

ARGENTINA

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1. How is “ESG” in Argentina defined in a corporate/commercial context, and what are its major elements?

The term ESG is not defined in Argentinian legislation. However, there is legislation that regulates environmental, social and governance matters. The most recent rules in these areas are being interpreted by the legal community with a holistic approach.

Neither is the meaning of ESG agreed within corporate sectors. Typically, companies operating in the mining, extractive and energy industries emphasize environmental aspects, focusing on climate change mitigation and adaptation, energy transition and efficiency, pollution control, rational use of natural resources, sustainability, water and land use or waste reduce-reuse-recycle.

By contrast, companies operating in agrobusiness, food production and other labor-intensive industries focus on social aspects, considering the company’s impact on customers, employees, suppliers and the community in general. For instance: labor matters, diversity and gender equity, workplace safety, non-discrimination, inclusion, stakeholder engagement, public participation and community relations.

An emphasis on governance is shared across industries, but concentrated in listed companies and companies with high degrees of interaction with the government. Listed companies focus on corporate governance, shareholders’ rights, directors’ duties, compensation, board structure, reporting and auditing and investor relations. Companies that work with the government are concerned with corporate stewardship and accountability, integrity and compliance programs (anti-bribery, prevention of conflict of interest, anti-money laundering, anti-trust, protection of human rights) and risk and crisis management.

2. What, if any, are the major laws/regulations in Argentina specifically related to ESG?

ESG legislation in Argentina is mostly related to the issuance of sustainable financial instruments. The Securities and Exchange Commission of Argentina (CNV) has established a legal framework regarding sustainable issuances. This includes the Guidelines for the Issuance of Social, Green and Sustainable Marketable Securities, which follow internationally recognized standards such as the Green Bond Principles, the Social Bond Principles and the Sustainable Bond Guide developed by the International Capital Market Association (ICMA) and the Climate Bonds Standard. The CNV has also approved a new regime for sustainable collective investment products and a set of good practices to promote sustainable financing. The latter includes the following:

- socially responsible investment guidelines;
- guidelines for the issuance of social, green and sustainable bonds; and
- guidelines for external auditors.

3. What other laws/regulations in Argentina touch on ESG themes?

Additional laws, regulations and guidelines in Argentina that touch on ESG are:

- **Environmental legislation.** Argentina’s environmental legislation is relatively advanced and proactive in the protection of the environment. Much legislation

has been passed on the federal, provincial and municipal levels. The right to a healthy environment is included in the Federal Constitution.

Argentina applies the “polluter pays” principle and requires the approval of an environmental impact assessment before conducting certain risky activities. Moreover, legislation guarantees the right of access to environmental information, public participation in the environmental decision-making process and access to justice in environmental matters. Environmental insurance is required, and reporting duties are also established. Argentina has approved several human rights international treaties

- **Green procurement.** The Federal Government set a regime for sustainable procurement by public authorities, which requires consideration of sustainability when acquiring services and goods.
- **Energy transition.** The Federal Government has issued the guideline “Energy Transition Plan to 2030.” It aims to address climate change by implementing a structural change in the supply and use of energy systems. It tackles the decarbonization of the energy matrix and seeks to increase the production and distribution of affordable, reliable and clean energy, promoting energy efficiency and strengthening adaptation to climate change. The generation of electricity by renewable sources is promoted in Argentina.
- **Climate change.** Argentina has passed several climate change statutes and international treaties, e.g., the United Nations Framework Convention on Climate Change, the Kyoto Protocol, the Paris Agreement and, lately, a federal climate change law ((Law No. 27,520) which establishes minimum environmental protection standards to guarantee adequate actions, instruments and strategies for adaptation and mitigation to climate change).
- **Gender equality.** The Public Registry of the City of Buenos Aires has issued a resolution that requires gender parity on management bodies and statutory committees of legal entities based on the Federal Constitution and international human rights treaties (e.g., Convention on the Elimination of all Forms of Discrimination against Women).
- **Mandatory prior consultation to indigenous people.** Indigenous people’s rights are guaranteed in the Federal Constitution and several provincial laws. Argentina has approved the International Labor Organization Agreement No. 169 on “Indigenous and Tribal Peoples in Independent Countries,” which grants civil, politic, social and economic rights to indigenous and tribal peoples and proclaims respect for their culture and way of life. It establishes procedures to ensure the participation of indigenous peoples in the adoption of legislative or administrative measures that may affect them directly (i.e., free, prior and informed consultation process).
- **Prevention of forced labor.** Argentina has approved the International Labor Organization’s Agreements No. 29 and 105 on abolition of forced labor, 2014 Protocol and Recommendation No. 203.
- **Good corporate governance.** Following the Guidelines of the Corporate Governance Principles of the OECD. The CNV has requirements relating to independent directors.
- **Corporate compliance.** Legal persons are criminally liable for money laundering (Federal Law No. 25,246) and for corruption (Federal Law No.

27,401) offenses. The anti-money laundering regime establishes mandatory compliance programs for gatekeepers since 2000. By contrast, anti-bribery compliance programs were established in 2018 and, except for certain public contractors, are not mandatory (but are recommended to reduce sanctions through prevention and cooperation).

- **Human rights.** Argentina is a signatory member of all human rights treaties comprising the business & human rights legal framework. All such treaties have constitutional status, meaning the violation of the rights established in human rights treaties can be reviewed by the Federal Supreme Court.

4. What, if any, litigation or enforcement activity has Argentina seen related to ESG?

There has been no relevant litigation or enforcement activity regarding greenwashing yet. However, there are a number of high-profile cases related to environmental, social and governance matters:

- **Environmental.** Litigation of environmental issues is widely developed. Access to justice is guaranteed and, largely, free of charge for plaintiffs (mostly, NGOs). Legal standing is broad, and the Argentine judiciary tends to be proactive in environmental cases (judicial activism is popular when dealing with these cases). Both at the federal and provincial judiciary, claims are brought requesting remediation of contamination or the immediate halt of a damaging activity. Moreover, other environmental law principles create incentives for litigation (e.g., the principle of *in dubio pro natura*).
- **Anti-corruption.** Public and private enforcement has exponentially increased in the last few years, and has led to some of the corporate governance rules noted above in response to Question 2. The “Notebooks Case”, for the first time in Argentina, led to dozens of business leaders being indicted and requesting leniency in exchange for cooperation in a bribery scandal. Subsequently, auditors, business partners and lenders are much more cautious when dealing with corporates implicated in those criminal investigations.
- **Business and human rights.** Argentinian civil society has historically been very active in the enforcement of human rights abuses and violations. Particularly active is criminal enforcement of “business and human rights” violations, especially those related to labor exploitation, child labor and other labor abuses. Companies operating in extractive, textile and agricultural industries are most exposed to these claims.
- **Labor litigation.** Labor litigation is frequent and common. This is primarily because labour laws are considered public law, meaning that the rights granted to workers cannot be set aside by private contracts. Labor Courts consider employees to be in a weaker position in the employment relation. Consequently, measures that in any way limit or restrict the rights established by labor laws are deemed null and unenforceable. In addition, employees are exempted from paying court fees and taxes when initiating a labor claim. Further, Labor Courts follow the *in dubio pro operario* principle: any ambiguity in a contract is construed in favor of the employee. Recently, because of high inflation rates, unions have had an important role in negotiating salary increases.

- **Antitrust.** In a recent case, the Antitrust Commission extended the definition of “general economic interest” to include ESG considerations. Dow Química Argentina S.R.L. (DOW) intended to close a facility. In October 2021, the Antitrust Commission ordered a temporary injunction forbidding the alteration of DOW’s productive assets in relation to the facility, and started an investigation for abuse of a dominant position. “General economic interest” was interpreted broadly to include the contribution of the company to the well-being of the population and its economic interest (e.g., a healthier environment, better level of education, lower unemployment and better income distribution). Pursuant to the Antitrust Commission, the shut-down of the production may be deemed as an abuse of a dominant position, with clear negative effects in the community.

5. What are the major non-law/regulatory drivers of ESG trends and developments in Argentina?

Firstly, the general public and retail investors are not yet engaged in ESG as a holistic term. The general public demand companies act in a responsible manner, mainly focusing on large corporations. Public consensus on responsible business centers, mainly, on environmental, social, anticorruption and labor issues. At the same time, large corporations are those particularly engaged in ESG and pushing for a sustainable corporate agenda.

Further, there is no mainstream local shareholder activism. In Argentina, ESG is mostly market driven: the aim is mainly to fulfill consumers and stakeholders’ demands and to secure access to capital.

Secondly, various soft laws are currently being applied in Argentina. For instance, the 2030 Agenda for Sustainable Development, approved by the United Nations General Assembly in 2015, is currently being implemented in Argentina by the National Council for Social Policies. Moreover, the Anti-corruption Office (OA) regularly issues guidelines based on international standards to help companies establish or improve anti-bribery compliance programs. For example, a digital platform was recently launched to be used as a benchmark for integrity policies and procedures.

Further, the CNV and the Argentine Central Bank have approved a corporate governance code for companies subject to their supervision. This code is based on the “comply or explain” principle, and sets out various non-binding recommendations and guidelines. Only specific principles are binding, including independence requirements for members of a public company’s board of directors and syndics. The code provides for the following:

- promoting transparency in related-party transactions;
- setting rules for proper management and supervision; and
- supporting policies for effective risk management.

Lastly, with regards to national contact points, the OECD National Contact Point for Responsible Business Conduct has been appointed in Argentina (under the Ministry of Foreign Affairs and Worship) and has heard many cases during the last few years.

6. Are the laws, regulations and obligations highlighted in Question 2 primarily related to corporate disclosure?

Only some large local and multinational companies issue ESG annual reports, mainly in the form of sustainability reports (which are separate non-financial documents). Most of them follow Global Reporting Initiative rules, but they are not commonly audited by independent third-party reviewers.

The Federal Constitution sets out the obligation for the government to provide for environmental information and education. A citizen's right to free access to environmental information is guaranteed, particularly in relation to information held by public authorities. Companies must also disclose certain environmental information. Further, Argentina recently approved the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters (Escazú Agreement). Its aim is to guarantee the full and effective implementation of the right of access to environmental information, public participation in the environmental decision-making process and access to justice.

7. Which sectors are most impacted by ESG in Argentina? How significant is ESG investment in Argentina?

The sectors that are most impacted by ESG are extractive industries, agribusiness, petrochemical and energy utilities. Those activities are, mainly, carried out by large companies (local and multinational), which have recently developed a strong ESG framework during. Public policies have been issued to specifically tackle these activities. For instance, environmental approvals for those activities usually require a public participation procedure and contain ESG requirements (e.g., hire local employees, buy from local suppliers, contribute to infrastructure public development funds, work on stakeholder engagement, develop social communication plans).

8. What are the trends in Argentina regarding ESG governance?

Companies are conscious that ESG measures should be integrated and proactive. ESG governance reflects both integrated structures (or several thematic structures reporting to a single Chief Risk Officer) and mandates oriented to prevent risks, not to react to incidents and complaints.

Governance structures do not follow any particular "local" trend, but follow usual patterns of corporate internal organization. Subsidiaries of multinational companies tend to replicate structures decided in their home countries, with direct reporting lines to either regional or global sustainability committees. The identifiable trend, as in many other countries, is to reorganize all compliance structures (environmental, anti-bribery, anti-money laundering, fraud, antitrust, etc.) under the oversight of a single officer (e.g., Chief Risk Officer).

While this is the case in most financial and listed companies, there is still a wide spectrum of large local business groups and small and medium enterprises where the ESG governance structures, when they exist, tend to be incipient and exploratory. For these companies, the ESG agenda could be spread among sustainability officers and/or allocated in other existing areas (e.g., communications, public/external/corporate affairs).

9. To what extent are ESG ratings or ESG benchmarks relied upon in Argentina?

There is no unique or established ESG benchmark in Argentina yet. Regarding financing, the CNV follows worldwide accepted tools to provide assurance to investors on the ESG credentials of the financial instruments used, among which is external reviews. These are suggested to issuers to reinforce the credibility of the label of the security used to finance green and/or social projects. The most common forms of external reviews are:

- a second opinion from an independent institution;
- verification by an independent third party;
- certification of the issuer's green security *vis-a-vis* an internationally recognized and publicly available standard; and
- rating/scoring.

10. What is the role of the private markets versus public markets in driving ESG developments in Argentina?

A great number of large national and multinational companies in Argentina have applied ESG policies. It is mainly market driven: policies have been adopted due to stakeholders and finance demands. Very few SMEs in Argentina have integrated ESG issues in their business strategies; the current local economic and financial situation is the focus.

Private markets are also driving the "G" agenda. Many investigations and remediation processes are requested by auditors, business partners or financial institutions. The hierarchization of compliance departments is also market driven. Compliance is evolving from bureaucratic and low-rank structures towards higher-ranked and prestige positions within corporates. As a result, Chief Risk Officers are now frequently consulted by board members when taking strategic and long-term decisions, and are entrusted to assess risks over new products, businesses lines or new markets, as well as to engage with senior regulators in policy discussions affecting the business.

11. What are the major challenges in terms of compliance for companies under ESG obligations?

The major challenges for companies facing ESG obligations are:

- to integrate compliance areas touching ESG topics (environmental, social, labor, anti-corruption, anti-money laundering, antitrust) under a single compliance structure;
- to find a cost-effective way to ensure compliance with each of these subject matters, following benchmark guidelines and being externally audited for quality assurance; and
- to comply with disclosure requirements to assure the public that the funds raised in an issuance are used for the purposes for which they have been invested – validation by independent external reviewer is becoming best practice.

12. What information sources are most relevant for ESG considerations in Argentina?

There are various high-profile NGOs that can be classified based on scope and line of business. Some of them focus on environmental issues, both local and global, while others focus on social or governance affairs (transparency, democratic institutions' quality and so on). There is no ESG-only focused NGO or think tank yet, nor any private measurement frameworks or ESG-only benchmarks.

13. Has Argentina developed a Taxonomy related to ESG?

No.

14. What does the future hold for ESG in Argentina?

Notwithstanding current economic and financial turmoil, Argentina continues to adopt ESG policies and, overall, setting public policies to achieve sustainable development. Certainly, there are many areas in which long-term decision-making is postponed for tackling urgent concerns. However, the potential role of Argentina in global food and energy security seems to be driving several specific bills that will make ESG principles more effective in agribusiness, energy transition and mining (lithium and copper, mainly). ESG policies would play a pivotal role in the development of these areas, as well as its financing.

AUTHOR BIOGRAPHIES



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