

Argentina - Milei Administration.

“Basis and starting points for the freedom of argentinians”

Bill.



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BASIS AND STARTING POINTS FOR THE FREEDOM OF ARGENTINIANS

The Milei administration has submitted, on December 27, 2023, to the National Congress, for consideration in extraordinary sessions, an ambitious bill (hereinafter referred to as the "Bill"), titled 'Basis and Starting Points for the Freedom of Argentinians.'

In summary, the Bill proposes legislation on the following topics (among others):

Declaration of Emergency

It declares a public emergency in economic, financial, fiscal, social, pension, security, defense, tariff, energy, and social matters until December 31, 2025.

Subsequently, legislative delegation is sought as provided for in Article 76 of the National Constitution, with the relevant deadlines and foundations. The Executive Power, with its administrative structure and technical expertise, will enact regulations that the emergency requires based on the detailed guidelines in the law.

Privatization of State-Owned Enterprises

It is proposed to declare all state-owned enterprises subject to privatization, complementing the decision of Decree 70/23 to transform all public enterprises into Joint Stock Companies.

Transparent and Efficient Public Procurements

The National Executive Power is empowered to consolidate the national system of public procurements into a single regime, currently dispersed in various regulations governing general aspects (contractor selection procedure, benchmark pricing, preference regime, private initiative, etc.) and specific administrative contracts. Quick and efficient dispute prevention and resolution systems, such as conciliation, mediation, settlement, and arbitration, are introduced for all systems.

Simplification of Administrative Processes

The project proposes a necessary update and modernization of the Administrative Procedures Law, capitalizing on its thirty years of existence. The

limits and forms of administrative procedures are specified to ascertain requirements with certainty and avoid unforeseen obstacles. Digitization is promoted.

Greater stability and legal certainty are offered to those affected by administrative acts. Minimum deadlines are provided to adapt to changes and prevent excessive retroactive effects. Access to courts is made transparent, specifying the administrative route and exceptions to bypass it.

Regulation of Political Activity for Public Officials

It is proposed that the publicity of acts, programs, works, services, and campaigns may not include or mention names, texts, symbols, or images that imply political-party or personal promotion.

Valuation of Public Employment

With the aim of improving the quality of administration, laws related to state personnel are modified. Mechanisms are also created to facilitate the incorporation of public employees into the private sector, and the sanctioning regime is strengthened to prevent abuse of public office.

New Public Works Framework

Infrastructure in Argentina reveals significant deterioration and a lack of modernization, especially throughout most of this century. The law establishes criteria for transparency in concessions, monitoring mechanisms, arbitration, and termination of concessions.

Reorganization of the State

Legal instruments are envisaged to carry out a profound reorganization of the national Public Administration, presenting it as an agile, transparent, and efficient structure to serve the community and citizens.

Internal Control of Public Administration

More technical independence is granted to the SIGEN and its internal audit units in various jurisdictions, as they now come under its technical hierarchy. The function of concurrent control of administrative management is introduced, not only post facto.

Dispute Resolution

Mechanisms for conciliation, settlement, and arbitration are established, and the State is included in the Mandatory Mediation Law, but only when acting in the field of private law, with appropriate prior controls for the execution of agreements.

Similarly, the possibility of entering into settlement agreements in disputes and administrative, judicial, and/or arbitral claims involving co-contractors of the Administration is introduced, provided they may be applicable and the agreement is deemed convenient for the interests of the national State, subject to the prior involvement of the Attorney General's Office of the Nation and the General Comptroller of the Nation.

Fiscal Measures

The Bill establishes:

(I) a Regime for the Exceptional Regularization of Tax, Customs, and Social Security Obligations for tax obligations overdue as of November 30, 2023;

(II) a Regularization Regime for Assets in possession, holding, or custody as of December 31, 2023, at no cost for the first USD 100,000, with a rate of 5%, 10%, and 15% on the excess over USD 100,000, depending on the date of disclosure;

(III) a Special Income Tax Entry Regime for the periods 2023 to 2027, inclusive, which includes a unification of the rate regardless of the location of the assets;

(IV) a new regime for export duties on all goods covered by the tariff positions of the Common Nomenclature of the Southern Common Market (MERCOSUR NCM).

A modification is also made to the Tobacco Internal Taxes to avoid distortions occurring in the market, generating inequalities among different competitors with a significant fiscal cost that has additionally led to an increase in tobacco consumption in recent years.

The Real Estate Transfer Tax on Individuals and Undivided Successions is repealed to reduce the cost of real estate transactions. In a subsequent step, the repeal of the Income Tax affecting the sale of properties acquired from January 1, 2018, onwards will be analyzed.

Debt Consolidation

Argentina holds a significant stock of intra-public sector debt, meaning it owns both assets and liabilities simultaneously. The law allows for the elimination of intra-public sector debts, where the government holds both assets and liabilities that can be canceled without affecting the net worth but with extensive benefits in terms of transparency and reduced management costs. This will result not only

in a lower total debt level, perceived favorably in credit markets, but also in reduced fees, management time, and market frictions.

Elimination of Luggage Tax

Upon entering the country after a trip, Argentinians encounter excessive luggage checks, paper declarations, and a 50% tax on goods acquired for personal use.

Regime of Incentives for Large Investments (RIGI)

A legal security system is established for certain sectors to incentivize large investments that, due to their long-term nature, would not take place without stable tax and exchange rate conditions. The provisions of the Bill ensure that such guarantees are focused only on high-value and long-term investments, thus having a fiscally positive effect by generating investments that might not otherwise occur.

Modernization of the Judiciary

A series of modernization improvements are implemented in the judiciary through amendments to Law 9667, Decree Law 3003, Decree Law 16005, and Decree Law 6848, which required dealing with outdated paper processes.

Furthermore, changes are made to expand the options available for judicial deposits under Law 26,764. On one hand, options are opened to all public banks without privileged banks, and on the other hand, judges are allowed to deposit them in any institution in the system with the consent of the parties involved. This eliminates the legal monopoly on these resources, resulting in a higher return for litigants. It is stipulated that the Central Bank will impose guidelines for the remuneration of judicial deposits denominated in pesos.

Simplified Succession Processes

The procedure for uncontested successions is simplified. The execution of non-judicial succession procedures is authorized to enhance the alternatives available to citizens. This new option should allow for the resolution of succession procedures in less time and cost for citizens while relieving the judiciary of an avoidable burden.

Jury Trials

Jury trials, mandated by Article 24 of the National Constitution, restore power to citizens to dispense justice. The right to be judged by peers and not by a state agent. In a liberal and democratic republic, citizens are sovereign, and as such, they have the right to judge and be judged by other citizens.

Strengthening Anti-Corruption Mechanisms

The Legislative Power, the Judicial Power of the Nation, and the Public Ministry of the Nation are instructed to appoint or create an entity aimed at monitoring public integrity and combating corruption.

Education

Several changes are promoted in the education system. Firstly, the completion of secondary education now requires a comprehensive examination. This exam will have a private score, but if desired, students can receive a certificate with their evaluation results. Parents will also be allowed access to their children's grades in learning assessment tests, as well as the average scores of their school and the country.

A continuous evaluation process for teachers is introduced. Restrictions on distance education are eliminated. Non-teaching professionals are also permitted to participate in the educational process, allowing our secondary education to benefit from the expertise of engineers, physicists, economists, sociologists, psychologists, and professionals who can contribute their knowledge and experiences to the educational process.

Entrance to higher education without completing secondary education is prohibited, a practice that is currently allowed.

Basic principles for allocating university resources are determined, taking into account objective factors related to educational goals.

Finally, while faithfully respecting the principle of free higher education for Argentine and resident foreign students, universities are authorized to charge tuition fees for non-resident foreigners.

Easy-to-Register and Manage Companies

The project aims to limit, within the federal system, the powers of Public Commercial Registries to request requirements not specified in the law, which often result in delays in the creation or administration of companies. Simultaneously, Registries are mandated to transition to digital means and abbreviate processing times. Permanent state control of single-member companies is eliminated solely based on their status, and limited liability companies are included among those that can be established with a single member.

Explicit authorization is granted for companies with multiple purposes, and the possibility of "stock options" for personnel is introduced, a way to implement Article 14 bis of the national Constitution regarding workers' participation in company profits. Finally, free access to company registers without charge is guaranteed.

Agroindustry: Meat and Fishing

Meat

The Bill advocates for consolidating not only sanitary regulations but also acting as the enforcement authority nationwide, regardless of the final destination of products manufactured in each plant. The proposal suggests unifying the legal framework, centralizing all regulations under a single norm, thereby ending the coexistence of Article 10 of Law 3951 for establishments dedicated to international and interprovincial trade and Law 22375 for establishments intended for interprovincial consumption. This measure is complemented by provisions in the Executive Decree prohibiting export restrictions, providing legal certainty and assurance to the sector.

Fishing

Modifications are introduced to Law 24,922, aiming to transform the fishing exploitation system. The current allocation system is replaced by a scheme of tenders for the maximum allowed catch. This shifts from a system of 'captive' quotas where the state did not earn revenue from production (or earnings were minimal) to a competitive scheme where the state appropriates revenues from its ichthyological resource. A partial transitional regime is introduced for current producers of already-allocated species. In addition to increased fiscal resources, these changes would allow for rapid growth in the activity, enabling Argentina to quickly tap into the full potential of its maritime resources.

Protection of New Varieties

There is a push for adherence to the International Convention for the Protection of New Varieties of Plants (1991) to incorporate best international practices that encourage significant investments for the modernization of the agricultural sector. This aims to generate incentives for innovation, promote international trade, improve access to enhanced varieties for consumers, increase agricultural productivity, support agricultural research and development, and enhance protection against unauthorized use of protected varieties.

Tourism

Law 25,997, governing tourism, is adapted to align the functioning of the Tourism Secretariat with its role as a promoter of the tourism system rather than a tourism producer. Additionally, Law 25,599 on Student Tourism is adjusted to the changes in Executive Decree 70/23 by removing references to the registry of travel agencies eliminated by the latter instrument.

Energy

A comprehensive review of the regulatory framework is undertaken in the energy sector to enhance and organize its development. The changes follow these guidelines:

- (i) comprehensive vision of the entire energy sector, not partial or in isolated and disconnected sectors;
- (ii) international focus, promoting free international trade;
- (iii) consideration of existing and potential natural resources of the Argentine Republic through increasing investments;
- (iv) application of the subsidiarity principle, fostering competitive private sector participation;
- (v) comprehensive approach to energy transition, recognizing that the commitments made are the responsibility of the National State, encouraging those emitting Greenhouse Gas (GHG) to be accountable for compliance and free to choose how to transition.

Hydrocarbons

The hydrocarbons sector has significant potential for job creation, resources, and foreign exchange in our country. The proposed reforms seek to maximize the exploitation of the country's resources. The new law establishes free international trade in hydrocarbons and prohibits intervention or price fixing in the domestic market at any stage of production.

The bidding regime for petroleum areas is changed to a royalty bidding system, where the winning bidder pays a royalty. This flexible approach allows for higher royalties in promising areas but lower royalties in less favorable zones. Additionally, an "anti-expropriation" clause is introduced, adjusting royalties if the reference price substantially changes in real terms.

Finally, a system of authorizations for the transport and/or processing of hydrocarbons is established, without a specified term or reversion of the infrastructure to the National or Provincial State, non-exclusive, and with obligations for open access to third parties in the remaining capacity.

Biofuels

A stable regulatory framework is established for biofuels, eliminating the temporal validity until 2030. One of the main changes is the introduction of free trade in biofuels, in terms of price and supply. Various production and price restrictions that were in place and hindered production are removed, and exemptions for biodiesel and bioethanol from certain taxes are eliminated.

ENRE and ENARGAS

The Regulatory Bodies for Gas and Electricity are unified for more efficient control and oversight of companies engaged in the transportation and distribution of electricity and natural gas.

Electric Energy

The proposed law establishes free international trade in electrical energy and the free choice of an electricity provider for end-users. Priority is given to the most economically efficient generation in the Wholesale Electricity Market (MEM) with economic dispatch considering the hourly marginal cost of the system and the cost of unsupplied energy to the community.

The Federal Council for Electric Energy is modernized to serve as a non-binding advisory body to the Ministry of Energy for the development of electric infrastructure.

Finally, greater clarity is provided in presenting the various components of the final bill to end-users.

Trust Funds in the Energy Sector

Efforts are made to enhance the effectiveness and efficiency in allocating and controlling resources within these funds. Therefore, the creation, modification, transformation, and/or elimination of trust funds in the energy sector, created by legal norms, including those intended for subsidies, is mandated. This involves reviewing their origin and purpose.

Uniform Environmental Legislation on Hydrocarbons

Greater coordination between the National State and the Provinces is encouraged, applying best environmental management practices to reconcile the development of the activity with proper environmental care. Additionally, the joint development of uniform national environmental legislation with the Provinces is promoted.

Energy Transition

To comply with international commitments under the Paris Agreement, the following is foreseen:

- Allocation of Greenhouse Gas (GHG) emission rights to each sector and subsector of the economy with thresholds compatible with current and future commitments.
- Creation of a GHG emission rights market with broad and decisive participation from private companies, the public sector, and other entities to achieve set goals effectively and gain access to climate financing.
- Establishment of rules for the GHG emission rights market, the transaction registry platform, and safeguarding against dominant positions or oligopoly.

Sustainable Productive Development

Changes are suggested in the burn law, allowing producers to create firebreaks and take preventive actions currently prohibited by legislation. Regarding the Forest Law, changes involve financing native forest funds directly from the Budget, simplifying procedures for the exploitation of forests in commercially enabled areas.

Amendments are made to the glacier law to allow economic activity in the periglacial zone only if there are environmental impact assessment studies, reversing federal power encroachment on the provinces.

Restrictions on the bulk commercialization of fertilizers are also removed.

Greater Competition, Fewer Monopolies, and State Restrictions

Utilizing the Spanish model, the Competition Defense Law is amended to grant the Agency the authority to litigate against provincial and municipal States if they enact any type of regulation that is detrimental to competition.

Moreover, the category of abuse of dominant position is removed from the typifications, limiting the commission's intervention to exclusive practices that affect the scope of competition, aligning our legislation with American antitrust laws.

Finally, the system changes the functional organization of the Competition Defense system. On one hand, the appointment mechanism for the director of the Competition Defense Agency is streamlined, breaking years of inertia that have hindered its establishment. Additionally, the competition defense tribunal will have a panel of international academic experts who, acting as sort of co-judges, can participate in each case according to their areas of expertise. This introduces external control for the tribunal's decisions.

Insurance Industry

The proposal suggests eliminating the need for prior authorization for insurance products from the Superintendence. This will allow greater creativity in insurance product offerings. It will also enable the Superintendence to focus its efforts and personnel on monitoring the financial solvency of companies.

Transportation

Changes in the organization of cargo and multimodal transportation are recommended to streamline and digitize processes. Additionally, owners transporting their own cargo are exempted from the cargo transportation regime.

Relevant changes are introduced in traffic laws. On one hand, the inspection points for vehicle technical verification (VTV) are expanded, allowing it to be performed at official dealerships and private workshops authorized for this

purpose. The need to eliminate physical toll booths is determined, and the autonomous driving mode is authorized.

Civil and Commercial Code with Greater Freedom

The concept of simplified divorce is introduced. Non-contentious divorces can be carried out more simply and inexpensively by registering them at the civil registry (similar to marriage registration).

The power of judges to reduce interest rates freely agreed upon by the parties to a contract is also limited. This prevents favoring delinquent debtors to ensure that those who fail to fulfill their obligations do not benefit. Debtors still have the option to request judicial reduction, but before falling into arrears.

Regarding 'astreintes' (compulsory penalties), judges are empowered to impose them based on the economic capacity of the defaulter to prevent large companies from preferring to pay fines, given their limited relative value compared to their assets, instead of complying with judicial resolutions, directly benefiting consumers.

The suppleness of legal norms is introduced in various contractual types, expanding upon what was already done in Executive Decree 70/23. This solidifies the notion that the will of the parties prevails.

Concerning compensation for civil damages, the scope of the so-called 'moral damages' is clarified. In addition, the State's joint liability for the acts of public officials is incorporated to provide predictability to the outcome of claims, which will be subject to the provisions of the Civil Code and not special administrative law.

The possibility for the surviving spouse to oppose the partition of commercial establishments is also limited, which often results in a violation of the property rights of other heirs.

Intellectual Property Regime

A regime for the management of collective rights, not present in our intellectual property law 11.723, is included. This is necessary to provide instruments to our artists to defend their rights.



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