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Argentina Seeks to Cap Rural Land Ownership by Foreigners

This April the Argentine Government sent to Congress a bill that sets restrictions on ownership of rural land by foreigners. If not corrected, its confusing provisions may cause uncertainty in real estate transactions.

On April 27, 2011, the Argentine President sent a bill to Congress (the “**Bill**”),¹ with a proposal to set a cap on ownership of rural land by foreigners.

What Are the Restrictions Envisaged in the Bill?

If enacted, the Bill will:

- (a) ban foreign ownership of more than 20% of the country’s rural land,
- (b) prevent foreign individuals or companies—please see below how a foreign company is defined—of a given nationality from owning more than 6% of the country’s rural land, and
- (c) ban any given foreign individual or company from owning rural land in Argentina in excess of an aggregate area of 1,000 hectares (equivalent to 2,471.053 acres, approximately).

These rules will apply to properties located outside urban areas, irrespective of the intended use of the land. This means that, for example, the restrictions will apply to industrial facilities or hotels, if located outside a city or town.

¹ Message 489/2011, file no. 73/11.

The Bill also provides that the purchase of rural property shall not be deemed “an investment” under the bilateral investment treaties entered into by Argentina, because of land’s non-renewable nature.

Furthermore, the Bill requires foreign individuals and companies that currently own rural property to report their ownership to an Inter-ministerial Board of Rural Property.

The Government has not explained yet how the 20 and 6% caps will be measured and by whom; this has been left for definition by implementing regulations.

Who Is Subject to the Restrictions?

While foreign individuals—even if resident in the country—are unambiguously subject to the Bill’s restrictions, the rules that define when those restrictions apply to companies are less than clear.

The Bill deems a company as “foreign” (and thus subject to its provisions) on the basis of an equity-holding threshold. If, for example, an equity interest held by a foreign individual or company in a local entity reaches that threshold, application of the restrictions is triggered.

However, the Bill has two conflicting provisions on this point, one setting that threshold at more than 51% of the company’s equity, and the other at only 25%. A company is also deemed as “foreign” when it has issued security instruments that entitle their holder to convert them into more than 25% of the company’s equity, and the holder or holders of such instruments are foreign.

The Bill includes other provisions aimed at preventing the circumvention of its restrictions through trusts or simulated structures. Nevertheless, the Bill as written lacks the necessary statutory clarity, and many questions arise on a first reading.

If the Bill is Enacted, What Will Happen with Foreigners who Already Own Land in Excess of the Restrictions?

The Bill specifically provides that it will not affect rights already vested, so foreign individuals and companies (as defined by the Bill) who already own rural land in the country will not be affected. However, if enacted as it stands today, the Bill will bring severe uncertainty for parties entering into real estate transactions with foreign individuals or local subsidiaries of foreign companies, or even with local companies who have issued securities.

Although the Bill and its strong political overtones are in line with the policies furthered by the incumbent administration, the Argentine Government has not

made public any studies that support the need for the caps provided by the Bill. It yet remains to be seen how serious the Government will be in pursuing its enactment. In any event, careful revision of the Bill's drafting is urgently called for.

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