

## Summary of the new FX regime set forth by the Central Bank

On September 1, 2019, the Executive Branch issued Decree No. 609/2019 ("**Decree 609**") which established that, until December 31, 2019, the export value of goods and services must be repatriated to Argentina and converted to Argentine pesos in accordance with the conditions and terms set forth by the Central Bank of the Argentine Republic (the "**Central Bank**").

According to the provisions of Decree 609, the Central Bank will define in which cases access to the foreign exchange market to purchase foreign currency and precious metals as well as transfers abroad will be subject to prior approval by the Central Bank, taking into consideration the different situation of natural persons and legal entities.

Likewise, the Central Bank has the power to establish regulations that prevent practices and transactions aimed at evading the measures adopted by Decree 609.

In this regard, the Central Bank issued Communiqué "A" 6770, modified and completed by Communiqués "A" 6776, "A" 6780, "A" 6782, "A" 6796, "A" 6814 and "A" 6815 (the "**Communiqué**") by which it introduces foreign exchange regulations and restrictions in line with the provisions of Decree 609, including, among others, the following:

### ***Obligation to repatriate foreign currency from goods exports***

- *Goods exports validated as from September 2, 2019*

Payments in foreign currency for goods exports up to the value invoiced according to the sale conditions of such goods exports, must be repatriated and converted to Argentine pesos on the foreign exchange market under the following terms, counted from the date of shipment completions granted by the Argentine Custom:

- (i) **15 calendar days** for goods exports corresponding to tariff items 1001.19.00, 1001.99.00, 1003.90.10, 1003.90.80 and 1005.90.10 (except pop corn), 1007.90.00, 1201.90.00, 1208.10.00, 1507.10.00, 1507.90.19 and 1517.90.90 (except those that do not contain soy).
- (ii) **30 calendar days** for goods exports corresponding to chapter 27 (except tariff item 2716.00.00) or tariff items 2304.00.10 and 2304.00.90.
- (iii) **60 calendar days** for goods exports between related parties that do not correspond to goods indicated in items 1.1.1.1 and 1.1.1.2, exports corresponding to chapter 26 (except tariff items 2601.11.00, 2603.00.90, 2607.00.00, 2608.00.10, 2613.90.90, 2616.10.00, 2616.90.00 and 2621.10.00) and chapter 71 (except tariff items 7106.91.00, 7108.12.10 and 7112.99.00).
- (iv) **180 calendar days** for the rest of goods exports.
- (v) **365 calendar days** for exports made under the "*Exporta Simple*" regime, regardless of the type of exported good.

Regardless of the maximum terms abovementioned, the Communiqué established that payments received for exports must be repatriated and converted on the local foreign exchange market within 5 business days of the collection date.

In order to determine whether a transaction is considered a transaction between related parties or not it will be applicable the rules set forth in section 1.2.2 of the "Great expositions to the credit risk" of the Central Bank.

The amounts in foreign currency originated in charges of claims for insurance, to the extent that the mentioned amounts cover the value of the exported goods, are reached by this obligation.

The exporter must appoint an entity to realize the “tracking of the trading in order to obtain foreign currency for export of goods”. The obligation of repatriation and settlement of foreign currency at the local foreign exchange market corresponding to a boarding permit will consider accomplished when the entity has certified that situation by the mechanisms established in that sense.

- *Transactions executed before September 2, 2019*

Those export transactions pending collection prior to September 2, 2019, must be repatriated and converted on the local foreign exchange market within 5 business days of the date of collection or disbursement abroad or in Argentina.

The exporters that have accomplished boarding permits in such period will be reached by a specific follow-up proceeding the characteristics of which will be informed separately.

The repatriation and conversion in the local foreign exchange market of foreign currency received by residents shall not be required if the following conditions are verified concurrently:

- (i) the funds received be deposited in accounts opened in Argentine financial entities;
- (ii) the repatriation be made within the specified periods set forth by the Communiqué;
- (iii) the funds will be applied simultaneously to operations whose access to the local foreign exchange market has been granted by law, considering the limits established for each concept involved; and
- (iv) the use of this mechanism be neutral for tax purposes.

***Repayment of advances and export pre-financing loans***

The use of payments of exports is admitted to the cancellation of the following advances and pre-financing loans:

- (i) pre-financing and financing provided or guaranteed by local financial institutions.
- (ii) pre-financing, advances and financing received and settled on the local foreign exchange market and declared in the external assets and liabilities survey.
- (iii) financial loans with agreements in force as of August 31, 2019, which their terms and conditions provide for the payment of principal and interest through the application abroad of the flow of export funds.

Those payment of advances and pre-financing loans of exports that are not detailed in points (i), (ii) and (iii) above, shall require the prior approval of the BCRA.

The Communiqué required a period of 90 days to prove the registration by the Argentine custom of the entrance of goods, in case of advance payments of imports to suppliers unrelated to the importer and the prior approval of the BCRA for advance payments of imports to suppliers related to the importer.

***Obligation to repatriate foreign currency from services exports***

Payments received for the rendering of services must be repatriated and converted on the local foreign exchange market within a period of no more than 5 business days from the date of their receipt abroad or in Argentina or their crediting in foreign accounts<sup>1</sup>.

The repatriation and conversion in the local foreign exchange market of foreign currency received by residents shall not be required if the following conditions are verified concurrently:

- (i) the funds received be deposited in accounts opened in Argentine financial entities;
- (ii) the repatriation be made within the specified periods set forth by the Communiqué;
- (iii) the funds will be applied simultaneously to operations whose access to the local foreign exchange market has been granted by law, considering the limits established for each concept involved; and
- (iv) the use of this mechanism be neutral for tax purposes.

#### ***Cash withdrawal abroad with debit cards***

The Communiqué established that cash withdrawals abroad with local debit cards as of October 28, 2019, can only be carried out with debit from the client's local accounts in foreign currency.

#### ***Obligation to send daily information on exchange sales for up to a daily amount equal to or greater than the equivalent of USD 2,000,000***

Through the Communiqué, it was established that the entities authorized to trade in the exchange market must send to the BCRA, at the end of each business day and with an anticipation of 2 business day notice, the information on the sales of foreign currency performed at the request of customers or operations of the entity for their own portfolio that implies access to the local foreign exchange market for up to a daily amount equal to or greater than the equivalent of USD 2,000,000, for each of the 3 business days counted from the first day reported.

For this purpose, it was established that until the BCRA implements the corresponding information regime, the information requested must be sent to [anticipooperaciones@bcra.gob.ar](mailto:anticipooperaciones@bcra.gob.ar), with the following detail: (i) reporting entity; (ii) TAX ID (CUIT) and name of the client (including the operations by the entities for their own portfolio); and (iii) date of the operation, concept code and equivalent amount in USD.

In this sense, the clients of the authorized entities must inform them with the sufficient time to allow those entities to comply with this informative regime and, to the extent that simultaneously the remaining requirements in force by Communiqué are fulfilled, proceed to carry out the exchange operations.

The Communiqué also provides that on the day of the FX transactions will be carrying out, the client may choose to perform the exchange operations reported with any authorized entity. To this end, the intervening entity must have a record from the reporting entity that such exchange operation has been duly informed.

#### ***Creation of external assets or guarantees related to derivatives transactions***

Legal entities, local governments, mutual funds, trusts and other universalities incorporated in Argentina will require prior approval of the Central Bank to constitute foreign assets and create all types of guarantees related to derivatives transactions, this means the payment of premiums, the creation of guarantees and the payment of futures, forwards, options and other derivatives. The provision of the Central Bank does not

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<sup>1</sup> The Communiqué does not define the concept of “exported services”. According on that, rises the question if it will be used the prevailing concepts until 2017, established on the Communiqué “A” 6037 (derogated by the point 4 of the Communiqué “A” 6244).

apply to authorized entities to operate on foreign exchange currency market, which tenancies on foreign currency holdings are regulated by specific regulations issued by the Central Bank.

The settlement of futures traded on Argentine organized markets, forwards, options, and any other type of derivatives entered into by the parties in Argentina must be made in Argentine pesos as from September 11, 2019.

Additionally, the natural persons must obtain previous approval from Central Bank for transactions over derivatives, related to the payment of premiums, creation of guarantees and settlement that correspond to future transactions, forwards, options and other derivatives, if this involves a payment in foreign currency.

The access to the local foreign exchange market for payment of premiums, creation of guarantees and cancellations related interest rate hedging contracts for declared and validated obligations of residents abroad shall be granted if the risks hedged do not exceed the external liabilities actually recorded by the debtor, to the extent that such debtor must appoint a financial entity who will be in charge of following up the transaction and file a sworn statement committing the settlement of the unspent funds or excess funds in the local foreign exchange market within the following 5 business.

#### ***Creation of external assets by Argentine individuals***

Argentine individuals must obtain prior approval from the Central Bank for the creation of external assets, the remittance of family aid and for entering into derivative transactions, in case the aggregate amount of the above-mentioned transactions exceeds the equivalent of US\$ 200 per month in all entities licensed to operate in FX transactions.

When the aggregate amount traded over these items exceeds the equivalent of USD 100 per month in all authorized entities to operate in FX transactions, the transaction must be carried out with debit to local accounts.

#### ***Access to the local foreign exchange market for non-residents***

Prior approval from the Central Bank will be required for non-residents to access the local foreign exchange market in case of purchase of amounts greater than the equivalent of US\$ 100 per month in all entities licensed to operate in foreign exchange transactions.

Exempted from the limit on foreign currency purchase in the local foreign exchange market are **(a)** transactions made by international organizations and institutions that operate as official export credit agencies; **(b)** transactions made by diplomatic and consular representations as well as diplomatic personnel accredited in Argentina for transfers made in the exercise of their functions; **(c)** transactions made by Argentine representations/agencies of courts, authorities, offices, special missions, commissions or bilateral bodies established by treaties or international agreements, to which Argentina is a party, to the extent that the transfers are made in the exercise of their functions; and **(d)** transfers abroad on behalf of individuals who are beneficiaries of retirement and /or pension benefits paid by the National Social Security Administration (*Administración Nacional de la Seguridad Social*, the “ANSES” by its Spanish acronym), up to the amount paid by the ANSES for the respective calendar month and to the extent that such transfer be made to the bank account located and owned by the beneficiary of such retirement and /or pension in his country of registered residence.

#### ***Obligation to repatriate new foreign financial debts and convert such debts on the local foreign exchange market***

New foreign financial debts disbursed as of September 1, 2019, must be repatriated and converted on the local foreign exchange market. Proof of repatriation and conversion will be required to access the local foreign exchange market for capital repayment and payment of interests on such debts.

The proof of repatriation and conversion will not be required if the following conditions are verified concurrently:

- (i) the funds received be deposited in accounts opened in Argentine financial entities;
- (ii) the repatriation be made within the specified periods set forth by the Communiqué;
- (iii) the funds will be applied simultaneously to operations whose access to the local foreign exchange market has been granted by law, considering the limits established for each concept involved; and
- (iv) the use of this mechanism be neutral for tax purposes.

***Repayment of foreign currency debt between residents***

Access to the local foreign exchange market for the repayment of debts and other foreign currency obligations of residents, entered into as from September 1, 2019, is banned.

Access to the local foreign exchange market is granted, at maturity, in case of foreign currency obligations between residents that are recorded in an official registry or have been entered into by way of public deed as of August 30, 2019.

The restriction to access to the local foreign exchange market is not applicable to payments of clients over financial debts granted in foreign currency by local financial entities, including the payments in foreign currency performed with credit cards.

Notwithstanding the aforementioned, residents who must make payments of services of foreign financial debts and/or securities issued under local legislation may carry out purchases of foreign currency in the local foreign exchange market prior to the deadline admitted by the Communiqué, under the following conditions:

- (i) the acquired funds must be deposited in foreign currency accounts owned by the residents and opened in local financial institutions;
- (ii) the access to the local foreign exchange market must be carried out no earlier than 5 business days beyond the terms allowed by Communiqué;
- (iii) the access the local foreign exchange market be made for a daily amount not exceeding 20% of the total amount that the residents must cancel at maturity of such foreign financial debt; and
- (iv) the intervening financial entity must verify that the foreign financial debt, whose service will be cancelled with said funds, complies with the regulations set forth by the Communiqué.

Foreign currency that is not used for the payment of principal and interests must be settled in the local foreign exchange market within 5 business days after such payment.

In addition, financial entities will be able to give access to the local foreign exchange market to residents who have foreign financial indebtedness with unrelated creditors or to Argentine trusts in order to secure the payment of principal and interests and/or to purchase foreign currency to provide guarantees for up to the amounts payable of such indebtedness, under the following conditions:

- (i) payment of foreign financial indebtedness which foresee the crediting of funds in guarantee accounts of future services and whose access to the local foreign exchange market has been granted by law;
- (ii) the acquired funds be deposited in accounts opened in Argentine financial entities. The creation of guarantees on accounts opened abroad will only be admitted if it is the only and exclusive option provided in financial indebtedness entered into force prior to August 31, 2019.

(iii) the guarantees in foreign currency do not exceed the amounts to be paid in the next payment of principal or interest date.

(iv) the access to the local foreign exchange market be made for a daily amount not exceeding 20% of the amounts to be paid in the next payment of principal or interest date; and

(iv) the intervening financial entity must verify that the foreign financial debt complies with the regulations set forth by the Communiqué.

Foreign currency that is not used for the payment of principal and interests must be settled in the local foreign exchange market within 5 business days after such payment.

### ***Distribution of profits and dividends***

The Communiqué establishes that prior approval of the Central Bank will be required to access the local foreign exchange market for distribution of profits and dividends abroad.

Even when the current exchange regulations does not include any reference regarding the documentation necessary to access to the local foreign exchange market, Argentine financial entities require the following documents: (i) minutes of the shareholders' meeting appointing the distribution of dividends; (ii) minutes of the Board of Directors' meeting approving the distribution of dividends; (iii) audited financial statements by chartered accountant corresponding to dividends derived from ended fiscal years, such audited financial statements must be legalized by the corresponding Chartered Accountant Council; and (iv) affidavit issued by the Argentine legal entity stating that the dividends have been included in the latest filing due of the external assets and liabilities pursuant to Communiqué "A" 6041.

### ***Pre-payment of financial debt***

The Communiqué sets forth that prior approval from the Central Bank will be required for access to the local foreign exchange market for pre-payment of foreign financial debt more than 3 business days before the maturity of capital repayment and interest payments.

The prior approval of the Central Bank would not be required for access to the local foreign exchange market if the following conditions are verified concurrently:

(i) the pre-payment must be carried out simultaneously with funds coming from new financial debt disbursed as of such date;

(ii) the average life of the new financial debt must be greater than the remaining average life of the financial debt being prepaid;

(iii) the first amortization date of the new financial debt shall not be earlier than the next amortization date of the financial debt being prepaid;

(iv) the principal amount of the new financial debt to be paid on the first amortization date shall not be greater than the principal amount to be paid on the next amortization date of the financial debt being prepaid.

Additionally, it will be required that the transaction be declared in the last due presentation of the external assets and liabilities survey.

It will be possible to access to the local foreign exchange market for pre-payments of financial debt if a new issuance of securities is made for the purpose of refinancing debts which had been granted access to the local foreign exchange market by virtue of the Communiqué if such issuance of securities lead to an increase of the average life of the financial debt pre-paid.

***Payment of financing from financial entities granted in foreign currency for clients from private non financial sector.***

The financing granted by financial entities on foreign currency for clients from non financial private sector must be exchanged to Argentine Pesos at the moment of its disbursement.

***Pre-payment of debt for goods imports***

Prior approval from the Central Bank will be required to access the local foreign exchange market for pre-payment of debt for goods and services imports.

This requirement is applicable for access to the local foreign exchange market to make payments of matured or debts for imports of goods with related companies abroad when it exceeds the equivalent of US\$ 2 million per month per resident customer. It will be considered “matured debts and “debts for imports of goods” to all outstanding debts until August 31, 2019, both those whose expiration had operated prior to that date, and those that did not have a stipulated expiration date.

In the case of pre-payments for imports, the respective supporting documentation must be submitted and evidence of entry of goods must be demonstrated within 180 calendar days of the access to the foreign exchange market and the recipient of the funds must be the foreign supplier.

***Payment of services with related companies abroad***

Prior approval from the Central Bank will be required to access the local foreign exchange market for the payment of services with foreign related companies, except for card issuers regarding transfers related to tourism and/or travel.

It will not be necessary previous approval from the Central Bank to perform the payment of premiums from reinsurance from abroad. In these cases, the transfer abroad will be made on behalf of the foreign beneficiary admitted by the National Insurance Superintendence.

***Access to local foreign exchange market for trusts created by residents who issue debt titles in order to attend services of capital and interests***

The entities will grant access to the local foreign exchange market to trusts created by Argentine residents that issue debt instruments in order to pay the amounts of principal and interest owed under their liabilities, if they verify that the issuer has had access to perform the payment.

***Obligation to repatriate and convert the foreign currency into the local foreign exchange market received in concept from disposal of non financial assets.***

The collection by residents of amounts in foreign currency from the sale of non financial assets must be repatriated and converted in the local foreign exchange market within 5 calendar days counted from the date of perception of that funds, either in the country or abroad, or from its income in bank accounts from abroad.

Under the Communiqué “A” 6037 (derogated by the Communiqué “A” 6244 issued by the Central Bank), nor financial assets encompassed those transactions in which a transfer of economic property rights involved, such as, fishing rights, mining rights, rights over the space, transfer of athletes, patents, author rights, concessions, leasings, trademarks, logos and internet domains. The current regulation does not include this definition, even though it is likely that the Central Bank will use this definition.)

***Exchange, arbitrage and securities transactions***

Exchange and arbitration transactions may be carried out with customers without prior approval from the Central Bank to the extent that, if implemented as individual transactions going through pesos, they may be conducted without such approval in accordance with the rules of the Communiqué.

Entities licensed to operate in foreign exchange transactions will not be able to buy securities in the secondary market and convert them into foreign currency, nor will they be able to use holdings of their General Position of Exchange (*Posición General de Cambios*) for payments to local suppliers.

It is worth mentioning that the transfer of foreign currency from their local bank accounts in foreign currency to their bank accounts abroad will be performed without restrictions and the exchange and arbitrages that involves the income of foreign currency from unreached operations by the obligation to repatriate in the local foreign exchange market will be done without restrictions.

The provisions of the Central Bank regarding the applicable dispositions to exchange and arbitration also apply to local securities custodian for funds received in foreign currency for payment of principal and income of foreign currency securities paid in the country, except in the case of funds received in foreign currency for the principal and income services of National Treasury Securities (*Bonos del Tesoro Nacional*), which are retransferred abroad as part of the payment process at the request of the foreign clearinghouses.

### **Other complementary regulations:**

The Argentine Securities Commission (*Comisión Nacional de Valores*, the “**CNV**”), through General Resolution No. 808/2019 dated September 12, 2019 (the “**Resolution 808**”), implemented complementary measures to the provisions established by the Central Bank by means of Communiqué, with the purpose of preventing the simultaneous purchase and sale of securities aimed at circumventing the foreign exchange market restrictions established by the Communiqué.

In this regard, the CNV through Resolution 808 sets forth that

- the Settlement and Clearing Agents (*Agentes de Liquidación y Compensación*), in order to carry out a purchase of securities denominated in U.S. dollars for a limit of up to US\$ 10,000 per month established by the Communiqué on behalf of a buyer, need a prior sworn statement from such buyer stating that the funds in U.S. dollars do not derive from local foreign exchange market transactions performed in the last five (5) business days;
- securities purchased in accordance with the procedure outlined in the above bullet point, may only be submitted for settlement after 48 hours have elapsed since the purchase; and
- the securities obtained by said purchase may not be transferred to cover the settlement of a sale transaction in pesos until five (5) business days have elapsed as from the accreditation of said securities in the respective clearinghouse (“*Agente de Depósito Colectivo de Valores Negociables*”).

### **Application of the Foreign Exchange Market Criminal Regime**

The Communiqué states that transactions that do not comply with the exchange regulations set forth by the Communiqué will be subject to the Argentine Criminal Foreign Exchange Regime (*Regimen Penal Cambiario*).

This publication does not offer a legal opinion on specific matters. If necessary, you should seek specialized legal counsel. Please note that this summary is based in accordance with rules, provisions set forth by the Central Bank and the CNV as of October 28, 2019.

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