

McEWAN



Family Law 2025

LAW AND PRACTICE



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1. Divorce

1.1 Grounds, Timeline, Service and Process

In Argentina, there are neither grounds for terminating marriage nor a required period of personal separation before for filing a divorce.

Argentina is a codified law jurisdiction. Its Civil and Commercial Code (CCC) has eliminated any form of fault-alleging by either of the spouses and, therefore, the possibility of initiating claims for damages (against the other spouse) is not allowed.

DIVORCE PROCEEDINGS

Either spouse may file, unilaterally or jointly, a divorce procedure. If a unilateral procedure has been filed, the parties may have an uncontested divorce. However, the judge will rule the same way as in a joint procedure, as there are no grounds for divorce.

Argentine law has recognised marriage between same-sex couples since 2010, so the same marital regime will apply in such cases. Adoption is also allowed for same-sex couples under the same terms as those required for heterosexual couples. Same-sex marriage and cohabitation have been recognised and enforced since 2015, with the sanction of the CCC.

The divorce process is initiated by filing a petition with the court based on the principle of the last marital domicile. This can be done by both spouses together (joint petition) or by one spouse alone (unilateral petition). A divorce petition can be filed at any time after marriage, as there are no required separation periods or specific grounds needed to request a divorce. If both parties agree on the terms, the court can issue a divorce decree within a period of two to three months. The divorce becomes official once the court's decision is registered in the Civil Registry of the jurisdiction where the marriage took place.



The rule for service of divorce proceedings is the last effective marital domicile or the domicile of the defendant spouse, at the plaintiff spouse's discretion. If one of the spouses does not have a domicile in Argentina, the action may be brought before the court of the last domicile they had within Argentina, provided the marriage was celebrated there. If the location of the last marital domicile cannot be established, the general rules of jurisdiction will apply.

RELIGIOUS MARRIAGES

Religious marriages have no legal effects in Argentina. In the Catholic Church, there is no divorce or separation. However, there is the annulment of marriage. Divorced Catholics can marry in the church only if it has been demonstrated through the church's internal process that they are free to marry. This also applies to non-Catholics who wish to marry a Catholic or convert to Catholicism.

MARRIAGE ANNULMENT

The annulment of a marriage is another process that spouses may file in relation to ending a marriage. When any of the grounds established by law arise, it is possible to request the annulment of a civil marriage, meaning it will be rendered null and void. Unlike divorce, when a marriage is declared null, it is as if it never existed. The grounds for declaring the annulment of a civil marriage are:

- if there was an error regarding the identity of the person with whom the marriage was contracted;
- when both or one of the spouses are under 18 years of age;
- when the marriage was entered into under the influence of force or fear strong enough to prevent the free exercise of decision-making;
- when there was no freedom of consent because one of the spouses was abducted;
- when one of the spouses was involved in the crime of spousal homicide in a previous marriage;
- when a prior marital bond still exists;
- when the marriage was contracted between:
 - kinship in a straight line in all degrees, regardless of the origin of the relationship;
 - kinship between bilateral and unilateral siblings, regardless of the origin of the relationship;
 - affinity in a straight line in all degrees.

The annulment is processed through legal proceedings before a judge. The process begins with a lawsuit, for which presenting the marriage certificate is a fundamental requirement. Once the marriage is annulled, all reciprocal rights and obligations arising from it cease as of the same day. If bad faith is proven in one of the spouses, they will be obligated to compensate the other for all damage caused.

SEPARATION OF ASSETS

Under the CCC, there is no judicial process under which spouses can obtain a separation sentence other than liquidation of marital assets. Separation of assets refers to a resolution by which the communal marital assets are divided between the spouses, who continue to be married under a different marital asset system (the separated patrimony system).

However, a process of judicial separation of marital assets may be filed in case spouses intend to extinguish the marital assets and for some reason (ie, religious) they do not want to file for divorce. The judicial separation of assets may be requested by one of the spouses:

- if the other spouse's mismanagement threatens to cause the loss of their eventual rights over the community property;
- if the other spouse is declared in a state of preventive insolvency or bankruptcy;
- if the spouses are living apart without the intention to reunite;
- if, due to incapacity or excuse of one spouse, a third party is appointed as the curator of the other.

1.2. Choice of Jurisdiction

The law of the last marital domicile determines the applicable law and court jurisdiction in divorce cases and all matters concerning marriage nullity. Argentina adopted a federal system of government in which each of the 23 provinces (and the Autonomous City of Buenos Aires) has its own procedural law. Thus, the applicable law is always the CCC, and the court with jurisdiction is the provincial court where the last marriage residence was settled. The same grounds apply to same-sex marriages.



A party to a divorce may contest jurisdiction if the last marriage domicile is not in Argentina. Marriage dissolution procedures are governed by the spouses' last marital residence law. However, if the last marital residence was in a foreign country, the parties may file for divorce in that country and then register the resolution at the local register. An Argentine judge's intervention is needed to receive all foreign-certified divorce documents.

Foreign divorces are recognised when the sentence is issued according to the last marital domicile principle. Therefore, if the last marital residence is located in a different jurisdiction, spouses must register the divorce resolution before the Argentine Civil Registry with the intervention of an Argentine judge who will have received all certified divorce documents filed by the interested party.

Notably, if there are proceedings in another jurisdiction, said proceedings filed in Argentina can be stayed until the jurisdictional dispute has been resolved. The CCC incorporates the international legal principle of avoiding contradictory rulings over the same matter passed by different courts.

2. FINANCIAL PROCEEDINGS

2.1 Choice of Jurisdiction

It is important to mention that the court's role in divorce proceedings is limited to supervision that rules of public order (normas de orden público) have not been infringed and to ensure, upon petition, a fair resolution of the unresolved effects of the divorce (either patrimonial or not). Having said that, upon petition, financial orders to enforce child support and financial orders to liquidate and distribute marital assets can both be made on divorce.

The choice of divorce orders and how to obtain them from the courts are ruled in the CCC and in each province's Civil and Commercial Procedure Codes.

The divorce decree shall rule regarding the communication regime when minors are involved (under 18 years old) and the attribution of the family home (according to the rules established in the CCC). If petitioned, the court will only order temporary and exceptional spousal maintenance or compensation obligations.



Any spouse may file preventive measures on child support or custody before or during the divorce procedure to ensure financial orders.

First, a foreign divorce decree needs to be recognised in Argentina – for which, summary information known as an “exequatur” must be made whereby an Argentine judge, once they have verified that all the requirements are met (ie, no breach of public order rules and does not oppose another decree passed in Argentina), orders the registration of the divorce in the corresponding Argentine Civil Registry. If bilateral international treaties have been signed, said rules shall apply.

Financial claims may be related to immovable assets located in Argentina and to enforcing child maintenance.

It is important to mention that a foreign financial decree duly certified in its jurisdiction can be enforced if:

the defendant (or paying party) is domiciled in Argentina; or
the defendant’s (or paying party’s) property is located in Argentina.

2.2 Service and Process

Financial settlements must go through a prejudicial mediation process before filing in court. If no agreement is reached, filing the complaint in court is permitted in order to be served. There is no arbitration in family law matters.

2.3 Division of Assets

Under the CCC, when a divorce occurs, assets can be divided either through the court or privately. The court does not have to address marital regimes in the divorce decree; instead, the parties can privately settle the liquidation of their marital property. They can agree on how to distribute the assets between themselves. Alternatively, if needed, either or both parties may file a petition for a judicial liquidation and distribution procedure.



The CCC includes two forms of marital estate: property earned or purchased by the husband or wife during the marriage. This marital property can then be classified as marital estate administered by the husband during the marriage and marital estate administered by the wife during the marriage, regardless of who holds title over the specific good. This means that any spouse can hold the title of a property, which is still considered marital estate – although it will be administered by the spouse holding its title. The marital estate also comprises all assets under the names of companies or third parties that have been established using marital assets or because of the liquidation of marital assets.

When a marriage is terminated (due to death or divorce), the assets that qualify as shared/marital property are grouped together. After the applicable liabilities and claims of each spouse have been worked out (which may include compensation for the differences in the value of the property), they are divided and distributed equally between the spouses (in case of divorce) or between the heirs and the surviving spouse (in case of death).

Trusts

Argentine law recognises the concept of trusts. Although Argentina has not signed the Hague Convention on the Law Applicable to Trusts and Their Recognition (1985), some court precedents acknowledge the existence and enforceability of foreign trusts, provided that such trusts do not violate Argentine public order (eg, rules regarding inheritance for descendants and spouses).

Regulations or by-laws of a trust cannot override the forced heirship rule. As this rule is part of public order, any provisions or structures (such as trusts) that conflict with it can be challenged in court. Argentine law offers legal remedies for cases where a forced heir has been negatively affected regarding the forced share they are entitled to receive. In this context, any heir is entitled to file a collatio bonorum claim, which involves joining the assets together into a common fund.

There are precedents from Argentine courts where forced heirship claims have been admitted against trust assets where the legitimate portion of one of them was infringed.

The case of Vogelius, Angelina y otros c/Vogelius, Federico y otros

In this case, the Supreme Court of Argentina ruled that even though a trust was established in the UK with assets located there, the succession must be governed by



Argentine civil law. The court addressed the issue of collatio bonorum (accounting for gifts made during the settlor's lifetime) and determined that a trust created to benefit a forced heir of the settlor might be classified as a gift to that heir made prior to the settlor's death. Consequently, this trust must be included in the estate's accounting, as its implications go beyond what is allowed under inheritance law.

Regarding private international law matters, the court established that even though the trust was governed by UK law, the succession was subject to Argentine law because the deceased was last domiciled in Argentina.

2.4 Spousal Maintenance

The CCC establishes spousal maintenance or economic compensation in exceptional and temporary circumstances, including:

in case of illness, or where a clear economic disadvantage means a worsening of their situation and the marital bond and its breakdown is a likely cause;
when experiencing difficulty in obtaining a job (generally in relation to the parent that holds custody of children); or
in case of potential loss of pension rights, they have the right to claim compensation.
Compensation may consist of a one-time benefit, an income for a specified time or, exceptionally, an income for an indefinite period. Financial compensation claims have a six-month statutory limit after the divorce decree has been issued.

2.5 Prenuptial and Postnuptial Agreements

Under the CCC, marital agreements (conventions) are accepted under Argentine law. For such agreements to be valid, the marriage must be celebrated, and the agreements are required to determine:

- an inventory of assets of each spouse;
- donations between spouses before marriage; and
- the adoption of one of the matrimonial property regimes.

Said agreements need to be signed by public deed. Argentina has only two marital property regimes: the community property and the separate property regime. The community regime



acts principally as the default regime if spouses keep silent on which regime they adopt. Also, spouses may change the matrimonial property adopted (only from a community regime to a separate regime and vice versa) within a year of marriage or once a year has passed since the last change.

If foreign prenuptial agreements are made, they must adhere to CCC regulations and be filed and registered with the Civil Registry if the marriage celebrated in another country is also registered in Argentina.

No postnuptial agreements are recognised by law. However, some private postnuptial agreements may be agreed upon by the spouses when a private separation and liquidation of the marital assets is signed.

For (pre)marital agreements to be enforceable, they must be documented through a public deed, and their content must comply with legal requirements. Courts have seen cases challenging whether the proper formal procedures were followed. Due to the variety of clauses included in these agreements, there is no significant case law.

2.6 Cohabitation

The CCC recognises certain rights for cohabitants, provided they have been together for at least two years. Through “cohabitation agreements” (pacto de convivencia), domestic partners can regulate different aspects of their lives together, such as economic aspects for distributing property and other responsibilities.

The CCC also provides protection for the family home and, if one partner dies, the survivor is granted the right to free housing in the home they shared for a period of two years. The law recognises other partial effects on partners (ie, social security and pension rights); however, the legal recognition provided for them is restricted. Partners or cohabitants do not have inheritance rights; therefore, a testator/testatrix may dispose of their wealth to the partner up to the disposable portion (one-third of the estate).

Under the CCC, a cohabitant with no children who suffers a clear imbalance in their economic situation (due to the end of the cohabitation) may claim economic compensation before the court within six months of the breakdown.



Upon petition, to ensure financial orders regarding enforcement of child support or economic compensation, the execution of a court's ruling may include seizure, lien or restraint of assets.

2.7 Enforcement

Execution of a court's ruling may include seizure, lien or restraint of assets (depending on the local jurisdiction where the procedure has been filed).

In Argentina, traditional methods to ensure child support fulfilment had been ineffective. For this reason, additional approaches were adopted to ensure that those responsible fulfil their obligation. Following the commitment adopted by Argentina to the Convention on the Rights of the Child, a Registry of Child Support Debtors was created.

In this way, the Registry seeks to ensure that debtors fulfil their obligation to pay child support, with a focus on the well-being of minors. Due to the challenges in achieving positive outcomes through enforcement actions, sanctions are applied to encourage debtors to rectify their situation.

International enforcement of a financial order is permitted in Argentina, following international regulations and special procedures.

2.8 Media Access and Transparency

When minors are involved, the law prohibits the publication, dissemination or advertising of certain facts related to individuals under the age of 18.

Processes are public files. However, family processes are reserved files, and only the parties involved have access to said files.

2.9 Alternative Dispute Resolution (ADR)

There is no ADR in Argentina.



3. CHILD LAW

3.1 Choice of Jurisdiction

For children proceedings, the jurisdictional grounds are the same for marriage and financial cases.

It is important to note that the last domicile will give the judge grounds to decide the children's proceedings and which of the spouses will remain in the family home. As such, the judge considers the following concepts:

who will take care of the children;
the best interests of the children
who is in a better financial situation to maintain a home on their own;
the health condition and age of the spouses; and
the interests of other individuals who are part of the family group.

3.2 Living/Contact Arrangements and Child Maintenance

COMMUNICATION AND CONTACT ARRANGEMENTS

If there is no (private) agreement between the parents through a parental agreement, the judge will decide on the "communication agreement". The contract agreement shall address the following:

- the place and time the children spend with each parent;
- the responsibilities each parent assumes toward the children (taking them to school, paying for health insurance, taking them to medical check-ups, etc);
- how the children will spend holidays, public holidays, and other important dates; and
- how will the children communicate with each parent.

When courts approach an application for child support or related matters in the context of family law, they generally follow a process that ensures the child's best interests are prioritised. For a general overview of how courts typically handle such applications, please see **3.1 Choice of Jurisdiction**.



Following the breakdown of a relationship or marriage, the legal approach to custody and parental responsibility focuses on ensuring the children's best interests are upheld. The courts typically follow a structured process determined by the CCC when determining custody and the allocation of parental responsibility.

In Argentina, there are certain restrictions on the court's ability to make orders regarding a child's living and contact arrangements, particularly to ensure the child's best interests are always the primary consideration. These restrictions are in place to protect the child's welfare and ensure that decisions regarding custody and visitation are not harmful to the child's emotional, physical or psychological development.

CHILD MAINTENANCE

In Argentina, child maintenance (*alimentos*) is defined as the financial support that one parent provides to the other for the care, upbringing, and welfare of their children after the breakdown of a relationship or marriage. The obligation to provide maintenance arises from the legal duty of parents to support their children, ensuring they have access to the basic needs necessary for their development, such as food, clothing, education, health, and shelter.

The child maintenance applies to both biological parents, regardless of marital status or relationship. *Alimentos* shall include:

- education (school fees, books, extracurricular activities, etc);
- healthcare (medical expenses, dental care, insurance);
- clothing; and
- housing (when the child lives with the custodial parent, maintenance also contributes to the housing expenses related to the child's needs).

Parents are expected to share the responsibility for maintaining their children, and the law recognises that these duties do not end when the child reaches adulthood in certain situations – for example, if the child is still studying or is unable to support themselves.

The parents' incomes and the financial agreements between the spouses in a divorce directly affect the calculation of child maintenance.



While there is no fixed formula for calculating child maintenance in Argentina, the law typically sets out a percentage of the non-custodial parent's income, which the court may adjust based on the child's needs and the financial ability of both parents. By way of example, child maintenance may range between 15% and 25% of the non-custodial parent's income, depending on the number of children and other relevant factors. The percentage may increase or be adjusted if there is more than one child. In cases where the parents are not in agreement about the amount of maintenance, a judge will evaluate the parents' incomes, the needs of the child, and other factors to determine an appropriate maintenance amount.

In joint or shared custody cases, where the child spends an equal amount of time with both parents, the amount of maintenance may be adjusted, with both parents contributing proportionally to the child's needs. The court will consider both parents' incomes and the practicalities of care and financial support.

As described previously, parents may address child maintenance arrangements privately and then seek the judge's acknowledgement.

PERMANENT AND TEMPORARY MAINTENANCE ORDERS

In Argentina, the court can issue both temporary and permanent maintenance orders, which are granted while a case is still pending, ensuring that the child's needs are met before a final decision is made. The weaker party typically requests this type of order. Conversely, permanent maintenance orders are established once a final decision is reached and remain in effect until the child turns 18 or until there is a change in circumstances.

In Argentina, child maintenance orders generally last until the child reaches the age of 21 (unless the adult child has sufficient resources to provide for themselves). However, there are exceptions and, in some cases, the maintenance obligation can extend beyond this age limit until the child reaches the age of 25 (for children attending university or vocational school and if they cannot support themselves). Moreover, beyond the age of 21, if the child is incapacitated or unable to work due to a physical or mental condition, the parent may still be required to provide maintenance, regardless of the child's age (on a case-by-case basis). The minimum age for a child to be able to apply for maintenance directly in Argentina is 18 years old, as this is the age of legal majority and the capacity to make independent legal decisions.



MEDICAL TREATMENTS

It is important to highlight that under the CCC, there is a presumption that children between the ages of 13 and 16 can make decisions regarding non-invasive medical treatments that do not compromise their health or pose a serious risk to their lives or physical integrity.

For invasive treatments that do compromise their health, or when their integrity or life is at risk, the adolescent must give their consent with the assistance of their parents. In the event of a conflict between the parents, the matter is resolved by prioritising the adolescent's best interests based on medical opinions regarding the consequences of carrying out or not carrying out the medical procedure.

3.3 Other Matters

Courts in Argentina have the authority to issue orders regarding the upbringing of a child when parents have not reached an agreement regarding schooling, medical care, religion, and holidays.

In Argentina, courts consider allegations of parental alienation to be a restrictive matter that considers the best interests of the child (as a public order rule). The factors to be considered are:

- the child's behaviour and relationship patterns – changes in the child's behaviour towards the alienated parent (such as sudden hostility, fear, or rejection) that cannot be reasonably explained; and
- parental conduct – evidence is examined to determine whether one parent has engaged in alienating behaviours, such as:
 - making disparaging remarks about the other parent;
 - limiting contact or access without valid reasons; and
 - manipulating the child to develop negative feelings towards the other parent.



In respect of parental alienation, the court may also:

- order evaluations by mental health professionals to identify signs of alienation and its impact on the child; and
- consider whether the alienation has negatively affected the child's emotional health, self-esteem, or ability to form stable relationships.

When parental alienation is established, the court can take measures such as adjusting custody or visitation arrangements, mandating therapy, or imposing penalties on the alienating parent to safeguard the child's welfare.

Once again, the principle of protecting the child's well-being applies to children giving evidence in court. The CCC grants children the right to be heard in legal proceedings affecting them – taking into account their age, maturity, and level of understanding.

Ultimately, the court uses the child's testimony as one of several factors to determine the course of action that best aligns with the child's rights and welfare.

3.4 ADR

Mediation is a well-established mechanism that helps parties resolve all family disputes (including child support, spousal maintenance, and marital asset division). It is a widely used ADR method in Argentina. Mediation involves a neutral third party (the mediator) who facilitates communication and negotiation between the parties to reach a mutually agreeable solution. The rule of confidentiality allows parties to negotiate freely without fear that their discussions will be used against them in court.

The law also allows private agreements to be settled by the parties with the participation of legal advice as a requirement.

In many provinces in Argentina, both mediation and private agreements are mandated by law as a prerequisite to filing certain types of court cases, including financial disputes.



3.5 Media Access and Transparency

In Argentina, reporting cases involving children is highly restricted to protect their privacy and safeguard their best interests. The applicable regulations are:

- The Convention on the Rights of the Child, incorporated into Argentina's Constitution, guarantees children's rights to privacy.
- The Civil and Commercial Code and Law 26,061 on the Comprehensive Protection of the Rights of Children and Adolescents explicitly prohibit the publication of any information that may directly or indirectly identify a child involved in judicial proceedings.

Media outlets are prohibited from publishing names, photographs, or any identifying details about the child or their family. Violations of these rules can result in legal penalties, including fines or sanctions for the publication.

ANONYMITY

All case reports will anonymise children's information to protect their identity. Names and other identifying details, such as addresses, school names, or photographs, will be redacted or replaced with initials or pseudonyms in all official records and public communications.

In family law cases, proceedings involving children are automatically anonymised as a matter of law to protect their privacy and dignity. Parents may still wish to ensure further anonymisation or privacy.

If any party, media outlet, or individual breaches confidentiality rules, the court may impose fines or sanctions. The offending party may face additional legal consequences.

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