2009 International Narcotics Control Strategy Report Volume II: Money Laundering and Financial Crimes

Country Report: Argentina

Argentina is neither an important regional financial center nor an offshore financial center. Money laundering related to narcotics trafficking, corruption, contraband, and tax evasion is believed to occur throughout the financial system, in spite of the efforts of the Government of Argentina (GOA) to stop it. Transactions conducted through nonbank sectors and professions, such as the insurance industry, financial advisors, accountants, notaries, trusts, and companies, real or shell, remain viable mechanisms to launder illicit funds. Tax evasion is the predicate crime in the majority of Argentine money laundering investigations.

Argentina has a long history of capital flight and tax evasion, and Argentines hold billions of dollars outside the formal financial system (both offshore and in-country), much of it legitimately earned money that was not taxed. To combat capital flight and to encourage the return of these undeclared billions, on December 18, 2008, Argentina's legislature approved a tax moratorium and capital repatriation law that would provide a tax amnesty for persons who repatriate undeclared offshore assets during a six month window. The law entered into force December 24. Under the law, government tax authorities are prohibited from inquiring into the provenance of declared funds, and some critics have raised concerns that this could facilitate money laundering. Implementing regulations are to be promulgated in February 2009, which will clarify that transactions under this law will be subject to existing laws, rules, and regulations related to the prevention of financial crimes, and will also reportedly include a requirement that transfers from abroad originate in countries that comply with international money laundering and terrorism financing standards. Top level GOA officials have indicated that they will ensure all Argentine legislation, including this law, abides by Argentina's obligations as a member of the Financial Action Task Force (FATF) and the Financial Action Task Force for South America (GAFISUD). In January the GOA takes over the Presidency of GAFISUD for 2009.

In 2007, the Argentine Congress passed legislation criminalizing terrorism and terrorist financing. Law 26.268, "Illegal Terrorist Associations and Terrorism Financing," amends the Penal Code and Argentina's anti-money laundering law, Law No. 25.246, to criminalize acts of terrorism and terrorist financing, and establish terrorist financing as a predicate offense for money laundering. Persons convicted of terrorism are subject to a prison sentence of five to 20 years, and those convicted of financing terrorism are subject to a five to 15 year sentence. The new law provides the legal foundation for Argentina's financial intelligence unit (the Unidad de Información Financiera, or UIF), Central Bank, and other regulatory and law enforcement bodies to investigate and prosecute such crimes. With the passage of Law 26.268, Argentina joins Chile, Colombia, and Uruguay as the only countries in South America to have criminalized terrorist financing.

On September 11, 2007, former President Nestor Kirchner signed into force the National Anti-Money Laundering and Counter-Terrorism Finance Agenda. The overall goal of the National Agenda is to serve as a roadmap for fine-tuning and implementing existing money laundering and terrorist financing laws and regulations. The Agenda's 20 individual objectives focus on closing legal and regulatory loopholes and improving interagency cooperation. The ongoing challenge is for Argentine law enforcement and regulatory institutions to continue to implement the National Agenda and aggressively enforce the strengthened and expanded legal, regulatory, and administrative measures available to them to combat financial crimes.

Argentina's primary anti-money laundering legislation is Law 25.246 of May 2000 (although money laundering was first criminalized under Section 25 of Law 23.737, which amended Argentina's Penal Code in October 1989). Law 25.246 expanded the predicate offenses for money laundering to include all crimes listed in the Penal Code, set a stricter regulatory framework for the financial sectors, and created the UIF

under the Ministry of Justice and Human Rights. The law requires customer identification, record-keeping, and reporting of suspicious transactions by all financial entities and businesses supervised by the Central Bank, the Securities Exchange Commission (Comisión Nacional de Valores, or CNV), and the National Insurance Superintendence (Superintendencia de Seguros de la Nación, or SSN). The law requires similar reporting by designated self-regulated nonfinancial entities that report to the UIF. Further, the law forbids institutions to notify their clients when filing suspicious transaction reports (STRs), and provides a safe harbor from liability for reporting such transactions. Reports that are deemed by the UIF to warrant further investigation are forwarded to the special anti-money laundering and counterterrorism finance prosecution unit of the Attorney General's Office.

Law 26.087 of March 2006 amends and modifies Law 25.246 to address many previous deficiencies in Argentina's anti-money laundering regime. It makes substantive improvements to existing law, including lifting bank, stock exchange, and professional secrecy restrictions on filing suspicious activity reports; partially lifting tax secrecy provisions; clarifying which courts can hear requests to lift tax secrecy requests; and requiring court decisions within 30 days. Law 26.087 also lowers the standard of proof required before the UIF can pass cases to prosecutors, and eliminates the so-called "friends and family" exemption contained in Article 277 of the Argentine Criminal Code for cases of money laundering, while narrowing the exemption in cases of concealment. Overall, the law clarifies the relationship, jurisdiction, and responsibilities of the UIF and the Attorney General's Office, and improves information sharing and coordination. The law also reduces restrictions that have prevented the UIF from obtaining information needed for money laundering investigations by granting greater access to STRs filed by banks. However, the law does not lift financial secrecy provisions on records of large cash transactions, which are maintained by banks when customers conduct a cash transaction exceeding 30,000 pesos (approximately $9,000).

In September 2006, Congress passed Law 26.119, which amends Law 25.246 to modify the composition of the UIF. The law reorganized the UIF's executive structure, changing it from a five-member directorship with rotating presidency to a structure that has a permanent, politically-appointed president and vice-president. Law 26.119 also established a UIF Board of Advisors, comprised of representatives of key government entities, including the Central Bank, AFIP, the Securities Exchange Commission, the National Counter-narcotics Secretariat (SEDRONAR), and the Justice, Economy, and Interior Ministries. The UIF legally must consult the Board of Advisors, although its opinions on UIF decisions and actions are nonbinding.

The UIF has issued resolutions widening the range of institutions and businesses required to report suspicious or unusual transactions beyond those identified in Law 25.246. Obligated entities include the tax authority (Administración Federal de Ingresos Publicos, or AFIP), Customs, banks, currency exchange houses, casinos, securities dealers, insurance companies, postal money transmitters, accountants, notaries public, and dealers in art, antiques and precious metals. The resolutions issued by the UIF also provide guidelines for identifying suspicious or unusual transactions. All suspicious or unusual transactions, regardless of the amount, must be reported directly to the UIF. Obligated entities are required to maintain a database of information related to client transactions, including suspicious or unusual transaction reports, for at least five years and must respond to requests from the UIF for further information within a designated period. As of September 2008 the UIF had received 4,032 reports of suspicious or unusual activities since its inception in November 2002, forwarded 491 suspected cases of money laundering to prosecutors for review, and collaborated with judicial system investigations of 155 cases of suspected money laundering. There have been only two convictions for money laundering since it was first criminalized in 1989 under Article 25 of Narcotics Law 23.737 and none since the passage of Law 25.246 in 2000. A third money laundering case brought under Law 23.737 is pending before Argentina's Supreme Court.

The Central Bank requires by resolution that all banks maintain a database of all transactions exceeding 30,000 pesos, and submit the data to the Central Bank upon request. Law 25.246 requires banks to make available to the UIF upon request records of transactions involving the transfer of funds (outgoing or incoming), cash deposits, or currency exchanges that are equal to or greater than 10,000 pesos (approximately $3,200). The UIF further receives copies of the declarations to be made by all individuals

(foreigners or Argentine citizens) entering or departing Argentina with over $10,000 in currency or monetary instruments. These declarations are required by Resolutions 1172/2001 and 1176/2001, which were issued by the Argentine Customs Service in December 2001. In 2003, the Argentine Congress passed a law that would have provided for the immediate fine of 25 percent of the undeclared amount, and for the seizure and forfeiture of the remaining undeclared currency and/or monetary instruments. However, the President vetoed the law because it allegedly conflicted with Argentina's commitments to MERCOSUR (Common Market of the Southern Cone).

Although the GOA has passed a number of new laws in recent years to improve its anti-money laundering and counterfinancing of terrorism (AML/CTF) regime, Law 25.246 still limits the UIF's role to investigating only money laundering arising from seven specific or "predicate" crimes. Also, the law does not criminalize money laundering as an offense independent of the underlying crime. A person who commits a crime cannot be independently prosecuted for laundering money obtained from the crime; only someone who aids the criminal after the fact in hiding the origins of the money can be guilty of money laundering. Another impediment to Argentina's anti-money laundering regime is that only transactions (or a series of related transactions) exceeding 50,000 pesos (approximately $16,000) can constitute money laundering. Transactions below 50,000 pesos can constitute only concealment, a lesser offense.

In 2006 and 2007, the National Coordination Unit in the Ministry of Justice, Security, and Human Rights became fully functional, managing the government's AML/CTF efforts and representing Argentina at the Financial Action Task Force (FATF), the Financial Action Task Force for South America (GAFISUD), and the Organization of American States Inter-American Control Commission (OAS/CICAD) Group of Experts. The Attorney General's special prosecution unit set up to handle money laundering and terrorism finance cases began operations in 2007. Although the Argentine Central Bank's Superintendent of Banks has not created a specialized anti-money laundering and counterterrorism finance examination program as previously considered, it began in 2008 specific anti-money laundering and counterterrorism finance inspections of financial entities and exchange houses.

Argentina's Narcotics Law of 1989 authorizes the seizure of assets and profits, and provides that these or the proceeds of sales will be used in the fight against illegal narcotics trafficking. Law 25.246 provides that proceeds of assets forfeited under this law can primarily be used to fund the UIF. Argentine courts and law enforcement agencies have used the authority to seize and utilize assets on a selective and limited basis, although complex procedural requirements complicate authorities' ability to take full advantage of the asset seizure provisions offered under these laws.

Prior to the passage of terrorist financing legislation in June 2007, the Central Bank was the lead Argentine entity responsible for issuing regulations on combating the financing of terrorism. The Central Bank issued Circular A-4273 in 2005 (titled "Norms on 'Prevention of Terrorist Financing'"), requiring banks to report any detected instances of the financing of terrorism. The Central Bank regularly updates and modifies the original circular. The Central Bank of Argentina also issued Circular B-6986 in 2004, instructing financial institutions to identify and freeze the funds and financial assets of the individuals and entities listed on the list of Specially Designated Global Terrorists designated by the United States pursuant to E.O. 13224. It modified this circular with Resolution 319 in October 2005, which expands Circular B-6986 to require financial institutions to check transactions against the terrorist lists of the United Nations, United States, European Union, Great Britain, and Canada. No assets have been identified or frozen to date. The GOA and Central Bank assert that they remain committed to freezing assets of terrorist groups identified by the United Nations if detected in Argentine financial institutions.

In December 2006, the U.S. Department of Treasury designated nine individuals and two entities that provided financial or logistical support to Hizballah and operated in the territory of neighboring countries that border Argentina. This region is commonly referred to as the Tri-Border Area, located between Argentina, Brazil, and Paraguay. The GOA joined the Brazilian and Paraguayan governments in publicly disagreeing

with the designations, stating that the United States had not provided new information proving terrorist financing activity is occurring in the Tri-Border Area.

Working with the U.S. Department of Homeland Security's Office of Immigration and Customs Enforcement (ICE), Argentina has established a Trade Transparency Unit (TTU). The TTU examines anomalies in trade data that could be indicative of customs fraud and international trade-based money laundering. One key focus of the TTU, as well as of other TTUs in the region, is financial crime occurring in the Tri-Border Area. The creation of the TTU was also a positive step toward complying with FATF Special Recommendation VI on terrorist financing via alternative remittance systems. Trade-based systems often use fraudulent trade documents and over and under invoicing schemes to provide counter valuation in value transfer and settling accounts.

The GOA remains active in multilateral counternarcotics and international AML/CTF organizations. It is a member of the OAS/CICAD Experts Group to Control Money Laundering, the FATF and GAFISUD. The GOA is a party to the 1988 UN Drug Convention, the UN Convention for the Suppression of the Financing of Terrorism, the UN Convention against Transnational Organized Crime, and the UN Convention against Corruption. Argentina participates in the "3 Plus 1" Security Group (formerly the Counter-Terrorism Dialogue) between the United States and the Tri-Border Area countries. The UIF has been a member of the Egmont Group since July 2003, and has signed memoranda of understanding regarding the exchange of information with a number of other financial intelligence units. The GOA and the U.S. government have a Mutual Legal Assistance Treaty that entered into force in 1993, and an extradition treaty that entered into force in 2000.

With passage of counterterrorist financing legislation and strengthened mechanisms available under Laws 26.119, 26.087, 25.246, and 26.268 Argentina has the legal and regulatory capability to combat and prevent money laundering and terrorist financing. The new national anti-money laundering and counterterrorist financing agenda provides the structure for the GOA to improve existing legislation and regulation, and enhance inter-agency coordination. The ongoing challenge is for Argentine law enforcement and regulatory agencies and institutions, including the Ministry of Justice, Central Bank, the UIF, and other institutions to implement fully the National Agenda and aggressively enforce the newly strengthened and expanded legal, regulatory, and administrative measures available to them to combat financial crimes. The GOA could further improve its legal and regulatory structure by enacting legislation to expand the UIF's role to enable it to investigate money laundering arising from all crimes, rather than just seven enumerated crimes; establishing money laundering as an autonomous offense; and eliminating the current monetary threshold of 50,000 pesos (approximately $16,000) required to establish a money laundering offense. To comply fully with the FATF recommendation on the regulation of bulk money transactions, Argentina should review policy options that are consistent with its MERCOSUR obligations. Other continuing priorities are the effective sanctioning of officials and institutions that fail to comply with the reporting requirements of the law, the pursuit of a training program for all levels of the criminal justice system, and the provision of the necessary resources to the UIF to carry out its mission. There is also a need for increased public awareness of the problem of money laundering and its connection to narcotics, corruption, and terrorism.