SUSTAINABILITY AND CSR IN ARGENTINA: AN ANALYSIS WITHIN ARGENTINE COMPANY LAW

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I. INTRODUCTION

The beginning of the nineties in Argentina marked a starting point for a new trend in sustainability, which led to the enactment of stringent environmental regulations and the incorporation of environmental concerns into the National and provincial Constitutions. However, the scope of this reform concerning sustainability did not extend to Argentine Company Law. To date, Argentine Company Law does not provide for any specific and/or direct requirements in connection with sustainability, the protection of the environment, or corporate social responsibility (henceforth, “CSR”). For some academics and practitioners, the regulation of such matters falls outside the scope of Argentine Company Law. The present paper will not only provide an analysis of the barriers identified by such scholars, but also propose ways in which sustainability could be promoted through Argentine Company Law.

It is worth mentioning that other sources of law –including case law on environmental issues– have set forth mandatory disclosure and compliance requirements applicable to companies whose activities could have a social impact and cause adverse effects to the environment. Therefore, a comprehensive analysis of the operation of all types of companies in Argentina and their responsibilities towards stakeholders would not only

1 Abogado (J.D. Equivalent), Universidad Nacional de Tucumán, Tucumán, Argentina (2004). LL.M. in Environmental and Natural Resources Law and Policy, University of Denver Sturm College of Law, Denver, Colorado, United States of America (2008).

2 Argentina is organized as a federal, republican and representative democratic Republic. The country is a federal state, consisting of three levels of government: the federal government, the provincial governments and the local governments (municipalities). Such federal organization results from the fact that pre-existing provinces formed the country. Such provinces set up the federal government and delegated certain powers to it. The provinces hold all powers not expressly delegated to the federal government. According to the Argentine Constitution, each Province should draft its own constitution in accordance with the principles established by the Argentine Constitution, and must adopt measures for the creation of municipalities within its territory.

3 For the scope and purpose of this work, “Argentine Company Law” means rules, and regulations governing the incorporation and operation of business entities that can be used as vehicles to carry out business activities in Argentina; e.g. the Federal Corporate Law No. 19,550 and the Civil Code norms applicable to companies.

4 Chapter 2.2.5 of this paper provides a description of the different standpoints regarding this matter. See, in general, DUPRAT Diego, Responsabilidad Social de la Empresa, LA LEY 2009-C, 1067-LLP (August), 783. See also LUCHINSKY, Rodrigo S., El Sistema de Gobierno Societario, Ed. Abeledo Perrot, Buenos Aires (2006).

5 Judges have become important interpreters of the Argentine environmental law with relevant and novel decisions.
involve a review of the Argentine Company Law, but also an overview of the regulations that are applicable to business in general.

Within this context the purpose of this paper is to: 1) describe the regulations that govern types, incorporation, shareholding structures, and operation of companies in Argentina; 2) describe the barriers and possibilities of promoting sustainability within Argentine Company Law; 3) provide a brief overview of other sources of law that regulate behaviors of companies towards stakeholders; 6 and 4) indicate how environmental rules have impacted on companies’ environmental and social behaviors.

II. ANALYSIS

1. TYPES OF COMPANIES AND SHAREHOLDING STRUCTURE UNDER ARGENTINE COMPANY LAW

The Argentine Corporation Law No. 19,550 (henceforth, “CL”) establishes different types of legal investment vehicles in order to develop commercial activities in Argentina. In general, legal entities are governed by the CL and also by special rules and guidelines issued by the Superintendence of Corporations (henceforth, “SOC”) of the City of Buenos Aires or the Public Registries of Commerce in the provinces (hereinafter, “PRC”). Moreover, companies under the Argentine public offer regime (henceforth, the “Public Offer Regime”) are also subject to regulations issued by the National Securities and Exchange Commission or Comisión Nacional de Valores (henceforth, “CNV”).

Pursuant to the CL, the main types of legal investment vehicles could be categorized as local entities and foreign entities, as follows:

(i) Local Entities: Corporations (Sociedad Anónima) or “SA”; Limited Liability Companies (Sociedad de Responsabilidad Limitada) or “SRL”; Joint Stock Companies (Sociedad en Comandita por Acciones) or “SCA”; Silent Partnerships (Sociedad en Comandita Simple) or “SCS”; General Trading Partnership (Sociedad Colectiva) or “SC”; Capital and Industrial Partnership (Sociedad de Capital e Industria) or “SCI”; and Temporary Joint Ventures (Uniones Transitorias de Empresas or “UTE” and Agrupaciones de Colaboración Empresaria or “ACE”).

This being said, investors wishing to associate in order to carry out business activities usually use the SA and the SRL legal structures, which are the most common types of companies that enjoy limited liability due to their proven efficiency over other types, which have been forgotten due to lack of use.7

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6 This concept, which includes not only shareholders, but also employees, communities and the environment, will be defined below.

(ii) Foreign Entities: These could be classified as foreign companies interested in incorporating local companies or in having interests in local companies; foreign companies conducting isolated acts in Argentina; foreign companies conducting acts included in their company purpose, such as establishing a branch in Argentina; and foreign companies that have their main activity in Argentina or establish a domicile within the country.  

Companies incorporated abroad that decide to operate permanently in Argentina usually opt to establish a branch (sucursal) instead of a subsidiary (subsidiaria). This is because branches are easier to operate and have less bookkeeping requirements than the SA and the SRL. However, according to Argentine Company Law, branches are considered to fall within the same legal entity or group as their head offices. Consequently, the head office may be held jointly responsible with its Argentine branch. Conversely, if an Argentine subsidiary is incorporated, the liability of the head office will generally be limited to the assets contributed to that subsidiary (i.e., the subsidiary’s equity capital).

This Chapter will focus on the treatment of SAs –both private and under the Public Offer Regime-, SRLs and foreign companies under Argentine Company Law.

1.1. Corporation or SA

This Section will briefly describe the main features of the Argentine SA.

1.1.1. Incorporation

The SA is currently the most commonly used type of company in Argentina. As will be discussed below, incorporation as an SA equates that shareholders’ liability is limited to the amount of capital subscribed. The SA’s capital is represented by shares.

Pursuant to the “plurality of shareholders” principle established in the CL, a minimum of two shareholders (either individuals or companies) is required for the SA’s incorporation, and should be kept throughout the life of the SA in order to avoid its dissolution and liquidation (see Section 94 (8) of the CL).

Although the CL does not expressly regulate the capital percentage that each shareholder must hold, the SOC’s position on that matter is that one shareholder cannot hold more than 95% of the capital stock of the company. In this sense, the SOC General Resolution No. 7/05 states that “Companies where the plurality of members is merely formal or

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8 For more information regarding foreign entities, see Chapter 1.4 below.
10 SA is regulated in §§ 163 et seq., CL.
nominal will not be registered. The legal authority is entitled to control if there is a substantial plurality of members, by evaluating the initial contribution made by each funding member, and the registration shall proceed if the initial contribution is economically relevant to constitute, together with the other contributions, an actual plurality.”

In accordance with Section 30 of the CL, SAs can only participate in stock companies (sociedades por acciones); e.g. an SA can participate as shareholder of another SA.13

SA’s shareholders can be Argentine residents or even non-residents/foreigners. For the purpose of participating in an SA, a non-resident corporation will have to be previously registered with the SOC and prove it has been duly organized in accordance with the laws of its country of incorporation.14 Such non-resident company must also give evidence of its ability to perform in its country of origin the same or similar activities it intends to undertake in Argentina. Insufficient evidence may lead the SOC to consider the company an “off-shore company,” and consequently reject its registration as a foreign corporation, and request its incorporation as a local company.15

Finally, the Articles of Incorporation and the By-Laws of the SA16 need to be incorporated in a public deed before a notary and approved and registered before and by the SOC.

1.1.2. Object Clause / Social Object

The company must have an accurate and specific social object or business purpose (hereinafter, the “Object Clause”).17

As we will see below, the Object Clause must be distinguished from the “interest of the company” and/or the “purpose of the company.” The latter concepts will be considered

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13 In this regard, Section 30 of the CL states that: “Corporations (SA) and joint stock companies (SCA) can only participate in stock companies (sociedades por acciones).”
14 See § 123, CL.
15 See SOC General Resolution No. 2/2005.
16 According to § 11 of the CL, the Articles of Incorporation must necessarily include:
   (i) Name, age, marital status, nationality, profession, domicile and identification number of the shareholders;
   (ii) Corporate name and corporate domicile;
   (iii) Object Clause (also known as social object), which must be precise and determined;
   (iv) Capital stock expressed in Argentine currency, and description of each shareholder’s contribution;
   (v) Term of duration, which must be specific;
   (vi) Organization of the corporate administration, audits, and the shareholders’ meetings;
   (vii) Profit distribution and losses rules. In case the By-Laws do not establish such rules, such distribution will be proportional to each contribution made by the shareholders;
   (viii) Rules to establish the rights and obligations of the shareholders among themselves and with third parties; and
   (ix) Company’s operation, dissolution and winding-up procedure.
17 See § 11, CL.
synonymous throughout this work and will be discussed in Section 2.1 below.

The Object Clause constitutes the means by which the company’s economic activities are fulfilled. 18 Indeed, the Object Clause constitutes the set of acts or categories of acts that the company intends to undertake according to its articles of incorporation, whereas the *activity* is identified with the effective performance of acts by the company already operating. 19

For said reason, scholars stated that the Object Clause determines the capacity and, hence, the limits to the activity of the company and its directors. 20

Regarding the number of acts / activities that could be included in the Object Clause, certain scholars have argued that the CL admits the plurality of corporate activities, provided that the Object Clause excludes general enunciations. 21 Conversely, other academics have considered that the Object Clause must be exclusive.

In this regard, the SOC, which has sought to eliminate the practice of enouncing an Object Clause constituted by a plurality of diverse and disjointed activities, has established through SOC General Resolution No. 9/2004 that the Object Clause must not only be specific, but also be *unique*, admitting only the inclusion of other activities (also described in a precise and determined way), if they are related, ancillary or complementary to those that lead to the development of the Object Clause.

Moreover, as suggested above, the Object Clause sets a limit to the SAs’ directors’ liability, given that the directors are prevented from undertaking contracts on the companies’ behalf for activities that fall outside the scope of the SAs’ Object Clause. 22

Yet, this does not preclude a company from carrying out activities outside its current business 23 or making investments in other companies within the allowed limits, 24 even if directors have contracted beyond the scope of the SA’s Object Clause. Under such circumstance, the SA will have to comply with all contractual obligations; at the same time directors will be held liable for breaching their duties, though. 25

**1.1.3. Stock Capital**

The stock capital of an SA is issued in shares, 26 which must be nominative, non-

18 *See* Statement of Motives of the CL.
22 *See* §§ 58 and 59, CL.
23 *See* § 63 (1)(d), CL.
24 *See* § 31, CL.
26 *See* § 163, CL.
endorsable and may or may not be represented by certificates. Each share certificate may represent one or more shares.\textsuperscript{27}

The SA may issue ordinary and preferred class of shares. Shares must have identical rights within each class.

The minimum stock capital is currently of Argentine Pesos (“AR$”) 100,000 (approximately USS 20,400 at the current official exchange rate).\textsuperscript{28} Despite the said requirement, with shareholders’ contributions being invested for the accomplishment of the activities stated in the Object Clause, the corporation’s capital needs to be proportionate to such Object Clause.\textsuperscript{29}

Within this context, Section 67 of Resolution No. 7/05 states that: “The Companies Control Authority shall demand a higher initial corporate capital amount to the one established in the articles of incorporation, even for the incorporation of companies limited by shares with a minimum amount stated in Section 186, first paragraph of Law 19,550, if it notices that, due to the nature, characteristics, or plurality of the activities included in the Object Clause, the capital is evidently insufficient.”

The capital stock must be fully subscribed upon incorporation. At least 25% thereof must be paid-in at the time of incorporation, and the remaining balance must be paid-in within the following two years.\textsuperscript{30} Contributions can be made in cash or in kind. When the contribution is made in kind, subscriptions must be fully paid.

Increase or reduction of stock capital must be decided at the shareholders’ meetings.

Shares are freely transferable, but the transfer must be notified to the SA. Further, the By-Laws may limit the transferability of nominative or book-entry shares, provided that such limitation does not mean to prohibit their transfer.\textsuperscript{31}

1.1.4. Liability

The responsibility of the SA’s shareholders is limited to the amount of capital subscribed,\textsuperscript{32} since SAs are legal entities separated and independent from their shareholders.\textsuperscript{33}

1.1.5. Domicile

\textsuperscript{27} For information on shares, see §§ 207 et seq., CL.

\textsuperscript{28} See § 186, CL.

\textsuperscript{29} In this sense, see RICHARD, Efraín H. and MUIÑO, Orlando M., Derecho ... Op. cit., p. 165.

\textsuperscript{30} See § 187, CL.

\textsuperscript{31} See § 214, CL.

\textsuperscript{32} See § 163, CL.

\textsuperscript{33} See § 2, CL.
As regards the company’s domicile, it is mandatory to establish the jurisdiction where the company will develop its main business in the By-Laws.

1.1.6. Audits

SA could be subject to both internal and external audits. The syndics or surveillance committee - appointed by the shareholders - carries out the internal audits, whereas the SOC performs the external audits.

The syndics are in charge of controlling that the other corporate bodies (board of directors and shareholders’ meetings) comply with the By-Laws and legislation in general. When there is more than one syndic, then the syndics act as a collegiate body that is called “Control Committee.” The By-Laws shall regulate the constitution and functioning of such committee.

Corporations shall be subject to an internal and external audit in the following cases:

- If they are subject to the Public Offer Regime;
- If their stock capital is of more than AR$10,000,000;
- If they have governmental participation;
- If they are engaged in financial business;
- If they supply public services; or
- If they control or are controlled by another company subject to audits according to any of the previous considerations.

1.1.7. Dividends

Shareholders’ meetings must approve the distribution of dividends. In this sense, dividends may be distributed to shareholders only when they are the result of liquid and realized earnings corresponding to an annual balance sheet regularly prepared and approved by the shareholders, and provided that 5% of such proceeds are destined to the constitution and/or increasing the company’s legal reserves. It is worth mentioning that in 1998, Congress passed Law No. 25,063, which amended the Profit Tax Law creating a withholding tax on dividends of shareholders under certain circumstances.

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34 See § 294, CL (powers and duties of syndics).
35 See § 290, CL.
36 See § 299, CL.
37 See §§ 224 and 70, CL.
Only corporations subject to audits in the terms of supra 1.1.6 are allowed to distribute advance dividends or dividends arising from special balances. Otherwise, directors, members of the oversight committee and syndics shall be jointly and severally responsible for such payments and distributions.

1.1.8. Financial Statements

The SA’s financial statements reflect the financial situation of the company in a determined period of time, usually a year.

The board of directors and shareholders’ meetings must annually approve the company’s financial statements. Nevertheless, an independent auditor must audit the annual financial statements.

The National Court of Appeals of the City of Buenos Aires (Room A) has found in the case *Minetti y Cia.* (Jun. 6, 2006) that financial statements had the following three main functions: 1) to disclose the real economic status of the company; 2) to maintain the capital’s integrity; and 3) to show the company’s businesses. In our understanding, these main functions explain why financial statements are so important for partners and third parties.

Pursuant to Sections 63 et seq. of the CL, a company’s financial statements comprise of:

- A general balance sheet, which shall supply information about the companies’ assets and liabilities. The term “liability” should include the allowances for contingencies that are considered likely to become liabilities of the company and all other items that by their nature could represent a liability of the company towards third parties.

- The Profit and Loss Statement, which shall show, among other items, the following: the proceeds of sales or supply of services, arranged by group of activity; the management, marketing, finance and other ordinary expenses; extraordinary profits and expenses of the fiscal year; and the evolution of the company’s net worth.

- Accountant complementary notes and annexes, which shall provide information regarding: goods with restricted rights of transfer and explanation of such restrictions; assets encumbered by mortgage; pledge or other real rights; the procedure adopted in the case of revaluation or devaluation of assets; etc.

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39 See § 224, CL.
40 See §§ 63 et seq., CL.
41 See § 63, CL.
42 See § 64, CL.
43 See § 65, CL.
• A Managers’ Report,\textsuperscript{44} an auditor’s report and, if it were the case, a syndic or oversight committee report.

It is worth mentioning that each Argentine province has its Association of Professional Accountants (\textit{Consejo Profesional de Ciencias Económicas}). Furthermore, the entity that brings together all Accountants’ Associations within the country is the Federation of Associations of Professional Accountants (\textit{Federación de Consejos Profesionales de Ciencias Económicas}). The Center of Technical and Scientific Studies (“CECyT”), which is the Federation of Associations of Professional Accountants’ consulting body, establishes technical norms and standards for accounting, which will be applicable in provinces upon decision of their Association of Professional Accountants.\textsuperscript{45}

The CECyT Resolution No. 8, which is applicable in all provincial jurisdictions, indicates that the financial statements constitute one of the most important tools for the transmission of economical information regarding the status and management of private and public entities. Such Resolution establishes general standards on audits and, more specifically, standards of external audits to financial statements. Further, the Resolution provides for the need to unify the standards on audits, emphasizing on the importance of financial statements for all communities.

Other technical Resolutions are available on the City of Buenos Aires Accountant’s Association website.\textsuperscript{46}

1.2. \textbf{Limited Liability Partnership or SRL}

Traditionally, scholars have placed the SRLs in an intermediate position between the companies formed by individuals and the companies constituted by shares.\textsuperscript{47} Regardless, the fact that the SRLs’ capital is formed by quotas—and not by shares—belonging to its members or partners, makes this vehicle unique in terms of its character.\textsuperscript{48}

This Section will briefly cover the main characteristics of the SRLs.

1.2.1. \textbf{Partners}

The SRL is also widely utilized for the purpose of conducting business activities in Argentina. Indeed, their features are quite similar to those of an SA.\textsuperscript{49}

\textsuperscript{44} See § 66, CL.
\textsuperscript{46} In this respect, see \url{http://www.consejo.org.ar/elconsejo/res_tecnica.htm} (last accessed, Mar. 31, 2011).
\textsuperscript{49} SRL is regulated in §§ 146 et seq., CL.
The SRL may comprise of up to 50 partners (unlike the SA, which are not required to have a maximum limit), who may be local or foreign individuals or legal entities, with the exception of corporations and companies in silent partnership.

Similar to corporations, the CL does not establish a minimum percentage of participation in the legal capital, but if there were only two partners, the SOC criterion is that the maximum percentage of participation held by one shareholder must be 98%.

1.2.2. Liability

The partners’ liability is limited to the capital subscribed or acquired in the company, although members of SRL could be held severally liable towards third parties for: 1) the contributions they made; or 2) overvaluation of the contributions in kind at the time of formation of the company or in connection with an increase of capital.\(^{50}\)

1.2.3. Legal Capital

Unlike an SA, the capital of the company is represented by quotas instead of shares.

There is no minimum legal capital requirement. However, the SOC may object to an apparently insignificant initial capital. In this sense, at least 25% of the initial capital must be paid-in at the time the SRL is incorporated and the balance must be paid-in within the next two years.\(^{51}\) Contributions in kind must be fully paid upon subscription.

If the legal capital of the SRL is insufficient in order to fulfill the Corporate Purpose, then the SOC may demand an increase of the capital, pursuant to Section 67 of Resolution No. 7/05 abovementioned.

Furthermore, quotas are freely transferable. Each transfer of quotas must be notified to the SRL and registered with the SOC corresponding to the jurisdiction of the company, in order to make the transfer opposable to third parties.\(^{52}\)

1.2.4. Controls

In a case in which the legal capital amounts more than AR$ 10,000,000, a syndic or oversight committee must be appointed. Therefore, pursuant to Section 284 of the CL, companies not included in any of the situations referred to in Section 299 may decide not to appoint syndics if such suppression is contemplated in the By-Laws.

1.2.5. Financial Statements and Reporting

Pursuant to Sections 145 and 146 of the Resolution No. 7/05, the SRL must file its

\(^{50}\) See § 150, CL.

\(^{51}\) See § 149, CL.

\(^{52}\) See § 152, CL.
financial statements with the SOC, provided that the legal capital amounts more than AR$ 10,000,000.

Regulations concerning company’s domicile, financial statements and foreign quota holders referred to for the SA apply to the SRL.

1.3. **Companies Subject to the Public Offer Regime**

Section 198 of the CL authorizes the SA to increase their capital through their public offer of shares. For that purpose, the SA must comply with the requirements set forth by Law No. 17,811, which governs the activities of the CNV, the Stock Exchanges, and the Securities Exchanges.

The extraordinary shareholders’ meeting of the SA has the power to decide whether or not the company will make the public offering of its shares. In addition, the public offering will not be effective without the prior authorization of the CNV. Chapter 1.3.1 below will briefly describe certain requirements that the SA must fulfill in order to get such an authorization.

It is worth noticing that the Argentine National Congress has recently promulgated Law No. 26,831 (henceforth, the “Capital Markets Law” or “Law No. 26,831”), which was published in the Official Gazette last December 28th, 2012 and will be entering into force next January 28th, 2013. The Capital Markets Law aims to promote more participation of small investors in the capital markets and grants the government more regulatory power, increasing its oversight and control abilities over the individuals, entities and companies subject to the Public Offer Regime. Upon entering into force, the Capital Markets Law will replace Law No. 17,811 and other regulations applicable to companies subject to the Public Offer Regime, such as Executive Order No. 677/2001 on Transparency in the Public Offer Regime (hereinafter, the “Decree 677”).

Although Law No. 26,831 will introduce certain new specific rules to the Public Offer Regime, many of the current general provisions implemented by Law No. 17,811 and Decree 677 will remain unaltered under the new regime. For clarity’s sake, the current Public Offer Regime’s provisions mentioned in this paper will be matched with their equivalent provisions from the Capital Markets Law that will enter into force next January 28th, 2013 (the Capital Markets Law’s provisions will be mentioned in footnotes).

Finally, Section 155 of the Capital Markets Law also states that certain –not yet determined- sections from Law No. 26,831 will be subject to regulation. Indeed, as from

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54 See § 155, Capital Markets Law.
55 For a description of the modifications to the Public Offer Regime set forth by the Capital Markets Law, see PAOLANTONIO, Martin E., Reforma del Mercado de Capitales, LA LEY online 04/12/2012, 1.
January 28th, 2013 the CNV will have a term of 180 days in order to enact new regulations.

1.3.1. Requirements to Enter to the Public Offer Regime

Section 16 of Law No. 17,811 defines public offer as any invitation to people in general or to determined sectors or groups, in order to enter into any business with securities, done by the issuers or by any one-man organization or by any association exclusively or partially dedicated to the securities’ trade, through any kind of personal offerings, journalistic publications, or any type of media communication or advertising process.\(^{56}\)

It is also worth mentioning that Decree 677 provides that “In addition, a public offering shall include any invitation with regard to legal acts with other financial instruments, whichever their nature may be, traded on an authorized market, such as forward contracts or options.” \(^{57}\)

Conversely, Section 17 of Law No. 17,811 states that the only securities that may be publicly offered are those issued collectively which, on account of having the same characteristics and enjoying the same rights within their class, are offered in series and are identified specifically at the time of performance of the respective contract. \(^{58}\)

The shares of an SA are the most common securities issued in series.\(^{59}\) As suggested above, prior to obtaining authorization in order to offer shares to the general public, the SA must file an application with the CNV. The application must be accompanied by information and documents belonging to the company, including information on the corporation, information on shareholders, and information on accounting. The CNV has the power to grant or deny such company’s request to make the public offer of shares.

Furthermore, the CNV has monitoring powers over the companies under the Public Offer Regime, including but not limited to: 1) the power to control compliance of the company with the Public Offer Regime; 2) the power to authorize modifications to the company’s By-laws; and 3) the power to control capital variations.\(^ {60}\)

1.3.2. International Accounting Standards

The International Financial Reporting Standards (“IFRS”), issued by the International Accounting Standards Board (“IASB”) are mandatory for companies under the Public Offer Regime, except for those companies that can utilize other accounting standards

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\(^{56}\) See also § 2, Law 26,831.

\(^{57}\) See also § 2, Law 26,831 (definitions of “Oferta Pública” and “Valores Negociables”).

\(^{58}\) See also § 82, Law 26,831.

\(^{59}\) See BOUREL, Martín R. and BOUZAT, Gabriel, Oferta Pública, LA LEY online 1991-E, 1382.

\(^{60}\) See § 6, Law 17,811 and § 19, Law 26,831.
from other regulatory or control entities\textsuperscript{61}; \textit{e.g.} insurance companies and companies governed by the Law of Financial Entities No. 21,526.

Furthermore, it is worth noticing that the CECyT Resolution No. 26 on adoption of the IFRS\textsuperscript{62} has also provided for the optional applicability of the IFRS to all non-listed companies throughout the country.

\section*{1.4. Foreign Companies}

The Argentine Federal Constitution (in specific the Preamble and Article 20) grants foreign individuals and entities similar rights to those established for Argentine residents. In this regard, Argentina has subscribed a series of Bilateral Investment Treaties, in order to provide foreign investments with legal protection.

In this context, Federal Foreign Investments Law No. 21,382 dated 1976 guarantees foreign investments in the country, by putting into practice the abovementioned constitutional right of equal treatment to non-resident foreigners. Pursuant to Law No. 21,382, foreign investors may carry out investments in the country without previous approval form the government, under the same conditions granted to Argentine residents. Furthermore, the law grants the right to foreign investors to repatriate their capital and remit liquid profits abroad.\textsuperscript{63}

According to the CL, corporations incorporated abroad are governed, as regards their incorporation and structure, by the laws of their country of incorporation. The current corporate law system in force in Argentina does not confer a nationality to foreign companies, but, on the contrary, it merely acknowledges their legal capacity, abiding by the law of the domicile of the country of their incorporation.\textsuperscript{64}

The CL allows such entities to carry out their business within the country, subject to certain requirements and depending on the kind of acts to be performed and the regularity of their execution.

One of the cases in which a foreign company may carry out its business in Argentina is through a subsidiary or through a branch.

As mentioned in section 1 above, concerning the foreign entities incorporated abroad aiming to do business in Argentina, the CL comprises of the following cases: 1) foreign


\textsuperscript{62} Published in the Official Gazette in Jun. 30, 2009.

\textsuperscript{63} In this respect, please note that although the Argentine Central Bank regulations allow the payments of dividends abroad, in the last months Argentina has been experiencing certain informal or \textit{de facto} additional foreign exchange restrictions both to purchase foreign currency in Argentina and/or to transfer such foreign currency abroad as payment of dividends. These restrictions were aimed at preventing outflows of foreign currency in Argentina in order to maintain a positive payment balance.

companies interested in incorporating local companies or in having interests in local companies; 2) foreign companies conducting isolated acts in Argentina; 3) foreign companies conducting acts included in their corporate purpose, like establishing a branch in Argentina; or 4) foreign companies that have their main activity in Argentina or establish a domicile within the country.

Next follows a review of the abovementioned cases, with special emphasis given to the case in which a foreign company decides to set a branch in Argentina, as well as to the monitoring, control and duties of the company’s organs.

(i) **Foreign companies interested in incorporating local companies abroad or in having interests in local companies:**

These companies must be registered with the SOC or the PRC, under Section 123 of the CL. It must be pointed out that the SOC does not register off-shore companies under Article 123 of the CL.

(ii) **Foreign companies conducting isolated acts in Argentina:**

According to Section 118 of the CL, foreign companies can appear in Argentine Courts and carry out one-off transactions in the country without being registered or subject to special formalities.

However, as established in Section 122 of the CL, for each operation executed in Argentina the foreign company must appoint a representative -who does not necessarily have to be registered in the SOC or PRC.

The nature of “isolated acts” is not defined in the Argentine legislation, nor is it properly ruled by the SOC or PRC. Therefore, the regularity of one-off acts is generally monitored and regulated on a case-by-case basis.

It is accepted both in the case law and by scholars that the “isolated act” concept excludes activities that do not evidence signs of permanency, and that are in contrast characterized by their irregularity. Hence, said concept should be construed under a restrictive approach.65

On the contrary, for the regular exercise of their business in the country, foreign companies must verify their existence and regular incorporation vis-à-vis the laws of their country, set a domicile in Argentina and appoint a representative.

(iii) **Foreign companies conducting acts included in their corporate purpose, like establishing a branch in Argentina:**

Following the dispositions of Section 118 of the CL, foreign companies transacting business in Argentina on a regular basis must be registered with the SOC or PRC, keep separated accounting records and appoint a representative in the country.

The establishment of a branch in Argentina (sucursal) is the most frequent way in which foreign companies decentralize their business operations and carry out their activities in the country.

Branches constitute an administrative decentralization with respect to the head office, and are also named after their head offices. Therefore, they have legal autonomy, which is implemented by the appointed legal representative. Yet, branches are integrated to the head office as regards their equity. In fact, they have an economic dependency vis-à-vis the head office, and although the head office can assign capital to their branches, they do not have their own equity. 66

Furthermore, although branches keep separated accounting records, such records are afterwards reflected in the head offices’ accounting.

Given that under the Argentine legal system branches are not considered separated entities from their parent companies, the latter is liable for all the legal responsibilities corresponding to the Argentine branch, 67 and the legal representative of the branch is subject to similar liabilities to those corresponding to a director of an Argentine company.

The performance of activities in the country can also be carried out by means of agencies. Although Argentine Corporate Law does not include a precise definition for this term, agencies could be considered as simple administrative offices, without capacity to undertake legal business on their own. They can only manage already existing business or facilitate their execution.

Finally, affiliated companies are incorporated with legal independence vis-à-vis their head office, with their own legal capacity, autonomy and with their own capital and organizational structure.

As regards the registration requirement, according to Argentine scholars the lack of registration included in Section 118 of the CL not only compels the company to comply with all the obligations assumed in Argentina (with the corresponding charges, penalties and responsibilities), but also holds administrators, representatives, directors, managers and agents acting on behalf of the foreign company in Argentina jointly and severally responsible for such obligations and holds directors, managers and partners who consent to such actions jointly and severally responsible with the company, notwithstanding the responsibilities corresponding to the company itself. Yet, this lack of registration does not

convert the foreign company into an irregular entity.\textsuperscript{68}

(iv) Foreign companies that have their main business in Argentina or establish a domicile within the country:

Although, as elaborated above, the CL establishes that the incorporation and structure of foreign corporations are governed by the laws of their country of incorporation, Article 124 of the CL includes an exception to such a rule. In fact, according to Article 124 of the CL foreign companies shall be considered local companies, and are therefore subject to the local regulations applicable to such entities, when their head office is located in Argentina or when their main business is intended to be conducted in the country.

According to the view of several scholars, one of the purposes of this norm is to avoid fraudulent behavior which does not comply with Argentine law regarding the acts performed in its territory.\textsuperscript{69}

In this respect, foreign companies developing their main business or establishing a domicile within Argentina shall be considered as local companies for the purposes of their incorporation, transformation and control of its operation.


2.1. The Purpose / Interest of the Company (\textit{Interés Social})

2.1.1. The Opinion of Company Law Experts

As mentioned above,\textsuperscript{70} during this work we will use the concepts of “the purpose of the company” and “the interest of the company” (\textit{interés social}) as synonymous.\textsuperscript{71} For clarity’s sake, it is worth revisiting the difference between the “purpose” or “interest” of the company from the company’s “Object Clause” or social object –distinction that was also discussed in subsection 1.1.2 above. Indeed, the Object Clause refers to the set of acts that, according to the Articles of Incorporation, the company intends to undertake. As we will see below, according to the view of certain scholars, the corporate purpose or interest provides the guidelines under which the company shall achieve its Object Clause.

Argentine Scholars’ interpretation of the term corporate interest has been surprisingly varied. Despite the fact that researchers have contributed in shaping the general characteristics of the \textit{interés social} and its applicability in our country, they have yet not

\textsuperscript{70} See chapter 1.1.2 above (Object Clause / Social Object).
\textsuperscript{71} Regardless, the English translation of \textit{interés social} would be more equivalent to “the interest of the company” than to “the purpose of the company.”
agreed on a clear and specific definition of *interés social*.\(^{72}\) Certain Company Law experts, however, have even argued against the existence of such a term.\(^{73}\)

To begin with, the following are the two main theories that Argentine Company Law scholars have traditionally used in order to explain the concept of *interés social*:

(i) **Contractual Theories**: In accordance to these theories, the interest of the company lies in the company’s structure and is only connected with its members’ interests. These theories do not agree on the existence of a corporate goal which goes beyond the shareholders’ profit maximization.\(^{74}\) In other words, the interest or purpose of the company would be equivalent to such partners’ collective interest (the profit maximization), excluding any purpose exceeding such collective interest.\(^{75}\)

(ii) **Institutional Theories**: Unlike the Contractual Theories, the Institutional Theories do not restrict the scope of the company’s interest to the shareholders’ wealth maximization. Pursuant to Institutionalism, the corporate purpose belongs to the company itself and embraces a multiplicity of interests surrounding the company; *i.e.* partners’, workers’, communities’, and governments’ interests.\(^{76}\) Certain supporters of these theories have stated that companies have an economic role in societies, as instruments that should contribute to the economic development, the creation of jobs and wealth, the scientific progress, and in general, the improvement of life quality.\(^{77}\)

As discussed above, Argentine Company Law commentators have not reached a consensus on a single definition of *interés social*. Certain academic opinion has stated that the corporate purpose is constituted by the collective effort of both partners and the company in order to achieve the social object, irrespective of the partners’ individual interests.\(^{78}\)

According to other scholars, the corporate purpose equates a social objective, which is achieved with the proportional satisfaction of each of the partners’ individual interest.\(^{79}\)


Furthermore, certain authors have mentioned that there is no such thing as a corporate purpose in the subjective sense of the concept, since only individuals can have interests. In this context, it has been stated that the corporate purpose lacks the psychological or subjective elements than an individual’s interests may have.

Meanwhile, Manóvil has analyzed the corporate purpose based on the fact that in every company partners share common risks and, therefore, common goals. Since such common risks depend on the management of an also common patrimony formed by the partners’ contributions, a common interest between partners arises. Manóvil has argued that such common interest is what scholars call and what it is widely known as the corporate purpose.

In addition, Luchinsky has expressed the view that the corporate purpose is the maximization of the company’s residual value and the equitable distribution of such results. According to this author, the maximization of the residual value means the increase of the company’s equity, which is owned by the shareholders provided that the company’s debts are fully paid.

On the other hand, Dobson has found in several provisions in the CL and in case law the presence of a corporate interest that is not limited to the partners’ individual interests, but goes beyond those interests. Said corporate purpose includes third parties’ and stakeholders’ interests, so long as such third parties or stakeholders are somehow affected by the company’s actions.

Within this context, stakeholders have been defined as parties that could have an interest in the company’s businesses or that could in some way be affected by the businesses’ management, including but not limited to, employees, suppliers, clients, other companies, the communities where the company conducts its activities, the environment, etc.

Pursuant to Dobson’s view, the *interés social* shall not be construed in the subjective sense of the term, but only in its objective sense. In order to match the corporate purpose with the stakeholders’ interests, Dobson has associated the *interés social* with the company’s social object. In that sense, according to Dobson’s interpretation of the term, the corporate purpose set forth the guidelines that the companies’ representatives should follow in order to help the company to achieve the social object. It is worth mentioning that Dobson has envisaged the concept of social object as a dynamic term, depicting it as the set of all acts and lawful activities that could be undertaken in the factual world.

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Accordingly, since all lawful activities would have positive effect on the society, Dobson has stated that the *interés social* is deeply related with the interests of the society in general.86

Our view is that companies cannot be isolated from the context where they conduct their activities. In fact, companies fulfill a very important role in economies and society in general. Most of the times, their acts have a social and economic impact with a direct effect on workers’ life quality, on the environment, and on the suppliers’ businesses.

As we will see below, in several provisions in the CL the concept of *interés social* shows up as a corporate interest that goes beyond shareholders’ individual interests. Following Dobson’s line of reasoning and correlation of the terms *interés social* and social object, it could be deemed that according to the CL the corporate purpose encompasses not only the profit maximization and increase of companies’ residual value, but also third parties’ interests that are somehow potentially affected by companies’ activities.

### 2.1.2. The Corporate Purpose in the Argentine Company Law

Although the CL has not systematically elaborated on the term *interés social*, there is a wide range of regulatory provisions in the CL and Decree 677 that discuss the term in question. These rules indicate that the legislator has given different interpretations to this concept. In some instances, the concept can be interpreted as the common goal of the company’s members. Conversely, in other instances, it can be viewed upon us as a superior concept that goes beyond the members’ interests.

The following are some examples of the utilization of such concept within the CL and the Public Offer Regime:

(i) Section 54, states that:

“...An action by a company that covers the prosecution of objectives beyond those of the company, or constitutes a mere device to violate the law, the public order or good faith or to frustrate third party rights, shall be directly imputed to the members or controlling parties that made such action possible, who will be held jointly and severally liable for all damages resulting from such action.”

It is worth mentioning that Section 54, which regulates the non-opposability of the legal entity (*inoponibilidad de las sociedades*), seems to refer to the term *interés social* implicitly. In this respect, scholars have argued that the concept of “attainment of objectives against the law” should be understood as a deviation of the company’s interest and is intended to protect the interest of third parties.87

(ii) Section 271, pursuant to which:

86 *Id.*
87 *Id.*, p. 63.
“A director can only enter into contracts with the corporation that are in the corporation’s normal business whenever such agreements are entered into under market conditions.

Agreements that do not conform to the requisites mentioned in the preceding paragraph may only be entered into after the approval of the Board or consent of the Syndics if there is no quorum. These transactions must be reported to the shareholders Meeting.

If the shareholders Meeting disapproves the agreements already entered into, the directors, or the Syndics in their case, shall be joint and severally liable for the damages caused to the company.

Contracts entered into in violation of the rules established in the second paragraph and which are not ratified by the Shareholders’ Meeting are null and void without impairing the liability stated in the third paragraph.”

(iii) Section 272, which reads as follows:

“When a director has an interest adverse to that of the corporation, he must inform the Board and the Syndics and abstain from participating in the deliberation, under penalty of incurring the responsibility of Section 59.”

(iv) Section 273, which states that:

“A director cannot participate, on his own account or for the account of third parties, in activities in competition with the corporation, except with express authorization of the Shareholders Meeting, under penalty of incurring the responsibility of Section 59.”

It shall be noted that the abovementioned Sections 271 to 273 set forth conditions in connection with the performance of management tasks, seeking to protect the company and its members by making the loyalty duty effective. In this context, it appears that the legislator intended to safeguard not only the shareholder’s interests, but also those of the company -as a legal entity separated and independent from its members- from the administrators’ negligent acts.

(v) Section 197 provides for conditions that limit the shareholders’ preferential rights for new shares, when the “corporate interest” requires such limitation. This Section reads as follows:

“The extraordinary Shareholders Meeting...may resolve in special and exceptional cases -when required by the interests of the corporation- to limit or suspend the preferential right for the subscription of new shares, under the following conditions: 1) That the discussion about this decision be included in the
meeting’s agenda; and 2) That the new stocks are to be paid for by contributions in kind or are given in payment for preexisting liabilities.”

(vi) Further, Section 248 states that shareholders with interests in conflict with the corporate interest shall not participate in the shareholders’ deliberations regarding issues under conflict. Pursuant to this Section:

“The shareholder … who in a specific transaction has, whether on his own or for a third party's account, an interest contrary to that of the corporation, is obliged to abstain from voting on the resolution relative to it. If this disposition is contravened, the shareholder will be responsible for the damages, whenever the majority necessary to obtain a valid decision would not have been attained without his vote.”

(vii) Section 8(a)(I) of Decree 677/01 states that representatives of companies under the public offer regime have the duty to make the interest of companies and of their members prevail over any other interests. 88

To sum up, Argentine Company Law appears to provide several interpretations of the term interés social. In some instances, shareholders’ goals and interests are emphasized. In other instances, the independent interest that goes beyond that of shareholders’ profit maximization and that involves the stakeholders’ interests is referred to. However, as discussed above, the corporate interest has not been methodically or systematically developed within the CL.

2.2. The Competence and Duties of the Company’s Organs

2.2.1. Company Organs in SA

(i) Corporate Management and Surveillance: The Board of Directors

An SA is administered by a board of directors composed of one or more members appointed by the shareholders’ meeting. The legal representation of an SA is vested in the president of the board.

The CL states, among others, that: 1) the board must hold regular meetings, at least once every three months (formality); 89 2) the quorum for a valid board decision is the absolute majority of its members; 90 3) directors may appear by proxy, but only if the necessary quorum is obtained without absent members; 91 and 4) board members must grant the SA a monetary guaranty to account for their performance which cannot be lower than AR$88 However, please note that the recently published Capital Markets Law has not adopted a provision equating the abovementioned Section 8(a)(I) of Decree 677.

89 See § 267, CL.
90 See § 260, CL.
91 See § 266, CL.
Moreover, a controller or syndic—who is a certified public accountant or a lawyer whose main duty would be to sign the financial statements—shall supervise the activities of the company on behalf of its shareholders, and verify that the board of director’s duty of managing in the company’s interests is complied with. However, non public companies can be exempted from the syndic so long as their corporate capital is below AR$ 10,000,000, and they do not work in public concessions or undertake activities related to banking or financial services.

Pursuant to the CL, there is no obstacle for a foreign citizen or non-resident to become a director of an SA. It must be pointed out however that the majority of the board members must be Argentine residents. The number of members on the board shall be determined by the By-Laws from a minimum of one, and equal or less members should also be appointed as alternates. If the board only has one member, such a member and its alternate must both be Argentine residents.

(ii) Shareholders’ Meetings

The shareholders’ meetings are the SA’s governing body. Regular shareholders’ meetings must take place in order to consider the following matters: 1) approval of the financial statements of the previous fiscal year, distribution of profits, management report, and all other measure in connection with the management of the company; 2) performance and liabilities of board members and syndics (as the case may be); 3) if necessary, appointment and removal of members of the board and syndics; and 4) capital increases, pursuant to Section 188 of the CL.92

The annual regular shareholders’ meetings must take place within five months as from the closing of each fiscal year.

In addition to the regular shareholders’ meetings, extraordinary shareholders’ meetings can be held at any time in order to consider any other matters that cannot be treated at regular meetings—e.g., capital increase or reduction, merger, early liquidation, etc. That is, pursuant to the system of the CL, the extraordinary shareholders’ meetings have a residual competence.

2.2.2. Company’s Organs in SRL

SRLs do not have board of directors, but have “managers.” In this respect, the legal representation of the company is vested in the manager or managers. In the latter case, the majority of them must be Argentine residents.

The CL does not require the company to hold managers’ meetings, unless required by specific rules in the company’s By-Laws or unless the SRL’s capital is greater than AR$ 92 See § 234, CL.
10,000,000.93 A resolution of meetings can be adopted as follows: 1) by means of members’ vote; or 2) by means of written statement where all members express their votes.94

With respect to SRL’s which capital exceeds AR$ 12,000, each manager shall also offer a guaranty of AR$ 10,000 as it is the case in the SA.

2.2.3. Directors’ Liabilities

According to the CL, companies’ directors and managers have unlimited, joint and several liability towards companies, shareholders and third parties for mismanagement as well as for not complying with the law, the company’s By-laws or the regulations thereof, and for any other damage incurred as the result of fraud, abuse of authority and gross negligence. Mismanagement arises if the directors or managers do not follow the duties of care or loyalty set forth by Section 59 of the CL, which states that:

“The administrators and representatives of the company must perform their task loyally and with the diligence of a good businessman. Those who were not to meet their obligations shall be unlimited, jointly and severally liable for damages arising from their acts or omissions.”

Liability shall be imputed considering the managers’ individual performance whenever functions had been assigned in accordance with the company’s By-laws, the regulations or a shareholders meeting’s resolution.95

As suggested in Section 2.1.2, when a director or manager has a conflict of interests - that is, an interest that is contrary to the corporation’s interest - the manager must inform this to the board of directors and the syndics and abstain from participating in the deliberation, subject to incur responsibility for mismanagement.

Furthermore, also pursuant to the CL provisions enumerated in Section 2.1.2, a manager or director can only enter into contracts with the company that are in accordance with its normal business whenever such agreements are entered into under market conditions. Agreements that do not comply with these legal requirements may only be entered into after the board’s approval or the syndics’ consent. In addition, these transactions must be reported to the shareholders’ meeting. If the shareholders’ meeting disapproves the agreements already executed, the directors, or the syndics in their case, shall be joint and severally liable for the damages caused to the company.

93 See § 159, CL.
94 Id.
95 Notwithstanding this, a director who participated in the deliberation or resolution or who acknowledged it, shall be exempted from liability if it is recorded that he had protested in writing provided for on the record and gives notice to the syndic before his liability is reported to the board of directors, the syndic, the shareholders’ meeting, the competent authority or before judicial action is exercised.
Contracts entered into in violation of the rules referred to beforehand and which are not ratified by the shareholders’ meeting are null and void without impairment of the liability stated for the directors or syndics.

2.2.4. The Relationship Between the Duties of Care and Loyalty and the Corporate Interest

Following certain scholars’ line of reasoning, the importance of the corporate interest or purpose lies on that it indicates the direction towards which the company’s activities should be conducted. 96 It follows that, the company’s actions shall aim towards serving the interests of the company. According to Dobson, the interests of the company are independent and go beyond the exclusive interest of its members.97

Within this context, commentators have argued that the interés social is deeply related to the managers’ duty of care and the duty of loyalty provided for in the CL.

The former duty, the duty of care, had aimed to avoid a negligent administration of the company. It is embodied in the obligations of administrators to conduct their tasks as good businessmen provided for by Section 59 of the CL. This duty requires administrators to have expertise in connection with the assigned tasks and entails, among others, the following responsibilities: 1) administer the company properly; 2) supervise the company’s business; 3) make informed decisions; 4) implement mechanisms in order to protect the company’s interests; 5) disclose information to the public diligently; and 6) comply with the law.98

Conversely, pursuant to the duty of loyalty, representatives cannot obtain benefits from situations in which the interests of the company are in conflict with its members’ personal interests. The duty of loyalty is also provided for in Section 59 of the CL, which expressly obliges administrators and representatives to act loyally towards the companies to which they represent.99

According to such line of reasoning, it appears that the final goal of the duties of care and loyalty is to prevent any conflicts of interests arising as between the company and its representatives. Furthermore, if any conflict arises, the administrators should make certain that the interest of the company prevails over any other interests.

It has been made clear that a common feature of both duties of care and loyalty is the obligation to seek, under any circumstance, the interés social.100 In this sense, it has been

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96 See DOBSON, Juan I., El Interés... Op. cit., p. 50.
97 Id.
98 For more information of the duty of care under Argentine Company Law, see LUCHINSKY, Rodrigo S., El Sistema de Gobierno... Op. cit., pp. 65-87.
99 For information regarding the duty of loyalty under Argentine Company Law, see LUCHINSKY, Rodrigo S., El Sistema de...Op. cit., pp. 89-111.
100 See DOBSON, Juan I., El Interés...Op. cit., pp. 53-54
stated that whenever the administrators perform their tasks as provided for by Section 59 of the CL, they will be serving the corporate interest.

2.2.5. Conclusions Regarding Barriers for Sustainability within the CL

As suggested above, the concepts of sustainability, CRS and/or environmental protection are not internally embodied in the Argentine Company Law. The following subsection will accordingly analyze the barriers and possibilities for promoting sustainability within Argentine Company Law.

Let us start by understanding the real meaning of CSR. This concept has been defined as a procedure by means of which companies assume responsibility of their actions within the social, economic and environmental context. In this sense, CSR is present in: the business ethics, the business transparency, the quality of the products and fairness of their price, the environment, the relationship between the company and its employees and the labor conditions, the relationship with consumers and clients, and the relationship with suppliers.101

Regarding barriers for CSR within Argentine Law, it is worth noticing that several sections within the CL are mainly based on the principles of Contractual Theories, which do not agree on the existence of a company’s goal that goes beyond the shareholders’ profit maximization.

Researchers in support of the Contractual Theories are of the view that the protection of the interests that are different to those of the companies member’s interest -e.g. the community interests-, falls outside the scope of Argentine Company Law.102 Pursuant to this line of reasoning, there should be no modification of the current structure of companies set forth by the Argentine Company Law for the purpose of protecting stakeholders’ rights.

Within this context, the regulation of stakeholders’ interests by company law could involve several issues; i.e. it would be difficult to identify interests supposedly affected by the company’s activities and to determine how relevant these interests are and how these interests shall be taken over.103

Along similar lines, other authors have indicated that the promotion of CSR via de means of Argentine Company Law would also demand a redefinition of Section 59 of the CL, which as mentioned above regulates the duties of care and loyalty of companies’ administrators. Indeed, the allocation of resources by administrators in order to satisfy

stakeholders’ interests without considering the investors’ or shareholders’ short term needs could go against such duties of care and loyalty.104

Pertaining to the policy side of this issue, company law scholars have understood that enacting legislation providing for CSR in company law would involve a very complicated debate, since such legislation could generate a decrease in investment and further contraction of the economy.105

This being said, according to such scholars, the government appears to be the one responsible for the safeguard of the stakeholders’ interests, by means of setting forth the minimum standards under which companies shall conduct their activities; e.g. insurance requirements, labor and social security requirements, protection to the environment, etc.106

In Argentina, traditional external regulations –mainly, environmental laws and case law- currently govern companies’ environmental and social behaviors. In the last years, many Argentine companies appear to have internalized environmental and social matters by developing and implementing a wide array of CSR plans.

In this author’s opinion, several of the perspectives above described against the promotion of CSR within Company Law are based on grounds which could be challenged, for the following reasons: i) first of all, such approaches seem to ignore the current reality of businesses and the social and economic role of companies. In the last years, for example, certain Argentine companies107 have been engaged in CSR plans which included investments in infrastructure and the development of educational and training programs for community members and for employees. Undoubtedly, these investments in CSR programs have helped such companies to earn a positive image in the society, since they have contributed to forming a positive attitude of the involved stakeholders’ towards such companies. ii) On the other hand, these theories do not seem to acknowledge the possible existence of a corporate interest that could embrace not only the shareholders’ profit maximization, but also stakeholders’ interests. As discussed in Chapter 2.1.1 of this paper, certain academic opinion has mentioned that the scope of the corporate interest is not restricted to the shareholders’ wealth maximization, but takes into account a multiplicity of stakeholders’ interests surrounding the company.108 Within this context, if we agree with the approach that the corporate interest could go beyond the shareholders’ profit maximization goal, then under such circumstance it would not be wrong to state –for instance- that administrators promoting CSR plans would not be violating their duties of care and loyalty.

107 Mainly, the companies that got involved in CSR plans were large companies with a significant number of employees.
108 See, for example, DOBSON, Juan I., El Interés… Op. cit.
This is not to say that the current system of the CL is the ideal scenario where to promote companies’ sustainable behaviors. On the contrary, it is true that the CL is based on the Contractual Theories\textsuperscript{109} and Company Law Scholars have come up with reasonable and well-thought arguments in order to dissipate theories towards sustainable companies.

3. **ACCOUNTING / REPORTING AND AUDITING ASSURANCE**

3.1. **Sustainability/Environmental and Social Reporting in the Annual Accounts, Annual Reports/Management Commentaries and Corporate Governance Statements**

As suggested above, the CL provides for regulations on companies’ accounting. Sections 61 through 73, which are applicable to all companies -since these sections are part of the body of general stipulations of the CL- set forth specific requirements regarding the financial statements’ formalities.

Nevertheless, the CL’s stipulations vis-à-vis the formality of financial statements do not establish any mandatory requirements referring directly to sustainability/environmental and social reporting in the annual accounts and consolidated accounts; nor do they provide for any concrete benefits for the voluntary reporting of these issues.

Yet, some technical advisors of the Professional Accountants’ Associations of the City of Buenos Aires have alleged that the current environmental regulations have caused companies to include environmental matters in their financial statements (mainly, in managers’ reports and accountant complementary notes).\textsuperscript{110}

In accordance with said opinions, it seems that the companies’ financial statements should assess certain environmental contingencies, which have the following common features: 1) the actions that generate the contingencies shall take place on or before the date the fiscal year ends; 2) the cause must be referred to identifiable and specific situations –e.g. a suit for environmental pollution that has not yet been solved- or to undetermined risks –e.g. bonds for eventual environmental pollution; and 3) the contingency may result in losses –e.g. an unfavorable decision in suits for environmental pollution- or profits –e.g. reimbursements to the company by third parties.\textsuperscript{111}


3.2. **Sustainability/Environmental and Social Reporting Separate from Annual and Consolidated Accounts and Compulsory Annual Report/management commentary information**

On the other hand, there are certain regulations external to the CL that would result in companies elaborating on *special* social balance sheets, *i.e.* in these cases the social and environmental reporting is separated from the annual and / or consolidated accounts.

Said regulations are, as mentioned, *external* to the CL, *i.e.* they are not seen as Company Law. Further, some of them are mandatory and others are voluntary, as elaborated below.

### 3.2.1. Federal Law No. 25,877

The first precedent in Social Balance Sheets was the enactment of Law No. 25,877, which, in its Chapter IV, states that companies with more than three hundred (300) employees should elaborate on an annual basis a “...*social balance with systematized information regarding work conditions, labor cost, and social security benefits in charge of the company. This document will be submitted to the Labor Union with legal recognition.*”

Pursuant to this law, the Social Balance Sheet shall contain, among other things, the following requirements: balance sheet, profit and loss statement, evolution of the net worth statement, and accountant complementary notes and annexes. 112

### 3.2.2. Law No. 2,594 of the City of Buenos Aires

The City of Buenos Aires has passed Law No. 2,594 (published in the Official Gazette on January 28, 2008) on Balances of Social and Environmental Responsibility (henceforth, “BASER”). This Law seeks to promote social and environmentally sustainable behaviors, by requiring certain companies to elaborate and submit their BASERs to the enforcement authority. The law constitutes an important precedent regarding legislation specifically related to sustainability and CSR.

Although regulatory details have not been passed yet -which makes the law so far inoperative-, it is worth mentioning the law’s most important provisions, as follows:

Law No. 2,594 is applicable to all companies –national or foreign, private or public- that either have established domicile in the jurisdiction of the City of Buenos Aires or develop their principal activities within such city.113

Pursuant to Section 2, the elaboration of the BASER is voluntary, except for companies with more than three hundred (300) employees and with an annual turnover above the limits set forth by Disposition No. 147/06 issued by the “SEPyME” (Secretariat of Small

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112 See §§ 25-27, Law 25,877
113 See § 4, Law 2,594.
and Medium Enterprises and Regional Development) for medium enterprises, for which the elaboration of the BASER is mandatory. The limits vary depending on the companies’ activities, as follows: i) AR$ 18,240,000 for agro companies; ii) AR$ 60,000,000 for industries and mining companies; iii) AR$ 88,800,000 for commerce companies; iv) AR$ 22,440,000 for service companies; and v) AR$ 24,000,000 for construction companies.

Furthermore, Section 3 establishes that companies that are not required to submit a BASER but yet voluntarily submit it will obtain benefits in connection with access to credit lines and technology innovation.

Section 10 provides for the creation of a Public Registry, where companies shall upload their BASERs. Pursuant to Section 8, the enforcement authority shall set forth the parameters and conditions under which companies will elaborate the BASERs, including but not limited to: 1) the equity aspect (which seeks to promote equity between men and women); 2) the social aspect (which seeks for an economically sustainable development and entails the relationship between companies and the different stakeholders; i.e. their employees, communities and influence areas, clients and suppliers); and 3) the environmental aspect (which includes the interaction between environment and companies and seeks to the promotion of activities reducing pollution and fostering a sustainable utilization of the natural resources).

Finally, transitory provision No. 2 of this Law proposes a series of accounting standards for the elaboration of BASERs’ indicators, such as: the Global Reporting Initiative (“GRI”), which is an international procedure for a multiplicity of sectors, intended to develop and spread globally the Sustainability Reporting Guidelines; and the Accountability 1000 (“AA1000”), which is a liability parameter seeking to assure social and ethical quality in the accounting, revision and submission of information.

3.2.3. Law No. 8,488 of the Province of Mendoza

The province of Mendoza has recently enacted Law No. 8,488 on Balances of Social and Environmental Responsibility (the “Social Balance”).

Pursuant to Law No. 8,488 –which was published in the Mendoza Official Gazette last November 28th, 2012- all companies with more than three hundred (300) employees and with an annual turnover above the limits set forth by SEPyME Disposition No. 147/06 must prepare a Social Balance in accordance with the guidance issued by the enforcement authority.

Please note that Law No. 8,488 has not been regulated yet, and thus is up to now inoperative.

3.2.4. Resolution No. 559/09 of the CNV

114 The Mendoza Law No. 8,488 is similar in its provisions to Law No. 2,594 of the City of Buenos Aires.
In August 2009, the CNV issued Resolution No. 559/09 (“the Resolution”), applicable to listed companies under the Public Offer Regime created by Law No. 17,811. The Resolution constitutes the first precedent regarding obligations of companies under such a regime to disclose environmental information in connection with their activities.

Pursuant to the Resolution, companies under the Public Offer Regime whose corporate purposes include activities that could cause adverse effects in the human environment should report as material facts: 1) any environmental surveys or audits prepared for or by the companies; 2) any adaptation programs implemented by such companies; 3) details regarding the companies’ compliance with the environmental insurance obligation set forth by the GEL; and 4) any measure or environmental management plan implemented by the companies in order to prevent environmental damages.

Furthermore, within the offering memorandums for the issuance of negotiable securities in Section “Key Information About the Issuer,” companies must report the material facts mentioned above, and also any authorizations granted by environmental authorities in the jurisdictions in which the company conducts its activities.

It shall be noted that the Resolution has been the subject of debate among several Argentine companies and associations of companies, who have raised issues regarding its scope and applicability.

In this sense, pursuant to a letter issued by the Argentine Associations of Corporations (Cámara de Sociedades Anónimas) last August 27, 2009, the Resolution is not operative yet until the CNV issues supplementary regulations in order to clarify the scope of the abovementioned duty to inform. Indeed, Section 1 of the Resolution –incorporated into General Resolution No. 368/2001 as Section 21, Ch. XXX Title 11– expressly states that the CNV must issue supplementary rules regarding the obligation of companies to disclose environmental information.

The Association of Companies has also alleged that the Resolution is in conflict with Law No. 25,813 on Free Access to Public Information, since it denies the confidential aspect of private entities’ environmental information, by unreasonably extending the number of persons / entities who would be obliged to disclose this type of information.

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116 Letter from the Cámara de Sociedades Anónimas to Dr. Eduardo Hecker, President of the CNV, dated Aug. 27, 2009.
117 Pursuant to Law No. 25,813, which is also a minimum standards law, the following persons have the duty to disclose environmental information, upon request: (i) national and provincial authorities of applications; and (ii) companies –either public or private- that supply public services. For more information on this law, see CHERVIN, Mariela and ALTIERI, Carolina, Derecho de Acceso a la Información Pública Ambiental: Proceso de Reglamentación de la Ley 25.831 Ajustado al Ordenamiento Jurídico del Derecho
3.2.5. Voluntary and Mandatory Reporting in Argentine Environmental Law

Argentine environmental regulations (henceforth, “Argentine Environmental Law”) provide for a regulatory scheme applicable to industrial and business activities, which aims to prevent environmental damages that may arise from such activities. As explained infra, these regulations set forth both voluntary and mandatory reporting provisions, which will be described in the present subsection. However, for clarity’s sake, we will first refer to the evolution of Environmental Law and its impact on company life in Argentina. Then, we will elaborate the voluntary and mandatory reporting established by environmental rules.

3.2.5.1. Evolution of Argentine Environmental Law

Researchers have recognized the following milestones for the development of the Argentine Environmental Law: the economic factors and society’s concern for the environment.

(i) Economic Factors:

The period from 1983 to 1990 was not a good time for the Argentine economy. The inefficiency of the government’s interventionist regime (based on price control, industrial subsidies and restrictions to foreign investments) led to hyperinflation, recession, and social conflicts.

In an effort to control the national crisis, the liberal system implemented by former President Carlos S. Menem resulted in a deep economic reform that involved: 1) the reorganization and privatization of public enterprises; 2) the promotion of foreign direct investment (“FDI”); and 3) the deregulation of various sectors of the economy, such as the oil, mining, land, water, and air transport sectors. In this way, the Menem

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118 In 1989, inflation in Argentina reached percentages up to 200% per month. See NOLON John R., Fusing Economic and Environmental Policy: The need for Framework Laws in the United States and Argentina, Pace University School of Law, Faculty Publications (1996), p. 693.


120 Privatization, which is defined as “the transfer of assets or service delivery from the government to the private sector,” has played a key role for the Argentinean structural economic reform. See Privatization.org, What is privatization, available at http://www.privatization.org/database/whatisp/getisprivatization.html

administration concluded with the interventionist regime and initiated a new phase for the national economy.

The new model was successful for some years.\textsuperscript{122} The structural reforms led to the stabilization and a steady growth in the economy. For example, in the period 1991-1998 the country’s Gross Domestic Product (“GDP”) grew at annual average rates of 5.9\%. Further, the consumer price index dropped from 100 in 1990 to 17 in 1992. In addition, there was practically no inflation.\textsuperscript{123}

This reorganization also encouraged the design of new policies and the enactment of new laws for the purpose of setting up the institutions necessary in order to make the reform achievable. These new laws and policies modernized the regulatory system and made it consistent with the free-market economy.\textsuperscript{124} Under these circumstances, the national and provincial governments passed modern environmental laws.\textsuperscript{125}

In this sense, the free market economy had an impact on the relationship between Argentinean society and the environment.\textsuperscript{126} The environmental law expert Walsh has explained the situation as follows:

\begin{quote}
“Privatization and deregulation strategies ... played a significant part in developing environmental regulations, given the perceived need for clear guidelines on environmental liabilities and obligations as part of the overall economic strategy aimed at attracting foreign direct investment.”\textsuperscript{127}
\end{quote}

Furthermore, Walsh concluded that environmental regulations enacted in the neo-liberal Argentina of the nineties set forth the new “rules of the game,” which were established by the government in order to create stability, predictability, and a friendly environment for the purpose of attracting private capital.\textsuperscript{128}

In sum, privatizations and FDI became the milestones for the development of the Argentina of the nineties.\textsuperscript{129} More importantly, they contributed to the delineation of the country’s new environmental policy.

\begin{flushright}
\textsuperscript{122} It is not the intention of this paper to discuss economic indicators; however, for illustrative purposes, some data will be addressed.
\textsuperscript{123} CHUDNOSKY, Daniel and LÓPEZ Andrés, Foreign Investment... Op. cit., p. 6.
\textsuperscript{125} This phenomenon also occurred in other Latin American and European countries, which, like Argentina, incorporated environmental issues into the regulatory systems that they created to develop their economies. See WALSH, Juan R. et al. Ambiente... Op. cit., p. 11.
\textsuperscript{126} WALSH, Juan R. et al., Ambiente... Op. cit., p. 1.
\textsuperscript{128} WALSH, Juan R. et al., Ambiente... Op. cit., p. 11.
\textsuperscript{129} See generally ABDALA, Manuel A., Institutions, Contracts and... Op. cit.
\end{flushright}
(ii) The Society’s Concerns as a Factor of Change:

It would not be entirely right to state that the Argentinean environmental policy shifted in the nineties exclusively due to economic reasons. Although, as discussed above, modern environmental regulations were aimed in part to create a friendly environment for investors, other historical and philosophical arguments explain this sudden change of the country’s environmental policy.

For many years, Latin American civil societies –including the Argentine one- have been concerned about sustainability and environmental matters. In the last years, however, sustainability became the new paradigm for development.

This new vision has been the inspiration for the incorporation of the “right to a healthy environment” into almost every Constitution of Latin American nations and their political divisions. Moreover, it started with the modernization of the environmental legal regimes. As Walsh stated, this “environmental constitutionalism” connected environmental law and sustainability with human rights.\textsuperscript{130}

Argentina has also been part of this trend of environmental constitutionalism. In this sense, the National Constitution was amended in 1994 to include the human right to a healthy environment, the concept of sustainable development, and access to environmental justice.

Section 41, which represents a clear milestone in the evolution of environmental law in Argentina,\textsuperscript{131} states that:

“All inhabitants of the nation shall enjoy the right to a healthy environment, apt for human development so that productive activities may satisfy the needs of present generations without compromising those of future generations; they have a duty to preserve the environment.

Environmental harm will generate, on a priority basis, an obligation to restore or remediate such impairment, in accordance with the law. Authorities will provide for the protection of this right, the rational use of natural resources, preservation of natural and cultural heritage and biological diversity, information and environmental education.

It is the duty of the nation to establish norms that contain the minimum requirements for protection, and the duty of the provinces to state such norms as may be necessary to complement them, without such minimum standards altering local jurisdictions.”

\textsuperscript{130} WALSH, Juan R. et al., Ambiente... Op. cit., p. 59.
\textsuperscript{131} WALSH, Juan R, Argentina’s Constitution and General Environmental Law ... Op. cit., p. 513
Entry of actual or potentially hazardous and radioactive waste to the national territory is forbidden."

Pursuant to Section 41, the provinces delegated the Federal Government the power to set forth minimum standards legislation for the protection of the environment, which are applicable within all the country. Conversely, provinces may establish supplementary legislation to these minimum standards either by enacting more stringent regulations or by passing their own environmental regulations in areas in which the federal government has not established such minimum standards. It shall be noted that provinces may never diminish the minimum standard legislation set forth by the National Government.

In accordance with the abovementioned principles, in 2002 the National Congress enacted the General Environmental Law No. 25,675 (hereinafter, the “GEL”), which is a minimum standards law that set forth the guidelines for implementing public environmental policies in Argentina. The GEL applies to all provincial jurisdictions and to both public and private sector, regardless of jurisdictions.

Section 4 of the GEL provides for the incorporation of remarkable International Environmental Law principles, such as the Precautionary Principle and the Preventive Principle. Pursuant to the prior, “where danger of a grave and imminent or irreversible environmental harm exist, lack of information or scientific certainty shall not be a reason to postpone the adoption of cost-effective measures to avoid environmental degradations.” According to the latter principle, “causes and sources of environmental problems shall be dealt with on a priority basis and in an integral fashion seeking to prevent any negative environmental aspects that may occur.”

In this sense, pursuant to Section 4 of the GEL, any environmental legislation implemented within the territory of the country should be consistent with the following:

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132 This Law was published in the National Official Gazette on November 28, 2002.
133 Apart from the GEL, the national Congress has enacted other Federal Minimum Standards Laws, including, but not limited to, the following: (i) Industrial Waste: Law No. 25,612 on minimum standards related to the management of industrial waste, which means “any element, whether solid, semi solid, liquid or gaseous obtained as a result of an industrial process”; (ii) Management of PCB: Law No. 25,670 on minimum standards for the regulation of PCBs in Argentina. Among other things, this law prohibits the entry of PCBs into Argentina; (iii) Environmental Management of Water Resources: Law No. 25,688 on management standards for the preservation of water and its uses; (iv) Free Access to Environmental Information: Law No. 25,831 on minimum standards for access to public environmental information; (v) Native Forests Protection Law: Law No. 26,331 on minimum standards for the protection of woods under federal jurisdiction; and (vi) Hazardous Waste Law: No. 24,051 on minimum standards for the hazardous waste management within the country.
136 See § 4, GEL.
137 See § 4, GEL.
principles: congruence,\textsuperscript{138} prevention, precautionary, inter generational equity, progressive, responsibility,\textsuperscript{139} subsidiary, sustainability, solidarity, and cooperation.

Although scholars have acknowledged that the abovementioned environmental principles are merely declaratory, Argentinean judges have given particular importance to them. These principles, indeed, have guided courts’ decisions in the most relevant case law pertaining to environmental matters.\textsuperscript{140}

\textbf{3.2.5.2. Voluntary and Mandatory Reporting Provisions in Argentine Environmental Law}

In analyzing the characteristics of the environmental legislation, scholars have argued that environmental law is a horizontal legal field that overrides other fields of law –either public or private- generating a new responsibility sphere subject to its own principles.\textsuperscript{141}

Further, commentators have defined environmental law as the body of legislation aiming to protect the environment in a preventive, progressive, and precautionary way, in connection with the human activities that may have an adverse impact on such environment. Thus, environmental legislation seeks to prompt a change in the current development model so that future generations can enjoy an environment in conditions similar to the present ones.\textsuperscript{142} For that reason, the relationship between the environment and the development model turn out to be very important. According to scholars, this is

\textsuperscript{138} All provincial and municipal legislation dealing with environmental matters must be amended so as to be in accordance with the principles and rules established in the GEL, which shall prevail over any other legislation that may contradict these minimum standards.

\textsuperscript{139} The generator of present or future degrading effects upon the environment is responsible for the costs of preventive and corrective remediation actions, notwithstanding the existence of corresponding environmental liability regimes.

\textsuperscript{140} E.g., in Estancias Violetas SRL v. Techint, the Supreme Tribunal of the province of Tierra del Fuego decided that whenever there were doubts regarding potential environmental damages, courts’ decisions should be favorable to the environment and the human health, pursuant to the principle “\textit{in dubio pro ambiente, in dubio pro salud}” (Emphasis added). Superior Tribunal de Justicia de Tierra del Fuego, Antártida e Islas del Atlántico Sur, (Aug. 10, 2006) Estancias Violetas SRL c. Techint S.A.C.I., LLPatagonia 2007 (abril), 914; further, in CODECI Río Negro s/ Amparo, the Río Negro Supreme Court granted a precautionary measure in favor of Indian communities occupying the influence area of a proposed mining project. In this sense, the precautionary measure prohibited the development of the “Calcateru” mining project on the following grounds: (a) the developer had not fulfilled all requirements established by both national and provincial legislation regarding public participation and evaluation of the projects’ possible impacts; and (b) a potential development of the project without the compliance of these requirements could endanger the environment. Superior Tribunal de Justicia de la Provincia de Río Negro, (Aug. 16, 2005), \textit{CO.DE.CI. de la Provincia de Río Negro s/ Amparo}, LL 2006-C, 223- LLPatagonia 2006, 69.


why the multiple interactions between company, society, life quality and environment are so relevant.  

Focusing our analysis on the impact of environmental law in business and industry, we can identify the following two sides of the same coin: (i) the corrective or reactive side, which entails mandatory regulations imposing sanctions to companies’ actions that could negatively affect the environment; and (ii) the voluntary auto-regulation side. Both sides are somehow embodied in the Argentine environmental regulations. What follows represents a description of the mandatory and voluntary reporting encompassed in environmental regulations.

(i) Mandatory Reporting Requirements:

The GEL has made the Environmental Impact Assessment (“EIA”) an important environmental management instrument and administrative procedure aiming to prohibit actions that could cause a negative impact on the environment and/or to promote corrective measures when the damages have already been generated. Based on the prevention principle set forth by Section 4 of the GEL, the EIA is intended to identify, prevent, and mitigate any adverse effects on the human environment motivated by industrial activities.

The EIA has been regulated extensively by both national and provincial legislation in Argentina. According to Walsh:

“...there is already considerable technical expertise and institutional experience with using EIA in the decision-making process for approving or licensing new development projects.”

Generally speaking, pursuant to the EIA regulations, any person or entity wishing to develop activities that may have a negative impact on the environment must first elaborate an EIA and file it with the environmental enforcement authority. After identifying adverse impacts, the proponent of the action shall indicate measures in order to mitigate the impacts. Further, the administrative authority shall approve these measures.

The proponent must then obtain the Environmental Impact Declaration (“EID”), which is the authority’s approval of the EIA. Regarding the EID’s contents, it is worth noticing...
that this instrument sometimes includes CSR obligations\textsuperscript{147} with which the proponent of the action must comply in order to maintain the EIA approval.

(ii) Voluntary Reporting Standards for CSR and Sustainability in Argentine Environmental Regulations:

The environmental law expert José Esain has analyzed the applicability of auto-regulation standards in Argentina. This section will report on his findings in connection with this matter.\textsuperscript{148}

According to Esain, Section 26 of the GEL set forth the legal basis for companies’ environmental auto-regulation standards. Pursuant to said Section, the national and provincial governments must establish legal mechanisms for the following purposes: 1) The elaboration of programs seeking to protect the environmental quality by persons or entities conducting activities that could have a negative impact on the environment (See Section 26(a), GEL); 2) the elaboration and implementation of voluntary commitments and auto-regulation standards, by means of internal policies and environmental management programs (See Id. (b)); and 3) the enactment of promotion measures and the development of incentives. For these purposes, authorities shall take into account the certification mechanisms offered by registered consultants (See Id. (c)).

As Senator Martí stated, the GEL has taken a remarkable step forward towards the incorporation of CSR objectives into companies’ performance management, in considering efforts that private and public entities should undertake seeking for the environmental protection (e.g. the implementation of environmental management programs internationally accepted, such as the ISO standards).\textsuperscript{149}

Regarding the effect of Section 26 of the GEL on the performance of industrial activities, scholars have indicated that programs to be implemented by companies pursuant to such provision would most likely prompt a change in the business life, since this situation would involve adding the environmental variable to the development of industry and business in Argentina. Yet, according to these experts, this change would generate a cost for companies –since they would be internalizing their negative externalities- and, therefore, it would have to be accompanied by incentives deriving from the state authority (mainly fiscal benefits).\textsuperscript{150}

In Argentina, the implementation of environmental management systems or Sistemas de Gestión Ambiental (henceforth, “EMS”) by companies is growing steadily. Currently,
many entities are voluntarily implementing programs in order to protect the environment and promote social development.

An EMS that is becoming very popular among Argentine companies is the ISO certification. Payá has identified the following principal requirements set forth by the norm ISO 14,001 on environmental management: 151

- The organizations shall elaborate environmental programs and policies.
- Companies shall identify environmental aspects in connection with their activities (i.e. any elements produced by companies that interact with the environment). To do so, they shall elaborate inventories of inputs (e.g. hazardous products) and outputs (e.g. discharge of effluents).
- Companies shall identify legal requirements applicable to their activities.
- Entities shall define objectives and goals, which shall be embodied in the entities’ internal documents.
- Entities shall elaborate environmental management programs that shall be executed in order to reach the designed goals. These programs, among other things, shall indicate the responsible of each operation areas, determine schedules and timetables in order to reach the designed goals, etc.
- The organizations’ managements shall define the roles and responsibilities of each area for the purpose of achieving the designed objectives.
- From the beginning of the certification process, entities shall establish monitoring and control procedures in order to verify the level of progress towards the designed goals.
- Entities shall also provide for plans in order to cover any contingency.
- In addition, organizations must implement training programs for their personnel.
- Companies shall also provide for internal communication guidelines.
- Further, companies shall implement control and monitoring procedures in order to verify whether the SGA is compatible with the requirements of the norm ISO 14,001.

• Finally, under the SGA, the management shall periodically review the compliance reports in order to verify whether or not the companies have fulfilled the ISO 14,001 requirements.

This being said, according to a research conducted by the Economic Commission for Latin America and the Caribbean (Comisión Económica para Américas Latina y el Caribe, “CEPAL”), in the last years there has been a significant increase in the number of Latin American companies certified to the norm ISO 14,001. The majority of such companies had their domicile in Brazil, México and Argentina.152

Furthermore, currently 248 Argentine companies are participating from the Global Compact Program, an initiative from the United Nations under which participants commit themselves to align their strategies and operations to 10 principles accepted for the following 4 main areas: human rights, labor conditions, environment and anti-corruption.153

Pursuant to Principles 7-8 of the Global Compact Program, companies must:

• Support a precautionary approach to environmental challenges (Principle 7, Global Compact Program).

• Undertake initiatives to promote greater environmental responsibility (Id., Principle 8).

• Encourage the development and diffusion of environmentally friendly technologies (Id., Principle 9).

Argentina is just getting started with the study of the abovementioned instruments. A lot of things remain incomplete, and it appears that both the accounting and the juridical sciences will play a key role in the development of Social Balance and Environmental Management Systems.154

Finally, it is worth mentioning that there are currently several bills under consideration – one of which is a bill to be issued by the Senate and another by the Chamber of Deputies – in connection with voluntary CSR.155

4. LIABILITY AND ENFORCEMENT

153 For more information on the UN Global Compact Program and on the Argentine participants, see http://www.unglobalcompact.org/ (last accessed, Mar. 27, 2010).
155 The projects that we could quote are: (i) Chamber of Deputies, Project No. 1312-D2010 - Corporate Social Responsibility, amendment of Law No. 25,877 on labor regime: substitution of Articles 25 and 26; and (i) Senate, Project No. 39/11 – Amendment of Law No. 25,877 regarding companies’ social balance.
4.1. General Overview on Companies’ Liabilities

This section will discuss the liability regime applicable to all Argentine companies. It will first describe fundamental legal premises established by general principles of Argentine law. Following this, it will analyze how said premises are embodied in the Argentine Company Law.

Pursuant to the Argentine Civil Code, a person is every entity capable of having rights and obligations. Furthermore, every entity capable of having rights and obligations that is not an individual is a legal entity. Legal or corporate entities have independent patrimony; that is, they have assets different from those of their members.

The Argentine Company Law has systematically adopted the principles mentioned above. Indeed, pursuant to the CL: 1) companies are legal entities different from their members; 2) companies have their own capacity to hold rights and obligations; 3) companies’ patrimony are independent -although being initially formed by contributions from their members; and 4) companies make their own decisions and their existence goes beyond their members’ existence.

The following presents consequences in connection with the premises discussed above:

- The duties and activities arising from the existence of the legal entity belong to such entity, not to its members.
- The legal entity’s rights belong to such entity, not to its partners.
- Companies are bound by their representatives’ actions. If other members are willing to annul actions that could bind the company before third parties, they will have to challenge such actions by means of the procedural rules set forth by the company’s articles of incorporation and by Argentine Company Law.
- The liabilities and consequences in connection with the entity’s relationships with third parties lie with such an entity. In this sense, third parties will only have rights enforceable against the company.

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156 See § 30, Civil Code.
157 See § 32, Civil Code.
158 See § 2, CL.
162 GRISPO, Jorge, Las Sociedades Comerciales como Sujetos de Derecho, La Ley 2004-A, 1251.
Rules on companies’ liabilities mentioned above are subject to certain exceptions. As discussed in Section 2.1.1 et seq. of this paper, actions of the company seeking to violate the law shall be imputed directly to the members or controlling parties that made it possible. If such actions generate damages to third parties, such members or controlling parties will be jointly and severally liable for such damages.

This introduces us to the theory of the “piercing of the corporate veil,” which has been vigorously applied in Argentine courts in recent years—especially by Labor Courts. Pursuant to such theory, under the abovementioned circumstances, members or controlling parties will not be able to oppose the legal personality in order to avoid liability for damages caused by their actions. On the contrary, affected third parties will be entitled to seek compensation directly from the company’s representatives.

4.2. **Liabilities Regime for Environmental Damages: Administrative, Civil, and Criminal sanctions**

4.2.1. **General Liability Regime in the CL**

In the event in which a company violates the CL, their By-Laws or any regulations, the SOC may impose to the company penalties of: 1) warning; 2) warning with publication in the Official Gazette; and 3) fines to the company, its directors and syndics. The amount of the fine would vary according to the seriousness of the infringement and the company’s capital. Should fines be imposed on the directors and the syndics, the company will not be able to take care of such fines.

Further, the SOC is empowered to request the following measures from the commercial judge who has jurisdiction over the company the following measures: 1) the suspension of the resolutions of the company’s administration bodies, if they are contrary to the law, the By-Laws, or any regulations; 2) the intervention of the company’s administration when the corporation makes a public offering of its shares or carries out capitalization or savings operations or in any form requests money or assets from the public with the promise of loans or future benefits; and 3) the company’s dissolution and liquidation under certain circumstances.

4.2.2. **Collective Environmental Damage in the GEL: Remediation Duties**

Argentina Environmental Law provides for two types of environmental damage: 1) the collective environmental damage, governed by the GEL; and 2) the damages to private

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164 For more information regarding the applicability of this theory in courts, see ALONSO, Juan I. and GIATTI, Gustavo J., Aspectos Procesales de la Aplicación de la Teoría de la Inoponibilidad Jurídica, in Suplemento Sociedades Comerciales, La Ley (2004), pp. 15-27.
165 See §302, CL.
166 Id.
167 See §303, CL.
property caused by environmental pollution –the latter type of damage is elaborated in Section 4.2.3 infra.

The GEL sets forth the liability regime applicable upon the generation of collective environmental damages, which are defined in Section 27 as “any substantial modification that can negatively alter the environment, its resources, and the equilibrium of the ecosystems or collective value.”

Regarding liability, the GEL sets forth the “polluter-pays” legal principle, under which persons or companies whose activities cause an adverse effect to the environment have the obligation to remedy such environmental damages. If such remediation is technically unfeasible, the GEL imposes on the polluter the duty to pay compensation.168

The GEL establishes joint and several liability for the remediation of environmental damages in the following situations: (i) if the environmental damages have been produced by two or more potential responsible parties, and (ii) if it is not possible to determine the degree of participation of each potential responsible party in the generation of the damage. Additionally, innocent parties shall have the right to sue other parties involved, in the event it could be proved that the latter are totally responsible for the generation of the environmental damage.169

It should be noted that the Company’s obligation to remediate could be extended to past and current administrators that participated in the pollution event.170

Pursuant to Section 30 of the GEL, the following parties have a standing for claim for remediation: any affected party, the Ombudsman, any environmental NGOs, and the government (national, provincial, and municipal).

### 4.2.3. Civil Liability for Environmental Damages

The liability principles of the Argentine Civil Code –see i.e. Section 2618 of the Civil Code- are applicable to environmental matters when pollutant activities also cause damages to private property of particulars and provided that there are no other specific environmental regulations or remedies under which the injured party can obtain compensation.171

### 4.2.4. Administrative Sanctions for Environmental Infractions

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168 See § 28, GEL.
169 This is known in Argentina as Derecho de Repetición; that is, the repayment rights to which innocent parties or parties having a small participation in the polluting activities would be entitled to against other responsible parties.
170 Indeed, in the event companies produce environmental damages, Section 31 of the GEL sets forth that liability shall be extended to their representatives –authorities and professionals- to the extent of their participation in causing such damages.
171 BUSTAMANTE ALSINA, Jorge, Responsabilidad civil por daño ambiental, La Ley, 1994-C.
Non-compliance of companies to environmental regulations can also be punished by means of administrative law sanctions applied by the environmental enforcement authorities.

Such sanctions are different and independent from the civil or criminal penalties that may also be applied to a company or entity whose activities cause environmental damages. This means that certain environmental offenses can be punished not only by administrative sanctions (i.e. fine, closure, or revocation of license), but also by civil (i.e. economic compensation) and criminal penalties (i.e. imprisonment).

Within this context, certain Argentine Administrative Law scholars have indicated that even persons or companies who have obtained administrative authorizations to conduct industrial activities (i.e. licenses or permits) and who comply with all applicable environmental regulations can be held civil or criminally liable for environmental damages generated by said activities.172

4.2.5. Criminal Liability for Environmental Infractions

The Criminal Code and certain national environmental laws on minimum standards (i.e. Law No. 24,051 on Hazardous Waste Management), impose criminal liability on companies’ directors, managers, syndics and representatives for environmental damages caused by their companies, provided that: (i) these damages are associated with the industrial activities performed by such companies; and (ii) the representatives participate in the illegal activities.173

The criminal regime set forth by Law No. 24,051 has been mostly applied by Federal Criminal Courts in cases involving pollution of inter-jurisdictional river basins with hazardous wastes.174

5. INCENTIVES AND DISINCENTIVES IN CSR LEGISLATION

Currently, there are no other types of incentives and disincentives as regards specifically the CSR in the Argentine legislation. Yet, the Mendoza Law No. 8,488 above described provides for certain tax benefits for companies that obtain the CSR Certification due to their compliance with the provisions of such law.175

Furthermore, one project of law has been proposed in the National Congress concerning: CSR; socially responsible behaviors; access to environmental and social information managed by companies; “Codes of Conducts”; creation and regulation of the “environmental and social balance sheet”; programs, plans and or projects on the matter

172 CAFFERATTA, Néstor, La Correcta Hermenéutica de la Ley 24.051, JA 1993-III-10.
173 See § 57, Law No. 24,051.
174 See i.e. Tucumán Federal Court, González, Juan s/ Infracción a la Ley 24.051(May. 5, 2008).
175 However, please note that the Law is inoperative since the Executive Power has not regulated it yet. See Chapter 3.2.3 of this paper.
of CSR; tax benefits; “public policies of CSR”; minimum budget norms; and legislative powers corresponding to the provinces and to the City of Buenos Aires (hereinafter, the “Bill”).

In this sense, the Bill includes in the tax benefits chapter the possibility to deduct from the company balance sheet for income tax purposes the expenses incurred for the development of programs, plans, projects implemented in connection with CSR; provided that the social balance sheet is filed.

Further, as regards the minimum presumptive income tax, the project provides for an exemption for the assets destined for the development of programs, plans and/or projects implemented in the terms described and with the requirements set forth in the previous paragraphs.

Finally, the Bill establishes that the tax credit arising as a consequence of expenses incurred for the development of programs, plans and/or projects implemented regarding CSR shall be deductible from the VAT tax base.

6. **CORE ISSUES CONCERNING GROUPS OF COMPANIES**

Business as usual indicates –regardless the companies’ size or location- that transactions, businesses and operations are usually conducted through groups of companies with reciprocal participations. These groups are not only multinational, but also formed by domestic companies.

The complexity of these structures generates a wide array of common problems, such as: 1) companies combining managers; 2) managers following the majority’s directives, therefore affecting the minority’s interests; 3) different categories of administrators; 4) shares with privileges; etc.

This chapter will evaluate the Argentine Company Law treatment to groups of companies, identifying not only regulations applicable to such groups, but also other issues, such as the role of the corporate purpose within groups of companies.


6.1.1. **Background**

As mentioned above, the phenomenon of companies’ concentration through groups of companies has been an important and growing reality in the twentieth and current centuries.

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This situation presents a flexibility originated in a variety of possibilities of different conformations. In this sense, centralized and decentralized groups are distinguishable according to the integration degree and the intensity of the unified direction exercised by the holding company as head of the groups.

Indeed, in centralized groups the unified direction is exercised with more intensity, limiting the degree of autonomy of the controlled company.

Moreover, groups can be distinguished in equal (or coordinated) and hierarchical (or subordinated). In the prior, the companies’ members of the group decide to enter into, as fully independent rights-bearing persons, an agreement that links them and binds them in their relationships.

Conversely, in the latter there is an entity, which, precisely through the control exercised in another, generates the subordination relationship.\(^{177}\)

### 6.1.2. Controlled and Linked Companies as defined in § 33 of the CL

The CL does not expressly regulate the concept of “groups of companies.”\(^{178}\) Despite that, several sections of the CL refer to entities or individuals that, under certain circumstances, “control” a company.

Section 33 of the CL is the only Section that expressly refers to controlled and linked companies. Pursuant to such Section, companies are considered controlled “whenever another company, directly or through another company in turn controlled: 1) possesses a participation, by any title, that grants to it the votes necessary to form the company’s will in social meetings or regular assemblies; or 2) exercises a dominant influence as a consequence of the possession of shares, quotas or parts of interest, or as a consequence of the special links existing among the companies.”

Conversely, the CL states that companies are “linked” when one company holds more than 10% of the capital of the other company. When a company holds more than 25% of the capital of the other company, the former must inform the latter so that its next regular assembly takes notice of the fact.

### 6.1.3. Disclosure Requirements

Regarding disclosure requirements, Section 62 of the CL foresees that controlling companies\(^ {179}\) must file with the SOC—as complementary information—annual consolidated financial statements, prepared pursuant to generally accepted accounting principles and to the regulations of the SOC.

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\(^{177}\) For more information regarding groups of companies, see MANÓVIL, Rafael, _Grupos de…_, Op. cit.  
\(^{179}\) As defined by § 33 of the CL.
The abovementioned Section seeks that the controlling companies shall elaborate –apart from their own financial statements- annual statements embracing the situation of their controlled companies.

More specifically, regarding financial statements’ formalities, companies must: 1) within the assets, identify in special items the credits against controlling, controlled and/or related companies and the investments made in such companies; 2) within the liabilities, identify the debts in favor of controlling, controlled and/or related companies; 3) within the profits and loss statements, indentify the interests paid or accrued with controlling, controlled and/or related companies; and 4) in the complementary notes, identify the results of the operations with controlling, controlled and/or related companies separately by each company.\(^{180}\)

Furthermore, when the interest of one company in the other company is of more than 50% of the equity, the controlled company’s accounting statements must be filed. On the other hand, when the interest does not reach the 50% but was of 5% or more, the result of the exercise and the net equity arising from the last general balance sheet of the controlled company must be mentioned in the annexes to the financial statements.\(^{181}\)

This information must be complemented with the memory, in which the administrators must inform on the relationships with the controlled, controlling and/or related companies and the variations that took place in the corresponding participations and the credits and debits.\(^{182}\)

### 6.1.4. Responsibilities of Controlling Companies

The CL also regulates several liability scenarios applicable to controlling parties that cause damages to entities they control. Indeed, Section 54 states that damages caused by fraud or negligence by those that, although not being members, control the company, makes the perpetrators liable to indemnify the company.

Further, this Section continues stating: “The member or controlling party that applies the funds or assets of the company to his own use or own business or to that of a third party is obliged to pass the resulting profits to the company. The losses or damages are exclusively to the member or controlling party’s account.”

Finally, the figure of “controller” shows up again in the last part of Section 54, which regulates the institute of the Impossibility to Oppose the Legal Personality, above elaborated.\(^ {183}\)

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\(^{180}\) See §§ 62-65, CL.

\(^{181}\) See § 65, CL.


Manóvil has identified the following elements that make Section 54 of the CL applicable:\textsuperscript{184}

(i) The damage occurred to the company: The generality of the legal text evidences the width of the disposition; \textit{i.e.} any given damage, whatever its nature, is included in the norm (acts or omissions as a consequence of specific operations or general policies, whether it be in the commercial, financial or other area).

(ii) The attribution facts: It is subjective in nature; \textit{i.e.} the damage must be a consequence of the willful misconduct or of the negligence, imprudence or lack of skill.

(iii) Compensation: The damage makes the shareholders or controllers jointly and severally liable, according to common law; \textit{i.e.} within the scope of an adequate causal link.

(iv) Prohibition to offset damages by benefits: The norm sets forth that the perpetrator of the damage cannot offset the obligation to compensate by the benefits that the operations may have caused in other businesses.

(v) The allocation of funds or effects to uses or businesses not in accord with those of the company: When a shareholder or controlling subject uses the company’s funds or effects for a personal or a third party’s purpose, he should not only compensate for the damages caused but also bring to the company the proceeds of such operations and, naturally, return the extracted funds or effects.

(vi) Absence of a consideration: The funds or effects must be extracted from the sphere of disposition of the company and such detraction must not generate a consideration in favor of the company since, otherwise, it would become a bilateral, commutative contract, with reciprocal considerations, by means of which the controlling subject or third party acquires a legitimate right to the use of the funds or effects.

(vii) Wide interpretation of the term “effects”: The norm establishes the term “funds or effects.” Although a first impression would lead to construe that it refers to money and tangible assets, the term “effects” has several meanings, including intangible assets, influences, prestige or other similar immaterial items.

(viii) The profits that must be brought to the company: The norm includes the scenario in which the funds or effects are applied to the responsible shareholder or controlling subject’s business, as well as the one in which the business belongs to a third party. In this sense, when the business belongs to the shareholder or controlling subject only in part, he would yet be forced to bring to the company the entirely of the income obtained, and not only the potion that would have corresponded to him.

6.1.5. Incompatibilities of Members of Corporate Bodies

Section 286 of the CL establishes the incompatibility of directors, managers and employees of the company to become its syndics. However, this incompatibility is also extended to those who hold identical office in a controlling or controlled entity. Further, the same incompatibility exists for the members of the surveillance committee, for the generic reference to Section 286 made by Section 280.

Nevertheless, the reasonableness of the extension of the norm has been challenged. In this sense, it has been argued that the grounds for the incompatibility lie in the fact that a person in charge of auditing the company and its administrators must have an absolute independent criterion. Therefore, there should not be a link of functional independency in connection with the audited administrators and, certainly, in no way regarding the audited company.\footnote{185 See, MANÓVIL, Rafael, Grupos de..., Op. cit., p. 394.}

The same reasons govern the incompatibility of directors, managers, and employees of the controlled companies, in view of the domination exercised upon them.

But the question is different with regard to the controlling company when such a company exercises command over the controlled one and there is no logical reason to preclude a relevant director, manager or employee from being appointed to audit its administration. On the contrary, the appointed officer might show a particular interest in the effective accomplishment of the function, interest that an independent syndic could be lacking in.\footnote{186 Id.}

6.2. Groups of Companies Outside the CL

6.2.1. Bankruptcy Law

The Bankruptcy Law No. 24,522 regulates expressly the concept “Group of Companies” in its Section 65, which reads as follows: “When two or more persons or legal entities form together a permanent group, they can jointly file for their insolvency and rehabilitation proceedings –concurso preventivo- explaining the judge the reasons for the existence of the group and revealing its externalization. The petition shall include all members of the group, without exception...”

Further, Section 161 refers to the extension of bankruptcy to controlling parties. In this sense, this Section states that the bankruptcy of a company extends to: 1) any person who, under the appearance of representing the bankrupted entity, carried out acts in his personal interest and administered the property of the bankrupted entity in detriment to creditors; and 2) any person who controls the bankrupted entity and has diverted its social interest towards the prior’s –the controller’s- benefit.
Finally, the Public Offer Regime contemplates expressly the concept of Group. Indeed, Decree 677, defines “Controlling,” “Controlling Group,” or “Control Groups” as any individual or legal person that holds, either directly or indirectly, individually or jointly, whichever the case may be, a share in the capital stock or voting rights that, de jure or de facto, which if stable, can grant enough votes to take a corporate decision in shareholders’ general meetings or to chose or remove the majority of the directors or syndics.  

When defining the terms “Controlling,” “Controlling Group,” or “Control Groups”, this Decree refers to the interests in the “corporate equity” or in “shares with voting rights” that either in fact or in law (in the former case, in a steady basis) grants them the necessary votes to form the company’s decision.

Decree 677/01 regulates the so called “almost total control,” that takes place within a corporation under the public offer regime, when an individual or entity, whether directly or through a third person or other controlled companies, hold 95% or more of the subscribed capital. In this scenario, the Decree provides for a system that allows the minority shareholders to request the almost total controller to make a purchase offer to the entirely of the minority shareholder.

6.3. Corporate Interest and Group of Companies

The emergence of the groups of companies has also raised the need to distinguish the groups’ corporate purposes – if any- from the individual corporate purposes of each of the companies forming such groups.

As argued by Rovira, the group’s corporate purpose is not necessarily identical to the interest of the companies forming such group. For that reason, it is worth identifying the interest of the controlling shareholder or controlling group and – on the other side- the interest of the majority of shareholders.

Furthermore, Rovira has discussed the principle that controlling companies seeking for financing tools in the capital market shall be necessarily willing to accept that upon the entry to the capital market, the controlling party shall treat equally to all other shareholders. In this sense, Rovira concludes that the control premium is not property of the controlling party, but of the capital market and, therefore, its value shall be shared between all shareholders.

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187 See also § 2, Law 26,831.
188 See also §§ 92-93, Law 26,831.
189 ROVIRA, Alfredo L., Pactos... Op. cit., pp. 76-77
190 Id.
191 Id.
Manóvil clearly sets his approach denying the existence of a group’s corporate purpose, as he affirms that “strictly speaking, there is not a globing or superseding of interests of the controlled companies of the group, but an evident opposition of interests, because in my opinion it is indisputable that the interest of the group coincides with the interest of those commanding the companies members of the group. This conclusion derives not only from the reality of facts, but also from the circumstance that the notion of interest is always assigned, in legal terms, to one or many subjects who are the holders of such interest. The group is not a right-bearing person and, consequently, is not entitled to hold an interest.”192

Simply put, Manóvil states that the individual corporate purpose is dominated by the interest of the controlling or commanding subject, arguing against the existence of a group’s interest.

6.4. **Piercing of the Corporate Veil Theory within Group of Companies**

We have mentioned supra that the theory of “piercing the corporate veil” has been vigorously applied in Argentine Courts in recent years, especially by Labor Courts. The Supreme Court cases of *Swift – Deltec*193 and *Parke Davis y Cía. SA*194 constitute two interesting examples regarding the application of such theory within groups of companies.

In *Swift*, the Supreme Court: 1) denied the validity of an agreement for the rehabilitation proceedings –*concurso preventivo*- voted by Swift’s creditors, and therefore declared Swift’s bankruptcy; 2) within the context of the rehabilitation proceedings, denied the completion of credit verification from other companies of the controlling group –Deltec-; and 3) determined Swift’s impossibility to oppose the legal personality and therefore extended the bankruptcy to the controlling party, in spite of its condition of foreign entity.

Since the domicile of the controlling party was abroad, the Court extended the bankruptcy horizontally to other companies that were controlled by the same commanding party and that were domiciled in Argentina, despite the fact that they did not have any relationship with Swift.

In order to prove Swift’s organic dependency in connection with Deltec, the Court emphasized on the fact that: i) Deltec International Limited195 held Swift’s controlling stock; ii) Deltec International controlled Swift’s company’s organs; and iii) Deltec International and Swift were economically linked.

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195 Such holding of the multi-national group Deltec had in Argentina and in the word businesses in finances and loans, agricultural investments, investments in the sugar industry, etc.
Besides other grounds, the Court in Swift found that the legal personality could not be used in order to negatively affect third parties’ rights and interests that went beyond the corporate interest. In this sense, the Court stated that the effects of Swift’s bankruptcy should also be imputed to Deltec International Limited, which was the real debtor and responsible of Swift’s obligations.

The facts verified by the Supreme Court in Parke were that the company Parke Davis from Detroit was the owner of 99.95% of the local company’s equity. In this way, the consideration for the use of formulas and proceedings held by the foreign company and perceived through royalties would also return to Parke Davis by means of the payment by the Argentine company of almost the entirely of its profits, without being subject to the payment of taxes. In this sense, when the royalties were considered a deductible expense in the local company’s balance sheet for tax purposes, a real and evident exemption took place; an exemption which was not granted by the letter nor by the spirit of the law.

The Court also stated that despite its apparent legal autonomy, the local company undoubtedly had an organic dependence in connection with the foreign company, due to its economical incorporation to the commanding company. Such subordination did not preclude the legal personality of the dependent company, but it did not override its tax payment capacity. It depicted an undeniable lack of real independence, with evident implications on the lack of freedom regarding the agreed proceedings and even the real profit that they could bring, as well as the actual need to hire them.

Thus, the Court decided to take into account the real background of the legal entity in order to solve the case concerning the tax treatment of royalty payments by a financially dependent company to the commanding company that collected such royalties.

Simply put, it appears that when the interests at stake are of fiscal or economic nature, jurisprudence has followed the line of reasoning which advocates that it is not possible to allow an abuse of the legal personality from controlling parties. In the present author’s opinion this should also be the case with regard to matters involving environmental pollution, due to public interest reasons. In this respect, certain academic opinion has justified the non-opposability of the legal entity based on public interest grounds.196

7. CONCLUSIONS

Below is a brief outline of certain of the conclusions drawn through the analysis provided in this paper:

(i) This work has analyzed the concept of the corporate purpose under the Argentine Company Law, arguing in favor of a notion that embraces not only the shareholders’ needs but also other affected parties’ interests; i.e. stakeholders’ needs.

(ii) In this sense, the corporate purpose has been identified as the guidelines that the companies and their administrators should follow in order to fulfill the companies’ objects clauses or social objects.

(iii) Generally speaking, Argentine Company Law has not embodied the terms CSR and sustainability, in spite of the importance that such concepts have over today’s business as usual.

(iv) It is not clear whether or not the Argentine Company Law is the adequate area of law which should be used to regulate all matters pertaining to sustainability. Indeed, some experts have emphasized the fact that the deviation of companies’ resources in order to satisfy stakeholders’ necessities could contradict important company law principles – e.g. obligations of directors to act loyally and carefully.

(v) Regardless, current Argentine legislation sets forth standards – both voluntary and mandatory – aimed to protect the environment and corporate stakeholders, including employees and communities affected by business and industry.