

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

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ARGENTINA

Responses submitted by:

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1. Would your jurisdiction be described as a common law or civil code jurisdiction?

Argentina is a civil code jurisdiction.

2. What method of adjudication is used (adversarial, inquisitorial, other or hybrid)?

In civil cases, the method of adjudication is adversarial. In criminal cases, the method is inquisitorial.

3. What are the qualifications of the adjudicator (judge – elected, appointed; jury; other)?

In Argentine, judges are not elected. They are appointed by the government. Argentine judicial system is composed of federal/national courts and provincial courts.

Courts in the provincial jurisdiction are organized according to the jurisdictional model adopted by the Provincial Constitution of each of the Argentine provinces.

Argentine federal system adopted a judicial council (“*Consejo de la Magistratura*”) for the organization of the Judiciary. One of the main functions of this judicial council is to propose 3 candidates for appointment to a federal/national bench. Then, the President of the Republic must appoint one of the candidates with the consent of the Senate. The judicial council does not intervene in the appointment of Supreme Court Justices. Justices are directly appointed by the President of the Republic with the consent of the National Senate.

A trial judge must be Argentine citizen, 25 years old, have a law degree and 4 years in the profession. An appellate judge must be Argentine citizen, 30 years old, have a law degree and 6 years in the profession or the judiciary. Finally, Justices of the Supreme Court must have a law degree, 8 years on the exercise of the legal profession, be 30 years old and Argentine citizenship for at least 6 years, and meet the requirements to be elected Senator.

4. Are there any procedures available for specialized courts (i.e. commercial court, employment, environmental)?

Yes. Courts distribute cases according to the subject matter under discussion (Civil and Commercial, Administrative, Criminal and Correctional, etc.).

Civil and commercial cases are usually dealt with according to the same procedure, known as “*juicio ordinario*”. But, in those cases involving a non-significant amount of money, the procedure that would apply is a more expedited proceeding known as “*juicio sumarísimo*” (This procedure is shorter and more limited in evidence. The “*juicio sumarísimo*” is

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applied also to cases in which individuals seek an expedited protection of their rights).

There are special procedures for employment and criminal cases. There are special procedures also for reorganization or bankruptcy of a company.

There is an expedited action for relief (“*acción de amparo*”) in case of violation of constitutional rights (Section 43 of the National Constitution and National Law 16,986).

5. Is arbitration an option and when? If so, what rules are typically used?

Yes, parties can submit disputes to arbitrators, but only pecuniary disputes. Disputes involving rights not subject to private transactions cannot be submitted to the decision of arbitrators.

Unless Argentine courts have exclusive jurisdiction over the case or the change of venue is prohibited by law, international disputes can also be submitted to international arbitrators. Section 1651 of the Civil and Commercial Code establishes that parties can’t opt for arbitration in case of: (i) status of persons, (ii) family matters, (iii) consumer cases, (iv) adhesion contracts; and (v) labor cases.

The National Procedure Code (applicable in national territories, federal cases and ordinary cases in the City of Buenos Aires) recognizes two types of arbitration: (i) “Amicable arbitrators”, who render their awards according to the best of their knowledge and belief. Amicable arbitrators are exempt from abiding by procedure rules and applying substantive law. The arbitrators decide the dispute based on equity standards; and (ii) “Arbitrators at Law”, who must be lawyers and must determine a case in the same way as a judge would do. Arbitrators are obliged to ground their decision in law.

Section 1652 of the Civil and Commercial Code recognizes the same types of arbitration, and section 1657 recognizes the institutional arbitration.

According to Section 1656 of the Civil and Commercial Code, parties can always appeal an arbitration award in case of total or partial nullity of the award. Parties can’t waive the right to appeal the award.

6. Will the Courts enforce an arbitration agreement to preclude other forms of litigation?

Yes.

7. For Court proceedings, is mediation mandatory, either before or after filing of a claim or complaint?

Mediation is mandatory before filing a judicial complaint in the jurisdiction of the City of Buenos Aires. Mediation has also become mandatory in several provinces. There are some exceptions to the mandatory mediation procedure (e.g., criminal cases, precautionary measures, reorganization or bankruptcy proceedings, amongst others).

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8. What is the process for pre-hearing fact discovery (if any)?

There is no discovery in Argentina. Parties offer the evidence with the complaint and the answer to the complaint. There are more limited procedures to obtain or preserve evidence with the assistance of the Court, described below.

(a) Are there provisions for mandatory document disclosures?

The plaintiff or defendant can request assistance from the court to obtain information indispensable to the complaint or to secure evidence that could be destroyed or misplaced before trial. The procedure is known as "preliminary measures" ("*diligencias preliminares*"). The petitioner is entitled to request from the opposite party or a third party specific information, documents or other materials relevant to a case before filing the complaint or the petition for mediation. These preliminary measures are restricted and exceptional and must be always conducted through the court.

Along with the filing of the complaint or the answer to the complaint, parties can also request from each other specific documentation related to the case. But they must identify the documentation requested. They can't broadly request all documentation related to the case.

(b) Is there provision for oral examinations of the parties or others?

Yes. A party can request assistance from the court to depose an elderly or ill witness before trial. Parties can also be examined according to specific rules known as "*absolución de posiciones*".

Pursuant to the rules of "*absolución de posiciones*", parties are asked true or false questions. The "*absolución de posiciones*" is an archaic means of evidence that parties can offer in all types of claims, but judges rarely admit it.

(c) Are there limits on the length of oral examinations?

No.

(d) Are witness statements or summaries to be provided before the hearing?

No.

9. What is the process for pre-hearing expert disclosure (if any)?

There is no pre-hearing expert disclosure. Proceedings in Argentina are conducted in writing. In principle, hearings are scheduled only for: (i) conciliation of the case; (ii) deposition of witnesses; or (iii) explanations from experts appointed by the court, there are no hearings.

(a) Are expert reports or written summaries required to be exchanged?

Yes. Once the expert files his report in court, parties are entitled to challenge it and request explanations.

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(b) *Are the parties entitled to conduct a pre-hearing oral examination of opposing experts?*

No. But the parties are entitled to appoint their own technical advisors to control the elaboration of expert's report.

(c) *Are there provisions requiring experts to meet and narrow issues before the hearing?*

Yes. The expert must narrow his work to answer the questions submitted by the parties.

10. Are there other notable discovery rules?

No. There is no discovery in Argentine judicial proceedings.

11. Is there a prehearing conference (for trial management, settlement or other purposes)? Who conducts it? How long before the hearing?

Yes. After the filing of the answer to the complaint and court's ruling on preliminary defenses, the court must schedule a preliminary hearing to: (i) invite the parties to settle the case; (ii) decide which are the disputed facts; (iii) decide whether the evidence proposed by each party is admissible or not, (iv) order the rendering of the evidence declared admissible, and (v) determine the extension of the evidentiary stage. The judge must conduct this hearing. This hearing takes place approximately within 6 months from the answer to the complaint.

12. Can a prehearing motion for judgment be brought? If so, what is the threshold test for judgment?

The defendant can file preliminary defenses (known as "*excepciones previas*"). The court should rule on the admission of these defenses before the preliminary hearing – described in answer to question 19. The National Procedure Code accepts the following preliminary defenses: (i) lack of jurisdiction of the court, (ii) lack of legal standing of the plaintiff or defendant; (iii) defense on pending litigation (litispence); (iv) mistakes or omissions in the writ of claim; (v) res judicata; amongst others.

13. Is there a process for obtaining pre-hearing rulings with respect to evidence admissibility including admissibility of expert testimony? What is the process and when does it occur?

According to the National Procedure Code (applicable in national territories, federal cases and ordinary cases in the City of Buenos Aires), the plaintiff must offer all the evidence to be rendered in court with the complaint. The defendant must do the same with the answer to the complaint, and also opine on the admissibility of the evidence offered by the plaintiff. Then, the judge requires the opinion of the plaintiff on the admissibility of defendant's evidence.

In the preliminary hearing, described in answer to question 11, the court must decide on the admissibility or not of the evidence proposed by the parties.

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14. What is the standard for admissibility of expert evidence?

The court should accept the appointment of expert witnesses when a technical expertise in a given field is required to prove facts that are relevant to the case.

15. Does the Court have the power to appoint its own experts? Under what circumstances and what type?

In Argentine judicial proceedings, experts are appointed by the court. This expert must file his report with the court within a certain time.

Parties are entitled to appoint their own technical advisors to monitor the work of the expert.

16. Does your jurisdiction protect privilege? If so, what privileges are protected from disclosure (attorney client / legal advice; documents prepared in anticipation of litigation; settlement discussions; other)?

The legal concept of attorney-client privilege is not as elaborate as in the US.

Under Argentine law, all communications between a client and his attorney are confidential, and the attorney has the legal obligation to not disclose information about his client. In principle, the only person capable to release a lawyer from this obligation is the client. But a judge could demand the disclosure of information that the attorney considers privileged in case of “just cause”.

17. If privilege is not protected, are there other protections from disclosure (i.e. privacy) that could prevent disclosure of otherwise privileged information, and what is the basis for those protections?

Yes. According to the National Constitution, the written correspondence and private papers should not be violated (Section 18).

18. Who determines privilege disputes, or disputes with respect to other forms of protection described in 17 above?

The judge or tribunal that hears the case solves privilege disputes.

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19. Briefly describe the trial process?

Ordinary trial process is conducted in writing (except for certain criminal cases).

In Federal and National courts, a trial process starts with the filing of the complaint with the court. According to local procedure rules, the complaint must be served in defendant's current domicile. Then, the defendant has fifteen (15) working days to: (i) file the answer to the complaint, (ii) raise preliminary defenses, (iii) file the documents supporting his/her position and (iv) offer evidence. The defendant is entitled to file a counterclaim against the plaintiff in the same process.

After ruling on the preliminary defenses raised by the defendant, the court will declare the opening of the evidentiary stage and schedule a preliminary hearing to invite the parties to settle the case, decide which are the disputed facts and order the production of evidence. If no evidence has been offered and/or if there are not disputed facts, the court should declare the case as a matter of legal interpretation ("*de puro derecho*") and the case would be ready for court's final decision.

Once the evidentiary stage is closed, the parties are entitled to submit written closing arguments. After the filing of closing arguments, the court should render the final decision. Parties can appeal trial court's decision before a court of appeals. Court of appeal's final decision can be also appealed to the Supreme Court of Justice in very limited cases. The intervention of the Supreme Court of Justice is only reserved to cases where a federal law is questioned, a constitutional matter is under discussion or the final ruling is "arbitrary".

The Congress has introduced a modification to national judicial proceedings creating a Court of Cassation ("*Corte de Casación*") to hear appeals from the Federal and National Courts of Appeals located in the City of Buenos Aires. This Court of Cassation would hear all cases prior to a petition for writ of certiorari to the Supreme Court of Justice. The Bill has been passed and promulgated, but judges were not appointed yet.

(a) *Are there opening submissions, in what form and of what length?*

No.

(b) *What is the order of presentation of witnesses?*

The plaintiff must submit the list of witnesses in the complaint, and the defendant must do the same in the answer to the complaint.

(c) *Who conducts examination and in what order?*

An officer of the court conducts the deposition of witnesses. The party who has offered the witness starts the interrogation. Then, the opposite party has the right to cross examine the witness.

(d) *What is the process for closing submissions?*

Once the evidentiary stage is closed, the parties are entitled to submit written closing arguments with allegations on the evidence rendered in court. There is a single time limit for all parties to submit their closing arguments. Parties do not have the opportunity to address the opposite party's closing arguments.

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20. Please identify any other notable trial procedures.

Upon filing the claim, the plaintiff must pay a litigation tax (3% of the amount claimed). However, the plaintiff can request a "pauper benefit" to litigate without paying costs and expenses. This request should be based on economical and financial difficulties to pay the judicial costs.

21. Who bears the burden of proof of liability? Causation? Damages? What is the standard of proof for each?

Each party has the burden to prove their allegations. This is the general rule for damages and causation. But there is a trend in the judiciary that establishes that the party who is in a better position to prove a certain fact is the one who has the burden of proof.

22. What heads of damage are recoverable (compensatory, pre-judgment interest, punitive damages, other)?

A plaintiff can seek indemnification for compensatory damages plus interest since the causation of the damage. The compensation might also include loss of profits and emotional distress. The National Consumer Protection Law No. 24,240 authorizes judges to apply a civil fine ("punitive damages") to the supplier who does not fulfill legal or contractual obligations to the consumer.

23. If punitive damages are available, what is the threshold for recovery, and range of awards?

Punitive damages are only admitted in consumer cases. There is no other provision apart from National Law No. 24,240 that admits punitive damages. The maximum of a fine for punitive damages is AR\$ 5,000,000 (Argentine pesos).

24. Are there time limits for bringing claims? Responding to claims? Please describe.

Yes. According to the Argentine statute of limitations, a claimant has 3 years to bring a claim for damages based on a contractual relationship or based on a non-contractual relationship. There are also specific time limits to initiate lawsuits related to the transportation of goods or persons, consumer law, unpaid invoices, etc. Additionally, there is a residual time limit of 5 years for all those situations for which the Civil and Commercial Code does not establish a specific time limit.

In an ordinary proceeding, the defendant has 15 working days to answer a complaint. There are special proceedings in which the defendant has 5 working days to answer the complaint.

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25. What are the requirements to establish jurisdiction over a foreign defendant in your court? Can a foreign defendant request that the court decline jurisdiction on the basis that there is a more convenient forum?

In pecuniary and international cases, parties can agree on a particular venue (there are exceptions). If there is no agreement, Argentine jurisdiction is established according to the nature of the claim. Argentine courts have jurisdiction over cases related to real estate property in Argentine territory, or cases related to registrations in Argentine public registries, and when the place of fulfilment of the obligation is located in Argentine or the domicile of the defendant is in Argentine. These are the general rules that could be subject to exceptions in particular cases.

A defendant cannot request the declination of jurisdiction based on a more convenient forum. The doctrine of forum non conveniens does not exist in Argentina.

Exceptionally, Argentine courts could accept to hear a case even though Argentine jurisdiction rules did not give him jurisdiction in order to guarantee the access to justice and when the case has a relevant contact with Argentina.

26. Are there procedures for a defendant to bring other potentially responsible parties into the proceeding? Briefly describe.

Yes. In the complaint or the response to it, the plaintiff or the defendant can request the court to summon a third party to whom the controversy is common or who could be considered liable (e.g. an insurance company). This petition is discussed with the opposite party before the decision of the court.

A third party can also request voluntarily authorization to intervene in a case, if the future final ruling might affect his rights or if he could have been named defendant or plaintiff in the case.

27. Are legal costs recoverable by either party? If so, under what circumstances, and how is the amount calculated? (i.e. is it a loser pays costs system).

The general rule is that the loser pays all costs of litigation (legal fees, litigation tax, costs and expenses of legal proceedings). At his sole discretion the judge can depart from this rule and exempt, totally or partially, the losing party from paying the legal fees and costs. But this decision must be duly ground (e.g., if the judge finds that the losing party had grounds to litigate, or if the losing party was granted the "pauper benefit").

In Federal and National Courts, the fees of attorneys to the prevailing party are usually calculated by trial courts between 14% and 25% of the amount of the award. The fees for bringing the case before the Court of Appeals are usually set between 25% and 35% of the foregoing amounts. Expert witness' fees range between 4% and 8% of the amount of the award (expert witnesses can request the prevailing party pay 50% of their fees in case the losing party is insolvent).

Notwithstanding all the above, pursuant to Section 730 of the Civil and Commercial Code, total legal fees, judicial costs and expenses (including the litigation tax) in the lower instance should not exceed 25% of the amount of the award, unless malice is proven. This limitation does not include: (a) fees incurred during the proceedings before the Court of Appeals, and (b) the fees of the losing party's attorneys and expert witnesses and the expenses incurred by such party during the lawsuit.

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28. Are contingency fees allowed?

Yes. Contingency fees are allowed. A lawyer can take a case on a contingency basis. In Federal and National Courts, the contingency fee cannot exceed 40% of client's recovery.

29. Is third party funding of claims permitted? Under what circumstances?

There is no restriction.

30. Are class or multi-party actions allowed? Under what circumstances? For what types of claims?

Yes. Multi-party actions are allowed in all those cases where several parties demand or are demanded in relation to a same matter. There is no limit of parties, but the court can obligate plaintiffs or defendants to unify representation. Any type of action permits several parties.

Argentine law does not specifically regulate class actions as known in the US. But the National Constitution authorizes the filing of a special claim ("*acción de amparo*") by an individual, the ombudsman or a civil association in protection of the rights of the community (Section 43). Additionally, Consumer Protection Act No. 24,420 introduced in the Argentine legal system an action known as collective action ("*acción colectiva*" or "*proceso colectivo*") that is similar to a class action. This action can be initiated by a consumer or an association incorporated for the protection of consumers' rights.

Even though collective actions are not statutorily regulated, the National Supreme Court created a registry of collective actions in order to prevent the filing of different lawsuits involving the same claim and avoid contradictory ruling from trial courts ("Acordada 32/1014"). The National Supreme Court also determined a set of rules that all lower federal and national courts must follow in conducting a collective action ("Acordada 12/2016").

31. Can claims be commenced by a consumers association or other representative organization? Under what circumstances?

Yes. Section 43 of Argentine Constitution set forth that any person, the ombudsman and civil rights associations have standing to initiate summary proceedings ("*acción de amparo*") in protection of the environment, competition law, consumers' rights, and rights related to the public interest ("*derechos de incidencia colectiva*").

Consumer Protection Act No. 24,420 set forth that a collective can be initiated by a consumer, consumer associations, the Ombudsman, governmental enforcement authority and/or the prosecutor. The purpose of this action is exclusively the protection of consumers' rights. In these collective actions, the judgment in favor of the consumer is res judicata for the defendant and all consumers who are in the same situation, although they were not parties to the lawsuit. Additionally, the final ruling must establish the procedure to determine the individual damage suffered by each consumer.

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32. On average, how long does it take to get to trial/final hearing, and what factors can affect that?

In an ordinary process, it takes approximately 4 years to get a final ruling from the trial court. However, trial extension depends on the complexity of the case. In very complex cases, a trial final ruling could take more than 10 years. Then, the appeal process can last for 2 years.

33. Is an appeal process available (distinguish between final and interlocutory/procedural orders as needed)? Who hears the appeal? How are they appointed? What are their qualifications?

The losing party is entitled to appeal interlocutory and final rulings of trial courts, unless the amount involved in the case is less than AR\$ 50,000 (Argentine pesos). The National Procedure Code establishes that decisions related to the tender of evidence are not subject to appeal.

The appeal is heard by a three-judge panel of the Court of Appeal. Courts of Appeals are usually divided in panels composed of three judges, who are appointed in the same way as trial judges. An appellate judge must be Argentine citizen, 30 years old, have a law degree and 6 years in the profession or the judiciary.

In very limited cases, the decision of the Court of Appeals may be further appealed before the Federal Supreme Court (there would be an intermediate step once Court of Cassation were created). The intervention of the Federal Supreme Court is reserved to exceptional cases, particularly when a federal law is questioned, when there is a constitutional matter at stake or the final ruling is "arbitrary". The Federal Supreme Court might deny certiorari at its sole discretion and without expressing cause.

34. Are hearing rooms available for electronic trials or appeals (i.e. where documents and transcripts are presented on computer monitors; witnesses can testify by video conference)?

No.

35. What is the practice regarding the use of graphics, computer animation, power point and the like, in trials? In appeals?

There is no use of graphics, computers animations or power points. The activities in an ordinary process in Argentina are conducted in writing (except for certain criminal lawsuits). In principle, hearings are scheduled only for: (i) conciliation of the case; (ii) deposition of witnesses; or (iii) explanations from experts appointed by the court, there are no hearings.

36. Will the lawyer at trial be the same as the one responsible for pre-trial procedures? Is there a solicitor / barrister distinction?

Yes. The lawyer at trial will be the same as the one responsible for pre-trial procedures. There is no solicitor/barrister distinction.

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37. What are the contributory negligence laws in your jurisdiction? Is there a comparative fault assessment, joint and several or proportionate liability among tortfeasors? Does a plaintiff's negligence reduce or eliminate liability of defendants named in the litigation?

According to Argentine law, the person is liable for those damages that are consequence of a wrongful or negligent behaviour (Section 1724 of the Civil and Commercial Code). In the title 5, chapter 1.6, the Civil and Commercial Code provides for the liability of the owner and/or guardian of objects causing damages, of the owner and/or guardian of defective or risky things/goods (regardless of possible wrongful or negligent behaviour), and the owner and/or guardian of risky activities. It is understood that the manufacturer who introduces a defective or risky product into commerce should be liable for those damages that are direct consequence of the defect or risk of the product. In the title 5, chapter 1.6, the Civil and Commercial Code provides for the dependent responsibility.

As to the contributory negligence, Section 1729 of the Civil and Commercial Code establishes that there is no liability when an act of negligence of the victim is what has caused the damage. However, the defendant might not be completely exempted of liability. Plaintiff's negligence does not always eliminate defendant's liability, it might only reduce it.

Pursuant to Section 1751 of the Civil and Commercial Code, tortfeasors are joint and several liable in case of an unique case of damage. In other cases, the comparative fault assessment is done by the judge at his sole criteria. But courts must follow specific rules. For instance, Section 40 of Consumer Protection Act sets forth the joint and several liabilities of all participants in the production, sale and marketing of goods or services when damages are consequence of the risks or defects of products or services.

38. Is service of a complaint issued outside your country permitted in your country by "informal" means, or must the Hague Convention be followed?

According to local procedure rules, the complaint must be served in defendant's current domicile. When foreign companies or foreigners are sued in Argentina, they should be served notice of the complaint in their domicile abroad (unless the company has a permanent representation in Argentina or the individual has a permanent residence in Argentina).

Therefore, the judge should issue a rogatory letter for the service of process. Usually, the service of the complaint is conducted according to the provisions of the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (November 1965). Nevertheless, Argentine courts permit the service of process by informal means.

39. Do your laws prohibit export of relevant documents from your jurisdiction for the purposes of litigation outside your jurisdiction? (Consider privacy rules)

No.

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- 40. Please point out any litigation Best Practices employed by Courts in your jurisdiction but not yet referenced in the survey.**

None.

- 41. Are there any significant areas in which you believe the playing field between plaintiff and defendant is not level that you think need to be addressed?**

In general, the judiciary is being more likely to benefit the consumer than the industry.

- 42. Are there legislative efforts under way that address any of the litigation practices in your country?**

The Congress has introduced a modification to Federal/National judicial proceedings creating a Court of Cassation ("*Corte de Casación*") to hear appeals from the Federal and National Courts of Appeals located in the City of Buenos Aires. Court of Cassation will hear all cases prior to a petition for writ of certiorari to the Federal Supreme Court. The Bill was passed and promulgated, but judges were not appointed yet.

There are also efforts to regulate class actions. There are several bills under discussion.