, public servants and oversight bodies, as well as those initiated ex officio by the Office on the basis of irregularities reported via the news media and other channels. From the time of its creation in December 1999 to 31 May of this year, it has reviewed 5,648 complaints.

Of the 3,383 new cases examined:

- 913 offenses were turned over to the courts.
- 709 were referred to other agencies of the National Public Administration as constituting potential administrative irregularities but not acts of corruption.
- 616 are currently under investigation by the DIOA.
- 1,145 were dismissed or closed.

Cooperation with the justice system:

The OA cooperates with judicial investigations in various ways:

a) By laying complaints that give rise to judicial proceedings. Of the 933 cases turned over to the courts, 681 referred to acts of corruption committed within the national public administration, while the remaining 232, despite constituting possible offenses, did not fall within the jurisdiction of this Office.

b) By proposing measures and providing evidence in cases in which it is involved as plaintiff. During the period covered by this report, the OA appeared as plaintiff in 33 cases that were deemed to demonstrate damage to State interests. The Office has participated as plaintiff in 75 cases since its creation.

c) By cooperating with the courts and providing evidence in pre-existing cases, in order to move the process forward. This assistance has been recognized in the rulings of several federal judges of first instance and of the Federal Court.

When it comes to training for public officials, the OA, with the financial support of the British Embassy's Global Opportunities Fund (GOF) and the UNDP, is developing virtual training courses (e-learning) for public officials. Those courses highlight the importance of officials' ethical obligations and the need to report irregularities of which they become aware. For further information on this program, see the OA web page (<http://www.anticorruption.gov.ar>)

B) Difficulties observed in the process of implementation:

C) Domestic agencies that participated in implementing the recommendations. Specific technical assistance and other needs in connection with implementation of the recommendation:

- Judicial Branch.
- Attorney General's Office.
- Anticorruption Office.

2. SYSTEMS FOR REGISTRATION OF INCOME, ASSETS, AND LIABILITIES (ARTICLE III, PARAGRAPH 4, OF THE CONVENTION)

At the federal level, Argentina has considered and adopted measures to establish, maintain, and strengthen systems for registration of income, assets, and liabilities of persons who perform public functions in certain posts as specified by law and, where appropriate, for making such registrations public as noted in section 2, part B., of Chapter II of this report.

V. Recommendation:

2.1. Improving the systems for the timely collection, use and public release of the financial disclosure reports.

A) Measures:

- *Resolving the discrepancy between the law establishing the National Commission on Public Ethics and the nonexistence 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.*

ACTIONS TAKEN BY ARGENTINA

- **NATIONAL COMMISSION ON PUBLIC ETHICS**

With respect to the first measure suggested, we refer the reader to the reply contained at point 1.1.1 of this Annex dealing with the Recommendations of the Committee of Experts (in this Annex, Recommendation II).

- **FINANCIAL DISCLOSURE REPORTS FOR COUNSELING PUBLIC OFFICIALS ON HOW TO AVOID CONFLICTS OF INTEREST AND FOR DETECTING ILLICIT ENRICHMENT**

With respect to the second measure, it is important to note that, within the NEB, the system of financial disclosures has been fully implemented, with highly positive results and a 99% compliance rate by officials required to report.

The Anticorruption Office has developed various computerized tools that are used to verify and update the universe of public servants required to submit financial disclosure reports, as well as for monitoring compliance and publishing information relating to them.

Since the creation of the Anticorruption Office, the Financial Disclosure Reports Unit has turned over to the Investigations Department 164 cases of possible illicit enrichment, based on information from those disclosure reports.

- **COMPUTERIZED TOOLS IMPLEMENTED TO OPTIMIZE THE SYSTEM OF FINANCIAL DISCLOSURE REPORTS FOR PUBLIC OFFICIALS:**

Reporter database (*Base de obligados, OAO*). This stores information received from the personnel units and makes efficient use of it. This database identifies the review status of persons required to report, and their compliance with reporting requirements, and produces lists that are posted monthly at the web page of the office to report any new developments on the status of compliance.

The information submitted by the various offices is entered directly into the database from the diskettes received at the Anticorruption Office.

Since 2003, when the recommendations were implemented, new modules have been incorporated for making better use of the information in the database. For example, in addition to the monthly compliance listings published at the OA web page, consolidated lists are now available showing all the information relating to the status of reporting compliance, as updated annually. This list provides anyone who wishes to consult it with a complete status table, with respect to annual reporting, and facilitates the search for delinquents, by jurisdiction or agency, once the time limit for submitting reports has expired.

Application for completing and transmitting financial disclosure reports: OANET. The ministry's IT office is working on modifications to the application, based on proposals submitted. Those modifications reflect the Office's experience during the years the application has been employed, as well as proposals submitted at the workshops organized by the OAS and the OA in December 2005.¹⁰⁷

Disclosures database. The computerized system, in place since 2000, allows the Anticorruption Office to retain the financial disclosure reports submitted in hard copy by officials at the senior levels of government, while the remaining reports are kept in the respective personnel offices. For controlling these remaining reports, a database has been developed covering the totality of disclosure reports that are publicly available. They can be consulted by document number or by the name of the reporter.

Since 2005, the reports reported in this database are cross-checked against compliance information from the OAO (Notice of Electronic Transmission reported by the agencies). This cross-check makes it possible to detect any errors in the information received and to request the appropriate corrections.

Computerized control of financial disclosure reports. Since 2004, for purposes of agreements that have been signed, the unit has been able to access remote databases online (National Automobile Ownership Registry, Federal Capital Property Ownership Registry), to verify the accuracy of data in the disclosure reports.

To make further progress with the development of tools for analyzing the content of financial disclosures and make full use of technological capacities for detecting cases that require in-depth analysis, two new systems have been developed: "LUPA and "SICRUFUP"

a) LUPA.

This permits a series of operations within the financial declarations database:

- Automated detection of statements showing asset increases between given percentages.
- Search and calculation for differences in the assets declared by the same official.
- Search and calculation of assets, by official.
- Search and calculation of assets, by rank.
- Detailed breakdown of reporters' assets and income, year by year, and the corresponding table.

The system has been operating since 2005

¹⁰⁷ See the OA web page, http://www.anticorruccion.gov.ar/internacional_02.asp, " Workshop organized by the OAS and the Anticorruption Office, Buenos Aires, December 2005".

b) SICRUFUP (“Crosscheck System for Public Officials”):

The year 2005 saw completion of a new system, SICRUFUP, which allows for cross-checking the database on financial disclosure reports kept in this Office with those of other registries of the Public Administration (Federal Capital Property Ownership Registry, National Automobile Ownership Registry, Office of the General Inspector of Justice).

The system of financial disclosure reports is designed to strengthen the integrity of civil servants by:

1. Ensuring that all civil servants required to do so comply with their reporting obligations (according to Article 263 (3) of the Criminal Code, deliberate failure to report constitutes an offense).
2. Tracking changes in officials' assets in order to detect any evidence of illicit enrichment.
3. Detecting situations of incompatibility or conflict of interest.

Each year, some 30,000 officials of the NEB submit financial disclosure reports to the Anticorruption Office. All of these 30,000 declarations arrive by Internet in the OA databases; reports in paper format are received only from senior government officials (approximately 1,500 declarations per year). From January 1, 2003 to June 12, 2006, the OA recorded 4,738 financial disclosures. Those relating to annual updates and departures from the public service are controlled by comparing the information with that in previous statements.

In addition to the control of the disclosure reports kept in the Office, those held in the various personnel units are controlled on a selective basis in accordance with pre-established criteria. Those criteria include selection by the nature of duties (responsibilities for control or regulation of activities or public services, issuance of licenses or authorizations, supervision of public funds) and by the hierarchical level of officials (Directors, Directors General, or equivalent) and the percentage of asset increases in consecutive filings.

All information relating to the financial disclosure system for public officials of the executive branch can be consulted at the OA web site (<http://www.anticorruccion.gov.ar>), by clicking on “*declaraciones juradas*”. Consultation can also be affected by e-mail to the Financial Disclosures Unit of the Anticorruption Office (udioa@jus.gov.ar).

B) Difficulties observed in the process of implementation:

With respect to implementation problems, we noted that some aspects of the OANET application need to be adjusted or modified to provide greater information and to facilitate control. Work on these problems is now underway in the IT area of the Ministry of Justice and Human Rights.

With respect to notifying noncompliant officials, there has been some progress but there are still difficulties in getting personnel managers to make this a practice, and to provide such notification in the legally required wording and format. As well, when an official leaves his position, the address shown on his file is frequently not updated, and consequently no notification can be sent.

C) Domestic agencies that participated in implementing the recommendations. Specific technical assistance and other needs in connection with implementation of the recommendation:

- Anticorruption Office.
- IT Management Division of the Ministry of Justice and Human Rights.
- Human resource areas of agencies of the NEB.

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

At the federal level, Argentina has considered and adopted measures to establish, maintain and strengthen oversight bodies for the effective compliance with the provisions selected for review in the first round (Article III, paragraphs 1,2, 4 and 11 of the Convention), as noted in part B., Chapter II, section 3 of this report.

VI. Recommendation:

- 3.1. Examining the feasibility of implementing the proposals contained in the Management Report for 2001 of the Anticorruption Office.

A) Measures:

- *Ensuring better coordination and cooperation among the Prosecutor General's Office, Administrative Investigations Office, Inspector General, Anticorruption Office, Auditor General, and Congressional Committees.*
- *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.*

ACTIONS TAKEN BY ARGENTINA

- **BETTER COORDINATION AND COOPERATION AMONG THE OVERSIGHT BODIES**
 - **PERMANENT FORUM OF ADMINISTRATIVE INVESTIGATION BUREAUS AND ANTICORRUPTION OFFICES**

To achieve better coordination and cooperation among oversight bodies, the Permanent Forum of Administrative Investigation Bureaus and Anticorruption Offices (already mentioned in the reply to point b) Recommendation I in this report) has been created.

The Forum¹⁰⁸ is an initiative designed to allow for the exchange of experience and information for improving the anticorruption policies that these national and provincial organizations implement in their respective jurisdictions.

The purposes of the Forum are:

- a) To promote and strengthen the development of its member bodies so that they can fulfill their functions of preventing, detecting, prosecuting and eradicating corruption and irregular administrative conduct.
- b) To foster and facilitate mutual cooperation in the exchange of information among member bodies, at both the preventive and the investigative stages.
- c) To take any steps necessary for the proper specialization and training of personnel, professional and administrative alike, through joint programs, exchanges and agreements with other public and private entities.
- d) To encourage the establishment of similar bodies in all jurisdictions, and to ensure that they enjoy the necessary independence and financing to perform their duties effectively and without undue pressure.
- e) To share experience on comparable problems so as to articulate efforts and common solutions.
- f) To establish linkages and pursue common action with civil society organizations in ways that will enhance the effectiveness and visibility of their work.

Details on the objectives, membership, bylaws and activities of the Forum can be consulted at its web page, created by the OA: www.foro-oas-fiscalias.org.ar.

¹⁰⁸ Comprising representatives of the *Oficinas Anticorrupción* of the Nation and of the Province of Chubut and Entre Ríos, the *Fiscalías de Investigaciones Administrativas* of the Nation and of the Provinces of Río Negro, La Pampa, Mendoza, Catamarca and Chaco, and the *Fiscalía de Estado* of Tierra del Fuego

The most important documents are published in the freely accessible portion of the page, designed for mass distribution. Indeed, one of the objectives of the Forum is to interact with society in order to improve respective capacities and to encourage public debate on issues within its jurisdiction.

- **INSPECTOR GENERAL'S OFFICE**

With respect to the Inspector General's Office (*Sindicatura General*), pursuant to the Internal Government Audit Rules of the SIGEN, approved by Resolution 152/2002-SGN, the purposes of this agency include "fostering coordination of work among the organs of the oversight system".¹⁰⁹

Among the goals to be achieved during audit work is that of obtaining, compiling and examining valid and sufficient evidence with respect to any discrepancies observed, seeking to identify the causes of any discrepancies, and making recommendations to promote compliance with procedures and the establishment of acceptable practices.

The SIGEN frequently responds to requests for information from the Administrative Investigations Bureau, the courts and other public organs, and its auditors will conduct the requested studies or expert examinations, employing procedures, professional resources and methods appropriate to the nature and circumstances of each case.

The SIGEN also responds to requests for assistance from the NEB and the authorities of its jurisdictions and of its oversight and audit bodies, and verifies that the jurisdictions and entities under its control have adopted measures to take prompt legal action for damages against those responsible, and to keep permanent watch over such cases.

- **STRENGTHENING THE OVERSIGHT BODIES**

- **INSPECTOR GENERAL'S OFFICE**

The 2006 Plan of the Inspector General, approved by Resolution SGN 128/2005, sets out various control activities planned by the SIGEN and by the internal audit units within the various agencies and entities of the national public sector, with respect to government hiring and procurement systems.

With respect to control over public hiring systems during 2006, planned activities include management audits, analyzing compliance with laws and regulations, and applying the criteria of efficiency, economy and effectiveness, among other aspects.

Between them, the SIGEN and the internal audit units have planned 89 audits of human resource management.

In turn, the SIGEN has included in its 2006 work plan projects relating to optimizing management and control over the agency's own system, addressing among other things

¹⁰⁹ These rules can be consulted at www.sigen.gov.ar/ "*Normas de auditoria interna gubernamental*".

the review and improvement of policies governing staff selection, rotation, dispute settlement, revising job profiles, optimizing the professional career, and assessing performance against responsibilities, as well as reviewing the mechanisms for productivity bonuses and other incentives.

The planned control activities and the regulations issued by the SIGEN make it possible to offer recommendations to strengthen government hiring systems and to guarantee equity and efficiency in those systems. The publication of SIGEN reports (available at its web site: www.sigen.gov.ar) also contributes to greater transparency in the system.

- **ANTICORRUPTION OFFICE. INSTITUTIONAL STRENGTHENING PROJECT:**

The Transparency Policies Planning Division of the Anticorruption Office has launched a project for "Institutional Strengthening of the Anticorruption Office", with the support of the British Embassy ("GOF", Global Opportunities Fund) and UNDP, as well as funding from the national treasury. The main objective of this project is to strengthen the OA's prevention policies.

The project began in 2005 and is intended to strengthen the OA's prevention policies through three components:

Component A: Map of Transparency Conditions and Accessibility in Public Procurement

The objective of this component is to create a scheme for strengthening transparency in government procurement systems by developing a map that will identify problem areas in the procurement process.

Component B: Distance Training (e-learning)

The idea is to create a "Distance Training System" (the "Training System in Public Ethics" or "SICEP"), whereby the OA can provide targeted training for officials of the National Public Administration. The system will include a virtual library or documentation center on transparency and corruption issues.

Component C: Ethics Training for Preventing Corruption

The purpose of this final component is to prepare and carry out educational activities (courses, workshops, seminars, debates, etc.) for students in institutions of higher learning throughout the country, and for their families and teachers, in order to create and promote public awareness of the importance of respecting the rule of law; to strengthen education in values, so as to prevent acts of corruption at all levels of social life; to make young people aware of public ethics issues and encourage them to debate those issues, both at school and at home, and to train teachers to provide continuity in fulfilling those objectives.

- **ANTICORRUPTION OFFICE. NEW JUDICIAL RECOGNITION OF ITS CAPACITY AS PLAINTIFF**

Attention should be drawn here to the ruling of the Supreme Court Justice on May 30, 2006 in case G. 1471. XL, "Gostanian, Armando on extraordinary recourse", in which it rejected defense arguments that the powers granted the Anticorruption Office to act as plaintiff were unconstitutional. The Court held that, provided the OA did not claim to preempt the prerogatives of the public prosecutors, those powers were not at odds with the Constitution.

Following are some of the considerations provided by the Supreme Court:

"I am not persuaded by arguments claiming that the powers to prepare preventive programs, received complaints, initiate administrative investigations against public officials or institutions, request reports from public and private agencies and from individuals, seek police cooperation, order expert appraisals, evaluate and oversee sworn declarations, analyze information from the Inspector General and the Auditor General, lay complaints before the courts with respect to acts that may constitute crimes (in which case its actions will amount to administrative prevention), and continue intervening in those cases as plaintiffs (Article 13 of Law 25,233 and its reference to Articles 26, 45 and 50 of Law 24,946, and National Decree 102/99), attributed to the Anticorruption Office, are in conflict with the Argentine constitutional order (...). I consider, instead, that this domestic legislation complies strictly with the purposes and objectives of the Inter-American Convention against Corruption (Preamble and Articles 2, 3, paragraphs 2, 8 and 9, and Article 7) approved by Law 24,759. (From the Prosecutor's report)

B) Difficulties observed in the process of implementation:

C) Domestic agencies that participated in implementing the recommendations. Specific technical assistance and other needs in connection with implementation of the recommendation:

- Inspector General's Office.
- Auditor General's Office.
- Anticorruption Office

With respect to the Forum of Administrative Investigations Bureaus and Anticorruption Offices, the participating agencies are:

- The *Oficinas Anticorrupción* of the Nation and of the Province of Chubut and Entre Ríos,
- The *Fiscalías de Investigaciones Administrativas* of the Nation and of the Provinces of Río Negro, La Pampa, Mendoza, Catamarca and Chaco, and
- The *Fiscalía de Estado* of Tierra del Fuego

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

At the federal level, Argentina has considered and adopted measures intended to establish, maintain and strengthen mechanisms to encourage the participation of civil society and nongovernmental organizations in efforts aimed at preventing corruption, as discussed in Part B., Chapter II, Section 4 of this report

Clarification. First of all, we must note that, while the initial country report model included as point 4.1 "Participation Mechanisms in General" (which in fact remains in the body of the report, in the analytical section), both in the case of Argentina and in that of most other countries, the Committee decided not to include this item in Chapter III of its reports ("Conclusions and Recommendations").

We shall therefore begin, following strictly the text of the report of the MESICIC Committee of Experts, with "Mechanisms for access to information", as point 4.1.

4.1. Mechanisms for access to information

VII. Recommendation:

4.1.1. Instituting legal norms supporting public access to government information

A) Measures:

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.

ACTIONS TAKEN BY ARGENTINA

On this point, we refer to Decree 1172/03, to which we shall return later in dealing with subsequent items on mechanisms for citizen participation, since that Decree relates to all aspects involved in Chapter 4.

- **DECREE 1172/03, "ENHANCING THE QUALITY OF DEMOCRACY"**

In December 2003, the President of the Nation signed Decree 1172/03 on Enhancing the Quality of Democracy, which applies to the entire National Executive Branch. It approves general regulations for:

- Public hearings.
- Publicity for the management of interests.
- Participatory rule-setting procedures.
- Access to public information.

- Open meetings of public service regulatory bodies.

In the drafting of this decree, special account was taken of OA experience between 2000 and 2002, when it submitted its legislative proposals on Access to Information and Publicity for Management of Interests for public debate through the Participatory Rule-Setting Procedure.¹¹⁰

The Decree assigns functions in accordance with various regimes. With respect to access to public information and management of interests, the Office for Institutional Reform and Strengthening of Democracy of the Head of Cabinet is designated as the enforcement authority, while the Transparency Policies Planning Department of the Anticorruption Office appears as the agency responsible for receiving, formulating and reporting to the responsible authorities on complaints filed over noncompliance with these regimes. With respect to participatory rule-setting procedures and public hearings, the Office for Institutional Reform and Strengthening of Democracy is the coordinating agency and the Transparency Policies Planning Department also serves as coordinator in cases within its competence.

For further information on the contents, actions and implementation statistics relating to this Decree, visit the web site of the Office for Institutional Reform and Strengthening of Democracy, www.mejordemocracia.gov.ar, at the information access site created by the NGO, Centro de Políticas Públicas para la Equidad y el Crecimiento (CIPPEC): <http://www.accesoalainformacion.org/ejercer.php?iframe=acceso.html> or at the web site dedicated to monitoring implementation of Decree 1172/03, of the Fundación Poder Ciudadano: <http://www.poderciudadano.org.ar/?do=temas&id=45&PHPSESSID=bc31e93a22dbd9fb0c1267cdcaff21>.

- **DRAFT LEGISLATION ON ACCESS TO INFORMATION:**

As described in the progress report for Argentina submitted during the Fifth Meeting of the MESICIC Group of Experts, via the Participatory Rule-Setting Procedures designed and organized by the Anticorruption Office, a draft law on access to public information was prepared and submitted by the executive branch to Congress in March 2002. That process is described in detail in an OA publication of June 2004, available at its web site (<http://www.anticorruccion.gov.ar>) under the title, "Participatory Rule-Setting Procedure. An open forum for debating public decisions", available at <http://www.anticorruccion.gov.ar/documentos/LIBRO%20EPN-DEFINITIVO-CON%20TAPA.pdf>

Congress currently has for consideration two drafts of the access to information law, one in the Chamber of Deputies and one in the Senate. These are:

¹¹⁰ In the text of the Decree prepared by the Anticorruption Office, and at the time of these management experiments, the tool was referred to in Spanish as "*Elaboración Participada de Normas*". Decree 1172/03 changed this term, substituting "*Participativa*" for "*Participada*". [The change makes no difference to the English equivalent]

Bill 818-S-06.

Sponsored by: Ernesto R. Sanz and Gerardo Morales.

Title: Law on Access to Public Information.

Bill 847-D-06.

Sponsored by: Marcela Rodriguez and Elisa Carrio.

Title: Regulation of the Constitutional Right of Access to Information.

B) Difficulties observed in the process of implementation:

C) Domestic agencies that participated in implementing the recommendations. Specific technical assistance and other needs in connection with implementation of the recommendation:

- Office for Institutional Reform and Strengthening of Democracy.
- Anticorruption Office.
- National Congress

4.2. Mechanisms for consultation

VIII. Recommendation:

4.2.1. Instituting procedures, where appropriate, to provide an opportunity for public consultation prior to the final approval of legal norms.

A) Measures:

- *Publishing and disseminating the draft bills of legal norms, and elaborating transparent processes in order to allow for 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.*

ACTIONS TAKEN BY ARGENTINA

- **DECREE 1172/03. "ENHANCING THE QUALITY OF DEMOCRACY"**

With respect to this recommendation, the NEB signed Decree 1172/03, for discussion of which we refer the reader to the response to point 4.1.1 (in particular with reference to the Participatory Rule-Setting Procedure).

- **ANTICORRUPTION OFFICE: BILLS PREPARED WITH BROAD CITIZEN PARTICIPATION THROUGH THE "PARTICIPATORY RULE-SETTING PROCEDURE":**
 - **Draft Law on Access to Information and Draft Law on Publicity in the Management of Interests:**

Both participatory procedures are described in detail in a publication of the Anticorruption Office (June 2004), available at the OA web site (www.anticorrupcion.gov.ar) entitled: "*Elaboración Participada de Normas. Un espacio abierto para el debate de las decisiones públicas*", accessible at the OA Web site:

<http://www.anticorrupcion.gov.ar/documentos/LIBRO%20EPN-DEFINITIVO-CON%20TAPA.pdf>

- **Draft Reform to the Public Ethics Rules:**

This procedure has been described in detail in this Annex, at point 1.1.1 (Recommendation II).

- **Draft Reform to the National Intelligence Law**

This bill, which was carefully prepared in collaboration with various civil society organizations, was described in this Annex in response to point 1.2.1. (Recommendation III).

- **Draft Law on the Protection of Informants and Witnesses of Acts of Corruption**

In May 2003 the Anticorruption Office launched a project, involving participation by all sectors of society, to develop legal norms.¹¹¹ That exercise resulted in the Draft Law on Protection of Informants and Witnesses of Acts of Corruption. In compliance with Article III of the Inter-American Convention against Corruption, the Anticorruption Office prepared a draft bill on the protection of informants and witnesses of acts of corruption. That project, which was financed by a grant from the World Bank (IDF 027282), has been submitted for consideration of the Minister of Justice for referral to Congress.

The bill is designed to provide protection from measures taken against persons who report or provide information on acts of corruption, or who provide evidence in criminal proceedings relating to the investigation of acts of corruption. Given the specific features of reprisals against informants and witnesses of this kind of act, the bill provides measures of protection not only for the physical safety of the protected person but also to cover any repercussions on his occupation, whether he belongs to the public administration or to the private sector.

¹¹¹ In accordance with the recommendation 4.2.1 of the MESICIC Committee of Experts (Country Report on Argentina, February 2003).

To ensure that the bill is consistent with our cultural context, compatible with the rights and guarantees recognized in law, and capable of effective implementation, the project was designed in three stages.

The first stage involved research into comparative law and proposed national laws in this area, national legislation relating to issues that must be covered in the bill, consultations and examination of national and foreign case law, and interviews with persons who had practical experience in this matter. With sufficient knowledge in hand about the aspects that the bill should cover, a draft bill was prepared.

In the second stage, that draft was submitted to consultations (Participatory Rule-Setting Procedure) involving officials of the executive, legislative and judicial branches, the Attorney General's Office, NGOs and academics with recognized expertise in this area. During the process, many valuable comments and suggestions were received and requests from a wide variety of sectors and perspectives were considered.

The consultation procedure was conducted by means of a three-day seminar to discuss the various matters dealt with in the draft bill. Finally, in the third stage, the outcome from this participatory process was analyzed, and the suggestions received were introduced as amendments to the draft.

The web site of the OA contains the following documents:

Draft Bill:

<http://www.anticorrupcion.gov.ar/Anteproyecto%20de%20Ley-Proteccion%20Testigos.pdf>

Invitation to debate the draft bill:

[http://www.anticorrupcion.gov.ar/TEXTO%20INTRODUCTORIO%20WEB%20\(II\).pdf](http://www.anticorrupcion.gov.ar/TEXTO%20INTRODUCTORIO%20WEB%20(II).pdf)

Final version of the Bill:

<http://www.anticorrupcion.gov.ar/Proyec%20Testigo.pdf>

Rationale for the final version of the Bill:

<http://www.anticorrupcion.gov.ar/Fundamentos%20proyecto%20de%20ley.pdf>

- **MECHANISMS FOR CITIZEN PARTICIPATION IN THE APPOINTMENT OF MAGISTRATES:**

With respect to citizen participation and oversight in the appointment of judges, the executive branch issued Decrees 222/2003 and 588/2003 establishing the powers of the NEB to appoint justices of the Supreme Court, the Prosecutor General and the Government Defender, and judges of the lower federal courts, as well as officials of the Attorney General's Office. Those Decrees create mechanisms that allow citizens, individually or collectively, professional, academic or scientific colleges and associations, and interested NGOs to make timely submission of considerations, viewpoints and objections with respect to any nomination. Thus, such entities and the citizens in general can present to the Ministry of Justice and Human Rights in writing, with proper substantiation and documentation, nominations, observations and any

circumstances that they deem of interest with respect to the background of candidates for a vacancy.

From the time that Decree was approved until the preparation of this report, this procedure has been used to appoint nine new members of the Supreme Court of Justice, the Prosecutor General, and various lower court judges, prosecutors and defenders.

B) Difficulties observed in the process of implementation:

C) Domestic agencies that participated in implementing the recommendations. Specific technical assistance and other needs in connection with implementation of the recommendation:

- Office for Institutional Reform and Strengthening of Democracy.
- Anticorruption Office.

4.3. Mechanisms for participation in public administration

IX. Recommendation:

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

A) Measures:

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.

ACTIONS TAKEN BY ARGENTINA

• THE "LETTER OF COMMITMENT TO THE CITIZEN" PROGRAM

By Decree 228 of March 8, 2000, the "Letter of Commitment to the Citizen" Program was created within the National Public Administration, in the Office of Public Management (www.sgp.gov.ar/CartaCom/index.htm), for the purpose of making government more receptive and more responsive to the needs and priorities of citizens in terms of the services it provides, establishing the general principles and criteria for improving the quality of those services, and reaffirming the rights of the citizen vis-à-vis the national public administration, including:

- “a) The right to obtain clear, truthful and full information on activities of the national public administration.
- g) The right of access to public records and archives with legally established limitations.

j) The right to submit complaints over omissions or delays in handling procedures of interest to the citizen, and to complain about any shortcomings or anomalies in the functioning of the services of the national public administration.”

The program currently covers 45 agencies of the national public administration, each of which has established at least one mechanism for citizen participation.

To fulfill these objectives, the program has been structured in four components, two of which relate to public information and communication, and to citizen participation.

Public Information and Communication Component. Within the program, communication takes on a significant dimension, in that it has to do not only with providing information necessary for publicizing services but also with the need to generate comprehensive communication with the public, so as to improve management, transparency and democratization (which will create or improve conditions for citizen participation in government agencies). This component requires agencies to provide clear and straightforward information on various aspects of public organizations.

Citizen Participation Component. This component involves incorporating citizen participation mechanisms into the design, planning and implementation of services and into social oversight of the outcomes. The program does not treat the citizen as a mere client or consumer of services, but treats him as a stakeholder who participates in the entire process of implementing government policies. Among the forms of participation indicated, consultation is generally the most widely used by agencies. The methods and techniques of this approach, as used in the member organizations¹¹² (Complaints System, Advisory Council, Public Hearings, Consultation Forums, Quantitative Surveys, Qualitative Techniques) are described below.

By way of example, we may cite some web pages of agencies that have pursued citizen participation initiatives in this respect: ANSES - National Social Security Administration (www.anses.gov.ar/) has constituted an Advisory Body of Retirees and Pensioners, and an executive body for the advisory body; SSS -Superintendency of Health Services (www.sssalud.gov.ar) has been holding public hearings; the Consumer Defense Office (www.mecon.gov.ar/secdef/) set up a Consumer's Advisory Council and the Federal Consumption Council (COFEDEC); INPI -National Institute of Industrial Property (www.inpi.gov.ar) has set up an Advisory Council; ENRE -National Electricity Board (www.enre.gov.ar) has been holding public hearings.

- **DECREE 1172/03. ENHANCING THE QUALITY OF DEMOCRACY:**

With respect to this recommendation, the NEB issued Decree 1172/03, discussed in this response under point 4.1.1.

¹¹² These techniques were developed by the Letter of Commitment with the Citizen Program in its publication, " *Participación Ciudadana en la Administración Pública* ", published in 2002 by the Office of Public Management, jointly with the World Bank, Civil Society Team.

B) Difficulties observed in the process of implementation:

C) Domestic agencies that participated in implementing the recommendations. Specific technical assistance and other needs in connection with implementation of the recommendation:

- Office of Public Management.
- Office for Institutional Reform and Strengthening of Democracy.
- Anticorruption Office

4.4. Mechanisms for participation in the follow-up of public administration

X. Recommendation:

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

A) Measures:

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

ACTIONS TAKEN BY ARGENTINA

- **MECHANISMS FOR PARTICIPATION IN MONITORING PUBLIC ADMINISTRATION. PROMOTION, TRAINING AND DISSEMINATION**
 - **DECREE 1172/03. "ENHANCING THE QUALITY OF DEMOCRACY".**

Since the approval of Decree 1172/2003 (see point 4.1.1), a number of steps have been taken to publicize and provide training in the use of this tool, both within the public administration and among organizations of civil society. For details on these activities, visit the web page of the Office for Institutional Reform and Strengthening of Democracy, of the Head of Cabinet:

<http://www.mejordemocracia.gov.ar/AccionesdeImplementacion2.php>.

B) Difficulties observed in the process of implementation:

C) Domestic agencies that participated in implementing the recommendations. Specific technical assistance and other needs in connection with implementation of the recommendation:

- Office for Institutional Reform and Strengthening of Democracy.
- Anticorruption Office.

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

Argentina has adopted measures in relation to mutual assistance and technical cooperation, in accordance with the provisions of Article XIV of the Convention, as discussed in part B, Chapter II, section 5 of this report.

XI. 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.

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

A) Measures:

In this case, the Committee of Experts suggested no concrete measures.

ACTIONS TAKEN BY ARGENTINA

- **DRAFT PLAN OF ACTION FOR IMPLEMENTING THE RECOMMENDATIONS FORMULATED TO ARGENTINA VIA THE MESICIC COMMITTEE OF EXPERTS**

The Draft Plan of Action constitutes a set of government policy proposals prepared through a broad process of deliberation, with active participation by many social players. It also represents a concrete and effective policy of cooperation by a State Party to the Convention (Argentina) with a cooperation agency of another State Party (Canada) and an international organization (OAS). The methodology used in preparing this action plan arose from a proposal of the General Secretariat of the Organization of American States which, with the support of the Canadian International Development Agency (CIDA), has sponsored a pilot project in follow-up to the recommendations that the MESICIC

Committee of Experts originally made to the first four countries analyzed in the context of that mechanism: Argentina, Paraguay, Colombia and Nicaragua.

In the case of Argentina, in mid-2005 the OAS General Secretariat, through the Department of Legal Affairs and Services, working jointly with the Anticorruption Office, signed a Memorandum of Understanding¹¹³ that calls essentially for the following actions:

1. Prepare a draft plan of action.
2. Organize a national workshop to debate that draft.
3. Draft a plan of action that incorporates the contributions from the workshop and from social stakeholders.

In pursuit of these objectives, the memorandum provides for the OAS General Secretariat to hire a national consultant selected from a short list proposed by the country. In the case of Argentina, the national consultant for the project has been Dr. Mario Rejtman Farah,¹¹⁴ who prepared a draft plan of action that served as the basic discussion paper for the national workshop, the methodology and results of which are described in the following point.

It is always difficult to identify the outstanding issues for formulating an action plan or to propose priorities for an agenda, for the selection of some priorities over others will depend on the particular viewpoint of the person making the choice. The draft was subjected to consideration, analysis and debate in a wide-ranging group of officials, specialists, civil society organizations and experts in each of the issues examined. Many of the concerns and observations formulated by them, both in the workshop convened for this purpose and subsequently, in writing, will be reflected in the final version of the action plan, which will be available shortly at the OA web page.

The document also incorporates some of the proposals of the Anticorruption Office, which is Argentina's focal point with MESICIC, with respect to each of the activities proposed. This plan consequently represents the outcome of a broad and pluralistic exchange of ideas.

In any case, given the nature of the measures proposed, it is clear that an even broader debate will be required in order to arrive at the greatest possible consensus on their implementation. (Even though this point has been expressly stated in many of the proposed actions, this clarification holds for all the activities described in this document). Nevertheless, we are convinced that the actions proposed here will provide a real roadmap for the improvement of public policies in the areas involved.

Methodology for the proposed plan of action

¹¹³ "Memorandum of Understanding for execution of a Technical Cooperation Project in Argentina to facilitate implementation of the recommendations formulated by the MESICIC Committee of Experts".

¹¹⁴ Dr. Mario Rejtman Farah is a lawyer and doctor of jurisprudence, specialized in administrative law.

As the basic text, we have used the report of the MESICIC Committee of Experts on Argentina.¹¹⁵ Consequently, for each chapter, Section A reproduces verbatim what was stated that report.

Section B of each chapter describes some of the actions that Argentina could consider with a view to implementing or improving implementation of the recommendations of the Committee of Experts (the original draft was divided into three sections, in which part B described the current status and part C the actions to be taken).

This plan thus uses the basic structure and numbering of the chapters from the Expert Committee report, transcribing first its conclusions and recommendations (always as point A). It has also been subdivided into separate chapters to allow for more thorough analysis, giving each of those chapters a name in order to facilitate identification. In some cases, for methodological reasons, we have combined the treatment of two or more provisions and recommendations or measures. Similarly, in one case (the recommendation dealing with access to information) we have treated the matter separately from recommendations relating to the decree or provision in which the question is addressed.

The chapters that make up the Action Plan are:

Introduction.

I. Provinces and Municipalities (Point A)¹¹⁶.

II. Conflict of Interest (Point 1.1; Recommendation 1.1.1).

III. Proper Conservation and Use of Resources Entrusted to Government Officials and Oversight Bodies (Points 1.2 and 3; Recommendations 1.2.1 and 3.1).

IV. Reporting Mechanisms (Points 1.3; Recommendation 1.3.1).

V. Systems for Registration of Income, Assets and Liabilities (Point 2; Recommendation 2.1).

VI. Mechanisms for Encouraging Participation by Civil Society (Points 4, 4.2, 4.3 and 4.4; Recommendations 4.2.1, 4.3.1, and 4.4.1).

VII. Access to Public Information (Point 4.1; Recommendations 4.1.1).

VIII. Assistance in Cooperation (Point 5; Recommendations 5.1).

IX. General Recommendations (Point 7; Recommendation 7.1).

Pursuant to the Memorandum of Understanding,¹¹⁷ measures have also been included that were not specifically mentioned in the report of the Committee of Experts.

National workshop

1. General presentation

¹¹⁵ "Report on Implementation in Argentina of the Provisions of the Convention Selected for Analysis in the Framework of the First Round", February 13, 2003.

¹¹⁶ The points in parentheses referred to the Report of the MESICIC Committee of Experts on Argentina.

¹¹⁷ Point I, 1.2., a.

The workshops were held on December 1 and 2, 2005.

They were inaugurated by Dr. Abel Fleitas Ortiz de Rozas, Administrative Control Inspector of the Anticorruption Office, and Dr. Ricardo Mario Domínguez, Chief of Staff to the Secretary General of the OAS.

Next, the national adviser, Dr. Mario Rejtman Farah, gave a brief presentation of the Draft Action Plan.

A panel consisting of Dr. Gabriel Fidel (*Ministro de Gobierno* of the Province of Mendoza); Dr. Leandro Despouy (Auditor General and Special Rapporteur for the United Nations Human Rights Commission on the independence of judges and lawyers); Manuel Mora y Araujo (Chairman of the Board of Directors of Universidad Torcuato Di Tella and executive President of IPSOS-MORA Y ARAUJO); Dr. Roberto Martínez Nogueira (Director of the Master's Program in Business Administration of the Universidad Nacional de Buenos Aires, PH D in government from Cornell University and professor at the Universidad de San Andrés) gave some general comments on the draft.

2. Opening of the workshop. Methodology for the debate:

The workshops were opened by Dr. Nicolás Raigorodsky, Director of Transparency Policy Planning of the OA, Dr. Jean Michel Arrighi, Director of the OAS Department of International Legal Affairs, Dr. Jorge García González, Director of the OAS Office of Legal Cooperation (Technical Secretariat for Mesicic) and Josefa Casas, Assistant General Director of International Affairs, Liaison Unit for Transparency of the Public Service Secretariat of Mexico.

While those present at the workshops intervened actively, in accordance with the previously agreed methodology that was distributed in writing, additional written comments and suggestions were excepted at the request of certain participants.

3. Working groups:

The preliminary version of the draft action plan was distributed to each of the invitees some days in advance of the workshops. They were also sent a guide describing the methodology proposed for the working groups.

Participants in the workshops represented a wide variety of views and interests (consistent with items 1.2 a.ii. and 1.2 c. of Annex A to the Memorandum of Understanding). There were more than 150 participants, and they included, in person or through representatives, legislators, senior authorities of oversight bodies, public officials, international agencies, NGOs, magistrates, magistrates' associations, and superior courts of justice, senior government audit bodies, provincial governments, and interprovincial organizations.

To encourage a thorough and detailed analysis of each of the proposals and activities, four working groups were established (item 1.2 d., Annex A of the Memorandum of Understanding), as follows:

Working Group 1:

Issues: Provinces and Municipalities

Basic Materials: Chapter 1 of the Draft

Moderator/Rapporteur:

Dr. Nicolás Raigorodsky, Director of Transparency Policy Planning, Anticorruption Office, Ministry of Justice and Human Rights, Argentine Expert on the MESICIC-OAS.

Deborah Hafford, Principal Analyst of the Transparency Policy Planning Department, Anticorruption Office, Ministry of Justice and Human Rights

Working Group 2

Issues: Conflicts of interest.

Systems for reporting income, assets and liabilities

Basic material: Chapters II and V of the Draft

Moderator/Rapporteur:

Graciela S. Ferro, Government Administrator, Core of Government Administrators of the Head of Cabinet, Disclosure Reports Unit of the Anticorruption Office.

Jorje R. Deambrosei, Government Administrator, Core of Government Administrators of the Head of Cabinet, Disclosure Reports Unit of the Anticorruption Office.

Lorena Caro, Analyst, Transparency Policy Planning Department, Anticorruption Office, Ministry of Justice and Human Rights.

Working Group 3:

Issues: Proper preservation and use of resources entrusted to public officials.

Oversight bodies.

Reporting mechanisms.

Basic materials: Chapters III and IV of the draft

Moderator/Rapporteur

Mario Rejtman Farah, National Adviser - OAS, Author of the Draft Plan of Action

Mariana Urdampilleta, Analyst, Transparency Policy Planning Department, Anticorruption Office, Ministry of Justice and Human Rights.

Leopoldo Giupponi, Analyst, Transparency Policy Planning Department, Anticorruption Office, Ministry of Justice and Human Rights.

Working Group 4:

Issues: Mechanisms for encouraging participation by civil society.
Access to public information.

Basic materials: Chapters VI and VII of the Draft

Moderator/Rapporteur:

Nestor Baragli, Anticorruption Policies toward Nature, Anticorruption Office, Ministry of Justice and Human Rights, Expert for Argentina with MESICIC-OAS.

Laura Geler, Principal Analyst, Transparency Policy Planning Department, Anticorruption Office, Ministry of Justice and Human Rights

SUBMISSIONS IN WRITING:

Some participants expanded on their suggestions as presented and debated in the workshops, through written submissions. Such papers were received from the following persons:

- Dr. Enrique Alonso Regueira, Vice President, Centro para la Democracia, el Desarrollo y la Justicia (CeDDyJ).
- Dr. Norberto Bruno, Internal Auditor of the Legislative Branch and President of the Association of Internal Auditors of the State, and Julio César Casavillos, Vice President of that Association.
- Dr. Ariel Caplán, President of the Fundación Sánchez Viamonte.
- Dra. Claudia Caputi, official of the Supreme Court of Justice.
- Dr. Manuel Garrido, Administrative Investigations Bureau.
- Dr. Rodolfo Gómez Leonardi, officer for access to information of the Federal Department of Tourism.
- Dr. Angel Gurruchaga, of the Inspector General's Office .
- Dra. Dolores Lavalle Cobo, lawyer.
- Dra. Emilia Lerner, former Auditor General.
- Dra. Graciela Lietti of the Auditor General's Office.
- Dr. Damián Loreti, Director of Communication Studies, Faculty of Communications Sciences, Universidad de Buenos Aires.
- Dra. Victoria Martínez Araoz, adviser to the Department of Institutional Reform and Strengthening of Democracy of the Office of the Head of Cabinet.
- Dr. José Massoni, former head of the Anticorruption Office.
- Escribana María Julia Pérez Tort, Fundación Poder Ciudadano.

- Dr. Héctor Rodríguez, Secretary General of the Auditor General's Office.
- Dra. Laura Sa Fleitas and Dr. Juan José Cerdeira, Ministry of Justice and Human Rights.
- Dr. Guillermo Scheibler, Secretary, Administrative Law Association of the City of Buenos Aires.
- Dr. Damián Staffa, Auditor General's Office .
- Arq. Carmen Sycz, National Director of the National Office for Management Innovation in the Department of Public Management of the Office of the Head of Cabinet
- Marcela Viviana Tain and Lorena Agnello, Advisers to the President of the Mixed Parliamentary Accounts Committee .
- Lic. Alejandro Turyn, of the Centro de Implementación de Políticas Públicas para la Equidad y el Crecimiento (CIPPEC).

All the documentation relating to this project (preliminary and final draft of the action plan, agenda, working guide and complete Rapporteur reports from the working groups of the national workshop, and comments received in writing) is publicly available at the OA web site: http://www.anticorrupcion.gov.ar/internacional_02.asp.

- **NATIONAL WORKSHOP IN PARAGUAY: PRESENTATION AND CONSIDERATION OF THE ACTION PLAN FOR PROGRESS IN IMPLEMENTING THE RECOMMENDATIONS OF THE OAS WITH RESPECT TO THE IACC IN PARAGUAY.**

In furtherance of the efforts at cooperation, a national workshop was held in Paraguay in December 2005 at which the draft Action Plan for Implementing the Recommendations Formulated by the MESICIC Committee of Experts to Paraguay was presented and debated. On that occasion, Dr. Nicolás Raigorodsky, Director of Transparency Policy Planning, Anticorruption Office of Argentina, gave a presentation on Argentine experience with implementing the IACC, and on progress and activities of civil society organizations in follow-up.

- **PARTICIPATION IN THE NEGOTIATION OF PREPARATION OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION**

Argentina worked intensely, through the Anticorruption Office and the Ministry of Foreign Relations, International Trade and Worship, in the negotiations and final drafting of the text of the United Nations Convention against Corruption (see the papers prepared by the OA at its web page, <http://www.anticorrupcion.gov.ar>, clicking on “*actuación internacional*” / “*ONU*”, or “*informes de gestión*”).

In December 2003, 95 countries including Argentina signed the UN Convention against Corruption in the City of Merida, Mexico.

In November 2005, the Senate gave preliminary approval to the bill approving the Convention, and finally, on May 10, 2006, it approved Law 26,097 ratifying the Convention.¹¹⁸

The OA also worked with the Ministry of Foreign Relations, International Trade and Worship in organizing the Regional High-level Seminar for Ratification and Implementation of the United Nations Convention against Corruption, which was held November 7 to 9, 2005. Officers of the OA participated in that seminar, coordinating panels dealing with practical cases relating to administrative investigations.

- **NETWORK OF GOVERNMENT PUBLIC ETHICS INSTITUTIONS IN THE AMERICAS**

This network consists of the heads of the public ethics offices of Chile, Mexico, Uruguay, Puerto Rico, United States, Canada, Brazil and Argentina. Its primary objective is to provide a forum for technical dialogue between offices with similar functions relating to public ethics, and to institutionalize and facilitate the exchange of information and assistance among hemispheric ethics officers. In this respect, the Anticorruption Office of Argentina, as coordinator of the network, has designed and set up the network's web site (www.reddeetica.org).

The proposed activities for the network, intended to enhance its work and raise its profile, consist essentially of two initiatives:

- Production and distribution of a newsletter.
- Organizing seminars or conferences on matters of interest.

With the support of the Ethics Office of Puerto Rico, and the efforts of the OA as coordinator, the network issued its first semiannual newsletter in April 2006, with materials submitted by every member country.

- **FOURTH GLOBAL FORUM AGAINST CORRUPTION**

In the preparatory stage, the Anticorruption Office was the Argentine representative to the International Organizing Committee for the Forum. As such, it presented proposals on possible issues to be addressed in the working panels, as well as potential speakers, stressing the need for a multidisciplinary approach to the problem of corruption.

This international meeting was held in Brasilia in June 2005. The OA was represented by the Director of Transparency Policy Planning, Dr. Nicolas Raidgorosky, who gave a presentation in the panel on "Rules and Instruments for Managing Conflicts of Interest".

¹¹⁸ For further detail on the OA's activities in connection with the United Nations Convention on Corruption, we recommend consulting the book published by the OA in October 2004, entitled: "*Convención de las Naciones Unidas contra la Corrupción. Nuevos paradigmas para la prevención y combate de la corrupción en el escenario global*", accessible through the Office's Web page: www.anticorruccion.gov.ar, clicking on "*publicaciones de la OA*".

The issues addressed by the forum included: international conventions, money laundering, government procurement, electronic government, measuring corruption, conflicts of interest, and civil society.

In November an official of the DPPT participated in the Sixth Meeting: Ethics as a Management Tool, invited by the Ethics Commission of the President of Brazil to describe progress in preventing corruption through the use of new information and communication technologies.

B) Difficulties observed in the process of implementation:

C) Domestic agencies that participated in implementing the recommendations. Specific technical assistance and other needs in connection with implementation of the recommendation:

- Ministry of Foreign Relations, International Trade and Worship.
- Anticorruption Office.
- All public agencies that participated in the workshops and debates for preparing the Draft Plan of Action for Implementing Recommendations Formulated to Argentina by the MESICIC Committee of Experts.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

The Committee wishes to recognize with satisfaction that Argentina has complied with Article XVIII of the Convention by designating the Ministry of Foreign Affairs, International Trade and Worship as the central authority for purposes of the international assistance and cooperation prescribed in the Convention and it is operational, according to the information supplied by the government in its response.

ACTION TAKEN BY ARGENTINA

B) Difficulties observed in the process of implementation:

C) Domestic agencies that participated in implementing the recommendations. Specific technical assistance and other needs in connection with implementation of the recommendation:

**ARGENTINA
REPLY TO THE MESICIC-OAS QUESTIONNAIRE FOR THE SECOND
ROUND**

CHAPTER ONE-1

SYSTEMS OF GOVERNMENT HIRING AND PROCUREMENT OF GOODS AND SERVICES (ARTICLE III (5) OF THE CONVENTION)

ANNEX 2, Chapter I-1: PROVINCIAL GOVERNMENT HIRING SYSTEMS

1.a) PROVINCIAL SYSTEMS

By way of introduction, we may note that the provincial systems, with some nuances, are quite similar to those at the federal level. They all provide career streams or classifications (*escalafones*) for permanent personnel, with job stability and entry through public competition. They include hiring regimes based on a relationship of dependency, all protected under public employment legislation such as the LCT, as well as hiring systems that do not involve a dependency relationship, for both services and works.

With respect to the positions that enjoy stability, there are several basic regimes and general classifications for employees of the provincial executive branches that are combined (usually in a subsidiary manner) with certain specific regimes, generally determined by the special characteristics of the job.

Virtually without exception, every province has special regimes for police and penitentiary workers; for primary, intermediate and higher education teachers; and for public health workers. As well, there are special regimes for provincially-owned utility companies and their regulatory and supervisory bodies.

Similarly, the legislative and judicial branches of the provinces tend to have their own public employment regimes, again similar to those at the federal level with respect to entry conditions, selection procedures and governing authorities. Nevertheless, in some cases, payment of salaries for legislative and judicial employees may be centralized in a unit of the provincial executive branch.

Following is a summary analysis of the aspects highlighted by the provincial authorities, in response to Questionnaire, with respect to the government hiring systems in their respective provinces

PROVINCES

PROVINCE OF BUENOS AIRES

In the Province of Buenos Aires, the basic or general regime for public employment is established in Law 10,430 (t.o. Decree 1869/96), as regulated by Decree 4161/96.

In addition to that general regime, there are some specific or special regimes:

- Personnel Regime of the Penitentiary Service (Decree Law 9578/8).
- Regime for the Professional Hospital Career (Law 10,471).
- Teachers' Statute of the Province of Buenos Aires (Law 10,579).

- Regime for Printshop Personnel Working in the Public Administration of the Province of Buenos Aires (Law 10,449).
- Scientific and Technological Investigation Personnel (Decree Law 9688/81).
- Classification Statute for Sanitary Works Personnel of the Province of Buenos Aires (Law 10,384).
- Regime Governing Artistic, Technical and Complementary Activities (Law 12,268).
- Statute Governing Permanent Staff of the Roads Department of the Province of Buenos Aires (Law 10,328)
- Statute Governing Police Personnel of the Province of Buenos Aires (Law 13,201); Police Statute Buenos Aires 2 (Decree 3291/04); and Statute Governing Police Support Personnel (Decrees 1766/05 and 2197/05).
- Provincial Education Law (Law 11,612).
- Regime Governing Lottery and Casino Workers (National Law 22,140 and Decree 1797/80).
- Personnel of the Former Provincial Energy Regulator (EPRE) and Personnel of the Electric Energy Control Agency of the Province of Buenos Aires (OCEBA; CCT 35/76).
- Personnel Transferred from Puertos y Ferrovianos (Ports and Railroads) (CCT 17/75; 24/75; 164/75).
- Personnel Transferred from Astilleros (Shipyards) (91/75).

Each of these regimes determines its own entry requirements and formalities. For the other aspects of public employment, most of the special regimes make specific reference to Law 10,430, making it residually applicable to any matters not covered in the special regimes.

There are also laws of varying hierarchy that stipulate the requirements for employment in certain senior positions, especially in the oversight bodies.

Law 10,430 (t.o. 1996) identifies (Article 107) positions belonging to the Permanent Staff without Stability, where eligibility requirements are the same as those for remaining personnel of the public administration (Article 109), with the exception of the age limit.

With respect to the regime governing contractual personnel in the centralized public administration, this applies only when the job, by its nature, cannot be performed by permanent staff, and persons in this category may not perform tasks other than those assigned.

Formal requirements for appointment. Incompatibilities. Advertising. Financial disclosure.

In all cases, a person proposed for appointment must file a sworn Statement relating to incompatibilities and disqualifications. According to Article 53 of the provincial Constitution, a person may not hold two public positions except by special waiver from the jurisdiction to which those positions belong. To this end, the Provincial Personnel

Department, which falls under the Technological and Administrative Management Secretariat, maintains a centralized background registry on provincial personnel, which is consulted before any appointment.

Candidates for positions in the Senior Personnel and Permanent Staff without Stability must also produce certificates from the National Registry of Recidivism and the Registry of Criminal Records, maintained respectively by the Federal Ministry of Justice and Human Rights and the Ministry of Provincial Security.

Finally, Decree 2704/05 introduced the Normative Information System of the Province of Buenos Aires (SINBA), responding to the need to achieve greater efficiency in public management through publicity, control and transparency.

That Decree creates an information system in which, among other things, decrees appointing staff without stability must be published (Article 2.e).

Diagnosis of the current situation with respect to public employment in the Province of Buenos Aires.

A total of 372,645¹¹⁹ persons provide services within the provincial public administration; of these, 72.86% work as permanent staff, 24.66% as temporary staff, and 2.48% under various arrangements that do not imply an employment relationship.

The permanent staff complement includes officials without stability and senior authorities (whose number varies with structural changes, and is currently about 1,066), while the temporary staff complement embraces transitory personnel, advisers, private secretaries, persons under service contracts, and others.

According to the data from the latest National Population and Housing Census (2001), there are 13,818,677 people in the Province of Buenos Aires (8,684,953 in the metropolitan region and 5,133,724 in the rest of the province)¹²⁰. The highest available figure for employees of the Provincial Executive Branch, Judicial Branch and Legislative Branch, excluding the municipalities, is 425,500¹²¹, which means that the ratio of public employees to total population is 30.8 per thousand.

Analysis of the main characteristics on the basis of existing legislation

The current general personnel regime and the other regimes in the Province of Buenos Aires present a public personnel organization model based on certain guiding principles, among which we may indicate: entry by merit, stability based on good behavior and satisfactory performance, promotion through competition, and political neutrality.

We may cite the following examples:

¹¹⁹ Source: Provincial Personnel Department, December 2005.

¹²⁰ Source: INDEC.

¹²¹ Source: Ministry of Economy of the Province of Buenos Aires.

Law 10,430 (Article 4): ... Selection shall be made by the competent authority... via a system of competition and interviews that guarantees equality of opportunity and transparency in the selection process for persons applying for public positions.

Law 12,268 (Article 20): The artistic personnel career shall be governed by the following general rules and those established by regulation: a) entry: by public and open competition, with background assessment and examination.

Law 9578 (Article 3). Requirements for admissibility to the penitentiary service: ... d) suitability through proof of capacity and competence, according to the law and its regulations.

Law 10,579 (Article 59). Entry to the teaching profession at the various levels: a) in basic positions, through background assessment; b) in higher education (*horas-cátedra*): 1) by competition based on assessment of qualifications, background and examination at the tertiary level. The requirements of this competition shall be determined by regulation. 2) by competition based on qualifications and background, at the remaining levels. 3) by area of expertise.

The government of the Province of Buenos Aires has made it a fundamental pillar in the process of provincial recovery to improve its employment relations, bearing in mind that recovery depends on its workers, for it is they who add value and give life to public institutions through their convictions, capacities and knowledge in technical, administrative and operational matters.

To this end, it is conducting the following activities:

Collective bargaining

Apart from any legal requirements, the province maintains dialogue with the legitimate representatives of public workers as an indispensable tool for defining the employment relationship as it relates to rights and obligations, career systems, performance evaluation, working hours and working systems, employment security, and other issues. Long-standing traditions that relate employment to criteria established by an authority have been set aside in favor of a negotiated agreement or contract among parties, which must in turn contain definitions that will sustain that dialogue over time.

Collective bargaining may cover all labor issues that make up the employment relationship, including those relating to pay and those relating to the provision of services and working conditions. It excludes, however: a) the government's power of direction in determining the organization and conduct of the provincial public administration and its organic structure; and b) the principle of suitability as the basis for entry and promotion within the administrative career.

The Governor of the Province of Buenos Aires, acting under the mandate conferred by Article 39 (4) of the provincial Constitution, approved Decree 3087/04 which convened

collective bargaining sessions for the first time in the provincial government, with participation by the unions representing provincial government workers, to renegotiate all aspects of the public employment regime. That collective bargaining system has been further strengthened by Law 13,543, proposed by the executive branch to the provincial legislature, which was promulgated by Decree 923/06 of April 28 of this year.

With the approval of that Law, the approach to labor relations has shifted from one of imposition to one of consensus, whereby the provincial government, without abandoning its undeniable role as employer, negotiates working conditions for provincial employees with the union representatives.

Professional career system

The executive branch of the Province of Buenos Aires is currently engaged in designing and instituting a new Professional Administrative Career, which will have to be negotiated with all the partners involved, based on assessment of persons' competence, within a framework of equal opportunity, in order to choose those who have the qualifications that meet the profiles defined for the position, these being understood to mean the values, knowledge, attitudes, abilities and skills that a person brings to an organization, upon assuming his responsibilities within an institutional framework.

Those qualifications are divided into three categories:

- Institutional ethics: this refers to the adoption of values compatible with democratic life and work in public institutions, with particular attention to solidarity and respect for minorities, among other questions.
- Technical and professional: this refers to the person's knowledge of the policy pursued by the organization.
- Attitude: this refers to the ability to organize work and time, resolve problems and take decisions, communicate, mediate and settle disputes, and engage in and lead teamwork.

Evaluation of qualifications for identifying suitable profiles takes place at three points:

1. Upon entry into the career.
2. During career development.
3. Upon the assumption of executive functions.

Career development

The groups, levels and stages defined in the new career, which necessarily refer to a category of the salary scale, allow the possibility of switching between groups, qualitative changes, and jumps in grade, as well as a number of levels that allow a person to pursue that career throughout his working life, if he prepares himself to do so.

This career path does not necessarily lead to executive responsibilities. The individual may grow and develop but prefer not to take on such functions. Executive functions must constitute the final stage of each group, for in this case the only prospect left is "to be a boss".

Assumption of executive functions

Access to executive responsibilities is through a process of selection and competition that takes into account, essentially, commitment to the management plan, knowledge of the specific area to be managed, peer-recognized leadership qualities, and the capacity to lead groups.

These functions will be time-bound: the official's term of activity will be defined in the competition, in four-year periods, consistent with the government management and planning cycles, in the case of the executive branch.

Moreover, there is a firm separation between the final career stages and the assumption of executive functions, which means that executive functions will be assumed not because the career makes this inevitable but because the person has a real capacity for leadership. Executive pay must in no case overshadow the salary available through career advancement, in order to prevent executive positions from being seen as the better option.

Officials who assume executive functions continue to belong to their original group and level or category. Every two years they may request reclassification to reflect their professional development (in this case, as a conversion of their own position), while continuing to exercise their executive functions. Once the management cycle is over, the official will return to his original category, or that achieved in the interim. In no case is there to be any "senior" group of present or past executives.

Training for public servants

In Decree 1208/05, the Governor of the Province of Buenos Aires approved the Professional Development Program for Senior Management in the Provincial Government, designed to train staff of the centralized and decentralized provincial public administration and its political officials, in accordance with the procedures and application systems establish therein.

Bearing in mind the capacity of government as a strategic value, the program promotes professional development both for political decision-makers (undersecretaries, provincial directors, directors) and for managers of the permanent structure of the provincial administration (deputy directors and department heads).

Studies Completion Program

Because one of the entry requirements for administrative employees (pursuant to Article 2.d of Law 10,430) is to have a secondary school diploma, the provincial government has implemented a "Studies Completion Program".

This program is targeted at provincial workers who have not completed their primary or secondary education, and wish to do so. It seeks to improve their performance and to promote equality for access to the administrative career which, as explained, relies on appointment by qualifications. This policy is led by the Public Management Secretariat of the Province of Buenos Aires, with support from the Provincial Personnel Department and the General Directorate of Culture and Education for the province.

PROVINCE OF CATAMARCA

1. Brief description of systems

With respect to public hiring systems ("public official", "government official", or "public servant", meaning any official or employee of the State or its agencies, including those selected, appointed or elected to perform activities or functions in the name of the State or in the service of the State, at all levels, according to the IACC), the Province of Catamarca has different rules regulating entry into the Provincial Public Administration.

Constitutional Provisions:

Article 166 of the Constitution of the Province of Catamarca¹²² makes "suitability" (*idoneidad*) the sole condition for access to public employment. It also establishes a competition system for filling public positions. The Article cited reads: "All public employees for whom this Constitution does not require election or a special form of appointment shall be covered by competition based on background assessment and examination, organized according to law and with the exceptions stipulated by law, in such a way as to guarantee the suitability of employees. The same law shall establish the classification schedule and the administrative career, in accordance with the merit system. All residents of the province are eligible for such positions, on the sole condition of suitability, in cases where this Constitution does not require special qualities."

Provincial laws

Consistent with the Constitutional precept cited above, Law 3276¹²³, Statute of Civilian Personnel of the Provincial Public Administration, and Law 3198¹²⁴, Classification of Civilian Personnel of the Provincial Public Administration, establish the requirements and conditions for access to the public administration, and the latter law creates the competition regime for filling vacant positions.

As well, we may cite provincial Law 5161 establishing the Health Personnel Career, which covers curative staff and their auxiliaries, and sets rules for access to that career, including entry requirements and competition for filling positions.

¹²² Available at: <http://www.diputados-catamarca.gov.ar/datos/conti-prov.pdf>.

¹²³ Available at: <http://www.diputados-catamarca.gov.ar/ley/consul.asp?numero=3276>

¹²⁴ Available at: <http://www.diputados-catamarca.gov.ar/ley/consul.asp?numero=3198>.

Decrees of the Provincial Executive Branch

Within the provincial public administration there are special rules applicable to specific agencies, requiring a performance appraisal, for which various concepts are spelled out relating to attitude, productivity and output. We may also mention the cases of decentralized entities, which have their own labor regimes, for which specific rules have been established governing personnel entry requirements and qualifications.

Publication of appointments

Every personnel appointment is confirmed through a service contract, signed *ad referendum* the Provincial Executive, for which a decree of ministerial agreement is issued approving the contract. That decree, and any administrative act issued by the executive, is published in the Official Gazette of the province.

2. Governing and administrating authorities of the system

Within the provincial public administration, the enforcement authority is the Human Resources and Public Management Secretariat, which embraces the following units:

Provincial Department of Human Resources, responsible for registering government personnel. Its tasks include keeping files, reporting new developments for the payment of salaries, and any other information related to application of the employment regime.

Informatics and Organization Department, which deals with payroll matters and assists with respect to the government's computer resources.

Provincial Medical Certification Department, which oversees absenteeism among government employees.

Personnel Selection and Evaluation Program (PROSEYEV), responsible for selecting staff at the request of government agencies.

Coordination Office for the Unified Education Grants Program (PROSUB) and the Training Program (PROCAP), which administers the program of working scholarships for university students and is responsible for providing training courses for public employees.

Personnel Expenditure Control Center, which monitors changes in staffing levels and all aspects relating to the personnel budget.

3. Control mechanisms

The province's regulations concerning control mechanisms include the following:

Provincial Constitution (Article 167): "All public officials, including all members of the three branches and any administrative agent who handles public funds or administers provincial property, before taking up their position and upon leaving it must make a sworn declaration of their own property and that of their parents, children and spouses, which shall be recorded in a special registry that shall be public so that, at any time, during or after their functions, any resident may by court order verify the legitimacy of the enrichment of the governor or administrative agent." "The court may decree the precautionary embargo of the goods or property indicated as illegitimately acquired, through influence or abuse of functions, and if this is proven, they shall be forfeited to the province, and the person shall be disqualified from holding positions paid by the province. Directors and employees of independent or social entities of mixed private-public ownership or para-statal entities, public enterprises, or entities that administer public goods and services are deemed equivalent to public officials."

Incompatibilities. Concurrent positions. The provincial Constitution (Article 168) establishes guidelines on incompatibility of positions: "No provincial official or employee may occupy another function or employment in the provincial, national or municipal administration, with the exception of teaching positions and commissions, and provided there is no incompatibility by reason of the nature of such positions, or overlapping of working hours. Retirees and pensioners under any system are prohibited from holding positions in the provincial administration, with the exception of artistic or technical activities where there are no other candidates. Provincial officials and employees may not be contracted by the province for other positions, functions or activities." In turn, Article 169 provides that "officials of the three branches and the heads of divisions are personally liable for retaining in office agents of the administration who were performing work in violation of the preceding Article, if they were or should have been aware of the situation. The Provincial Accounting Office or the Court of Accounts will lay charges against any employee who conceals the existence of concurrent jobs."

Consequently, Decree Orders 1385/92 and 1483/93 established the Single Regime Governing Concurrent Positions, which regulates incompatibility of schedule when the exercise of concurrent positions involves the overlapping of working hours, and incompatibility of positions, establishing the incompatibility of holding concurrently two or more administrative or governmental positions or university teaching duties in excess of the limits established for that purpose.

Among the oversight bodies there are, in addition to the General Accounting Office of the Province and the Court of Accounts:

The Personnel Expenditure Control Center, under the Human Resources and Public Management Secretariat, which is responsible for implementing personnel expenditure control mechanisms in the provincial public administration, and is involved in hirings, departures, changes and movements of personnel, permanent and nonpermanent, under any legal arrangement that involves a contractual relationship between the province and an individual for the performance of specific services, for the period of time before the

corresponding decree is issued. It also oversees the payroll control system and is responsible for reporting any irregularities, incompatibilities or relevant changes to the competent authority and to the Personnel Audit Unit for corrective or disciplinary measures.

Within the General Accounting Office of the Province there is the Personnel Audit Unit, which conducts administrative investigations into violations of the rules governing leave, working schedules, justifications and allowances, concurrent positions, and other aspects, whatever the legal, statutory or classification regime, for persons working within the central or decentralized provincial public administration, provincial enterprises, independent entities or any other entity in which the provincial government has an interest, whatever its legal nature and composition.

4. Access to the public service through a merit-based system

From the foregoing it may be concluded that, within the provincial public administration, there is a system for access to the public service based on merit, through the competition system.

5. Advertisement for the selection of public servants, indicating the qualifications for selection

According to law 3276, competitions are announced or notified at least 10 working days in advance, and the notice must specify at least the following:

- a) The agency offering the position and the nature of the competition.
- b) The number of positions to be filled, indicating the category, group, function, pay and work schedule.
- c) General and particular conditions required, or an indication as to where they may be obtained.
- d) Opening and closing dates for registration.
- e) Date, time and place at which the examinations will be held, if any.

Competitions are open or internal, and will involve a background assessment, or a background assessment and an examination, depending on the case and the provisions of each regime.

Open competitions. Information on open competitions must be widely disseminated, particularly in the geographic location of the entity offering the openings. While other means of advertising may be used (posters, wall notices and notice boards in public places), advertisements must be carried over radio and in two daily newspapers, including that of greatest circulation within the zone, and another of equal characteristics in the country, for two consecutive business days.

Internal competitions. Notice of internal competitions must be provided within the respective jurisdictions through information circulars issued by the appropriate personnel service, which must be sent to all eligible employees.

6. Ways to challenge a decision made in the selection system

Pursuant to Article 62 of the above-cited law, challenges relating to competitions must be substantiated [*words missing*] will not stop proceedings. In cases where complaints are admitted, the relevant authority will suspend the competition, and reopen it once the irregularity has been resolved.

With respect to the filing of complaints, Article 92 provides that competitors who disagree with the order of ranking or the score obtained will have five working days to apply to the Complaints Board of the agency offering the position.

If no complaint has been filed within that time limit, the verdict of the Examining Board will be deemed accepted and the personnel office will issue the appropriate administrative act, proposing the appointment or promotion, or declaring the competition void, depending on its outcome.

The submission of a complaint suspends processing of appointments to the positions in question, and this will recommence once the respective decision is finalized.

7. Relevant exceptions to the above

In the case of persons who are temporarily absent from their position, there is a system for assigning substitutes, which is also used in the case of vacant positions until the corresponding competition can be held.

PROVINCE OF CHACO

1. Brief description of the systems

Article 69, Chapter VI "Public Administration", of the Constitution of the Province of Chaco provides: "The Public Administration must be directed to satisfy the needs of the community in an efficient, effective, economical and timely manner. All residents of the province are eligible for public employment provided they can demonstrate suitability and primary residence in the province. The law shall ensure that all employees of the public administration are covered by a basic legal regime and single classification".

Article 70: "No person employed in the province for more than one consecutive year may be removed from his position while he gives evidence of good conduct, suitable physical and mental aptitudes, and efficient performance of his duty".

Law 2017, Personnel Statute of the Provincial Public Administration (Article 4) classifies staff as permanent or temporary, according to their stability.

Permanent staff: this includes employees who have been appointed to vacant position provided for in the manual of positions, are paid from the budget of the entity, and are entitled to the stability granted by the statute.

Temporary staff: this covers employees providing specific services with a fixed termination date. This category is broken down into contractual personnel, day workers, and ministerial appointees (*personal de gabinete*).

2. Governing and administrating authorities of the system and control mechanisms

All competitions are conducted by an examining tribunal, and its rulings are not subject to appeal.

3. Access to the public service through a merit-based system

Permanent staff members are hired through open competition involving assessment of background and examination, and they enter at the lowest level of the corresponding classification group. For filling senior positions, the first step will be to conduct an internal competition based on assessment of background and/or examination, for the promotion of persons already providing services within the administration. Only if this competition is declared void will an open competition be called.

PROVINCE OF CHUBUT

1. Brief description of systems

The public administration embraces political officials and career employees. Career employees are governed by the Personnel Statute of the Provincial Public Administration, approved by Decree Law 1987. Besides the statute there are other special regimes for public employment: the Personnel Classification of the Department of Minors and the Family (Law 3158); the Personnel Classification of the General Accounting Office of the Province (Law 4237); the Statute of Teaching Personnel (Decree Lot 1820); the Statute of Intermediate and Higher Education Personnel (Law 2152); and the Statute and Classification of the Provincial Police (Decree Law 1561).

2. Access to the public service through a merit-based system

Career employees enter the provincial administration through competition, when the seniority of the position so warrants; alternatively, when the government needs to fill a vacancy with certain characteristics, it may identify one or more persons who meet the conditions of aptitude and attitude. Competitions are conducted by ranking according to merit.

In both cases subsequent training increases officials' preparedness so that over the medium term they can move on to new positions of greater responsibility.

PROVINCE OF CORRIENTES

1. Brief description of the systems

The hiring of public servants in the Province of Corrientes is governed by the Public Employee Statute approved by Provincial Law 4067. The Statute covers persons designated by the competent authority to provide remunerated services in dependencies of the provincial executive branch, including decentralized and/or autonomous entities.

There are exemptions for officials whose appointment or removal is governed by procedures established in the Constitution and other laws; political officials (ministers, undersecretaries) and persons who, by legal or regulatory provision, exercise functions of equivalent rank; the official clergy; security and surveillance personnel; personnel covered by special laws, special statutes, and collective labor agreements.

With respect to security and surveillance personnel, Law 2987 governs the functions of police officers and Law 4044 those of the provincial penitentiary service personnel.

2. Governing or administrating authorities of the system and control mechanisms

The province has created the "Personnel Administration System", as the organizational basis for planning, executing and implementing policies governing the relationship between the province and its employees. That system consists of the General Directorate of Personnel, as the central unit, and the corresponding sectoral units (personnel areas of each jurisdiction). The principle of regulatory centralization and operational decentralization applies.

3. Access to the public service through a merit-based system

The Public Employee Statute provides that employees covered by that statute comprise the Civil Service Staff of the Provincial Public Administration under the executive branch. As well, it provides that permanent staff are to be organized in accordance with the principles of job stability, training, and administrative career. It defines permanent staff to cover any employee appointed to a vacant position identified in the budget.

As well, the statute defines nonpermanent personnel as employees providing specific services, with a fixed termination date. That classification covers contractual workers, trainees, and ministerial appointments.

PROVINCE OF ENTRE RIOS

1. Brief description of the systems

The Province of Entre Rios has a Public Employee Statute, approved by Provincial Law 3289 (t.o. Decree 5703/93). The system covers all persons appointed by public authority and paid through the budget, with the exception of political officials (ministers, secretaries and undersecretaries) and employees whose appointment is regulated by the Constitution or special laws, such as staff of the General Education Council, Police Personnel, and Penitentiary Service Personnel.

Judicial employees also have a special regime established by Provincial Law 5143. Provincial Law 9190 created the Professional Hospital Workers Career, which covers university graduates in various disciplines and specialties (biochemists, nutritionists, pharmacists, kinesiologists, physicians, dentists, psychologists, social workers, etc.), who must be appointed through competition on the basis of qualifications, background, and an examination.

2. Governing or administrative authorities of the system and control mechanisms

Attention should be drawn here to the role played by the General Directorate of Personnel, which is part of the Ministry of Economy and Finance, and which maintains a "single file" system for public employees. This system is accessible via Internet for all authorized users. There is also a web page with information of interest to employees, which furthermore provides the possibility of downloading the forms required for certain procedures: <http://www.entrerios.gov.ar/rechum/>

3. Access to the public service through a merit-based system

The Public Employee Statute governs entry into the permanent staff of government agencies through a competitive selection system based on qualifications and/or qualifications and examination, a process that will be internal or open depending on the seniority of the position to be filled.

4. Relevant exceptions

The Province of Entre Rios has a procedure of contracting for services and works within the central administration; decentralized agencies, autonomous entities and provincial enterprises, approved by Decree 4167/05 of the Ministry of Economy and Finance. This procedure establishes the requirements for contracting independent professionals and other services provided by independent workers.

PROVINCE OF LA PAMPA

1. Brief Description of the Systems:

The Province of La Pampa is governed by Law 543, the "Statute for Employees of the Executive and Legislative Branches within the Provincial Public Administration".

According to Article 1 of that statute, it applies to all permanent and nonpermanent staff who, by virtue of an administrative act issued by the competent authority, provide remunerated services in the executive and legislative branches of the provincial public administration, and are not covered by special statutes. Permanent staff are classified within the categories and branches determined by that law, and those established pursuant to Article 285.

Upon appointment, which is permanent, employees are incorporated into the respective career stream (Article 2). The appointment of a permanent employee is conditional for a maximum period of 180 days of effective service, after which the employee is automatically confirmed, if he has obtained a sufficient rating. If the rating is inadequate, he will cease his employment when that rating is final (Article 30).

Once a permanent employee's appointment is confirmed, pursuant to Article 30, he is entitled to stability of tasks, functions and category achieved (Article 45).

Nonpermanent staff are restricted to contracted employees who provide services personally and directly, under a fixed-term contract (Article 3). Such persons are contracted only for tasks that, by their nature or duration, do not require or permit the appointment of permanent staff (Article 4).

2. Access to the public service through a merit-based system

Title VII of Law 643 establishes a competition regime (Articles 197 to 222) for access to public employment, based on merit.

3. Advertisement for the selection of public servants, indicating the qualifications for selection.

Pursuant to Article 200, open competitions are advertised in a newspaper of the province on two alternate days, the latter of which must precede the closing of registration by at least 10 days; notice must also be placed in the Official Gazette of the Province, and other advertising media may be used. Closed or internal competitions are announced through information circulars and on notice boards, through the Official Gazette, and other means, with the same timing (Article 201).

4. Ways to challenge a decision made in the selection system

Challenges must be filed with the authority that called the competition, up to five days before the closure of registration, and must be resolved by that authority within five days after filing. If the complaint is upheld, the competition will be suspended and reopened once the regularity is corrected. A decision denying the challenge may not be appealed (Article 202).

PROVINCE OF LA RIOJA

1. Brief description of the systems

The Province of La Rioja has Law 3870, "Personnel Statute of the Provincial and Municipal Public Administration", with its amending and regulatory laws and decrees.

Article 1 of that law provides that it applies to all persons who by virtue of an express administrative act from the competent authority provide services on a permanent basis, and who are referred to as "agents".

The law includes all the guiding principles for public employment contracts, namely: personal exercise by the agent, recognition of the agent's rights such as stability, remuneration, qualification of services, training, allowances, transfers and conversions, when the needs of the service so permit, and under specific conditions, leave entitlements, special mention for extraordinary work that translates into benefits to the State, the right to join a union, health and social care, resignation and retirement.

It also stipulates duties, prohibitions and incompatibilities for agents.

Finally, it establishes a disciplinary regime that guarantees due process and the right of defense.

It should be noted that this legislation does not cover public officials as such, nor does it apply to ministerial appointments, defined as staff who perform legal or technical advisory functions for the Governor, ministers, secretaries etc. These are appointed by administrative act according to need, under the government's discretionary powers, and their employment ends automatically upon expiry of the term of the authority that proposed their appointment.

2. Access to the public service through a merit-based system.

The Province of La Rioja has a Provincial System of Positions with Strategic Functions, governed essentially by Decree 008/98, which institutes and defines its main elements, and Decree 225/98, which establishes the General Selection Regime for such positions. Subsequent decrees and resolutions have incorporated clarifications, amendments and supplementary provisions.

Essentially, the process consists in a formal evaluation of documentation submitted, for purposes of demonstrating whether the agent's profile (age, sex, training, seniority, experience, etc.) meets the indispensable requirements for candidacy for the position, and a general evaluation that includes an assessment of background, a technical assessment, and a personal interview.

All of the above relates to the administrative function of the provincial executive branch.

Mention should be made of the manner in which judges and officials of the judicial branch are appointed, recalling that the legislative branch (which in this province has only one chamber) is constituted by suffrage.

Examining the judicial function, the provincial Constitution establishes the manner of appointing magistrates: thus, members of the Superior Court and the Prosecutor General are appointed by the Chamber of Deputies at the proposal of the Governor, while other judges and prosecutors are appointed by the Council of Magistrates, which examines the technical qualifications of candidates in a public and open competition, and provides the Chamber of Deputies with a short list of five candidates for selection in a public session.

Officials of the judicial branch are covered by the Personnel Statute of the Judicial Branch of the Province of La Rioja and the Organic Law of the Judicial Branch, Law 2425.

This statute covers "law officials" (*funcionarios de ley*), technical and administrative employees, and service and manual workers. They are appointed by the Superior Tribunal, and they enjoy stability, meaning that they may not be removed from office without due administrative process.

The statute also contains provisions for the personal provision of service, payment for services in accordance with pay scales established as a function of category; and the right to promotion through the ranks, based on order of merit.

3. Governing or administrative authorities of the system and control mechanisms

Within the judicial branch there is a Discipline and Qualifications Board consisting of a sitting judge and representative of the Attorney General's office and of the judicial workers' union. The board must provide a ruling in all disciplinary proceedings involving judicial personnel, and may do so ex officio in any challenge filed with regard to classification, promotion, mention, and order of merit. This guarantees due process and the right of defense in disciplinary proceedings against employee. Employees also are entitled to vacation and leave.

PROVINCE OF MENDOZA

1. Brief description of the systems

The Constitution of the Province of Mendoza prescribes, with respect to the conditions for entry and removal in the public service, as follows: (Article 30) "All Argentines are eligible for public office in the province, the sole conditions being good conduct and capacity, in all cases where this Constitution or the law does not demand special qualities. Employees may be removed only for just cause, and a special law shall be issued to

govern employment, its duration, stability, compensation and promotion"; and (Article 43) "Appointments of officials and employees by the branches of government in violation of the requirements of this Constitution are null and void, and such employees may at any time be removed from their posts". At the same time, the Constitution defines the working day: (Article 45) "The working day shall be governed by regulation. With respect to public works or services in establishments of the State, the working day shall be eight hours, with the exceptions provided by law."

Provincial Law 5126 approved the classification schedule for personnel of the public administration, which establishes the parameters for the administrative career, and defines systems of selection, entry, promotion and remuneration for the various groupings of personnel in the provincial and municipal administration that are not covered by special pay regimes, such as teachers, health workers and police personnel.

This classification establishes the principle of selection by competition for entry into the administrative career. The established groupings are: administrative and technical; professional; health and social work; maintenance and production; data processing; and general services. Public employees may be promoted to a higher rank when: a) there is a vacancy in the respective class; b) the person meets the conditions for entry and those established for each function; and c) the person achieves the highest ranking in the respective competition.

The remuneration system is constructed as a function of the classification structure, with additional provisions for: seniority, educational attainment, professional responsibility, hierarchy of function, dedication to duties, and other characteristics. Supplements may also be offered, depending on the type of work in each grouping.¹²⁵

With respect to the existence of special regimes, we may mention the Personnel Statute of the Ministry of Social Welfare, approved by Law 5241 (for which the career classification is defined by Law 5465); the Regime governing the Police of Mendoza, approved by Law 6722; and the statute governing personnel of the Parks and Zoological Gardens Administration, approved by Law 7162.

2. Access to the public service through a merit-based system

Pursuant to Law 5126, access to the public service within the provincial public administration is based on merit, as demonstrated through a competitive system of background assessments and examinations for filling vacancies.

First, an internal competition will be held (for permanent, nonpermanent, interim and contract staff). If the post cannot be filled, an open competition must be called. The administration must in each case guarantee objectivity and impartiality in this procedure,

¹²⁵ The payment of "extraordinary remuneration" is prohibited by Article 39 of the provincial Constitution: No law or provision may be issued to grant "extraordinary remuneration" to any official or employee of government, except for services rendered in the course of their duties or for special or extraordinary commissions.

as well as the pertinent system of appeals. To this end, the Classification Board must consist of government representatives and representatives of the public employees' unions. As well, until all positions within the classification have been filled by competition, persons appointed on a temporary basis may not be removed, except by due administrative process.

3. Advertisement for the selection of public servants, indicating the qualifications for selection

Competitions to fill vacant positions in the provincial and municipal administration must by law be publicized widely before and after they are held.

With respect to the judicial branch, which also has a specific career classification, the Supreme Court of Justice advertises competitions at its web page, which also provides access to the regulations, forms and information relating to the competition:

<http://www.jus.mendoza.gov.ar/documental/concursos/index.php>

4. Relevant exceptions

As an exception to the systems established in the statutes and classifications mentioned above, it is possible to contract services with independent professionals and workers. In this respect, Law 6980 creates a Single Registry of Professional Services applicable to all service contracts in the central administration and decentralized entities.

PROVINCE OF MISSIONES

1. Brief description of the systems

The principal system for hiring government employees in the Province of Misiones is the Basic Juridical Regime of the Provincial Public Administration, approved by Provincial Law 1556. This regime applies to persons who, by virtue of an administrative act issued by the competent authority, provide remunerated services in dependencies of the provincial executive branch and decentralized, autonomous and constitutional agencies. It also applies, in a subordinate manner, to personnel covered by special regimes, such as police and teachers. The latter are governed by the Teachers' Statute approved by Provincial Law 67.

The Basic Regime differentiates between "permanent" and "nonpermanent" staff. Permanent staff positions are organized according to the principles of stability, training and administrative career; nonpermanent positions, depending on the characteristics of the services provided. Nonpermanent staff are classified as "contractual personnel", "day workers" (*jornalizados*), and persons who have been hired as permanent but have not yet achieved stability.

Contractual personnel are persons whose labor relationship is governed by a contract, the term of which may not exceed one year, and who are assigned exclusively to providing services that, by their nature and duration, cannot be fulfilled by permanent staff. This means that they may not perform functions other than those established in the contract. The Basic Regime also provides that renewal or extension of the contract does not grant the employee stability.

With respect to "day workers" or temporary staff, they are used exclusively to provide services or perform tasks or works of a temporary nature, occasional or seasonal, that cannot be performed by permanent staff. This means that they may not fulfill tasks other than those for which they were appointed.

For permanent staff, the Basic Regime provides that, once the selection process has been completed (competition or examination), the appointment may be postponed for 30 days after notification. At the end of that time, the appointment lapses. As well, the appointment is deemed provisional during the first 24 months, after which the appointment automatically becomes definitive.

This Basic Regime establishes certain incompatibilities for positions in the public administration, and these were deepened and expanded by Law 3200. That law also expressly prohibits the contracting of personnel on a fees basis without a relationship of dependency, regardless of the juridical modality adopted, in any of the branches of the provincial government, constitutional organizations, decentralized or independent agencies, provincial corporations and mixed-economy enterprises, or corporations in which the national or provincial government holds a majority interest.

2. Relevant exceptions

In the case of contracts that involve the payment of technical and professional fees, the Governor or the President of the Legislature or of the Supreme Court may authorize duly substantiated exceptions. Personnel may also be contracted without a relationship of dependency, on an exceptional basis, when this is necessary to fulfill agreements or undertakings with other provincial, municipal, national or international jurisdictions, provided those jurisdictions pay the full cost of such contracts (for example, under World Bank or UNDP projects).

PROVINCE OF NEUQUÉN

1. Brief description of the systems

The Constitution of the Province of Neuquén¹²⁶ spells out the requirements for holding public office. These include both general and specific principles.

¹²⁶ Available at: <http://www.legislaturaneuquen.gov.ar/hln/Documentos/descargas/ConstProv2006.pdf>

The general rules include those contained in Article 156 to 158,¹²⁷ which detail the general requirements for access to positions in the public service, and the pertinent prohibitions and incompatibilities.

The Constitution also establishes the particular requirements for all senior positions such as deputies (Article 169), ministers (Articles 169 and 217), treasurer (Article 257), General Accountant of the Province (Article 257) and State Prosecutor (Article 253).

As a supplement to those basic requirements, Provincial Law 5¹²⁸ of 1958 establishes and regulates the obligation to submit financial disclosure statements before assuming functions.

2. Access to the public service through a merit-based system

Article 156 of the Chapter on "Access to Public Office" of the Constitution of the Province of Neuquén provides: "Provincial and municipal public employees shall be appointed by competition and examination, after demonstration of adequacy. The respective statutes shall also determine the regime governing their stability, promotion and dismissal, guaranteeing them the right of defense before special tribunals and pertinent compensation in case of arbitrary acts. The law shall not prevent public employees from engaging in political activity outside the exercise of their functions". Article 157: "Persons who are in arrears to the Province on legally confirmed debts, and persons who have been legally disqualified, may not be employees or officials". Article 158: "No one may hold two or more concurrent public positions or functions, even if one is provincial and the other national or municipal, with the exception of the position of *convencional constituyente* (delegate to a constituent convention). With respect to professional or technical personnel, teaching posts and commissions, where the law provides that these are compatible."

PROVINCE OF RIO NEGRO

1. Brief description of the systems

The Province of Rio Negro has approved two laws designed to transform the management of human resources, inculcating motivation and dignity in their work in order to enhance substantially the effectiveness and productivity with which public goods and services are provided.

The first, approved in November 1996, is Law 3052¹²⁹ which creates the Regime for the Public Function and Restructuring of the State, the general objective of which is to adapt

¹²⁷ Constitution of the Province of Neuquén. Access to public office:

Article 156. Provincial and municipal public employees shall be appointed by competition and examination, after demonstration of adequacy. The respective statutes shall also determine the regime governing their stability, promotion and dismissal, guaranteeing them the right of defense before special tribunals and pertinent compensation in case of arbitrary acts. The law shall not prevent public employees from engaging in political activity outside the exercise of their functions.

¹²⁸ Available at: <http://www.legislaturaneuquen.gov.ar/main/Consultas.asp?mostrar=4>

the functioning of the provincial public administration to the needs of the community with respect to public goods and services; it regulates the definition and modification of organizational structures, entry, career development, personnel duties and rights, salary structure and composition, and their relationship to the provincial budget.

To achieve the general objective, this regime provides for three interrelated management instruments:

- a) **The Organization and Structure System**, which regulates the process of designing and approving organizational units and their working positions.
- b) **The Human Resources Administration System**, which regulates processes relating to the administrative career, designed to promote professionalism in the public service.
- c) **The Salary Administration System**, which regulates pay criteria for public servants and relates them to the budgetary management of human resources. It provides for a single structure of salaries for all agencies, based on a suitable balance between requirements, responsibilities and remuneration in each position, in order to retain and develop qualified human resources within the framework that assures an equitable administrative career.

Specifically, with respect to the hiring of public officials, the Human Resources Administration System provides that access to institutions of the executive branch is conditional upon the following circumstances:

- a) There is a vacant position within the organizational structure, approved by the respective institution.
- b) The salary for that provision is provided for in the current personnel budget of the institution.
- c) The general entry requirements have been met.

It also provides that the initial appointment and subsequent transfer to other positions shall require:

- a) The necessary evaluations, conducted by competition and examination, to determine the person best qualified in terms of aptitude for performing the position in question, which criterion shall take precedence over any other in the decision with respect to the appointment.
- b) The necessary ratings to determine the appropriate classification level.
- c) The determination of pay in accordance with the applicable salary regime.

Public employees must be rated at least annually through objective procedures that must take account of at least the following aspects:

- a) Education and training.

¹²⁹ Available at: <http://www.legism.gov.ar/despliego.php?cual=L/L03052.html>

- b) Previous working experience.
- c) Personal aptitudes.
- d) Previous performance within the institution.

Public employees who obtain the best ratings and who meet the minimum requirements for promotion may be promoted to higher positions within their respective classifications, provided that higher position is among those allowed by the current position.

The second law, approved in December 2000, is Law 3487¹³⁰, which creates the "General and Basic Statute for Personnel of the Public Administration of the Province of Rio Negro", which consists of two annexes:

- Annex I: General and Basic Statute for Personnel of the Public Administration.
- Annex II: General Provincial Personnel Schedule

This law applies to all persons providing remunerated services in any institution of the provincial executive branch, with the exception of public employees covered by special statutes for teachers (Laws 391 and 2444) and police personnel (Law 679)

Annex II establishes the Administrative Career Regime, designed to promote professionalism in the public service, ensuring the articulation of the organizational objectives and goals of the provincial public administration with the development of the professional skills of those providing services in it, on the basis of the principles of:

- a) Ethics in the public service.
- b) Stability of employment.
- c) Entry, permanence and progress based on suitability, merit and training.
- d) Transparency and equality of opportunity in procedures.
- e) Assignment of functions in accordance with agents' capacities.
- f) Evaluation of performance, productivity in the exercise of public office, and responsibility of public officials for their promotion under that regime.

Depending on the functional nature of the position occupied, employees will be classified under the following groups: Public Management, Professional, Technical, Administrative, Social Welfare, and Support Services.

Positions are rated and classified in seven salary levels, ranging from I to VII, depending on the complexity, responsibility and independence required. The following table shows the distribution of staff for each grouping by level (*nivel*), step (*tramo*) and grade (*grado*):

¹³⁰ Available at: <http://www.legism.gov.ar/despliego.php?cual=L/L03487.html>

Table of Groupings, Levels, Steps and Grades

Grouping	Levels	Steps			
		<i>Ayudante</i> (Assistant)	<i>Asistente</i> (Associate)	Principal	Superior
Public Management	I and II		Grades 1 and 2	Grades 3 and 4	Grades 5 and 6
	III		Grades 1 and 2	Grades 3, 4 and 5	Grades 6, 7 and 8
Professional	I and II		Grades 1 and 2	Grades 3 and 4	Grades 5 and 6
	III		Grades 1 and 2	Grades 3, 4 and 5	Grades 6, 7 and 8
Technical	III and IV		Grades 1 and 2	Grades 3, 4 and 5	Grades 6, 7 and 8
	V	Grades 1			
Administrative	IV		Grades 1 and 2	Grades 3, 4 and 5	Grades 6, 7 and 8
	V and VI	Grades 1	Grades 3, 4 and 5	Grades 6, 7 and 8	Grades 9 and 10
Social work	IV		Grades 1 and 2	Grades 3, 4 and 5	Grades 6, 7 and 8
	V and VI	Grades 1	Grades 3, 4 and 5	Grades 6, 7 and 8	Grades 9 and 10
Support services	V, VI and VII	Grades 1	Grades 3, 4 and 5	Grades 6, 7 and 8	Grades 9 and 10

2. Governing or administrating authorities of the system and control mechanisms

The enforcement bodies for this law are:

a) The Provincial Council on the Public Function and Restructuring of the State, under which are the following:

- a.1) The General Executive and Technical Committee.
- a.2) The Institutional Organization and Human Resources Committees and the Area Committees.
- b) The Complaints Board.
- c) The Discipline Board.
- d) The Central Evaluation Board.

The Provincial Council on the Public Function and Restructuring of the State has the following functions, among others:

a) To implement and administer the systems for Structures Administration, Salary Administration, and Human Resources Administration.

(...)

g) To process, maintain and supply information to institutions of the public sector and other users, on organization, human resources, salaries and functioning of the State, and processing services.

The General Executive and Technical Committee has the following responsibilities with respect to hiring:

(..)

e) To propose to the Provincial Council on the Public Function and Restructuring of the State the human resource policy measures necessary for making best use of public-sector personnel.

The responsibilities of the Institutional Organization and Human Resources Committee and the Area Committee are:

(...)

b) To propose to the General Executive and Technical Committee of the Provincial Council on the Public Function and Restructuring of the State decisions relating to entry, appointment to office, development, promotion and training.

c) To evaluate and rate personnel in the organizational structures.

The Complaints Board must hear any complaint filed by public employees with respect to administrative acts that affect their rights and that are not covered in the disciplinary regimes. Decisions of the Board are binding and have both individual and general effects.

The Discipline Board is the body that applies the disciplinary regime for public servants covered by this law. That Board operates under the criteria of operational decentralization, swiftness in procedures, and objectivity in resolutions, and seeks to ensure that the disciplinary measures it imposes are of a corrective character.

The Central Evaluations Board is the senior appeals body in case of any challenge to the personnel evaluation and rating processes.

3. Access to the public service through a merit-based system

Employees enter the administrative career through a competitive selection regime, and they advance in that career through the regime of vertical or horizontal promotion. Vertical progress consists in promotion to successively higher levels through selection processes, and entitles the employee to occupy positions of greater responsibility, complexity or independence. Horizontal progress consists in promotion through the different steps and grades within the employee's classification level, and represents a process of maturing and developing skills relevant to his own occupational profile. The employee thereby obtains qualifications through the performance evaluation, and is

entitled to the training or professional development activities established for each group, level, step and grade.

All persons entering the provincial administration in a position covered by this classification do so at the lowest grade and step of the level assigned to the position.

The Selection Regime governs the filling of funded vacancies. The selection process involves competition and examination, designed to produce an objective evaluation of background, academic and working experience, and knowledge, skills, aptitudes and personal qualities required for the position, on the basis of which candidates are ranked by merit. These competitions may be internal, general or open.

Internal competition: this is open to persons within an organizational unit at the level of Sub Directorate, Directorate or Directorate General who have a labor relationship with that entity and/or have been exercising for at least two years the function or position to be filled.

General Competition: this is open to all persons included in the career stream and those who, under a different labor relationship with the provincial government, have been exercising for at least two years the function or position to be filled.

Open competition: this is open to all candidates from the public and private sectors who can demonstrate the required suitability and qualifications. Open competitions are used to fill vacancies at the initial level of each grouping; working positions at Level V of the Social Welfare Grouping as specified by regulation, and for cases in which the General Competition has been declared void. In the case of equal merits, preference will be given to public employees.

Positions at the remaining levels are filled through internal competition. If the internal competition is unsuccessful, a general competition will be held.

Specific competitions may also be arranged, and the appointment will be made by the competent authority on the basis of the resulting merit ranking.

For filling positions in the Public Management Grouping as determined by regulation, the authority may choose from among the three highest-ranking candidates, provided this procedure has been disclosed in the announcement of competition. If this has not been disclosed, the authority must follow the resulting order of merit strictly. The orders of merit are valid for six months. In all cases, the appointee must take up the position within 30 days after notification of his appointment. If he does not, or if he leaves his position for any reason, the next-ranking candidate will be appointed.

Selection processes are held within the first and third quarter of each calendar year, and are duly publicized.

For promotion to a higher grade, the following requirements must be satisfied:

- a) The candidate must have obtained a rating of at least satisfactory or normal, in the annual performance evaluation.
- b) Before any promotion, the candidate must demonstrate that he has taken training in any of the authorized forms or that he has the pertinent qualifications established by regulation for the position.
- c) For these purposes, duly demonstrated activities in which the employee has developed or acquired technical or professional experience deemed relevant to his function or professional development may be recognized.
- d) The regulations for implementation of this section must stipulate the requirements for each promotion from one grade to the next, according to the occupational grouping of the employee.

With respect to paragraph a), the employee's performance is evaluated in terms of objectives or results achieved in his functions, taking account of the conditions and available resources, the abilities and approaches demonstrated, and aptitudes for work and public service.

Personnel are pre-rated by the head of the unit in which they work, and are rated by their immediate superior, who must have at least the rank of Director General. The rating must be approved, before the employee is notified, by the respective Institutional Committee on Organization and Human Resources.

Evaluators are responsible for timely production of performance evaluations for their staff, and must notify each employee of his rating in a personal interview. Only in cases duly authorized by the competent authority may the rating be notified through another procedure or means.

With respect to paragraph b), the Provincial Council on the Public Function and Restructuring of the State establishes and coordinates at Training and Development System for upgrading and enhancing employees' skills as required for the proper functioning of the services and for meeting the requirements of the promotion regime.

For promotion from one grade to another, credit can be earned only through training activities recognized by that council for each grouping, subgrouping, level, step and grade. In no case may training be prescribed for a total of less than 10 hours of classroom or equivalent activity.

To fulfill the retraining requirements for horizontal promotion, a procedure will be established for accrediting labor skills as a supplementary or compulsory modality.

Promotions become effective on the first working day of the second and fourth quarter of each calendar year after all of the requisites have been fulfilled.

For enforcing the provisions of this law, a Career Commission is established within the Provincial Council on the Public Function and Restructuring of the State, with the following functions:

- a) To prepare the legal and regulatory instruments for implementing the law, which must be approved by decree upon recommendation of the Provincial Council on the Public Function and Restructuring of the State.
- b) To implement the process of incorporating personnel into this regime, at the proposal of the institutions of the executive branch, through the Institutional Committees on Organization and Human Resources.
- c) To advise in the issuing of supplementary rules, interpretations and clarifications, and in all aspects relating to implementation of the established Administrative Career Regime.
- d) To prepare methodological instruments for the administrative career.
- e) To assist the Institutional Committees on Organization and Human Resources in applying the classification aspects.
- f) To hear appeals filed by employees with respect to application of this law.

4. Ways to challenge a decision made in the selection system

Employees may appeal their ratings to the official who rated them, substantiating their claim and providing provable information that will allow the issue to be resolved. If satisfaction is not obtained at this stage, the employee may appeal to the Institutional Committee and finally to the Central Evaluations Board. Employees who do not achieve a satisfactory rating will work out with their evaluators a program for improving their performance.

5. Objective results obtained, including any available statistical data

It must be noted that, five years after approval of the Career Classification Statute establishing the basis for the administrative career in the public service, the Province of Rio Negro has still not implemented all the methodological instruments that would allow personnel of the public administration to make use of the new administrative career systems.

While the law was approved as part of the Reforms for Modernization of the State, its enforcement has been postponed because of the emergency economic, financial, administrative and salary conditions prevailing not only in the province but in the country as a whole.

Currently, the province has extended the economic, financial and administrative emergency until December 31 of this year, by means of Decree Law 7/05. The same has been done at the national level.

In this context, and in order to assure continuity in basic public services such as health, education and security, public employees are now being hired via the exceptional route

approved by the Council on the Public Function and Restructuring of the State. Each appointment still requires: a) the existence of a vacancy in the approved organizational structure; b) the availability of budgetary allocations; and c) compliance with the general entry requirements.

In addition to these conditions, the enforcement authority responsible for public employment and the administrative career in the province is preparing to implement the classification schedule stipulated in Law 3487 on a pilot basis in a selected institution. As a result of this work, manuals and instruments should be available for making the new administrative career model generally operable.

PROVINCE OF SALTA

1. Brief description of the systems

Systems for the hiring of public employees are established by:

1. Provincial Constitution, Second Section, Second Part, Executive Branch, Chapter I: Article 144 (2 and 7), Chapter VI: Public Administration, Articles 61 to 65 inclusive.
2. Law 5546, Statute of Public Employees.
3. Decree 1170/96, Article 4.
4. Law 6583, Article 16.

These provisions establish the characteristics and guiding principles for the appointment and removal of public officials and employees.

2. Governing or administrating authorities of the system and control mechanisms

Control is exercised by the General Director of Personnel of the Province, the General Director of Organization and Systems, the Office of the Inspector General of the Province (as the internal control agency) and the Office of the Auditor General of the Province (as the external control agency).

3. Access to the public service through a merit-based system

Access to the provincial public service is based on objective methods for selecting the best-qualified persons. Competitions may be open (i.e. open to any person in the community who wishes to apply for a public position) or closed (i.e. limited to employees or officials who are already performing some function within the public administration).

4. Advertisement for the selection of public servants, indicating the qualifications for selection

Personnel selection procedures are advertised in the Official Gazette, the provincial newspaper of greatest circulation, and notices in the various departments, which reflect the requirements for the position in question.

5. Ways to challenge a decision made in the selection system

These are established in the competition notice. Also applicable in a subsidiary manner is provincial Law 5348 on administrative procedures, which details the means of recourse available (Chapter II, Articles 172 to 187). Once administrative remedies have been exhausted, an appeal for judicial review may be filed.

6. Relevant exceptions to the above

As exceptions to the above, hiring may be done through two modalities, "services" or "works", or as "temporary" employees pursuant to Article 30 of Decree 1178. Such access to the provincial public administration is exceptional, and always temporary, bearing in mind that the Economic, Financial and Administrative Emergency Act (Law 6583) is fully in force in the province, and personnel appointments are limited.

PROVINCE OF SANTA FE

1. Brief description of systems

Provincial legislation contains rules governing conditions for hiring employees (with a permanent or temporary employment relationship), namely: **Law 8525**, Statute for the Provincial Public Administration, which establishes a difference between permanent and nonpermanent (contractual or temporary) staff, characteristics, form of appointment, entry requirements, duties, rights and prohibitions. **Decree 2695/93**, Civilian Personnel Classification for the Provincial Public Administration applies to permanent staff of the public administration. It establishes the various groupings that make up the classification structure and establishes, for each grouping, the general conditions governing entry, pay scales, promotions, and additional and supplementary conditions, and the competition system, which requires advance public notice of competitions.

Announcements of competitions (suspended by Decree 3924/87) for entry or promotion are ordered by Executive Decree 0088/87; they are regulated by resolution of the jurisdictional head; they are published by the Personnel Directorate (General Directorate of Human Resources of the Province); the system is to be coordinated by a jury, the membership of which is determined in Articles 93 to 95 of Decree 2695/83, and there is also provision for participation by the most representative labor association.

2. Access to the public service through a merit-based system

The system for holding competitions (assessment of qualifications or examination) ensures that access is based on merit.

3. Advertisement for the selection of public servants, indicating the qualifications for selection

Selection procedures and requirements are advertised through publication and dissemination of the announcement of competition (Article 92, Decree 2695/83).

4. Ways to challenge a decision made in the selection system

Decisions of the jury may be challenged through motions for revocation and appeal (Articles 109 and 110, Decree 2695/83).

5. Relevant exceptions to the above

The executive branch, using its discretionary powers under Article 72 of the provincial Constitution to exempt its own acts from regulation, may make appointments without announcing a competition. Decree Law 1757/56 on provincial accounting allows the possibility of direct contracting, on an exceptional basis, in certain cases stipulated in Article 108.

A. PROVINCE OF TIERRA DEL FUEGO

1. Brief description of systems

Pursuant to Article 14 of Law 23,775 which gave provincial status to the former National Territory of Tierra del Fuego, the rules that applied within the National Territory on the date of promulgation of that law are to be maintained in the new province, unless they are repealed or amended by the Constitution of the new province, by law, or by provincial legislation, to the extent they are compatible with its autonomy.

At that date, Law 22,140 applied within the national territory by virtue of Territorial Law 331; to date it has not been replaced by any provincial legislation, and it therefore remains in force.

Law 22,140 (Article 7) sets out the requirements for entry into the public administration:

- a) Suitability for the function or position, as demonstrated by the selection systems.
- b) Conditions of morality and conduct.
- c) Psychophysical aptitude for the function or position.
- d) Candidates must be Argentine citizens, and naturalized citizens must have had such status for more than four years. Exceptions to either of these requirements must be approved by the executive branch (national/provincial) in each case.

Articles 8 and following reinforce those requirements.

The Constitution of the Province of Tierra del Fuego¹³¹ (Article 16) declares: "Work is a right and a social duty; it is the legitimate and indispensable means for satisfying the spiritual and material necessities of the individual and of the community. Tierra del Fuego, Antartida e Islas del Atlantico Sur is a province founded on work and as such it recognizes for all its inhabitants the following rights: (...) 12. The right to stability in the public career service; employees may not be removed from their position without due administrative process based on legal cause, and without the guaranteed right of defense. Any dismissal in contravention of the foregoing shall be null and void, with the attendant compensation. 13. The right to progress through the administrative career; for purposes of guaranteeing effective application of the rights set forth in this Article, the provincial government is empowered to exercise control over work within its jurisdiction, in the manner and form established by law."

For purposes of greater efficiency and rationality in government, Article 73 of the Constitution provides: "It is the duty of the provincial public administration, in its administrative acts, to observe the principles of efficiency, swiftness, economy, decentralization and impartiality, and at the same time to rationalize public expenditure, and to conduct itself in accordance with the following precepts, as a minimum:

1. The jurisdictions that make up the functional structure of each branch of the provincial government must submit, together with their annual budget proposal, a functional chart broken down by organizational units. Any amendments thereto, involving an increase in permanent staff, must be fully justified and approved by the provincial legislature.
2. It is absolutely prohibited, within any area of the three provincial branches of government, to contract temporary personnel in any manner, except for reasons of speciality and strict functional needs.
3. Persons assigned to political functions shall not be entitled to stability. No law may be issued that would accord such persons extraordinary remuneration of any class or on any grounds.
4. Remuneration of all kinds paid to public employees and officials, both elected and appointed, in any of the three provincial branches of government, agencies and decentralized entities may in no case exceed that of the Governor of the Province. There shall be no items for reserved expenditures.
5. Budgetary items earmarked for the operating expenses of the provincial public administration, including the payroll and social charges for all its personnel, shall not exceed 50% of the total ordinary revenues of the provincial government, after deducting municipal shares and including in that percentage the three branches of the government."

2. Relevant exceptions to the above

¹³¹ Available at: <http://www.legistdf.gov.ar/sitio/documentos/conspro/>

Law 661,¹³² the 2005 budget law, granted access to the provincial public administration for persons who were beneficiaries of social plans, or who were serving as temporary employees, and determined objective guidelines for evaluation.

Thus, Article 9 of the law made available a total of 4000 permanent staff positions within the provincial public administration, for fiscal year 2005, to be occupied by persons covered by the transfer (the “*pase a planta*”) currently working under contract, employment projects, or social plans. It ordered that the incorporation of personnel in the process of evaluation would be ratified by a special law once the executive branch completes the tasks of evaluation, selection and appointment. This process would apply to all personnel eligible to enter the provincial administration as permanent staff, and their classification level would be determined by their education, seniority and experience, and position attained; the minimum entry-level would be at category 10 or its system.

That new law is to incorporate into the permanent staff all persons working as temporary or nonpermanent personnel in a routine activity within the provincial government, provided they have been in their position for at least one year following approval of Law 661.

In the case of contractual personnel, recognition will be given to their educational or professional level, their experience, their seniority in their current position or employment, and the rating given by their superiors, for purposes of placing them in the classification level consistent with their evaluation, or as proposed by their superior, and of determining the grouping to which they will belong, starting from the Constitutional principle of balance between duties and pay for workers of the provincial public administration.

The entire process of selecting and incorporating personnel into the permanent staff, and the definitive lists of employees so incorporated and those who have been rejected or postponed, must be reported to the provincial legislature for ratification or modification.

ARGENTINA
REPLY TO THE MESICIC-OAS QUESTIONNAIRE FOR THE SECOND
ROUND

CHAPTER ONE-2

GOVERNMENT SYSTEMS FOR PROCUREMENT OF GOODS AND
SERVICES (ARTICLE III (5) OF THE CONVENTION)

¹³² Available at: <http://www.legistdf.gov.ar/sitio/lp/leyes/cd%20leyes/LEYESP/Ley661.htm>

ANNEX 3, Chapter 1-2: PROVINCIAL GOVERNMENT PROCUREMENT SYSTEMS

REPLY OF ARGENTINA

SANTA FE

The Province of Santa Fe uses a procurement system based on a set of rules contained in provisions of the Accounting Law and its regulatory Decrees. The Ministry of Finance, through the Provincial Directorate of Procurement and Supply, conducts procurement on behalf of those agencies that do not have specifically delegated procurement authority, or when their establishing legislation so determines, such as the Ministry of Health, Ministry of Works and Public Services, and decentralized agencies.

The general and particular aspects of the purchasing mechanisms employed are regulated as follows:

- Basic form of contracting for the provincial government: public bidding.
- Other applicable forms of procurement: private bidding, price competition, direct negotiations; the budgetary thresholds for which are \$100,000, \$30,000 and \$5,000 respectively, pursuant to Article 2 of Decree 3226/05.
- Pursuant to Decree 3226/05, contracts may be authorized according to the following thresholds: Directors General: up to \$50,000; Ministers and Secretaries of State: up to \$200,000; Ministers and Secretaries of State jointly with the Minister of Finance: up to \$400,000; Provincial Executive Decree: amounts exceeding \$400,000.
- Bidding documents and terms and conditions must be prepared in accordance with Decrees 2807, 2808 and 2809/79.
- Procurement transactions are to be publicized pursuant to Law 12,489 and Decrees 1008/01 and 082/04.
- Direct negotiation of purchases is considered an exception to the rule; it may only be used in the cases stipulated by Article 108 of the provincial Accounting Law, and all such transactions must be duly substantiated and authorized.
- Use of the contracting module, an integral part of the Financial Administration System (SIPAF), which entails planning and executing a procurement procedure that reflects the various expenditure and budgetary stages (draft budget - annual procurement program; request for purchase - provisional earmarking of expenditure; award - accrued expenditure stage; reception and final certification - clearance for payment stage).

The Annex to this document contains the following provisions: the pertinent portion of the Accounts Law; Decree 3226/05; Law 12,489; Decrees 1008/01 and 082/04.

With approval of the Law on Administration, Efficiency and Control, making the procurement subsystem an integral part of the Property Administration and Management System, the Ministry of Finance is now preparing the respective regulations, consistent

with the guiding legal principle of regulatory centralization and operational decentralization. The new system will require the financial administration offices of jurisdictions and agencies to conduct their own procurement, under the guiding principles established by the current Provincial Directorate of Procurement and Supply.

Documentation on procurement procedures:

- Purchase request form. Decree 4504: purchase requests under the SIPAF system.
- Bidding documents.
- Procurement management document under the SIPAF contracting module, setting out the main terms and conditions of the call for tenders.
- Notice of call for tenders.
- Form used for analyzing the formal and economic requirements of bids.
- Predetermined forums with list of bidders and comparative cost tables.
- Pre-award forms and their equivalent in the SIPAF contracting module.
- Supply order forms/pre-established model contracts.
- Definitive certification forms for goods and their equivalent in the contracting module.

The annex to this document contains models of the forms listed above.

Openness, equity and efficiency:

To guarantee these principles in the procurement of goods and services, whether through public bidding, private bidding, price competition or direct negotiation, the Province of Santa Fe uses a methodology that gives broad publicity to proceedings.

At the same time, the bidding documents contain technical specifications for the goods to be procured, which allow for wide participation by bidders, as well as pre-established specific and general clauses that guarantee transparency and free competition.

Governing or administration authorities of the systems and control mechanisms

a) Administrative authority of the Procurement System of the Ministry of Finance

Provincial Directorate of Procurement and Supply, the functions of which are found in Decree 5100 (copy attached)

b) Procedural control mechanisms.

All procedures are subject to the following controls:

- Internal control by the Provincial Directorate of Procurement and Supply, over the stages assigned it by regulation (preparation of bidding documents, examination of bids, consultation of the Suppliers Registry, pre-award).
- Technical and legal controls prior to signature of the final award.

- External controls over the legality of proceedings, by the Provincial Court of Accounts.

Provincial Registry of Suppliers

The Provincial Directorate of Procurement and Supply is operationally responsible for the Provincial Registry of Suppliers, in which all individuals or legal persons must register in order to be qualified as suppliers. The requirements for registration are contained in Disposition 065/05 (copy attached).

Registration in the Provincial Registry of Suppliers is a prerequisite for submitting bids. Nevertheless, individuals or legal persons not registered may present bids, and upon doing so they are deemed to have applied tacitly for registration. In this case, bidders must provide with their bid the information stipulated in Article 6 of Decree 2809/79.

If an unregistered bidder submits the winning offer, payment may not be made until the bidder is registered as a provincial supplier and acquires the status of Active Payment Beneficiary.

The Suppliers Registry is a fully computerized information system that contains files on each bidder, recording its business history as well as any sanctions issued against it by this or another registry office, in the case of individuals or firms not registered here..

The procurement portal of the provincial web site publishes the list of registered bidders, as well as the list of registered and unregistered suppliers who have been sanctioned.

Any party seeking to register or update its information can do so through the procurement portal, which contains the necessary forms and regulations. The Provincial Directorate of Procurement and Supply is now instituting a system for electronic pre-registration of suppliers.

The attached sample of data extracted from the memory shows the number of new registrations in the last 10 years. The total number of registrations at this date is 2,239.

With respect to sanctions, we may report that 58 firms registered as suppliers have been sanctioned over the last 10 years, with penalties ranging from disqualification to elimination, while 13 sanctions have been issued against unregistered suppliers (see attached table).

Notwithstanding the foregoing, we may note that registered suppliers are liable to economic penalties (fines, calling of bid or contract guarantees, monetary fines for contractual adjustments) in the case of partial or total default on delivery, premature withdrawal of bids, or failure to comply with clauses in the terms and conditions, such as inadequate provision of technical services.

Electronic methods and information systems for government procurement

Advertising requirements. All procurement transactions conducted by the Ministry of Finance through the Provincial Directorate of Procurement and Supply on behalf of other departments use the methodology indicated in Law 12,489 and in Decrees 1008/01 and 082/05.

Attached to this document is information from current notices, as well as an example of the online procurement procedure via the provincial web site.

Public bidding:

- Publication on two working days in the Official Gazette and for at least one day in two major newspapers of the country and region.
- Publication of the notice at the procurement portal of the provincial web site, indicating the object of the procedure, the procedure number, the date and time of opening, and availability of the bidding documents for consultation by interested firms and the general public.
- Invitations sent by e-mail or traditional mail to potential bidders registered under the requested heading either in the Provincial Registry of Suppliers and the Electronic Registry of Bidders, or in specific industry publications (e.g. the *Guia de la Industria*).
- Posting on the bulletin board of the Directorate of Procurement and Supply, located in its building and available to interested parties for consultation of the terms and conditions; information from the bidding documents can also be obtained from the government offices in the city of Rosario and in the federal capital.
- Online publications at the provincial web site, Procurement Portal, in the section that provides information on proceedings under way or awarded: list of bidders, comparative cost tables for bids, pre-award reports, including the list of members, final award notices (dispositions, ministerial resolutions, decrees), supply orders and contracts signed, from each of the proceedings.

Private bidding, price competition, and direct negotiation. Except for publication in the Official Gazette and in newspapers, the procedures described in the preceding section are used for such transactions: when the object of the tender so warrants and/or the direct negotiation budget is representative, notification of the call for tenders will be published in newspapers.

Public works contracts

The Province of Santa Fe regulates such contracts through the Public Works Law 5188.

Identification of the selection criteria for contractors

Selection of bids, pursuant to Article 35 of Decree 2809/79. The province reserves the right to conduct comparative studies as it deems necessary, using the method or methods it considers appropriate for purposes of determining the most advantageous offer. The basic criterion for such selection is that the winning offer will be the one that meets the

conditions for the tender and that results in the lowest cost. Nevertheless, the lowest-price condition may be combined with other criteria such as technical suitability of the bidder, the quality of the offer, the proposed financial solution, the manner of performing the service, delivery times, and any other quantitative or qualitative criterion that allows the most favorable offer to be selected from among those that meet the terms and conditions, and which may result in the selection of an offer that does not represent the lowest-cost bid.

With approval of Law 12,105 (*Compre Santafesino*, “Buy Santa Fe”), the terms and conditions of tenders now reflect the provisions of the law, whereby the bid examination and pre-award committees must allow a margin of preference for provincial suppliers, within the percentages established in the law, when comparing their bids against those of other suppliers.

In the case of a tie, if the preferential provisions described above do not apply, the bid examination commissions must observe the provisions of Article 37 of Decree 2809/79, on preferences for products manufactured in the province, preference for national products, and when all products are of the same origin, preference will be given to those offering the shortest delivery times. If there is still a tie, the prices will be submitted to open-cry auction, and if the tie persists, the winner will be drawn by lot, in the presence of the bidders, and a report to this effect will be prepared. Notwithstanding this provision for open-cry auction, the directorate has implemented a mechanism to invite the submission of improved price offers in sealed envelopes, indicating the date and time at which they will be opened, so that interested parties may attend. All the background information with respect to improvement of bids pursuant to Law 12,105, or as described above, is included in the file on the transaction.

With respect to transactions that require the awarding of specific scores, the terms and conditions of the tender contain schedules for this purpose, in order to guarantee equity and transparency, as well as the articles established in the preceding paragraphs, bearing in mind that Decree 2809/79 and Law 12,105 are part of the legal basis governing the terms and conditions of the tender, regardless of the form of contracting employed.

Ways to challenge a selection

Pursuant to Law 10,204 on administrative procedures, participants in the bidding process who consider themselves unfairly treated by the provincial government's award may challenge that decision within 10 days after it is notified.

The administration must resolve the matter, accepting or denying the challenge, in which case it may give the plaintiff leave to appeal to a higher authority.

It must be noted that action taken during the entire procurement procedure is considered as an activity preparatory to the final decision to be taken by the competent authority, and as such is not subject to appeal.

b) Objective results obtained, including any available statistical data

The Annex to this report contains statistical data for the last 10 years, including:

- General summary of activities, showing indicators of administrative management and indicators of contractual management.
- Users - Provincial Directorate of Procurement, indicating the quantity of public tenders, private tenders, price competitions, and direct negotiations for each of the departments involved.
- Total number of procurement proceedings by jurisdiction in the last 10 years.
- Total amount of public contracts and supply orders issued, by jurisdiction, in the last 10 years.
- Jurisdictional distribution of awards in 2005.
- Geographic distribution of public contracts and supply orders issued in 2005.
- Distribution in the Province of Santa Fe of public contracts and supply orders signed in 2005.
- Total amounts of orders issued and contracts signed, by heading.
- Geographic distribution of supply orders for immediate execution in 2005.
- Distribution of awards in the Province of Santa Fe, by supply orders for immediate execution in 2005.
- Average number of sanctions imposed in 2005 on registered and unregistered suppliers.

MISIONES

At the provincial level there are two fundamental laws: Law 2303 on Provincial Accounting (Articles 84 and 85) and Law 83 on Public Works (Articles 13, 14, 15, 16 and 17), which the municipalities apply if they do not have their own procurement system, consistent with the Provincial Constitution and with the Municipal Organization Law 257 (Article 102-57 and concordant articles).

The general principle of public bidding:

In the provincial public administration (centralized and decentralized: autonomous entities, municipalities, etc.), as well as in the other branches of government, by express provision of the Constitution (Article 70) any disposal of state or municipal property, purchases, public works and other contracts must be done through the system of public auction or bidding, under penalty of nullity, as determined by law or regulation.

Article 84 of the Accounting Law requires that any purchase or sale for the account of the province, and any contract for rental, leasing, work or supply, must be let as a general rule through public bidding, and any contract for the provision of services must be preceded by competitive qualification and/or examination.

Openness. All systems used, with the exception of minor contracts for small amounts (transactions not exceeding \$8,000 may be made through direct contracting) require,

depending on the amount and characteristics, the necessary publication of calls for public tender or competition, or invitations in the case of private or direct tenders in the exceptional cases provided by law. The governing principle is that notices of procurement or competition must be given wide publicity through publication in the Official Gazette, major newspapers, invitations, etc., depending on the nature of the goods or services to be procured.

Equity and efficiency. Equity is achieved by giving all potential bidders the possibility to participate on a basis of equality, consistent with the bidding documents or terms and conditions (general or specific), while efficiency is achieved by selecting the most advantageous bid (Law 2303, Article 91), which our legislation defines as that which, being compliant with the terms and conditions and of equal quality, offers the lowest price.

Governing or administrative authorities of the systems and control mechanisms

The governing authorities of the systems are the senior authorities of the various branches of government, and the officials who establish the regulations. With respect to control mechanisms, there are essentially two. The first is internal and a priori, and is exercised by the Provincial General Accountant through the Fiscal Delegations (Article 125 to 130 of the Accounting Act, Law 2303), and the second is external and ex post, exercised by the constitutionally enshrined Provincial Court of Accounts (Article 132-133 of the Provincial Constitution and Decree Law 1214 establishing the Court of Accounts).

Registry of contractors

It is a general requirement in the province that contractors be registered in the Official Registry of State Suppliers (Article 94, Law 2303).

Public works contracts

These are signed in accordance with Law 83 on Public Works and its Regulations.

Identification of the selection criteria for contractors

The general rule for the selection of contractors is the most advantageous offer (Article 91, Law 2303 and Article 26, Law 83).

Ways to challenge a selection

Bidders may appeal to the contracting agency and/or a higher authority pursuant to the Law on Administrative Procedures 2970 and/or they may pursue the administrative disputes procedure before the Superior Court of Justice.

We can report that the procurement systems used in the province are those necessary for its functioning, and that the respective governing powers, authorities and officials observe the greatest transparency and diligence in the performance of their duties.

SAN JUAN

The rules on government procurement in the Province of San Juan are the Accounting Act, Law 2139/59 and Law 2153/59 and their amendments, and Regulatory Decree 00402/79 and its amendments.

Procurement systems with and without public tendering

In accordance with those laws, most contracts are let through public bidding, which is compulsory for amounts in excess of \$60,000. These rules also establish the basic principle of publicity, which is compulsory for all forms of procurement with the exception of direct purchases of up to \$4000.

Governing or administrative authorities of the systems and control mechanisms

The Financial Administration Law 6905/98, as amended by laws 7212/01 and 7347/02, establishes and regulates the province's financial administration, internal control in the public sector, and the responsibility of officials. It also establishes six systems for this administration: Budgetary, Public Credit, Treasury, Accounting, Contracting, and Property Administration, and it empowers the executive branch to determine the date on which that Law will come into force. Although it is not yet in force, the Integrated Computerized Financial Administration System (TRADFIN) has been operating since January 1, 2005. That system allows the government administration, backed by dynamic internal and external controls and operating in real-time, to operate efficiently, ethically, and with a minimum of red tape. TRADFIN has as its governing bodies the Provincial Budget Directorate, the Provincial General Accountant, the Provincial General Treasurer, the Central Procurement Office and the Central Properties Office.

The procurement system will be used to purchase goods, works and services required by the provincial government.

The governing body is the Central Procurement Office, which will coordinate the operation of all procurement units and services in the public sector, and will propose rules and procedures for that purpose.

According to the Law, any contract, purchase, rental, lease, supply etc. for the public sector must as a general rule be procured through public bidding, with specific exceptions related to amounts. The regulation will stipulate the conditions of advertising, supplier guarantees, and all aspects that will encourage contractors and suppliers to participate on an equitable basis, and to make procurement procedures transparent.

Procurement officials will be liable for any negligence, even if they have followed the formal rules, if the results significantly exceed the stipulated values and market conditions.

The situation incorporates the methodologies recommended by the Inter-American Convention against Corruption, by assuring the most advantageous procurement for the State, in terms of price and quality, and better control over the investment of public funds, while establishing functional responsibility in case of negligence.

CHACO

The Constitution of the Province of Chaco, Section One, Chapter V "Public Finances", Article 67, "Tendering Regime" provides: "Any purchase or disposal of provincial or municipal goods, the contracting of works or services, and any other contract signed by the province or the municipalities with private persons, must if possible be put to tender, under penalty of nullity, and without prejudice to emerging liabilities. By law or ordinance, exceptions may be established to this principle".

Procurement systems with and without public tender

Application of this basic constitutional principle is expressly covered in:

- a) Title II, Chapter VII "Contracting System", Section A, "Legal Framework and Organization of the System", Articles 122 to 129 and Section B, "Legal Regime Governing Procurement", Articles 132 134 of Law 4787 on Organization and Functioning of the Financial Administration of the Provincial Public Sector".
- b) Chapters XII VII, Articles 1 to 73 of Law 4990 on Public Works.
- c) Decree 3566/77, "Procurement Regime", regulated by the law indicated at a) above.

These laws refer to the procurement of goods and to the contracting of services.

LA PAMPA

Procurement systems with and without public tendering

A General Law on Public Works (Law 38) and its amendments and supplements govern:

- a) Public bidding: as a general principle, public works and projects are to be awarded by public bidding (Article 9.1 of the Law).
- b) Exceptions: exceptions apply to the following types of contract:
 - 1. By direct contracting: 1. When the works do not exceed \$40,000 (Article 38.a); 2: when there are justified reasons of urgency.
 - 2. By price competition: 1. When the value does not exceed \$120,000 (Article 38.a); 2. When the works require a specific artistic, technical or scientific capacity or involve

works of art or special technique that can be entrusted only to scientists, technicians, artists, entrepreneurs or specially trained workers, or when patents or exclusive privileges must be used (Article 38.b); 3. When there are no bidders, or when there has been no offer that serves the interests of the State (Article 38.e).

3. By private bidding: 1. When the value does not exceed \$240,000 (Article 38.a) and 2. When the works by their nature cannot be clearly specified, budgeted or calculated for purposes of tendering (Article 38.g).

4. By force account (*por administración*). The law allows execution of works on force account when the value does not exceed \$40,000, or when it falls within the normal working capacity of the institution (Article 9.a and g and Article 10).

5. Project contracting. Article 12 of Law 38 and its Regulatory Decree 1155/59, as amended by Decree 1062/01 and Decree 270/05, establish a procedure of direct contracting for projects up to \$21,000; price competition up to \$42,000; and private bidding up to \$84,000.

Governing authorities of the systems and control mechanisms

Calls for public bidding, approval of legal and technical documentation, works budgets and plans, and awards, are handled through issuance of the corresponding decree of the provincial executive branch, upon the advice of the Public Works Council, legal advisers and the Comptroller of the Provincial Court of Accounts.

Procedures involving the exceptions of direct contracting, price competition, and private bidding (Article 38.a) of the General Law on Public Works (Law 38) are approved and awarded by resolution of the Minister of Public Works and Services, by delegation from the Governor by Decrees 331/05 and 270/05, with the compulsory advice of the Public Works Council and the Comptroller of the Court of Accounts.

The Public Works Council is a legal and technical body created by the General Law on Public Works (Articles 112 to 119). It consists of the senior managers of the agencies reporting to the Ministry of Public Works and Services. It issues substantiated resolutions, and the minutes of its meetings are certified.

Court of Accounts. This is a constitutionally instituted control agency. Article 103 of the provincial Constitution provides that the Court of Accounts shall supervise the receipt and investment of provincial public revenues, and the accounts of private institutions that receive subsidies from the province, with respect to their investment of such subsidies.

The Court of Accounts consists of a president and two members, appointed by the executive branch with the consent of the Chamber of Deputies, after a competition and an examination by the Council of Magistrates. They may not be removed, and they may be tried in the cases established by the Constitution. Their functioning is governed by the Organic Law, Decree Law 513/69.

Registry of Public Works Contractors

Article 21 of the General Law on Public Works establishes a permanent Registry of contractors to the Ministry of Public Works and Services. It is currently governed by Decree 2546/93. The registry office has the status of a directorate reporting to the Undersecretary of Public Works and Services, and is responsible for recording all persons interested in bidding.

Within the organic structure of this registry office there is a Classification Commission, consisting of members appointed by the executive branch and by the Professional Council of Engineers and Architects of the Province, and by the Argentine Construction Chamber. The essential function of this body is to prepare internal rules for the Registry of Contractors, to order inspections, to punish firms, to examine penalties imposed for purposes of subsequent qualification, training and ethical background.

The most important functions of the Director of the Registry are to keep files and oversee all registrations, to grant certificates of authorization to participate in tenders, to assess the behavior of registered firms, etc.

Information system for government procurement:

Pursuant to the General Law on Public Works (Article 16 and 17), tenders are to be published in the Official Gazette and in between five and 10 newspapers or magazines, 15 days in advance. When the size of the project so warrants, notice will be published in newspapers of provincial and national circulation. With respect to electronic advertising, the Official Gazette can be consulted at the provincial web page. Article 18 of Law 38 establishes the minimum contents of tender notices.

The quality and quantity of publications in the media are governed through contracting procedures, with control by the Public Works Council and the Comptroller of the Provincial Court of Accounts.

The technical, accounting and legal criteria established in the internal rules of the Permanent Registry of Public Works Contractors guarantee equality in the registration firms. Law 38 (Article 22) establishes grounds for exclusion from the registry.

Tender documents are accessible, with clear specifications, reflecting the principles of security in contracting and encouraging the greatest possible number of bidders for each tender, in order to promote healthy competition.

Specifically, the opening of bids follows the procedures of articles 23 to 31 of the Public Works Law with respect to the basic principles of administrative law, swiftness, economy, simplicity, and efficiency of procedures, observing and enforcing due process pursuant to the Administrative Procedures Law 951 and its Regulatory Decree 1684/79.

With current legislation and its supervision by the competent bodies, effective enforcement is assured, and the principles of openness, equity and efficiency in the public tendering of public works in the province is guaranteed.

Public works contracts

The General Law on Public Works contains a chapter on the award and formalization of the public works contract following completion of the formal and substantive procedures for awarding the works. It establishes the interventions and controls already described, the terms, notifications and means for guaranteeing contracts.

Identification of the selection criteria for contractors

Law 38 establishes, as the governing principle, that the bid must adhere strictly to the terms and conditions established for the tender. Once this is confirmed by the Pre-awards Commission (the opinion of which is not binding on the agency), the award will go to the bid that, in the judgment of the administration, is most advantageous (Article 35). In practice, according to available statistics, the lowest bid will normally be accepted, if it complies strictly with the terms and conditions.

Article 36 also indicates that bids will not be considered if they are submitted by firms that include as members or advisers officials or technical personnel in the service of the provincial and municipal government, even in the case where those persons ceased to provide such service up to three months before the call for tenders. Firms with legislators or municipal counselors as members or advisers are also disqualified from bidding.

Ways to challenge a selection

The specific terms and conditions for tenders establish the possibility of submitting observations on the bid opening procedure, and challenging the decision awarding the contract (because the remaining acts are preparatory to administrative determination they are not binding). The Law of Administrative Procedures (Law 951) and its regulatory Decree 1684/79 applies here, with all the guarantees of due process.

b) Objective results obtained, including any available statistical data

The Ministry of Public Works and Services has a computerized system for tracking all procedures for the contracting of public works by the provincial government. From December 2003 to May 31, 2006, 403 public works contracts were awarded, using the various procedures outlined above. Of these awards, 54% involved public bidding. The remaining works were contracted through private bidding, price competition, or directly, because they were beneath the legally established thresholds (i.e. between \$40,000 and \$240,000 for public works, and between \$21,000 and \$84,000 for projects).

To date, one firm has been penalized by suspension from the Registry of Contractors for misconduct, as proven before the Classification Commission mentioned in point iii.

The following documents are attached: General Law on Public Works (Law 38); Decrees 1062/01, 270/05, 331/05, 2546/93, and Decree Law 513/69.

ENTRE RIOS

With respect to government procurement systems, Provincial Law 5140 on Financial Administration of Goods and Contracts, regulated by Decree 795/96 MEOSP, governs transactions that result in transformations or changes in the public finances, and is binding on the centralized and decentralized administrative organs of the province.

Procurement systems with and without public tenders

That Law provides that government procurement may be conducted through: public or private bidding; requests for quotes; competition on the basis of merit and background; and by private initiative.

It sets forth a series of principles intended to secure:

- Publicity and transparency.
- Promotion of competition.
- Deregulation of procedures.
- Administrative decentralization.
- Efficiency, effectiveness and economy in the procurement process in order to meet needs on a timely basis with the best technology and at the lowest cost.
- Establishing the responsibility of agents and officials who authorize, direct and execute contracts, bearing in mind the public interest at stake.

Bids must be submitted at the place indicated in the bidding documents, in a sealed envelope, with the required formalities. Bids may relate to all or a portion of the requested merchandise, but always for the total of each item (unless the bidding documents provide an exception to this rule). Once the bids are received, they will be opened at the specified date and time, in the presence of the competent authority and of the participating bidders. After the opening, a report will be prepared reflecting the process and the data from the bids.

Law 9353 establishes preference for firms located within the Province of Entre Rios, allowing local products a margin of 5% over those from outside the province.

Governing authorities of the systems and control mechanisms

The province has three control bodies:

Internal control: General Accounting Office of the Province. This is a constitutionally established governing body for the system of internal control over the economic and financial management of the provincial public finances and the government accounting system. It covers economic, financial, budgetary, normative and property aspects.

It intervenes preventively in orders authorizing payments and expenditures, citing the rule that, except upon special instruction from ministers, such orders are invalid without its sign-off (*visto bueno*).

External control: Provincial Court of Accounts (TC). The TC is a constitutionally instituted external control body for the provincial public finances, overseeing the decentralized agencies, autonomous entities, state enterprises, hospitals, health centers, government boards, delegated public works, subsidies to individuals and corporations, and the accounts of the municipalities and municipal retirement funds. It is responsible for controlling legal, economic and financial, accounting, budgetary and management aspects.

It must approve the receipt and investment of public funds by all provincial officials and administrators.

Legal control over state activity: The Provincial Attorney's Office (*Fiscalía del Estado*). This office has constitutional hierarchy. It is responsible for legal control over state activity, in order to ensure observance of the provincial constitution and the laws and decrees issued under it.

Its function is to defend the province's fiscal interests. It is a legitimate party to lawsuits and to all cases that involve a violation of state interests (Article 139). It can challenge the decisions of the provincial executive when in its judgment these are contrary to the financial interests of the state.

The Anticorruption and Public Ethics Office (OAEP) comes under the Provincial Attorney. It has a Transparency Policies Planning and Administrative Control Area and an Investigations and Prosecutions Area.

The office is responsible for prevention and investigation of all conduct prohibited by the Inter-American Convention against Corruption, within the central and decentralized provincial public administration, autonomous entities, state enterprises, corporations in which the province holds an interest, and any public or private entity that receives funding from the provincial government.

Ways to challenge a decision

There is nothing to prevent administrative acts from being challenged through the administrative and judicial routes, at the initiative of an interested party.

SANTIAGO DEL ESTERO

The Province of Santiago del Estero is governed in procurement matters by the Accounting Law (Law 3742) and by Law 6655 (Chapter II: Procurement by the Provincial Public Administration).

Procurement systems with and without public tendering

Procurement procedures are conducted by means of public bidding, private bidding, price competition and direct contracting.

Series B Decrees 83/78 and 84/78 regulate procedures under public bidding and private bidding.

Agencies that purchase goods and services must provide reasonable advance notice of calls for tender to the Court of Accounts (a constitutional body), and they must submit pre-award decisions to the oversight body of that court.

Public works contracts

These are governed by Law 2092.

CHUBUT

The Province of Chubut recently approved a provincial financial administration act (Law 5447). In the section dealing with government procurement it stipulates the main characteristics of procurement methods and their requirements. At the same time, a regulatory decree was issued and the Provincial Procurement Office was created.

TUCUMAN

The legal system of the Province of Tucuman comprises Decree 49/17, "Purchasing and Contracting Regulations", and Decree Order 11/1, "Mission and Functions of the General Directorate of Purchasing and Contracting".

Procurement systems with and without public tendering

As a general rule, all procurement involving works, supply, rental, leasing and services on behalf of the province is done through public tender. However, there is a threshold below which private bidding or price competition may be used.

Calls for tender must be published in the Official Gazette and in the newspaper of major circulation in the place where the supply or works are to be performed. They may also be published in the newspapers of other jurisdictions, when the case is sufficiently important or urgent.

Governing authorities of the systems and control mechanisms

Decree 11/1 created the General Directorate of Purchasing and Contracting, reporting to the General Secretariat of Government, with the mission to propose policies, rules, systems and procedures for the procurement of goods and services for the provincial

public sector, in coordination with other government agencies, within the framework of existing legislation, and respecting their special regimes.

This agency has the following functions:

1. To propose general and specific policies and to adopt measures relating to procurement by the provincial public sector.
2. To propose rules for implementing procurement policies and measures and to make proposals for improving the existing rules relating to the procurement system.
3. To design and implement systems to facilitate the effective and efficient management of procurement, including systems of information on suppliers, benchmark prices, and rules.
4. To publicize policies, rules, systems, procedures and price databases, via the Internet, for use by the provincial public administration.
5. To advise jurisdictions and entities in preparing their annual procurement programs, integrating basic budgetary information and preparing forms, instructions and computer software for programming procurement.
6. To organize the registries required for monitoring and evaluating the system's performance and prepare programs that will facilitate their consultation and use by the jurisdictions and entities of the system.
7. To submit combined procurement proposals to the executive branch on behalf of the respective ministries, autonomous and decentralized agencies, when this would achieve significant savings.

RIO NEGRO

In the Province of Rio Negro, the legal framework for government procurement is found, first, in Article 98 of the provincial Constitution: "Any disposal of provincial assets, any purchase, any public work or any concession of public services shall be done through public or private tendering, under penalty of nullity, and without prejudice to the consequent liabilities". Legislation establishes certain exceptions to this principle.

The tendering requirement may be waived when the province carries out works on force account or through cooperatives, mixed corporations or others in which it holds an interest, or through inter-municipal or inter-provincial bodies established for this purpose to promote regional economic development.

Finally, priority in procurement is given to individuals or firms based within the province: Law 3619 (BO 3983) regulates this right.

Pursuant to the constitutional provision, the Financial Administration Act (Law 3186, BO 3537) has been approved. Title VII (articles 81 to 83) establishes the procurement system, which is regulated by Decree 188/04 (BO 4202).

Law 286 deserves special mention: chapters III and IV regulate the systems for the contracting of public works.

Procurement systems with and without public tendering

In the first place, we shall examine the most important aspects of Law 3186.

Article 82 of this Law makes public tendering the preferred procedure for selecting contractors. "Any procurement by the government must comply with the public tendering procedure" in order to achieve the greatest number of bidders and to select the most advantageous offer.

Article 83 makes it a general procurement principle to achieve the greatest possible number of bidders, on the basis of equality, to award the contract to the most advantageous offer, which is in principle the lowest-price offer, and to consider the costs of financing, operation and administration for formalizing the purchase.

The exceptions to this general principle relate to:

- amount;
- special characteristics of the contract; and
- procedures governed by special regimes.

In the first case, the law authorizes private tendering, price competition and direct contracting with bidders expressly invited by the government.

The maximum amounts for each of these procedures are set by regulation, subject to adjustment in accordance with indices prepared by the technical offices, currently contained in Decree 903/00.

Notwithstanding value-related exceptions, Article 87 allows direct contracting in specific cases, where it can be conclusively demonstrated that the stipulated circumstances exist and that the price to be paid is reasonable.

Those specific cases are:

- a) Unforeseen emergencies or fortuitous circumstances where it can be demonstrated that public tendering is not in the public interest and that the situation was not caused by lack of foresight on the part of some official.
- b) If a public tender has been declared void and there are sound reasons for not conducting another similar procedure.
- c) When the acquisition, execution or repair of works of a scientific, technical or artistic nature must be entrusted to persons with demonstrated specialization.
- d) Procurement of goods or services that belong to only one person or entity, or that can be sold only by certain persons, and for which there are no appropriate substitutes.

- e) Contracts that must be performed in a foreign country, where it is demonstrably impossible to conduct bidding.
- f) Contracts and procurement in general conducted with public agencies, for example in the case of certain state-owned society such as ALTEC.SE or cooperatives created by outsourcing services to former provincial employees, such as SAER.SA or Patagonia Gráfica.
- g) In the case of goods and services of demonstrated scarcity on the market.
- h) Repairs to machinery, equipment or motors, where it would be a cumbersome operation to dismantle, transport or examine them prior to tendering. This exception does not apply to predictable, routine or periodic repairs.
- i) Purchase of breeding livestock and specialized agricultural products.
- j) Purchase and sale of products intended to promote economic development or to meet health or social needs, provided the products are sold directly to users or consumers.
- k) Goods and services for which the price is determined by the national or provincial government, and for which, under equal conditions, preference must be given to public agencies.
- l) Purchase of goods at public auction, provided the maximum amount payable has been set in advance.
- m) Sale of official publications produced by agricultural or industrial agencies and services provided for a price by government.
- n) Items stipulated in Article 84 of the law.
- o) "Savings circles" or partnerships for specified purposes, to purchase capital goods, machinery, equipment and motors; and finally,
- p) Purchases that do not exceed the fixed amount.

Decree 188/04, which approved the Procurement Regulations (regulations to Law 3186) and Decree 189/04 (BO 4184) which governs authorization and approval of expenditures, complete the legal framework establishing systems and procedures for authorizing the procurement of goods and services and the selection of contractors by government.

Decree 188/04: Article 3 expands upon the principles governing procurement mentioned in Article 83 of the law, requiring observance of the following:

- a) Equality of treatment and conditions among bidders.
- b) Free competition.

- c) Advertising and publicity for transactions.
- d) Defense of the collective interest and the public purse.
- e) Transparency in procedures.
- f) Liability of agents and officials who authorize, approve or negotiate contracts.
- g) Programming procurement in light of the nature of activities and the availability of budget appropriations.

Article 9 regulates Article 82, defining the procedures contained therein. Following is a brief description of each of these procedures:

1. Public tendering: contract proposal of a general nature, published and advertised, subject to terms and conditions, for which interested parties may present offers.
2. Private tendering: proposal with the same characteristics, but issued to certain firms or individuals.
3. Price competition: a procedure by which selected firms or individuals are invited to quote prices.
4. Direct contracting: not subject to the foregoing requirements; the procurement is negotiated between the government and a specific firm or individual.
5. Public auction: the procedure used for sales at public auction.

Article 17 regulates aspects of direct contracting, providing in particular that such transactions are an exception to the general principle, and clarifying each such exception.

Thus, it requires that an unforeseen emergency must be demonstrated by technical reports prior to contracting; any contract signed on these grounds will be null and void unless those grounds are properly substantiated.

Article 17 then stipulates that, if the emergency can be attributed to lack of foresight, an investigation will be held to determine who is responsible, and that person will be punished for grave misconduct if prejudice to the public purse is demonstrated.

The Article stipulates that if a tendering procedure is declared void, this does not in itself justify direct contracting; it must also be demonstrated that a new call for tenders cannot be issued, for reasons of urgency or prejudice to the public purse.

In the case of scientific or artistic works, purchase of breeding livestock, or specified trademarks, the character and specialization of the firm to be contracted must be certified in advance by competent technical body.

In this legal regime, a fundamental requirement for direct contracting is demonstration that the price to be paid is reasonable. Thus, Article 17 indicates as a guiding principle "the prices system" which consists of soliciting quotes from at least three suppliers, and with the proviso that if their reasonableness cannot be demonstrated by the rules of the market, a technical body may certify it in light of prices for previous contracts of a similar nature, or benchmark prices.

In addition to these modalities, the Procurement Regulations include other variants, such as multiple stage bidding (Article 27) where quality and price comparison is done in two or more stages, with successive pre-selection; private initiative (Article 28), where the originator enjoys some right of preference and is allowed to improve his offer against the best bid submitted; "integral projects" (Article 30); international tendering and requirements for importing goods (Article 31); the open supply system (Article 32), fixing a unit price but no predetermined quantities; and electronic procurement (Article 35), subject to approval by the decree regulating the regime and identifying the kinds of goods that can be procured in this manner.

Publicity. The legal rules examined provide that the decisions taken during procurement proceedings must be made public.

Thus, Article 86 of Law 3186 stipulates that calls for tender or auction shall be published in the manner and with the time limits and conditions established by regulation, so as to guarantee publicity for the decision, and Decree 188/04 (Procurement Regulations) devotes Chapter II to advertising and publicity.

Article 43 of that Decree governs the publication of calls for tender, requiring notice to be published at least 12 days in advance in the Official Gazette and in a local newspaper for at least three consecutive days.

Notwithstanding such publication, the tender documents must be posted on bulletin boards in the place established for their sale (Article 44) and they must also be published at the web site, pursuant to Law 3641 (BO 4009) and its Regulatory Decree 520/03 (BO 4103).

Confirmation that all these publicity requirements have been fulfilled must be attached to the corresponding acts (Article 46).

Thus, publicity for public tenders has been assured, fulfilling thereby a fundamental juridical role in government procurement procedures, since it is only after publication that the activity of bidders begins.

Governing authorities of the systems and control mechanisms

Article 16 (4) of Law 4002 (BO 4364) empowers the Ministry of Finance, Public Works and Services to oversee contracting policies, standards and systems for the provincial public sector, including purchase and supply systems.

Accordingly, that Ministry has established the General Directorate of Supply, which is the specific agency responsible for these tasks. It prepared the accompanying statistical data (Annex 1) on control over public and private tendering was for the years 2003, 2004 and 2005, showing percentage changes in certain inputs.

Control mechanisms

Prior control over all administrative proceedings that could result in changes to provincial public assets is the responsibility of the General Directorates of Administration or the organizational units that perform similar functions in the central administration, in this case that mentioned in the first place (Article r. Decree 1494/99) and prior legal control for which the permanent legal services of each agency are responsible.

Law 2938 (Article 12.d.3) refers to these services, requiring that, prior to issuance, the administrative act must comply with all the stipulated procedures, including the opinion of the agency's legal adviser and approval by the Provincial Attorney, when (among other cases) the financial interests of the province are at stake.

The General Accounting Office of the Province exercises parallel control over those procedures, and must pronounce itself before the commitment is given and before the payment is made (Article 2 of the Decree).

The General Accounting Office and the Provincial Attorney's Office are internal control bodies created by articles 190 and 191 of the provincial Constitution: the first is responsible for recording and internal control of the public finances, and the second controls the legality of provincial administrative acts and defends its financial interests.

Registry of suppliers

Articles 47 and 48 of Chapter III of the Decree are devoted to the Single Registry of Suppliers. Among its functions, it must keep a centralized database on the registration of individuals or businesses seeking to contract with the provincial administration, on the basis of the following principles: simplicity and economy, publicity and broad admission, establishing registration fees and the sanctions regime (Article 47).

To participate in tenders, bidders must be registered in this registry. As an exception, foreign firms without official representation in the country can register during the proceedings, or their registration can be finalized within an established deadline if they are the successful bidder.

In addition, Decree 374/61 (BO 43) creating that registry remains in force and currently regulates additions and deletions of suppliers, registration requirements, and the sanctions regime, among other important aspects.

Without prejudice to that registry, with approval of Law 3709 (BO 4051), the Provincial Registry of Consulting Services has been organized for institutions and individuals accredited to offer their professional services as consultants to the provincial public sector (Article 4), through the procedure of public competition, private competition, or public tendering for the contracting of services (Article 9).

Electronic methods and information systems for government procurement

As indicated above, the tender documents must also be published via the Internet, pursuant to Law 3641 (BO 4009).

Public works contracts

Public Works Law 286. There is a special regime governing public works, regulated by Law 286, which applies to "all constructions, projects, installations and works in general executed by the province through its agencies, by itself or through private or official individuals or entities, with its own funds, national, municipal or private contributions" (Article 1).

The contract must be awarded through public tender (Article 9), except in the cases expressly indicated, when it may be awarded via private bidding or price competition:

- a) When the official budget does not exceed the amount set by the regulation.
- b) In the case of works or objects of art or technique or of a special nature that must be entrusted to artists, technicians, scientists, firms or specially trained workers, or when patents or exclusive privileges must be used.
- c) When the circumstances require confidentiality.
- d) For reasons of urgency.
- e) When, after two successive calls for tenders, there have been no bidders, and no suitable offers have been made.
- f) When they fall within the ordinary working capacity of the prospective agency.

Article 12 provides for unit price, fixed price and "cost plus" systems for procurement, with publication in the Official Gazette in all cases.

The criterion for selecting the contractor is stipulated in Article 23, which calls for the contract to be awarded to the person submitting the most advantageous proposal, provided it is compliant with the terms and conditions of the tender.

Identification of the selection criteria for contractors

Article 83 (b) of Law 3186 requires the contract to be awarded to the offer most advantageous to the public interest, this being understood in principle to mean the offer with the lowest price; exceptions may be allowed for reasons of quality, upon the prior recommendation of the contracting agency, justifying the assessment of quality (Decree 188/04, Article 61).

Article 57 of the Procurement Regulations requires the Pre-awards Commissions to consider price, quality, suitability of the bidder and other conditions of the bid, in their reports.

Article 61 also reserves a right of preference, where conditions, price and quality are equal, for suppliers based in the province, with the clear intention of promoting local interests pursuant to Article 98 of the provincial Constitution and Law 3619.

Related to the issue of quality and price is the System of Benchmark and Reference Prices stipulated in Article 94, Title III, of the Procurement Regulations now being

prepared by the General Directorate of Supply for application to the central and decentralized administrations with a view to ensuring that goods and services are procured at reasonable prices consistent with market conditions of value, quality and quantity, and to making government procurement transparent (Article 95).

Ways to challenge a selection

Decree 188/04 (Chapter VI, Article 64) details the challenges regime, and stipulates that bidders may challenge the contracting process at any stage. In particular, they may appeal for changes in the bidding documentation already approved by the competent authority if it contains serious flaws, up to five days prior to the opening of the envelopes, and they may challenge pre-awards within three days of notification.

Challenges are submitted to the tendering agency: they have suspensive effect, and require intervention by the Provincial Attorney. This regulation introduces a new feature, whereby challenges once decided cannot be appealed, and an appeal bond (*garantía de impugnación*) may be demanded in the terms and conditions, for specific cases.

FORMOSA

Procurement in the Province of Formosa is governed by law 1180, on financial administration, goods and contracting and control systems of the provincial public sector, approved on December 18, 1995, which establishes the procurement regime (Title VII, Articles 90 to 117 and concordant articles).

General principle of public tendering

With respect to procurement systems with and without public tenders, the procedures are set forth in Article 97 and concordant articles of Law 1180, as follows:

- a) tendering (public and private);
- b) competition on the basis of qualifications, merits and background;
- c) direct contracting;
- d) competition for comprehensive projects and pre-projects;
- e) public auction;
- f) according to the rules agreed with international financial institutions in the case of contracts financed by them; and
- g) private initiative.

The text of Article 91 of the above-mentioned law lists the objectives of any procurement transaction:

- a) reasonableness in light of the public interest;
- b) publicity and transparency in the entire process, so that society will have confidence in it;
- c) promoting and ensuring competition among suppliers or contractors, by encouraging them to participate in the various procurement processes, deregulating as far as possible the requirements for their inclusion;

- d) efficiency, effectiveness and economy in the procurement process, with the essential goals being timely completion, the best technology, and the lowest cost;
- e) liability of agents and officials who authorize, direct and execute contracts, with particular attention to reasonableness in light of the public interest;
- f) the basic premise is to select the contractor on the basis of the offer that is most advantageous to the provincial government;
- g) flexibility of procedures;
- h) equality among bidders.

We may add to that, consistent with the above guidelines, the negotiation of purchases of goods and services takes into account the essential criteria of predictability and prudent timing, and the deadlines for using budgetary allocations established by the Ministry of Economy and Finance. All proceedings are centralized in the Purchases and Supply Directorate of that Ministry, unless the procurement involves special characteristics, in which case it will be channeled through the Financial Administration Office of the originating agency.

In all cases, moreover, the goods to be purchased are broken down into various items in order to secure the greatest possible participation by bidders, including those that are too small in terms of their capitalization, production capacity or other factors, to quote for supply of the entire lot. The implicit objective is to facilitate competition by the greatest number of registered bidders, and thereby give practical effect to policies for ensuring equality of business opportunity among all registered firms, regardless of their size.

Governing or administrative authorities of the systems and control mechanisms

The governing or administrative authorities of the systems and control mechanisms provided by law are:

- a) the Provincial Court of Accounts;
- b) the Provincial Auditor General;
- c) the special Internal Audit Commissions appointed by the executive branch at the proposal of the governing body or at the request of other branches;
- d) the Provincial General Accountant; and
- e) the Expenditure Control Directorate of this Ministry.

Registry of contractors

A process is underway to optimize the conditions and arrangements for firms registered in the Registry of Suppliers by the Ministry of Finance, with the issuance on May 19, 2006 of Resolution 3212/06 of the Minister of Economy and Finance, approving use of the Classifier of Standard Activities Codes, for dealings with the Registry of Suppliers, in cooperation with the Provincial Tax Collection Agency. Its objectives are:

- To facilitate the preparation of lists of suppliers according to the activities codes defined.
- Communication to the Provincial Financial Administration Services of those firms registered that are in a position to contract, broken down by headings;

invitations to bid must be confined to these firms, except when the bids contain excessive prices, in which case bids may be accepted from non-registered firms, once the legal requirements have been fulfilled.

- Publication via the press, radio and television of the list of suppliers authorized to contract with the provincial government, under the respective headings.

For firms registered in the Registry, their compliance with the following legal restrictions is checked:

Firms and sole proprietorships are not acceptable as suppliers to the government if their members or owners fall into any of the following categories:

- a) if they hold political positions as defined by Article 91 of the provincial Constitution;
- b) if they are agents of the State; and
- c) if they are members of companies or owners of businesses and are seeking to register for the same item or items.

The purpose here is to guarantee the principles of equality among bidders, and impartiality in the process.

For information purposes, we may report that there are currently 672 firms registered.

The Registry of Contractors is kept by the Undersecretary of Public Works and Services in the Ministry of Planning, Investment, Public Works and Services, in the context of the Legal Regime for Public Services of Decrease of 959/80 and its amendments.

Electronic methods and information systems for government procurement

With respect to publicity, the growing use of information and communication technologies has had an impact on the relationships among the various agencies and between them and public and private organizations and individuals, and although the governing rule referred to above does not require this modality, the Directorate of Purchases and Supply of This Ministry has in fact been publishing calls for private tenders at the official provincial web site.

Public works contracts

These can be handled in the following ways:

- a) Public Works Contract, through any of the following systems:
 1. Unit of measure
 2. Fixed price
 3. Cost plus
 4. Delegated management
 5. A combination of the above.
- b) Public Works Concession Contract, which may take the following forms:
 1. Toll system
 2. Contribution of improvements

Contractors are qualified in light of their annual contracting capacity, with respect to the execution times required by the works to be tendered. This mechanism has been instituted by decision of the Undersecretary of Public Works, whereby a distinction is made between projects that require less than one year and those that require more than one year. As well, the Undersecretary has approved a list of minimum equipment that firms must have in order to bid for different types of works.

Identification of the selection criteria for contractors

We must note that the official estimates contained in the bidding documents are based on reference prices derived from surveys conducted jointly by the Directorate of Trade, the Directorate of Purchases, and the Office of Consumer and User Protection, all belonging to the Ministry of Economy and Finance. The rule adopted, on specific instructions from the Minister, is that the criterion for awarding the contract must be the relevant market price.

Ways to challenge a selection

These are stipulated in Article 111 and concordant articles of Law 1180, which provides that, once the bids are opened under any procedure, every bidder has the right to submit observations on that process, or for other purposes. Such observations will be treated as a challenge, which must be submitted in writing, together with a cash deposit of 1% of the total value of the items challenged, for which an official receipt will be issued. The challenge will be resolved at the time of the award. This fact is stated in the general terms and conditions.

CORRIENTES

Procurement is governed by Law 5571, the Law on Financial Administration and Control, Procurement and Administration Systems for Properties of the Provincial Public Sector, which regulates the Provincial Procurement System in articles 108 to 119 of Title VIII.

Procurement systems with and without public tenders

Article 108 stipulates that any contract must be put to public tender if it involves expenditures, and to public auction or tender when it involves revenues, which must be authorized, processed and approved by the executive branch.

Notwithstanding the above, procurement may be conducted in the following ways:

1. By private tender, when the amount of the transaction does not exceed \$150,000.
2. By direct purchase, following price competition, up to \$75,000, as determined by the branches of government.

3. Directly, with approval of the executive branch and the other branches of government, in any of the following situations:

- a) Between official, mixed, national, provincial and municipal entities.
- b) When the total price of the contract does not exceed \$7,500.
- c) When a public or private tender or auction has been declared void, and no valid bids have been submitted.
- d) For demonstrated reasons of urgency or fortuitous circumstances.
- e) To acquire goods made by or belonging to persons under exclusive right, when there is no suitable substitute.
- f) Goods and services that must be procured abroad, when it is impossible to conduct bidding there.
- g) Purchase of goods at public auction: the branches of government must decide the cases and circumstances and set in advance a maximum price for the transaction.
- h) When the items to be purchased are known to be in short supply.
- i) To purchase, execute, conserve or restore artistic, scientific or technical works that must be entrusted to specialized firms, individuals or artists.
- j) Repairs to machinery, equipment, and vehicles or motors, where it would be too costly to disassemble, transfer or examine them in cases of public tender: this exception does not apply to routine or periodic maintenance.
- k) When circumstances require that government transactions be kept secret.
- l) Purchase of breeding livestock by selection or of seeds, plants or cuttings, in the case of unique or outstanding specimens.
- m) The sale of perishable goods and those intended to promote economic development or meet health needs, provided they are sold directly to users.
- n) In the case of goods for which prices are fixed by the national or provincial government.
- o) Publications of documents, reports, advertising and official notices, such as laws, decrees, edicts, resolutions, orders, calls for tender, messages and other government acts.
- p) To acquire used goods in sound condition that, because of their characteristics, conditions and price, are advantageous to the state. In this case the authorization must be given by ministerial decree, on the recommendation of the Provincial Attorney.

The executive branch may deliver used or retired goods as partial payment for the acquisition of new goods or used goods in the case of item p) of this Article.

Nevertheless, the branches of government may contract by means of competition based on qualifications, merit and background in those cases where technical, scientific, cultural or artistic capacity is considered the primary factor for obtaining the service or work required.

Competitions based on qualifications, merits and background may be public or private.

Publicity (Article 114). Calls for public tender or auction must be published for at least five days in the Official Gazette and at the Internet site of the Ministry of Finance of the Province; other media may be used however to ensure the greatest possible publicity.

Notice must be published at least 15 days, from the last date of publication, in advance of the opening of the bids, or 30 days in advance if notice is placed abroad. On an exceptional basis, these terms may be reduced when considerations of urgency or the public interest so require, but in no case may they be less than five days (domestic) or 10 days (abroad), and the reasons must be recorded in the act ordering the call for tender.

With respect to the anticorruption clause, this provides for the automatic rejection of the proposal or bid at any stage of the proceedings, and automatic cancellation of the contract, if money or other gifts are given or offered:

- a) To a public official or employee responsible for the tender or contract to induce him to perform or omit acts proper to his functions.
- b) Or to exert the influence of his position over another public official or employee with such responsibility to induce him to perform or omit acts proper to his functions.
- c) To any person to take advantage of his relationship or influence over a public official or employee with such responsibility to induce him to perform or omit acts proper to his functions.

The active subjects of this conduct are deemed to be persons who have committed such acts directly or indirectly in the interest of the contractor, whether as representatives, directors, partners, agents, managers, factors, employees, contractors, negotiators, trustees, or any other natural or legal person.

Such conduct is deemed to be committed upon the mere attempt.

Governing or administrative authorities of the systems and control mechanisms

The internal system of control over economic, financial and property management of the provincial public sector is the responsibility of the Provincial General Accountant's Office. The organization and functioning of that system are governed by this law, and the rules issued to such purpose by the Provincial General Accountant (Article 93).

The system of external control over the budgetary, economic, financial and legal aspects and the efficiency and effectiveness of management in the provincial public sector is the responsibility of the Provincial Court of Accounts, established by Law 3757 as amended by Law 5375 and subsequent amendments (Article 107).

Electronic methods and information systems for government procurement

Calls for public tender or auction are published simultaneously at the Internet site of the Ministry of Finance of the Province, without prejudice to other media that may be considered appropriate.

SALTA

The procurement of goods and services is regulated by Provincial Law 6838 and its Regulatory Decree 1448/96, which establishes the Provincial Procurement System and is applicable to the entire provincial and municipal public sector without exception. The objective is to respect "regulatory centralization and operational decentralization", by organizing the system on the basis of: 1) centralization of policy and rules, and 2) decentralization of the operations of contracting for goods, works and services.

The general principles enshrined in this legislation are those of:

- a) publicity;
- b) equality of opportunity for interested parties and bidders;
- c) promotion of greater competition among bidders; and
- d) flexibility and transparency in processes and procedures.

The rules require advertising at the provincial, national and international levels as appropriate. Transactions must be published for one day in the provincial Official Gazette and in at least one newspaper of provincial circulation, at least 10 working days or 5 working days in advance, when in the judgment of the contracting entity the circumstances so justify.

Procurement systems with and without public tendering

The following procurement systems are used:

- a) Public tendering. Public tendering is the normal procedure, when the value of the procurement exceeds \$35,000, or in the case of public works when the value exceeds 37,500 times the minimum wage, excluding social charges, for the category of laborer in the Collective Agreement in the Construction Industry.
- b) Price competition. This may be used for procuring homogeneous goods for which there is a permanent market, or when the amount of the contract does not exceed the threshold established for public tendering.
- c) Direct contracting. This may be based on benchmark prices or on free election via direct negotiation. It is an exceptional procedure used to speed the procurement process, but it is attended by certain formalities that ensure respect of the general principles required by legislation. The "benchmark price" (*precio testigo*) is the maximum unit value to be paid by the administration in the procurement of goods or services. The Central Procurement Unit is responsible for determining the benchmark price on the basis of provincial and national market data. The applicable ceiling for using this procedure is \$15,000. In the case of public works, the ceiling is 7,500 times the minimum wage, excluding social charges, for the category of laborer in the Collective Agreement in the Construction Industry.

d) Tendering for complete projects. This system is used when the contracting entity has not yet determined the detailed specifications of the object of the contract, or in the case of private initiatives for which proposals are sought on the various possible ways of fulfilling them.

e) Public auction

Governing or administrative authorities of the system and control mechanisms

The governing or administrative authorities of the system and internal control mechanisms are: the Central Procurement Unit, the Financial Administration System, and the Provincial Inspector General. External control is exercised by the Provincial Auditor General. Any disputes between bidders and the government are submitted to the Administrative Tribunal created within the Ministry of Finance of the Province (articles 90 to 96).

Registry of contractors

The Provincial Registry of Contractors is located within the Central Procurement Unit, and contains data on the capacity and other aspects of provincial suppliers.

Electronic methods and information systems for government procurement

With respect to the commercial system, the province is now implementing the electronic procurement system. With respect to the financial system, the J.D. Edwards system has been implemented and is in full operation.

Public works contracts

Public works may be contracted by any of the following procedures:

- Fixed price.
- Unit of measure.
- Cost-plus.
- A combination of the above systems.
- Full or partial payment, deferred to periods subsequent to execution.
- Other systems as approved by the Governor.

Ways to challenge a selection

Administrative decisions taken during the selection process may be challenged through the remedies provided by the administrative procedures law of the Province of Salta. Those remedies include: a) reconsideration; b) referral to a higher authority; and c) appeal. They do not have suspensive effect, in order not to hold up government action.

b) Objective results obtained, including any available statistical data.

No overall statistical data are available, since each operating unit is responsible for recording its own data, consistent with the principle of operational decentralization enshrined in Article 2 of Law 6038.

BUENOS AIRES

Procurement systems with and without public tendering

The procurement of goods and services by the Province of Buenos Aires is governed by Decree 2334/06 - Law 7764/71 and Decree 728/06.

Decrees 787/04 and 2698/04 made significant amendments and innovations in the procurement regulations, significantly speeding and streamlining contracting procedures, strengthening the jurisdictional powers and promoting greater responsibility and commitment in the management of each Ministry, Secretariat, entity or agency, and establishing a more effective framework for citizen oversight of provincial management: among other tools, it authorizes public consultations at the time of preparing the bidding documents, and advertisement and dissemination of procurement notices at the provincial web site.

Article 25 provides that any contract must be let through public tendering if it involves expenditures, and by public auction or tendering if it involves revenues.

In all procurement proceedings, whether by public tender, private tender, or direct contracting, priority must be given to individuals or businesses of Argentine nationality, provided the products, services and goods are produced or processed within the national territory, and are comparable in terms of price and quality to bids received from foreign or domestic individuals or firms for products, goods and services produced or processed outside Argentine territory.

Following is an explanation of the procedures introduced by each of the reforms, and the impact that those reforms have had on administration and on the management model, as well as the guiding principles underlying them:

Greater delegation (efficiency). Jurisdictional competencies for authorizing and approving public tenders, private tenders and direct contracting were adjusted to strengthen the role of each Ministry, Secretariat or agency through greater delegation of powers, as part of the administrative decentralization policy sponsored by the current provincial administration, bearing in mind that this would also result in greater responsibility and commitment on the part of the delegated officials, with respect to provincial policies for simplifying processes and procedures, streamlining management, and making government action more transparent.

Mechanisms were established to coordinate and articulate the jurisdictional bodies, distributing powers over the different stages of the administrative process using criteria for active and responsible participation and, in addition, measures that would simplify

and facilitate the precise identification of limits, in order to produce a framework that could be made readily accessible to the public.

Standard Bidding Documents: Basic Technical Specifications: Public Consultations (efficiency, streamlined processes, and transparency). The new provisions represented progress with the system for the procurement of goods and services by introducing Standard Bidding Documents (Decree 1676/05), as a way of avoiding repetition of an unnecessary and undoubtedly wasteful administrative procedure. The Standard General Terms and Conditions were introduced, governing in general the contracting procedures contained in the Provincial Accounts Law.

There was also progress in defining the various Standard Special Conditions for each type of contract, extending this to the technical specifications, when by its repetitive character the matter so permitted. In this sense, and in the context of introducing the System for Identification of Goods and Services in Common Use in the National Government, confirmed by Decree 2754/2004, the Standard Set of Special Conditions for the Procurement of Goods and Inputs was introduced.

At the same time, in order to reinforce the province's "corporate purchasing power", through the Standard Terms and Conditions for Unified Purchases of such goods and inputs, a system was established for centralizing common orders and the initial contracting process, whereby "prices are fixed", while finalization and fulfillment of the contract remains decentralized. This was based on experience and the results obtained from the calls for tender issued under the "Simplified Regime for Contracting and Payment" authorized by Article 62 of Law 12,874 and regulated by Decrees 2404/02 and 55/03, which were highly beneficial for the public purse, both in terms of cost reduction and administrative simplification of the process and its recent replication, when Decree 1153/04 authorized public bidding to meet the needs for standard computer equipment in the various ministerial jurisdictions. These unified schemes allow the province to act as a "corporation", but without the drawbacks of concentrating functions, thereby achieving values (respecting those of the market and consistent with experience) that legitimize this approach.

These amendments to the tendering procedure have established clear and precise rules that have helped to reduce administrative costs inherent in the repetition of the same or similar procedures, and have served to simplify provincial supply management by incorporating new technologies such as forms of advertising and disseminating government acts, so as to make the overall contractual framework accessible and publicly known.

We expect that during the course of 2006, 90% of expenditure through the contractual regime governed by the Accounting Law will be covered by contracting procedures supported by the respective Standard Special Conditions.

Public Consultations (Publicity). In addition to preparing standard bidding documents, and with a view to achieving greater transparency, publicity and participation by potential

bidders, it was deemed advisable to submit the terms and conditions to the public, prior to their consideration by the executive, for suggestions or objections, using the "non-binding public consultations" mechanism.

Prior interventions (efficiency, streamlined processes). Progress was made in establishing control that was systemic as well as strengthened and focused on those actions of the provincial administration that, by their importance or nature, required closer attention.

Given that any kind of fiscal damage was highly unlikely, direct contracts between state agencies were exempted from prior interventions, but at the same time this exception was regulated for the purpose of avoiding any outsourcing or intermediation that would distort its purpose

Prohibition of contract splitting (transparency). It was considered appropriate, together with the precautionary charging of the expenditure, that officials should record in the respective authorization decision express reference to previous authorized purchases for goods or services of the same type or commercial nature, in order to reduce the margin of discretion in this area: it is believed that this can be done through the corresponding control by the organs of the Constitution.

Benchmark prices (transparency). Having adhered to the System for Identification of Goods and Services in Common Use of the National Government, and with a tool in place for administering price data, we incorporated "reference or benchmark prices" for the products or services in question, to be consulted prior to the award: this element is considered to be of enormous value for enhancing transparency in selection procedures.

In addition, we expect that effective introduction of a system of price caps will provide the control system with an additional tool for analyzing procurement management in each jurisdiction.

Strengthening (publicity and transparency). As part of the policy for modernizing the state, we decided to publicize procurement transactions at the provincial web page, and adopted the general principle that the terms and conditions published there should be available free of charge.

New method of paying suppliers (efficiency). Streamlining management and bringing greater legal security and certainty to the payment system, by using bank transfers to make direct payment.

Governing or administrative authorities of the systems and control mechanisms

The Provincial General Accountant exercises internal control over economic and financial management of the public purse, and for this purpose has direct access to all documentation and records within his jurisdiction, using the established functions and the usual control techniques.

Registry of contractors

The Provincial General Accountant keeps the Registry of Suppliers and Bidders, in which any person interested in contracting with the province must be registered.

Pursuant to Article 87 of the regulations to the Accounting Law, Decree 3300/1972, the Registry of Suppliers and Bidders contains individual data files on the background and activity of each bidder, and the Provincial General Accountant can retrieve from it any necessary reports and documents.

Electronic methods and information systems for government procurement

Decree 2698/2004 requires jurisdictions, agencies or entities to publish their annual procurement programs as well as their contracts for goods and services at the web site of the Province of Buenos Aires.

The Bidding Documents and General Conditions, Special Conditions and Basic Technical Specifications must be made publicly available, free of charge, through publication of the web site of the Province of Buenos Aires, except in those cases where the contracting agency, when authorizing the notice, assigns a price to such documents, based on their length, complexity, or cost of reproduction. In this situation, that price must not exceed 0.5% of the total amount budgeted or estimated for the expenditure.

Public works contracts

These are governed by Law 6021 of December 21, 1995.

Identification of the selection criteria for contractors

The procurement regulations approved by Decree 3300/1972 provide (Article 45) that the pre-award must always go to the lowest price offered, except in the case covered by Article 46, where the criterion for the pre-award will be quality, provided it can be demonstrated that the best quality is in the fiscal interest, notwithstanding the price difference.

Ways to challenge a selection

Bidders have three days to submit observations on the pre-award or to file administrative appeals pursuant to the Provincial Law on Administrative Procedures, Decree-Law 7647/1970.

b) Objective results obtained, including any available statistical data

PROVINCIAL PUBLIC SECTOR
TYPES OF CONTRACTS

2004

TYPE	AMOUNT IN MILLIONS	% NO AMOUNT	QUANTITY	% NO QUANTITY
Public Tender	363.40	32.80	223	6.40
Private Tender	67.20	6.10	480	13.80
Direct Contracting Art.26 Inc.2 - Ley de Contabilidad	125.40	11.30	1799	51.60
Direct Contracting Art.26 Inc.3 - Ley de Contabilidad	498.00	45	983	28.20

2005

TYPE	AMOUNT IN MILLIONS	% NO AMOUNT	QUANTITY	% NO QUANTITY
Public Tender	586.40	47.80	122	4.10
Private Tender	98.50	8.00	441	14.90
Direct Contracting Art.26 Inc.2 - Ley de Contabilidad	112.80	9.20	1558	52.80
Direct Contracting Art.26 Inc.3 - Ley de Contabilidad	428.70	35.00	829	28.20
Recognition of Expenditure (*)	-	-	-	-
Total	1226.40	100.00	2950.00	100.00

Source: Dirección General de Informática

[Graph, page 35:]

CONTRACTING BY TYPE, 2004-2005

Public Tender
Private Tender
Direct Contracting Art.26 Inc.2 - Ley de Contabilidad
Direct Contracting Art.26 Inc.3 - Ley de Contabilidad

CATAMARCA

In the Province of Catamarca, the System for the Procurement of Goods and Services of the Provincial Public Sector is established by Law 4938 (published in the Official Gazette No. 9 of 1998), which establishes and regulates the Financial Administration, Procurement, Administration of Provincial Property, and Control Systems for the Provincial Public Sector.

All matters relating to public works are governed by a specific law, Law 2730 and its Regulatory Decree 1697, and in a subordinate manner by the rules of Law 4938.

Procurement systems with and without public tendering

For the procurement of goods and services: Law 4938 provides (Article 86) that the Procurement System of the Provincial Public Sector is constituted by a set of principles, rules, agencies, resources and procedures applicable to the disposal or acquisition of goods, services, the contracting of projects and pre-projects, consulting services, leases, works, concessions of works, and public services by the agencies listed in Article 1 of that Law (a. Provincial Administration consisting of the Central Administration and Decentralized Agencies, autonomous or not, and Social Security Institutions; b. Enterprises and Companies of the Provincial Government exempt from the public employment relationship). Article 87 provides that, notwithstanding the above, all matters relating to public works will be governed by the specific Law and Regulations, while the rules of the present Title apply in a subsidiary manner.

The general principles governing procurement, bearing in mind the particular features of each procedure, are:

- Publicity.
- Equality of opportunity for bidders.
- Promotion of competition among bidders.
- Flexibility and transparency in procedures.
- Defense of the community interest and that of the provincial public sector.
- Possibility of determining the liability of agents and officials involved.

Any disposal or acquisition of goods and any other contracts signed by the province must be done through public auction or tender.

Notwithstanding the general rule of public tender (Article 82), private tender, price competition, and direct contracting may be used, depending on the amount or specific nature or special conditions of the transaction. In the case of direct contracting, the following procedures are used:

a) Direct contracting with benchmark price. When provincial, national or international market data, analyzed by the unit designated for this purpose by the executive, indicate that the price of a standard good or service tends to have a standard value, procurement

may be contacted directly, provided the contractual price does not exceed the wholesale or retail prices on the market. The manner of obtaining benchmark prices is determined by regulation.

b) Free election through direct negotiation. This procedure may be used in the following cases:

1. Between jurisdictions and entities of the provincial government and with those at the national, provincial, municipal level, or other recognized public entities.
2. When procedures for public auction or tender, private tender, price competition, competition on the basis of merits and background, and competition for complete projects have been declared void and no valid or acceptable bids have been submitted, or they were deemed not advantageous to the interests of the province in terms of price or quality.
3. For the purchase of goods or the contracting of services for which manufacture, supply or provision is the exclusive right of certain persons, or that belong to persons or entities with exclusive right of sale, provided they cannot be substituted by similar goods or services.
4. To acquire, execute, conserve or restore works of art, or scientific or historical works, when this must be entrusted to specialists of recognized expertise.
5. The acquisition of goods that are not produced or available in the country, through the intermediary of international agencies of which the nation or the province is a member.
6. Repairs to machinery, equipment, vehicles and motors, where it would be too costly to disassemble, transfer or examine them in cases of public tender: this exception does not apply to routine or periodic maintenance.
7. When there are demonstrated grounds of urgency or emergency.
8. The sale of perishable goods and those intended to promote economic development or to meet social needs, provided they are sold directly to users or consumers.
9. The purchase of foodstuffs and medicines directly from their manufacturers.
10. The purchase of perishable goods at fairs, open markets, or directly from producers.
11. When the goods or services are in obvious short supply on the local market, which circumstance must be demonstrated case-by-case by the competent technical offices.
12. The purchase of animal and plant species, in the case of unique or outstanding specimens.

13. Contracts negotiated in the context of intergovernmental agreements or with foreign government entities that involve an exchange offset by products produced or manufactured in the province destined for export.

14. Goods and services for which the national or provincial government determines the prices.

a) Direct contracting subject to a threshold. This procedure is used to procure goods and services that, because of their modest amount, meet the requirements of the regulations.

Competition on the basis of merits and background. Under this contracting procedure, the competitor who best combines the greatest technical, scientific, financial, cultural or artistic capacity to contract with the administration will be selected.

Tendering for complete projects. This procedure is used when the provincial administration is not able to determine detailed specifications for the object of the contract and wishes to obtain proposals to meet its needs. For purposes of selection of the project, the contracting jurisdiction or entity must fulfill the following requirements:

1. Select the co-contractor in light of the technical advantages of his proposal, his background, and his price.
2. Specify the factors that must be considered for evaluating the proposals, and determine the relative weighting to be assigned each factor, and the manner of applying it.

f) Private initiative. This selection procedure is used when a private party makes an unsolicited offer for the location of works or the contracting of goods and services. If the responsible authority considers that the proposal is in the public interest, after evaluation and certification from the corresponding technical and legal bodies, with any amendments deemed appropriate, the executive branch may approve the definitive proposal by joint ministerial decree.

On the basis of the approved proposal, a public invitation for new proposals will be issued, for submission no less than 30 days hence. Proposals may be considered only if they improve the future investment by 8% or more, and if the savings or benefit to the administration exceed the proposal in hand by an annual equivalent of 5%, but in all cases the initial private proponent will have the right to match the best offer, in which case he will be awarded the contract. If the nature of the offer is such that the two variables, investment and savings, cannot be evaluated, the correspondent variable must be weighted.

Use of benchmark prices. The unit designated by the executive branch to determine the benchmark price, pursuant to Article 98.a of Law 4938, must intervene in all procurement proceedings conducted via public tender, private tender, price competition and direct contracting, in order to determine the official budget for such procurement. If this is not

possible, the unit will file a substantiated report. In the case of procurement financed in whole or in part with funds from international financial institutions, the rules and procedures agreed with those institutions will apply.

The senior authorities of the jurisdictions and entities will determine the officials competent to authorize, approve and award contracts, under the various contracting procedures.

Regulations to Law 4938. Because regulations have not been issued for Law 4938, with respect to the Provincial Procurement System, Decree 152 of February 27, 1998 retained the transitional nature of Decree 2175/80, regulating the Procurement Regime of Accounting Law 2453 (repealed by Law 4938 on Financial Administration).

Decree 2175, II, Procurement Regulations, Article 2, sets limits for the various forms of procurement. The latest amendment, through Decree 195/2005, sets the following limits:

- Direct contracting: up to \$10,000.
- Price competition: up to \$150,000.
- Private tender: up to \$300,000.
- Public tender: more than \$300,000.
- Official publication: up to \$18,000 for direct contracting.
- “Ceremony and protocol”. Up to \$6,000 for direct contracting.

That Decree also establishes the hierarchical levels for the authorization, approval and award of contracts, depending on the amount involved.

Public works

Subsidiary rules:

The Public Works Law 2730/74 and its Regulatory Decree 1697/74 and amendments thereto constitute the specific rules in this area.

Accordingly, public works are deemed to include any studies, projects, constructions, conservation, installations, and works in general conducted by the province in the public interest.

Thus, acquisitions, supplies, leases, upgrades or repairs to machinery, equipment, vehicles, devices, artifacts, installations, materials, fuels, lubricants, energy, working tools, performed by the administration (the person or agency responsible for the work) for the works it constructs until their complete authorization are also covered by the Public Works Law.

The land needed for the execution of public works has been declared of public utility and subject to expropriation (Article 87 of Law 2730).

In Catamarca, public works of any kind may be executed in accordance with the following procedures:

- By contracting.
- On force account.
- Using a combination of the above.

a) Contracting of public works may be done in the following ways:

I. Public works contract

1. By unit of measure: bidders must quote unit prices for each item of the official budget.
2. Fixed-price: bidders must offer to execute the work for a fixed, single and comprehensive price.
3. Cost-plus: bidders will compete solely with respect to the profit markup that will be applied to the total cost of the works, plus the general expenses established as a percentage in the bidding documents.
4. By delegated administration: execution of the public works is delegated to other institutions under Public Law at the national, provincial or municipal level, in accordance with the agreement negotiated in each case.
5. By a combination of these methods: as established in the respective terms and conditions.
6. Via other systems that are permitted on an exceptional basis: as determined in the respective terms and conditions

II. Public Works concessions

1. Contracting of public works

The general rule for government contracts has been defined by the provincial Constitution, Article 174: "All disposals of property of the province, purchases, supplies and other contracts by the province shall be conducted through public auction or tender, under penalty of nullity and without prejudice to the administrative, civil and criminal liability of the officials who authorize, execute, or consent to the transgression of these rules. Cases expressly stipulated by law shall be exempt."

Consistent with the general principle, the specific law in this matter, Law 2730/74 and its regulations, establishes (Article 12) that "all procurement under this Law must be formalized through public tender".

The same law, however, allows exemptions for procurement through other procedures, "directly or through private bidding or price competition, in accordance with the rules established by regulation".

The executive branch has set the maximum limits for awards through private bidding, price competition and direct contracting, in Decree 1357/04 of August 31, 2004:

Direct contracting may be used:

- a) When the official budget for the works does not exceed the ceiling established annually by the executive branch (currently up to \$50,000).
- b) When works that are indispensable for a project in execution were not foreseen in the project, and could not be included in the respective contract, provided they do not exceed 50% of the total contract value.
- c) When works must be performed immediately because of urgent or unforeseen circumstances.
- d) When the circumstances require confidentiality.
- e) In the case of works and objects of art or of a technical or specialized nature that can only be entrusted to specialized artists, technicians, scientists, firms or workers, when patents or exclusive privileges must be used, or when only one person has the know-how for execution.
- f) In the case of contracts with national, provincial or municipal agencies.
- g) When the administration, for duly substantiated reasons of timeliness and convenience, contracts with cooperatives, neighborhood organizations, or any other public-interest entity for works that address their specific purposes.
- h) When a project is contracted with the author of the respective study.
- i) It is not necessary to publish notice in the Official Gazette, or to place advertising in a newspaper of local circulation.
- j) Pursuant to Article 2 of the Regulations of the Provincial Registry of Public Works Contractors and Bidders, Decree E. (OP) 1208, the Certificate of Registration in the Registry of Public Works Bidders showing the Annual Execution Capacity assigned must be attached (Article 29).

Price competition:

- a) When the official budget for the works does not exceed the ceiling established annually by the executive branch (currently up to \$300,000).
- b) Quotes must be requested from at least three firms in the industry.
- c) It is not necessary to publish notice in the Official Gazette, or to place advertising in a newspaper of local circulation.
- d) Proposals must be submitted in a sealed envelope, using forms specially prepared for this purpose by the administration.
- e) The terms and conditions may require the signature of the technical representatives.
- f) Proposals will be opened publicly at the day and time indicated in the invitation, and the corresponding report will be prepared.
- g) The following seals must be affixed: service tax seal (0.5% of the official budget), seal per sheet (\$0.50).
- h) Pursuant to Article 2 of the Regulations of the Provincial Registry of Public Works Contractors and Bidders, Decree E. (OP) 1208, the Certificate of Registration in the Registry of Public Works Bidders showing the Annual Execution Capacity assigned must be attached (Article 29).

Private tender:

- a) When the official budget for the works does not exceed the ceiling set annually by the executive branch (currently up to \$600,000).
- b) The investment project must have a favorable Technical Relevance Report.
- c) Quotes must be requested from at least three firms in the industry. Those invitations must be sent at least five days before the opening of offers.
- d) It is not necessary to publish notice in the Official Gazette, or to place advertising in a newspaper of local circulation.

- i) Proposals must be submitted in a sealed envelope, using forms specially prepared for this purpose by the administration.
- j) The terms and conditions may require the signature of the technical representatives.
- k) Bidders must post a bid guarantee for an amount no less than 1% of the official budget.
- l) The Certificate of Authorization and Technical Capacity issued by the Registry of Public Works Bidders must be attached.
- m) Proposals will be opened publicly at the day and time indicated in the invitation, and the corresponding report will be prepared.
- n) The following seals must be affixed: service tax seal (0.5% of the official budget), seal per sheet (\$0.50) and seal of guarantee (6%).

Public tender:

- a) The investment project must have a favorable Technical Relevance Report.
- b) Notice must be published in the Official Gazette and in one or more newspapers of local circulation, with the requirement for two to three publications, at least seven to 15 days in advance, depending on whether the amount of the official budget is up to \$1 million, or in excess of that amount.
- c) Proposals must be submitted in a sealed envelope, using forms specially prepared for this purpose by the administration.
- d) The terms and conditions may require the signature of the technical representatives.
- e) Bidders must post a bid guarantee for an amount no less than 1% of the official budget.
- f) The Certificate of Authorization and Technical Capacity issued by the Registry of Public Works Bidders must be attached.
- g) Proposals will be opened publicly at the day and time indicated in the invitation, and the corresponding report will be prepared.
- h) The following seals must be affixed: service tax seal (0.5% of the official budget), seal per sheet (\$0.50) and seal of guarantee (6%).

II. Public works concessions

Concessions for public works shall be let through public tender, and the award shall be decided in a decree by the executive branch. The subsequent contract must establish clearly and precisely the obligations and rights of the concessionaire.

b) Works on force account

Under this procedure, the administration takes responsibility for execution of the works through its technical departments, acquiring the materials, assigning the necessary personnel, and contracting for labor.

Governing or administrative authorities of the systems and control mechanisms

External control:

In Catamarca, external control is exercised by the Provincial Court of Accounts, an autonomous body created by the provincial Constitution, the organization and functioning of which is governed by its organic law 4621 and amending law 4637.

Traditionally, the Court of Accounts has exercised legal and accounting control and jurisdictional oversight, by issuing rulings on matters of accounting and liability. The Court of Accounts is not empowered by its Organic Law to exert control over Merit or Management, a responsibility that falls to the internal control body. Pursuant to Article 189 of the provincial Constitution and the organic law, the jurisdiction of the Court of Accounts extends to:

- The provincial executive branch.
- The provincial legislative branch.
- The provincial judicial branch.
- Municipalities throughout the province.

Article 189 of the provincial Constitution also makes the Court of Accounts responsible for audit and control of public revenues, for all parastatal financial transactions and accounts, the corresponding examinations and judgments, auditing and overseeing the collection and investment of public revenues of the municipalities and municipal commissions, and reporting directly to the Legislature on its activities by May 31 of each year.

The Court of Accounts has confined its controls almost exclusively to the rendering of accounts for the inflows and outflows of funds in the various agencies, covering formal, legal, accounting, numerical and documentary aspects.

Internal control:

The Office of the Provincial General Accountant (CDPD) is the internal control body. The structure and scope of internal control is defined by Law 4938.

The internal control system consists of:

- The Office of the General Accountant, as the regulatory, supervisory and coordination body.
- The Internal Audit Units, within each jurisdiction and entity.

The Office of the Provincial General Accountant is a centralized agency of the executive branch. It does not have its own legal personality nor does it have the power to designate or promote personnel or to determine its organizational structure.

Law 4938 provides that the internal control system is to comprise the Office of the Provincial General Accountant as the regulatory, supervisory and coordination body, and the Internal Audit Units created or to be created within each jurisdiction and entity of the provincial executive branch.

These Internal Audit Units report to the senior authority of each jurisdiction or entity, and are coordinated technically by the General Accountant.

Law 4938 defines the Control Model to be applied and coordinated by the General Accountant. It must be "comprehensive (covering the entire organizational structure under its control) and integrated (integrating the different activities performed by the entity in their different phases), and must address budgetary, economic, financial, property, legal and management aspects, evaluation of programs, projects and transactions, using the criteria of economy, efficiency and effectiveness."

Law 4938 requires the General Accountant to report:

- a) To the Minister of Finance on the financial and operational management of the organizations within his jurisdiction.
- b) To the Provincial Court of Accounts on actions taken by entities under its supervision, as well as responding to consultations and specific requests from the external control body;
- c) To the public, on a regular basis.

Registry of contractors

For the procurement of goods and services:

Firms seeking to do business with the provincial government through price competition, private tender or public tender must be registered in the Provincial Registry of Suppliers. That Registry is kept by the provincial General Accountant, and is regulated by Annex II, Regulation of Provincial Government Procurement, Decree 2175/80, with transitional force as the regulation to Law 4938 pursuant to Decree 152/98.

Article 182 of Annex II of Decree 2175/80 provides that "registration in the Registry shall be valid for 365 days. At the end of that time, if the supplier has not renewed its registration, it shall immediately be struck from the Registry and shall be deemed for all purposes to be unregistered."

B. For public works

Article 13 of that law requires that bidders be registered with the Registrar of Public Works Bidders, which must establish the requirements for registration. It must operate in accordance with the provisions of Law 2730/74, its Regulatory Decree, and the general terms and conditions approved.

In the Province of Catamarca, the Provincial Registry of Public Works Contractors and Bidders applies to the entire provincial administration. It comes under the Secretariat of Public Works and Services, which in turn reports to the Minister of Public Works and Services.

All firms seeking to execute public works in the provincial administration must be registered in that Registry, which will record the classification and capacity assigned them.

With authorization of the executive branch, the registrar may sign, *ad referendum*, interprovincial agreements of reciprocity for recognizing the certification of construction firms, but such recognition does not exempt those firms from registering in the Registry.

The Council may, at its own initiative or upon instructions from the executive branch, apply sanctions to firms if they are in default on contractual obligations contracted under the jurisdiction of any registry or if any of the documentation presented is found to be untrue.

Public Works contracts

There is no standard contract applicable to the provincial public sector: each agency may adopt its own model contract in accordance to its needs, provided it includes the minimum clauses required by law. Public works contracts are signed primarily by the agencies that have budgetary allocations for them: the Ministry of Public Works and Services and its dependencies, the Secretariat of Housing, the Secretariat of Water and Environment, and the Provincial Police of Catamarca.

Identification of the selection criteria for contractors

For the procurement of goods and services:

Annex II of Decree 2175/80 provides as follows:

“Article 53. In the case of contracts that require specialized or technical knowledge for their assessment, the Pre-awards Commission may request opinions, reports or other elements of judgment from technical agencies or dependencies of the administration, which are obliged to respond promptly and will be liable for the information provided.

“Article 54. In examining the proposals submitted, a comparative table of prices and conditions will be established, and proposals that must be rejected, and the motives therefor, shall be determined.

“Article 59. The pre-award shall go to the compliant proposal deemed most advantageous.

For these purposes, the following factors will be weighted:

- Geographic location of the bidder.
- Previous history as supplier.
- Price of the goods to be provided.
- Quality of the goods to be provided.
- Delivery times.
- Any other factor deemed appropriate for weighting.

These factors will be weighted numerically, using a scale of values as specified in the special terms and conditions.”

In case of a tie, bidders will be invited to improve their price. If the tie persists, the winning bidder will be selected by lot.

Method of applying the weighting factors, to be shown in the Special Terms and Conditions (the value of the factors shown below is purely illustrative).

1. Geographic location of the bidder. The score to be assigned will depend on the location of the headquarters of the bidding firms: the highest score will go to firms headquartered in the Province of Catamarca, as indicated below:

- a) Firms located in the Province of Catamarca: four points.
- b) Firms located outside the Province of Catamarca: two points.

2. Previous history as a supplier:

a) Bidders that have not committed any of the errors described in articles 93 to 99 of the Provincial Procurement Regulations: three points.

b) Bidders that have been subjected to fines for late delivery of elements, goods or services, on 1 to 3 occasions: two points.

c) Bidders that have been subjected to fines for late delivery of elements, goods or services, on 4 to 6 occasions: one point.

d) Bidders that have been subjected to fines for late delivery of elements, goods or services, on 7 or more occasions and that have been sanctioned with a warning or suspension but have been authorized to participate in procurement: zero points.

In all cases, the previous history of each bidder will be documented in a report from the Registrar of Provincial Suppliers.

3. Price of the goods to be supplied. For this factor, the quantification is done by multiplying the lowest weighted price by the highest score assigned to the factor in question: the result will be divided by each of the weighted prices submitted, in relation to the unit price of each of the elements to be supplied.

The weighted price is determined by applying Law 5038, "Buy Catamarca", and its regulatory decrees 1122/01 and 445/02. To benefit under this law, bidders must present a certificate issued by the Provincial Office of Industry, Trade and Industrial Promotion and by the Labor Inspection Office.

Article 1 of Law 5038 provides that the provincial public administration and other legal entities covered by articles 1 and 2 of Law 4938 (Central Administration and Decentralized Agencies, autonomous or not, and Social Security Institutions, Provincial Enterprises and Corporations, the Legislative Branch, the Judicial Branch, the Department of The Interior, Ministries, Secretariats and the Court of Accounts) are required, in all acts and procedures covered by articles 86 to 105, Title VI of the Procurement Law, to give preference to goods produced in the province and to contract works and services from local firms or individuals.

Preference in the purchase of goods or the contracting of services applies also to services, goods or products originating in other jurisdictions offered by local firms or suppliers, if the same or equivalent cannot be procured in the province.

Article 6 of Decree 1122/01 provides that the preference to be accorded to the price of the offer will be based on the type and size of the firm, the use of locally produced inputs, the use of inputs that, while not produced locally, are purchased from a local supplier, and the generation of local employment, through the application of a general formula.

4. Quality of the goods to be supplied. With respect to this factor, the score will be calculated on the basis of samples provided by the bidders, the trademark of the goods quoted, their technical qualities, the need they are to meet, and the results from the use of similar goods by entities of the contracting agency, if this can be determined:

- Very good: 45 points.
- Good: 27 points.
- Satisfactory: 10 points.

5. Delivery times. The score for each firm will be determined on the basis of the time within which it will fulfill the purchase order:

$$\frac{\text{Shortest delivery time} \times \text{highest score} (3)}{\text{Delivery time to be considered}}$$

Public Works:

Whatever the manner of selecting the contractor, the award will go to the most advantageous offer from among those that are compliant with the terms and conditions.

The lowest price will not be the only determining factor. The province will select the contractor on the basis of its past history, its technical, financial, economic and execution capacity, the amount of the proposal, and the final report of the Registrar of Public Works Bidders.

The fact that a bidder has not submitted more than one offer will not disqualify him from award if his proposal is deemed the most advantageous.

Ways to challenge a selection

All administrative acts of the provincial government are subject to the Code of Administrative Procedures, approved by Law 3559/80, the text of which was consolidated and approved by Decree GN 598 of April 20, 1983

Title VII, Complaints and Appeals Procedure, Chapter II, Appeals, Section I, Challengeable Acts, provides that any administrative declaration that produces individual and immediate legal effects, whether definitive or transitory, unilateral or bilateral, may be challenged in defense of subjective right and legitimate interest.

If administrative declarations do not produce an immediate legal effect with respect to the interested party, they may not be challenged by appeal, but the interested party has the right to submit written considerations on them. This provision applies to reports and expert opinions, even if obligatory and binding, draft resolutions, and preparatory acts in general.

Types of recourse stipulated in the Code:

- Recourse of Reconsideration. This must be submitted with written substantiation to the administrative authority that issued the act, within five days following notification.
- Recourse to a higher authority (*Jerarquico*). This must be submitted with written substantiation to the administrative authority that issued the challenged act, in a manner subsidiary to the recourse of reconsideration; it may also be submitted directly to the authority that must resolve the matter, within five days after reconsideration has been denied or, by silence, is deemed to have been denied.
- Appeal (*Recurso de Alzado*). This recourse may be taken against final decisions of autonomous entities that preclude the administrative dispute route, and it must be decided by the executive branch, with the opinion of the Provincial Attorney. It must be filed in writing and with substantiation before the administrative authority that issued the challenged act, in a manner subsidiary to the recourse of reconsideration; it may also be submitted directly to the authority that must

resolve the matter, within five days after reconsideration has been denied or, by silence, is deemed to have been denied.

- Administrative Review. This procedure may be followed when:
 - a) There are contradictions in the operative portions.
 - b) Documentation decisive for settlement of the matter comes to light that was ignored when the act was issued or that could not then be added to on the file.
 - c) The original act was issued on the basis of documents or circumstances declared false by judicial ruling.
 - d) The act was issued through coercion, corruption, violence, or any other proven fraudulent maneuver or grave irregularity.

This recourse must be filed within five days after notification of any contradictions, or within 20 days after the retrieval or discovery of the documents or the cessation of force majeure or third-party influence.

Chapter III of the Code also provides for *Perención*, which entails dismissal of action after three months for want of prosecution by the appellant. This measure is declared ex officio and is subject to appeal. If it is the administration that has initiated or pursued the proceedings, the measure will take effect one year after the last action was taken.

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Law 3870 on Provincial and Municipal Public Administration

With respect to government procurement systems, we refer first to the definition of "property" in Article 1 of the Inter-American Convention against Corruption: "Property means assets of any kind, whether movable or immovable, tangible or intangible, and any document or legal instrument demonstrating, purporting to demonstrate, or relating to ownership or other rights pertaining to such assets."

The provincial Constitution requires that the principal government procurement system is public tendering. Article 72: "Tenders. All disposals of property of the province or municipalities, purchases, public works and other contracts shall be effected by the system of public auction and tender, under penalty of nullity, except in cases provided by law."

On this basis, laws have been issued to regulate the procedures that the government must follow in the procurement of goods and services. This includes Law 3462, amended by Law 3648 and regulated by Decree 9429/60, and retained in force by Article 98 (a) of the Financial Administration Act, Law 6425.

Procurement systems with and without public tenders

Title III of Law 3462 establishes public tender or public auction as a general principle for all procurement by the provincial government, if expenditures or revenues, respectively, are involved, and it lists the specific exceptions under which private tender, price competition and direct contracting may be used. These exceptions have been regulated by means of ministerial decrees and resolutions relating primarily to the thresholds for such procedures, adapting them in light of inflation and currency devaluations in our country.

For all government procurement of goods and services, Article 28 of Law 3462 identifies the persons entitled to authorize and to award contracts within the amounts established in that Article (note that these provisions of Article 28 have also been updated by Ministerial Resolution 180/05).

Decree 120/04 provides an alternative procedure, created in a special context for specific cases previously established.

That system was instituted under the special circumstances of the country's economic and financial crisis in order to establish a flexible and streamlined mechanism which, in light of the good results obtained, is still being applied.

By means of this mechanism, a Procurement Commission was established, representing all the parties that must intervene in the procurement process, with a view to bringing transparency, security, efficiency and effectiveness to proceedings, while dispensing as far as possible with administrative bureaucracy.

Governing authorities of the systems and control mechanisms

The external control and supervisory body is the Provincial Court of Accounts.

Its membership and powers are enshrined in the provincial Constitution. Those powers include overseeing legitimacy in the collection and investment of revenues by public officials and employees and entities of the central and decentralized administration, which are required to submit accounts for the monies they have invested or received, for its approval or disapproval.

Law 4828 (Organic Law of the Provincial Court of Accounts) assigns it further powers, namely to exercise preventive control, to judge the accounts, and to judge fiscal responsibility and execution.

The purpose of the Court of Accounts, then, is to supervise and oversee all financial and economic transactions of the province.

Registry of contractors

There is a Registry of Public Works Contractors, in which all firms seeking to bid on public works must register, pursuant to the Provincial Public Works Law and Decree 654/06, which governs its functioning and establishes the requirements for registration.

Public works contracts

Decree Law 21323/63, the Provincial Public Works Act, governs public works. Its Regulatory Decree 332/88 governs the selection procedure for government contractors and, consistent with Article 72 of the Constitution, makes public tendering the principal method, while establishing the exceptions to that rule.

Those exceptions are specifically listed in the Law, and require a joint ministerial order of validation.

Identification of the selection criteria for contractors

The established rule is to accept the offer most advantageous to the interest of the state. This includes not only the most economical offer but also a number of requirements that the bidder must meet, as stipulated in the terms and conditions, such as moral, technical, and financial suitability, the firm's previous history, its capacity, etc.

Ways to challenge a selection

The bidding documents generally provide for the possibility to submit observations on the pre-award decision or report, while Law 4044 on Administrative Procedures provides for recourse against any administrative decision that produces individual and immediate legal effects, whether definitive or transitory, unilateral or bilateral, as a means to challenge the award..

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Law 2141 on Financial Administration and Control enumerates (Article 9) the systems that make up the financial administration: budget, public credit, accounting, treasury, contracting, administration of property, and any other related system determined by regulation.

Procurement systems with and without public tender

Procurement system: Law 2141, Title III:

“Article 63. Procurement shall observe the following general principles:

- a) Any contract shall be let through public tender, when it results in expenditures, and through public auction or tender, when it results in revenues.
- b) The award shall go to the offer is that are most advantageous to the interests of the public purse.

c) Observance of guidelines of economy, efficiency and effectiveness in the management of procurement, financing, and operational and administrative procedures relating to procurement.

d) Competition by the greatest possible number of bidders, equal treatment of bidders, and the comparison of offers with analogous conditions.”

Article 64 of that Law lists the specific cases in which procurement may be contracted directly; on this point, the Law is strict in preserving transparency and equal opportunity in contracting.

With specific reference to the procedural system and the programming of tenders and contracts, Procurement Regulations have been issued (Annex 1, Decree 2758/95), to which we shall refer below.

Provincial Property Management System: Law 2141, Title IV

Article 69 (Law). Provincial property consists of all goods that, by express provision of law or because they have been acquired by its agencies, belong to the province.

Article 69 (Regulation). Provincial property includes, in addition to those goods indicated in Article 69 of the Law, goods donated or bequeathed to the province, goods used in the process of construction, and goods constructed or processed by dependencies of the provincial government.

Additions to property: the entry of goods into state ownership, representing an increase in fixed assets through purchase, construction, donation or bequest, birth, etc.

Deletions from property: eradication or retirement of property of the province, in the following terms:

a) Definitive: when an item ceases to be a provincial asset, through sale, donation, death, total destruction, disappearance, theft, robbery etc.

b) Removal from active service: when the asset presents a change in condition or situation, and is listed as “out of service” or “surplus”.

The deletion of an asset is declared by administrative act, upon the recommendation of a technical commission, and is recorded for accounting purposes as provided in the Manual of Procedures for the Properties Management System.

When goods are removed from active service they are sent to the Government Surplus Warehouse.

Decree 2758/95 Annex 1: Procurement Regulations

Publicity. For public tenders or options, the regulations require the publication of notice in a newspaper of wide circulation within the zone where the procurement is to be effected and carried out. Notice may also be published in newspapers of other jurisdictions in order to attract greater competition by bidders, and other means of dissemination may be used in addition.

Such notices must contain the necessary data and requirements, such as the name of the contracting agency, the object of the tender or auction, the place for submitting bids, the date and time of opening.

Notice of the opening of bids must also be published in the provincial Official Gazette (articles 5 to 9).

Notwithstanding the foregoing, a minimum number of firms must by law be invited to participate, depending on the type of contract (articles 11, 12 and 13).

All of the foregoing requirements, taken together, are designed to ensure transparency in the process.

Equity and efficiency

Special conditions. Articles 15 to 22 of the Law provide assurances of equity with respect to bidders, in particular through the implementation of special clauses that must be respected by all bidders in submitting their proposals, which must be presented in sealed envelopes.

Opening of envelopes. Equity is guaranteed throughout the process: during the act of opening the proposals, an official of the Provincial General Accountant's Office and of the Provincial Notary's Office will be present (articles 33 to 38).

Pre-award. The regulations on this point imply not only the rules of equity (Article 39: minimum of three members on the Pre-award Advisory Commission; Article 46, detailed report by the Advisory Commission; Article 48, rules for considering offers as equal), but also efficiency in expenditures, in that the pre-award must go to the proposal that, in terms of quality and price, best satisfies the need. It is possible, for example, to award a contract by item or portion thereof.

Governing or administrative authorities of the systems and control mechanisms.

Control. The Office of the Provincial General Accountant is the governing body for the systems of internal control over the public purse (Article 77 Law 2141), and the Court of Accounts exercises external control (Article 85, Law 2141).

Registry of contractors

The Provincial General Accountant maintains the Provincial List of Suppliers. This covers all natural and legal persons who bid or contract with the state. Disposition 73/04 of the General Accountant indicates the documentation and data that potential suppliers must provide for purposes of that agency's control.

The Procurement Regulations also provide for a Registry of Warnings and a Registry of Sanctions, for suppliers who default on their contractual obligations. The rules for inclusion in these registries are set by the same regulations, and were amended by Decree 1927/05, consistent with Law 1284 on Administrative Procedures, and with the constitutional principles of equality before the law, the right of defense, and all those principles that bring legality to the process.

The foregoing provisions constitute the means whereby the provincial government guarantees equality and transparency, and in particular the means for guaranteeing the optimum provision of products and services for which the supplier was contracted.

Public works contracts

Preferential treatment is allowed, pursuant to Public Works Law 687.

Identification of selection criteria for contractors

The law requires the award to go to the offer that is most advantageous to the interests of the public purse.

Ways to challenge a selection

Law 1284 on Administrative Procedures (Articles 174 to 178) governs the available administrative remedies and the formalities for filing appeals and claims, which must comply with the provisions of Articles 124 and 125. It also identifies the persons eligible to bring challenges, and specifies the effects of filing appeals and claims.

TIERRA DEL FUEGO

There are a number of laws governing public procurement; these are found at the constitutional level (Article 74), in a territorial law (Law 6), in provincial decrees (1505/02 and 1289/02) and in resolution 6/02 of the Provincial General Accountant's Office.

Procurement systems with and without public tenders

The provincial procurement system allows for various procedures, including public tender, private tender, price competition, and direct contracting.

Governing or administrative authorities of the systems and control mechanisms

The Court of Accounts is the external economic and financial control body, pursuant to Law 50.

The Provincial General Accountant's Office is the internal control body that oversees provincial procurement. It covers both the central government and the decentralized and autonomous agencies, and provincial enterprises and corporations.

Registry of contractors

The province has a Provincial Registry of Suppliers (PROTDF), which lists all merchants, industries and service providers that contract with the province. The General Accountant also keeps a computerized information system on suppliers.

Electronic methods and information systems for government procurement

Tierra del Fuego has an official web site (www.tierradelufuego.gov.ar) which is accessible and interactive, and contains published information on purchases and contracts.

The province also has two official television channels (11 and 13) by which official communications of interest are publicized, including those relating to procurement.

Public works contracts

A system similar to that of the APN is used: the legal basis is the same.

Identification of the selection criteria for contractors

Article 43 of Law 278 provides that "for the award of any tender for public works or services, a scoring system must be established that will give preference, in selecting the most advantageous offer, to the offer that will employ the greatest number of personnel who have been employed in the province for more than two years".

Ways to challenge a selection

The means for challenging selections are contained in Regulatory Decree 1505/02. Challenges are decided by the authority competent to approve the contract, and they may not be filed subsequent to the award decision.