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management's intervention, knowledge or tolerance; (ii) that the crime results in serious social or environmental consequences, or ones which affect the provision of any public utility service; and (iii) that the crime was committed on more than one occasion. In any of these scenarios, the Bill provides for an increase in the minimum of the fine to ten per cent of annual gross income for the year immediately preceding the date of the crime. It is important to note that corruption crimes are frequently the result of actions repeated over time and that, in most cases, they are not committed by an employee alone, but with their superiors' acquiescence. The aggravating circumstances included in the Bill could mean that the exceptions usually established as aggravating circumstances become the general rule, given the frequency with which they occur in corruption cases.

In contrast, the Bill provides for a reduction of the maximum fine to five per cent of gross income (making it clear that in no case will the fine be below one per cent) where the entity has effectively cooperated and provided

evidence as set forth above.

Other provisions of the Bill

The Bill provides for the creation of a 'National Registry of Convicted Companies' to be administered by the Anti-Corruption Office through its webpage, which will show a list of companies that have been convicted by a final judgment. The publication will be maintained until the convicted company has fully complied with all criminal sanctions imposed or 'as part of an effective cooperation agreement' (technically, there would be no conviction in this last case, making some specific clarification necessary in order to understand if the cooperation agreement will also be published in the Registry).

Note

- 1 The Bill makes clear that in these cases there will be no application of the rule under which the voluntary payment of the fine, where the crime is punishable by a fine, will cause the expiration of the criminal action if paid before commencement of the investigation process.

New procurement rules for Argentina's federal public administration

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Summary

The purpose of this article is to highlight the principal changes to the rules and procedures governing national public procurements in Argentina, introduced by Decree 1030/2016 on 16 September 2016. The new Regulation does not introduce substantial changes to its predecessor, although it does include some relevant modifications.

Introduction

In September 2016, the government of Argentina modified some of the rules and procedures governing national public procurement. What follows is a brief primer on the principal changes.

On 16 September 2016, the National Executive issued Decree No 1030/2016 modifying Decree 892/2012. The latter implemented the regulation of Delegated Decree No 1023/2001 of the General Regime for Public Procurement (GRPP), issued on 13 August 2001, by the federal executive branch by exercising legislative powers delegated to it by the legislature under the terms of Section 76 of the Federal Constitution.

The GRPP and its Regulation are applicable to certain contracts entered into by the central administration – the federal executive branch, its ministries and departments as well as any other central government bodies – and its agencies, including social security institutions (Section 2, GRPP).

The new Regulation does not introduce substantial changes to its predecessor, although it does include some relevant modifications.

Regarding its scope of application, the replaced Decree's provisions remain, although national universities are now included (Section 2). Furthermore, international public procurements executed by foreign contracting operational units along with those contracts entered into by the State Asset's Administration Agency will be subject to their own regulation (Section 3).

Also, the Federal Administration of Public Revenue (AFIP in Spanish) will need to provide information regarding breaches of tax and provisional law to the National Procurement Office (NPO), to verify bidders are authorised to enter into contracts with the State (Section 5). The NPO is a body subordinated to the federal executive that serves as the governing entity for the GRPP and its Regulation.

Regarding modifications, the amounts considered to determine the types of contract required have been modified (ie, public bid, abbreviated procedure or direct award; Section 9).

Current types of contracts have been maintained, although Integral Projects Contests have been introduced for cases in which particular conditions cannot be specified and it is necessary to find solution proposals. As for new modalities of application, electronic procurement has been significantly amended (Sections 31 to 34), establishing that the NPO is the body entrusted to put it into

practice. Also, the simplified procedure has been eliminated.

Regarding offers, the new Regulation establishes that the requirements to be fulfilled must be included in the tender documents, which must list specific remediable and non-remediable causes for dismissal (Section 56). Also, an important incorporation is that alternative offers will always be accepted.

As a cause of ineligibility, the following issues have been included: a foreign conviction with a final judgment over bribe issues under the terms of the Organisation for Economic Co-operation and Development (OECD) Agreement, and being part of the World Bank's List of Disabled over Corrupt Practices (Section 68, subsections 'H' and 'I').

Strictly regarding procedure, administrative deadlines have been reduced, along with penalties for delays.

It is important to point out that the Decree incorporates clauses related to renegotiation (regarding supply contracts when external and supervening circumstances affect contractual balance in a decisive way) and mutual agreed termination (Sections 96 and 97).

Finally, the Competent Authority is entitled to include in the tender documents a mechanism of dispute resolution between jurisdictions, entities and suppliers, to solve disputes arising within the selection procedure, execution, interpretation, termination, inexistence, ineffectiveness or invalidity of the contract (Sections 115).