
The Tearsheet

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| <ul style="list-style-type: none"> ▪ Given the timeline of the appeal before the Second Circuit Court of Appeals of New York, and the legal obstacles facing the motion of turnover regarding Argentina's 51% stake in YPF, plaintiffs Petersen Energía and Eton Park have refocused their efforts on the "alter ego" doctrine for discovery purposes. ▪ They aim to expand the scope of discovery to include additional state-owned enterprises (SOEs) as potential sources of assets to enforce their \$16.1BN judgment while continuing to push for discovery based on the presumption that YPF and the Central Bank of Argentina (BCRA) are alter egos of the Argentine Republic. ▪ On August 27, the Southern District Court of New York will hold a premotion conference. We believe Judge Loretta Preska may grant the right to discover alter ego evidence regarding other instrumentalities. ▪ However, we do not perceive any imminent risk of a judgment that declares such instrumentalities as an alter-ego of the Republic to enforce the judgment. ▪ Consequently, we now expect that the turnover petition will be decided in October, together with the discovery request. ▪ We anticipate continued judicial activism from the plaintiffs, with both the motion for turnover and the alter ego evidence claims forming part of a broader strategy aimed at reaching a possible settlement with Argentina. Any such settlement would likely require intervention from the Argentine Congress, as it would involve significant financial commitments. ▪ This possibility may gain serious traction as we approach 4Q25 when the appeal is expected to be heard, especially if the mid-term elections in 3Q25 provide President Javier Milei with greater political clout in Congress. | <table border="0"> <tr> <td style="vertical-align: top;"> <p>Aug 23</p> <p>Aug 27</p> <p>Sept 3</p> <p>Sept 6</p> <p>Oct</p> <p>Dec 14</p> <p>3Q25</p> <p>4Q25</p> <p>4Q26</p> </td> <td style="vertical-align: top;"> <p>YPF presents its defense in the Court of Appeals to avoid being reinstated in the case</p> <p>Premotion conference</p> <p>Premotion conference regarding alter ego discovery, including the Republic and BNA, and YPF's participation in turnover petition</p> <p>Final arguments of all parties in the Court of Appeals</p> <p>Expected decision on the alter ego discovery and the turnover petition</p> <p>The Republic completes discovery</p> <p>Argentine midterm elections</p> <p>Court of Appeals decision</p> <p>SCOTUS hearing the case (exp.)</p> </td> </tr> </table> | <p>Aug 23</p> <p>Aug 27</p> <p>Sept 3</p> <p>Sept 6</p> <p>Oct</p> <p>Dec 14</p> <p>3Q25</p> <p>4Q25</p> <p>4Q26</p> | <p>YPF presents its defense in the Court of Appeals to avoid being reinstated in the case</p> <p>Premotion conference</p> <p>Premotion conference regarding alter ego discovery, including the Republic and BNA, and YPF's participation in turnover petition</p> <p>Final arguments of all parties in the Court of Appeals</p> <p>Expected decision on the alter ego discovery and the turnover petition</p> <p>The Republic completes discovery</p> <p>Argentine midterm elections</p> <p>Court of Appeals decision</p> <p>SCOTUS hearing the case (exp.)</p> |
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1. Navigating the YPF legal maze: appeal, turnover motion, and the alter ego strategy

- The YPF case has become an intricate one, with at least three parallel proceedings: (i) the appeal, (ii) the turnover petition and the judgment stay, and finally (iii) the alter ego discovery.
- Argentina has appealed the \$16.1bn judgment issued by the Southern District Court of New York (SDNY) before the Second Circuit Court of Appeals. The appeal will take several months to be decided.
- The appeal is expected to confirm Argentina's contractual breaches in the 2012 YPF takeover but may also revisit the compensation amount, potentially sending the case back to the SDNY for reassessment.

- Concurrently, the plaintiffs filed a motion to enforce the judgment by turning over YPF shares held by Argentina. As highlighted in [our earlier report](#), this motion will encounter significant legal hurdles, including sovereign immunity and international comity, which might delay or complicate its resolution.
- Judge Loretta Preska may seek alternative payment proposals from Argentina or request the U.S. Government's opinion to navigate these challenges.
- In any case, in practical terms and because of the appeal, the \$16.1bn judgment is stayed, although Argentina has to propose alternative means of payment security. Therefore, any enforcement risks require a decision authorizing the enforcement pending appeal—that will not be an ordinary decision, considering the amount of the appeal judgment.
- The next decision that the SDNY must make is (i) whether or not to grant the turnover petition and (ii) whether or not to lift the stay. We consider that a turnover ruling is unlikely to be granted. Regarding the stay, the SDNY could decide not to rule on the matter but allow the plaintiffs to expand their discovery.
- We were expecting a decision on the turnover petition in August. Still, because of the pre-motion conference and YPF's hearing schedule set for September 3, the decision will likely be postponed until October. As we explain below, our base case scenario is that the turnover will not be granted at this time.

2. Expanding the Alter Ego Strategy: Revisiting Discovery in the YPF Case

- In October 2023, the plaintiffs requested post-judgment discovery. As we showed in [another of our Aurora reports](#), the plaintiffs initially pursued the "alter ego" strategy by asking Judge Preska to compel YPF and other SOEs, including Aerolíneas Argentinas, ARSAT, the Argentine Central Bank (BCRA), Banco de la Nación Argentina (BNA), and ENARSA to provide documentation on their relationships with the Argentine government.
- On May 28, Judge Preska ruled that only the discovery requests concerning YPF and BCRA were valid, citing reasonable doubts about their relationship with the Argentine government.
- Consequently, Argentina was ordered to produce documents detailing its relationship with these entities over the past two years. For the other SOEs, Preska stated that the plaintiffs would need to provide further justification to expand the discovery beyond YPF and BCRA.
- The alter ego discovery is not intended to declare that the instrumentalities are liable for the \$16.1bn judgment but only to produce evidence regarding the Republic's day-to-day control over them.
- On August 1, after focusing on the motion for the turnover of YPF shares and recognizing its challenges, the plaintiffs returned to the alter ego strategy. They requested Judge Preska establish a mandatory schedule for post-judgment discovery.
- Crucially, they also sought to expand discovery under the alter ego theory, including the aforementioned SOEs alongside YPF and BCRA, presenting new evidence to justify this broader discovery, and arguing that these entities might also be "alter egos" of the Argentine government.
- BNA, one of these SOEs, opposed this request, asserting that it had already produced documents on three occasions and had not engaged in delay tactics. The bank strongly opposed any expansion of discovery under the "alter ego" theory, arguing that the plaintiffs had not provided sufficient evidence.

- The Argentine Republic also opposed the plaintiffs' proposed scheduling order, arguing that the proposed deadlines were unattainable due to the volume of documents requested. They further opposed the expanded "alter ego" discovery, stating that the plaintiffs had not demonstrated the day-to-day control necessary to justify expanding discovery to other SOEs, rendering the request unfounded.
- On August 20, the SNDY granted the petitions, deciding to hold a premotion conference on August 27 and defining the schedule for the Republic's discovery, ending on December 14, 2024.
- At the same time, YPF requested its admission as an interested party in an additional effort to oppose the turnover petition and post-judgment discovery. The oil company argued that the doctrine of *res judicata* prevents the plaintiffs from relitigating its liability.
- The petition has not yet been decided. In any case, the discussion is not about YPF's liability but about the possibility of using its shares for the turnover petition or, in any case, to advance the discovery regarding day-to-day control. On September 3, the Court will hold a conference to decide on the matter.

3. What to expect in the following months

- The decision about the expanded alter ego discovery will depend on how the SDNY decides the turnover petition, which we consider unlikely to succeed.
- While denying the turnover petition, the Court could increase the pressure on Argentina to ensure the payment of the \$16.1bn judgment pending appeal. Authorizing expanded alter ego discovery will likely create incentives to propose alternative means of payment.
- At the same time, the burden of discovery is lower than that of declaring the alter ego for liability purposes. For purposes of post-judgment discovery, it is enough to demonstrate a reasonable doubt about the level of control over the instrumentality.
- The SNDY could consider that that burden was met, allowing an expanded discovery regarding other instrumentalities without determining whether the alter ego factors are fulfilled for liability purposes.
- Hence, if the turnover petition is not granted, the Court could grant the right to expand post-judgment discovery after the hearing scheduled for September 3 while asking for additional assurance of payments.
- If Argentina fails to present such assurance, the Court could authorize the plaintiffs to seek the enforcement of the judgment, increasing the risks of claims against instrumentalities based on the alter ego doctrine, not only in Argentina but also abroad (as was already requested).
- The discovery will put the Milei administration in a difficult position due to the risk that the governance rules applied during President Fernández's term could be considered a presumption that the Argentina Government extended the political control over instrumentalities, including the BCRA.
- At the same time, the Court will likely admit YPF's request to intervene after the September 3 hearing. In that case, the decision on the turnover petition could be postponed by approximately one month.
- Consequently, considering the hearings set for September 3, the Court will probably decide on the turnover petition and the expanded alter-ego discovery in October. While the first petition will likely not be granted, the expanded discovery will probably be authorized.

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