Updates in Administrative Law and State Reform

June 2024

On June 28 2024, Congress passed the "Law of Bases and Starting Points for the Freedom of the Argentines" (the "Statute"). All that remains is the promulgation or veto of the President of the Nation.

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1. Administrative Reorganization

In order to improve the functioning of the State, reduce the oversized structure, and ensure effective control of the national Public Administration, Chapter I ("Administrative Reorganization") of Title II ("State Reform") empowers the national Executive Power to make arrangements regarding the central or decentralized administration bodies or agencies contemplated in subsection a) of article 8 of Law No. 24.156[1], which have been created by law or regulation with equivalent rank, excluding national universities, the bodies or agencies of the Judicial Power, Legislative Power, Public Ministry, and all entities that depend on them, the modification or elimination of competences, their reorganization, modification, transformation of legal structure, total or partial dissolution, merger, division, or transfer of competences to the provinces or the Autonomous City of Buenos Aires with prior agreement on the allocation of resources.

Similarly, it empowers the national Executive Power to arrange regarding the companies and societies contemplated in subsection b) of article 8 of Law No. 24.156[2], the modification or restructuring of their legal structure, merger, di-

[1] That is, Central Administration, decentralized organizations, and Social Security institutions. The possibility of dissolution does not apply to the National Council for Scientific and Technical Research (CONICET); the National Administration of Laboratories and Health Institutes "Dr. Carlos G. Malbrán" (ANLIS); the National Administration of Drugs, Food and Medical Technology (ANMAT); the Industrial Property Institute (INPI); the National Institute of Cinema and Audiovisual Arts (INCAA); the National Communications Entity (ENACOM); the Nuclear Regulatory Authority (ARN); the National Commission on Space Activities (CONAE); the National Atomic Energy Commission (CNEA); the National Commission for University Evaluation and Accreditation (CONEAU); the National Securities Commission (CNV); the National Central Unique Coordinating Institute for Ablation and Implant (INCUCAI); the Financial Information Unit (UIF); the National Institute of Agricultural Technology (INTA); the National Institute of Industrial Technology (INTI); the National Genetic Data Bank (BNDG); the National Parks Administration (APN); the National Service for Agri-food Health and Quality (SENASA); the Argentine Antarctic Institute (IAA); the Institute of Scientific and Technical Research for Defense (CITEDEF); the Technological Research Center of the Armed Forces (CITEFA); the National Geographic Institute (IGN); the National Institute of Seismic Prevention (INPRES); the National Hydrographic Service; the National Meteorological Service (SMN); the National Water Institute (INA); the Argentine Geological and Mining Service (SEGEMAR); the National Institute for Fisheries Research and Development (INIDEP); the National Center for High Performance Sports (CENARD); the National Superintendency of Insurance; the Superintendency of Labor Risks; and the National Agency for the Promotion of Research, Technological Development and Innovation.

[2] State Companies and Societies, which include State Companies, State Societies, Corporations with Majority State Participation, Mixed Economy Societies, and all other business organizations where the national State has a majority participation in the capital or in the decision-making process.

vision, reorganization, reformation, or transfer to the provinces or the Autonomous City of Buenos Aires with prior agreement that guarantees the proper allocation of resources.

It also authorizes the national Executive Power to modify, transform, unify, dissolve, or liquidate, excluding the Trust Fund for Residential Gas Consumption Subsidies created by Law No. 25.565, public trust funds in accordance with certain guidelines and those arising from their creation norms, constituent instruments, or other applicable provision.

Finally, it authorizes the national Executive Power to intervene, for a period of one year from the entry into force of the Law, the decentralized bodies, companies, and societies mentioned in subsections a) and b) of article 8 of Law No. 24.156, with certain exceptions (e.g., national universities, bodies or agencies of the Judicial Power, Public Ministry, ANMAT, CONICET, INTA, ANLIS, CONEAU, UIF).

2. Privatization of Public Companies

In Chapter II ("Privatization") of Title II ("State Reform"), the law declares subject to privatization under the terms and with the effects of Chapters II and III of Law No. 23.696 on State Reform: ENERGIA ARGENTINA S.A., INTERCARGO SAU, AGUA Y SANEAMIENTOS ARGENTINOS S.A., BELGRANO CARGAS Y LOGÍSTICA S.A., and SOCIEDAD OPERADORA FERROVIARIA S.E (SOFSE) CORREDORES VIALES S.A. Additionally, with specific details, Nucleoeléctrica Argentina Sociedad Anónima (NASA) and Yacimientos Carboníferos Rio Turbio (YCRT) are declared subject to privatization.

To carry out these privatizations, the national Executive Power may consider transferring ongoing contracts to the Provinces and must comply with the provisions contained in Law No. 23.696 and the Law under analysis. These privatization processes must be carried out in accordance with the principles of transparency, competition, maximum concurrence, open government, efficiency and effectiveness in the use of resources, publicity, and dissemination.

If, in the context of a privatization process, the liquidation of companies in which the national State owns the entirety of the corporate participation occurs, a series of guidelines must be followed.

The Bicameral Commission for Monitoring Privatizations created by article 14 of Law No. 23.696 will intervene in the privatizations carried out, and the General Syndicate of the Nation and the General Audit Office of the Nation will act in permanent collaboration with this Commission.

Regarding the privatization process, articles 17, 18, 20, 22, 27, and 35 are amended; and subsections 3, 4, and 5 of article 16 and articles 32 and 33 of Law No. 23.696 are repealed.

In all the mentioned procedures (reorganization, privatization), the involved companies or agencies will be exempt from complying with Law No. 11.687 ("Transfer of commercial and industrial establishments") and will not be required to meet the minimum capital amount (currently $30,000,000) indicated in article 186 of Law 19.550 (T.O. 1984) and its amendments.

Finally, the guiding principles that every company or agency with total or majority state participation must respect are established: efficiency, transparency, integrity, value generation, differentiated roles, and efficient controls.

3. Update to the Administrative Procedure Law No. 19.549

On the other hand, under Chapter III, modifications to the Administrative Procedure Law are established. Among the main modifications are:

a. Scope of application: Expands the scope of application to the Legislative and Judicial Powers when they exercise administrative functions. Establishes its supplementary application to non-state public entities and to administrative procedures governed by special laws. Conversely, it clarifies that it will not apply to all other companies and business organizations where the national State has, directly or indirectly, total or majority participation, which will be governed by private law.

b. Incorporation of principles and requirements of administrative procedure (art. 1° bis)

- Establishes as fundamental principles of administrative procedure legality, reasonableness, proportionality, good faith, legitimate trust, transparency, effective administrative protection, administrative simplification, and good administration.
- Additionally, the following procedural requirements are incorporated:
- **Citizen participation mechanisms**: Establishes that if a public hearing is required by a legal norm, this procedure may be complemented or replaced by the mechanism of public consultation or the one that is technically or legally most suitable for achieving the best and most efficient participation of interested parties and the adoption of the relevant act.
- **Right to a reasonable time frame**: Recognizes as a principle that procedures must conclude within a reasonable time and by written and express decision.
- **Speed, economy, simplicity, efficiency, and effectiveness in procedures. Free of charge. Good faith:** Establishes that administrative procedures, including resources, claims, and other challenges, will be free of charge without prejudice to the obligation to pay the fees of lawyers, representatives, and experts proposed.
- **Bureaucratic efficiency**, providing that interested parties will not be obliged to provide documents produced by the centralized or decentralized Administration if they have consented to these being consulted or obtained from their own databases.

- **Notifications**: The law incorporates the need to indicate to the interested party the available resources and whether the act exhausts the administrative route. Its absence entails the nullity and inefficacy of the administration. Previously, the regulation established that this absence extended the appeal periods to 60 days, but did not imply the nullity of the notification.
- **Review**: It is foreseen that the request for review suspends all periods not only to file appeals but also to answer reviews, transfers, summonses, or demands.
- **Extension/postponement of deadlines**: It is foreseen that the extension of deadlines is automatic in case the administration does not respond to the request 2 days before the expiration, but it is added that this extension will continue until 2 days after the administration responds to the requested request.
- **Deadlines in general**: The general deadline of 10 days is maintained for carrying out procedures, notifications, and summonses, compliance with intimations and demands, and response to transfers, reviews, and reports, and a maximum period of 60 days is established to resolve once it is in a position to be resolved by the competent body and provided that no special period is foreseen.
- **Denunciation of Illegitimacy**: It is limited to a period of 180 days from the notification of the act, after which it is understood that the right has been voluntarily abandoned.
- **Interruption of deadlines due to filing of administrative resources or judicial actions:** It is clarified that the interruptive effects of claims and administrative resources will remain until they become final in the administrative seat as appropriate: (a) the administrative act that resolves the matter; (b) the administrative act that declares the expiration of the procedure; or (c) the administrative act that accepts the abandonment of the procedure or the right.

c. Requirements of the Administrative Act (art. 7°):

- Adds will defects together with the requirement of competence.
- Specifically mentions respect for effective judicial protection within the procedural requirement.
- Eliminates the application of the LPA to administrative contracts.

d. Form of the Administrative Act: Accepts electronic or digital form as an admissible form and delegates to the regulation the conditions to which the use of electronic or digital means will be subject.

e. Public Consultation in Public Services Matters (incorporates article 8 bis): Establishes that, when the law requires the participation of users and consumers in tariff and public service regulation matters, a public consultation procedure must be carried out that guarantees access to adequate information and allows interested parties to express their opinions within reasonable time frames. The regulatory authority must consider these opinions in a substanti-

ated manner. Additionally, a non-binding public hearing can be held when circumstances warrant it, justifying this decision in reasons of economy, simplicity, and speed.

f. De Facto Actions: In addition to traditional de facto actions, it is added that the Administration will refrain from: (i) Establishing electronic, computer, or other mechanisms that by omitting alternatives or other defects or technical resources have the practical effect of preventing conducts that are not legally prohibited; (ii) Imposing measures that by their nature require prior judicial intervention, such as embargoes, searches, or other similar measures on the domicile or property of individuals.

g. Administrative Silence:

- **Negative Silence/Elimination of the Prompt Dispatch**: Eliminates the requirement to file a prompt dispatch to configure negative silence by the administration.
- **Positive Silence**: As a novelty, it is foreseen that when a norm requires an administrative authorization for individuals to carry out a certain conduct or act within the framework of a faculty regulated by the Administration, at the expiration of the period to resolve without an express resolution, silence will have a positive sense. It will not apply in matters of public health, environment, public service provision, or rights over public domain assets. It is foreseen that this institute will only become operational once the corresponding regulation is issued.

h. Presumption of legitimacy and enforceability: Empowers the Administration to use force against individuals or their property, without judicial intervention, when it is necessary to protect public order, public domain, or state-owned lands, seize movable property dangerous to the safety or health of the population, or, in the case of Police or Security Forces, in the commission of flagrant crimes.

i. Nullities:

Expressly incorporates within the cases of absolute nullity:

- when the Administration's will is vitiated by a serious defect in the formation of a collegiate body,
- when the object is not certain, possible, or in accordance with the law,
- when the required prior hearing of the interested party is omitted, or a serious violation of the procedure occurs,
- when there is deviation or abuse of power. These grounds for nullity were previously implicitly recognized as a consequence of the defects of the act's own requirements in article 7°.
- Additionally, it adds that nullity is relative in cases of incompetence by matter, when the act is issued by an administrative authority different from the one that should have issued the act, but within the same

sphere of competence, unless it concerns exclusive competencies assigned by law to a specific authority.
- It expressly provides that the sentence of absolute nullity will have retroactive effect to the date of the act, unless the court decides otherwise for reasons of equity, provided that the beneficiary of the act has not acted in bad faith.

j. Incorporation of loss of profit in compensation

It is foreseen that when the act is revoked, replaced, or suspended for reasons of opportunity, merit, or convenience, the damages caused must be compensated, including duly proven loss of profit.

k. Responsibility for the repeal of general scope acts:

General scope administrative acts may be repealed, totally or partially, and replaced by others, ex officio or at the request of a party. When acquired rights have arisen under the previous regulations, the damages effectively suffered by their holders must be compensated.

l. Elimination of the Review Resource / Incorporation of Prescription Period (article 22).

- The review resource provided for in the previous article 22 is eliminated.
- The new article 22 establishes prescription periods to request the judicial declaration of nullity of particular scope administrative acts from the notification of the act:
- 10 years in case of absolute nullity
- 2 years in case of relative nullity.

The period for filing administrative resources that exhaust the administrative route cannot be less than 30 days from the valid notification of the act being challenged.

m. Challenge of particular scope acts

Among the novelties we can find:

- Exceptions to the exhaustion of the administrative route are established when the act being challenged: (i) is based exclusively on the invalidity or unconstitutionality of the legal norm or higher hierarchy that the challenged act applies, (ii) constitutes useless ritualism, (iii) an amparo action or another urgent process is filed, (iv) acts issued in relation to what is the subject of a judicial process, after the issuance of the final and firm judgment (e.g., repetition of a fine declared null in judicial seat).
- The period for filing administrative resources that exhaust the administrative route (hierarchical) is extended to no less than THIRTY (30) days from the valid notification of the act being challenged.

— Challenge of acts in the framework of contract execution: It is foreseen that administrative acts issued during the execution of contracts with the National State that the contractor has expressly challenged within THIRTY (30) days of being notified will be judicially challengeable until 180 days after the extinction of the contract, without prejudice to the application of the corresponding prescription norms. For this purpose, it will not be necessary to have maintained the administrative challenge or promoted the judicial challenge, or the express or tacit denial of that challenge, during the execution.

n. Challenge of general scope acts

No relevant modifications were introduced, without prejudice to some clarifications such as:

- The actions of amparo or other urgent processes and the challenge of decrees of the National Executive Power issued in the exercise of the powers conferred by articles 76, 80, and 99, subsection 3 of the Constitution (e.g., delegated decrees and DNU) are exempt from the obligation of this improper claim.
- It is clarified that the lack of direct challenge of a general scope act or its eventual dismissal will not prevent the challenge of particular scope acts that apply it and vice versa.

o. Expiration period (art. 25 and 25 bis). Unification of periods. Repeal of solve et repete.

- Nullity Claims (art. 25): The expiration period is extended from 90 to 180 days from the notification of the act that exhausts the route.
- Direct Resources: (new article 25 bis): A period of 30 judicial business days is established, and all prescriptions establishing shorter periods are repealed.
- It is also established that in no case can the administrative body before which the judicial resource is filed deny its admissibility, limiting itself to forwarding it to the competent court within 5 days, and the individual can directly go to court in case of non-compliance with this period.
- Solve et repete for pecuniary sanctions is repealed. All normative prescriptions to the contrary are repealed.

p. Amparo for delay

The judicial amparo procedure for delay is regulated in greater detail. Among the most relevant issues we can mention:

— A period of 5 days is established for the administration to respond to the transfer.
— It is foreseen that only the sentence is appealable when (i) it does not grant the amparo for delay; (ii) it accepts the period proposed by the

Administration; (iii) it sets the period for the Administration to pronounce itself.
- The appeal resource will be granted only for devolutive effect.

g. Prior administrative claim

- Deadlines for resolving the claim in the administrative seat are not modified.
- The expiration period for initiating judicial action is extended to 180 days (as in the modification of article 25) from the notification of the act that negatively resolves the claim.
- This period does not start to run in case of silence, unlike the previous wording, without prejudice to the right to initiate judicial action once it has expired.
- The following exceptions to the mandatory filing of the prior administrative claim are incorporated: (i) In cases of claims for damages for contractual liability (previously only extracontractual), (ii) In eviction actions against the national State or another that does not proceed through ordinary means, (iii) In case of useless ritualism.

4. Modifications to the Public Employment Regime

Finally, the Law makes a series of modifications to the public employment regime. Among the main ones are:

- Modifies the availability regime of employees with stability, establishing that those affected by restructuring measures that involve the suppression of bodies, agencies, or the functions assigned to them; or reduction due to excess, as indicated by the competent body's reasoned report, will automatically go into availability status for a term of 12 months, after which the worker will automatically be dismissed and entitled to receive compensation similar to that provided for in article 245 of the Labor Contract Regime.
- Eliminates the obligation to reassign to other bodies those delegates with a pending mandate or the year after union protection in case of suppression of the body, although in these cases they cannot be put on availability.
- Eliminates the possibility for public employees to work an additional year after being required to retire.
- Eliminates the worker's express consent in cases of geographic mobility.
- Eliminates the provision for mechanisms of union associations' participation in the selection systems for filling vacant positions.
- Prohibits state personnel from performing any type of tasks related to electoral or party campaigns during their working hours.
- Modifies the disciplinary regime to impose warnings, suspensions, dismissals, and disqualifications, hardening the causes that motivate these sanctions and extending the prescription periods.

— Establishes that proportional discount in remuneration may be made in cases of strikes.

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