

Argentina

Legal overview

Registered Companies and Partnerships

The two most common ways for a foreign company to establish a presence in Argentina are through either an Argentine resident subsidiary company or an Argentine permanent establishment (such as a branch).

In order for a company incorporated in a foreign jurisdiction to perform the activities listed within the framework of its corporate object, establish a branch in Argentina, or establish any other kind of permanent representation, it must:

- provide evidence of the existence of the company pursuant to the laws of the country of origin;
- establish an address in Argentina in order to comply with publication and registration requirements; and
- provide evidence of the decision to have a representative in Argentina and appoint said representative; in the case of a branch, it will also be determined how much capital will be allocated to such branch when applicable under special laws.

These requirements apply not only to companies incorporated in a foreign jurisdiction wishing to create a new company in Argentina but also to those that wish to purchase portions, quotas or shares of Argentine ongoing companies. Short term investments are excluded.

Classification of Registered Companies

The two most common company types are the following:

1. Sociedad de Responsabilidad Limitada, SRL (Limited Liability Company): The capital is divided into quotas. Members' liability is limited to the number of quotas subscribed or acquired.
2. Sociedad Anónima, SA (Corporation or Joint Stock Company): The capital is divided into shares and shareholders' liability is

limited to the value of the number of shares subscribed by a shareholder.

- A Sociedad de Responsabilidad Limitada is similar to a Sociedad A corporation may not be a quota holder;
- SRLs are always privately held;
- Any change in quota holders requires an amendment to constitutional documents;
- Formation procedures are simpler; and
- Greater flexibility is permitted in the constitutional documents.

For the legal classification of companies and partnerships, the manner in which capital is divided is taken into account. In Argentina, capital may be divided as follows, depending on the company type:

- partnership interests expressed as a number of partnership units;
- quotas; or
- shares.

Partnerships (Partnership Interests):

- Sociedad Colectiva, SC (General Partnership): The capital is divided into partnership interests, expressed as a number of partnership units. Partners are unlimitedly, jointly and severally liable for partnership debts.
- Sociedad en Comandita Simple, SCS (Limited Partnership): The capital is divided into partnership interests, expressed as a number of partnership units. There are two categories of partners in this company type: general partner and silent/limited partner. General partners are unlimitedly liable for partnership debts. Silent partner's liability is limited to their capital contribution.
- Sociedad de Capital e Industria, SCeI (Partnership made up of Capitalist and Industrial Partners): The capital is divided into partnership interests. There are two categories of partners: capitalist and industrial partners. Capitalist partners are unlimitedly, jointly and severally liable for partnership debts. Industrial partners' liability is limited up to the total of unpaid earnings.

Partnerships (Membership Quotas):

- SRL (Limited Liability Company): The capital is divided into quotas. Provided that partners have not overvalued any property they contribute to the capital of the SRL, partners' liability is limited to the number of quotas they subscribe or acquire.

Companies Limited by Shares:

SA (Corporation or Joint Stock Company): The capital is divided into shares. Members' liability is limited to paid-up shares.

- Sociedad Anónima Unipersonal, SAU (Sole Member Corporation): There is only one member, and this must be established when the corporate type is described.
- Sociedad Anónima Simplificada, SAS (Simplified Corporation) - Act 27349: This is a new company type which, unlike the SA or SRL, can be easily and quickly formed. Incorporation can be done online thus saving costs because fewer formalities and procedures are required. The company may operate with a single member, either a natural or artificial person.
- State-Owned Company: This is created when the Federal State, Provincial States, Municipalities, state agencies legally authorised to do so, or majority state-owned corporations hold, either individually or jointly, 51% of the share capital in a company.
- Sociedad en Comandita por Acciones, SCA (Partnership Limited by Shares): General partners are liable for partnership debts; silent partners' liability is limited to their subscribed capital. The capital is divided into shares.

Memorandum and Articles of Association

Articles of Association (also called By-Laws) are the main constitutional documents for a company. All registered companies must have Articles of Association, which must be filed and registered with a Public Registry.

In addition to Articles of Association, a company may have Internal Regulations, which are registered in the same manner.

The new Argentine Civil and Commercial Code, approved under

Act 26994, authorises shareholders' agreements.

Share Capital

Share capital only applies to companies limited by shares.

Shareholders' liability is limited to their contribution of the issued shares.

Occasionally, shareholders could be liable for other matters in excess of their share capital contribution. An act performed by a company seeking to conceal the obtainment of a non-corporate benefit and where the corporation is a resource to violate the law, public order or good faith or to infringe third parties' rights, will be directly attributed to the members or controllers that made it possible. Such parties will be jointly and severally liable for the damages caused, regardless of the fact that they are only shareholders.

Public Offer of Shares

An authorisation from the Argentine Securities Commission ("Comisión Nacional de Valores" or CNV) is required to make a public offer. A company is admitted to the public offering regime and then the specific securities are approved. Additionally, an authorisation from the relevant stock exchange is required to list securities on that exchange. Most shares issued are listed at the Buenos Aires Stock Exchange (BASE), which is the largest Argentine exchange organisation.

General Meetings

Articles of Association must include rules about company governance, administration and representation, and, if required by law, rules about internal audit of accounts.

If there are no special provisions, the following rules apply:

- Participants may take part of a governing body's meeting remotely as long as all required persons consent to this alternative form, which must allow participants to communicate simultaneously. Minutes must be signed by the Chairperson and another officer and specify the type of meeting held. Attendants' participation has to be recorded.
- The members who are required to participate in a meeting,

or Board members, may call the meeting themselves with no need for prior notice only if all members are present and the items on the agenda are unanimously approved.

In other respects, the Company Act establishes the formalities for calling a meeting, making a difference between company types.

Directors

In SRLs, administration and representation of the company lies with one or more managers, who may be members, appointed for a determined or undetermined period in the Memorandum of Association or at a later time. Substitutes can be chosen in case of a vacancy. If there is more than one manager, the Memorandum of Association may state the administration functions for each manager or impose joint administration. If nothing is specified in that respect, it is understood that a manager may conduct any administration act individually.

In SAs, administration is conducted by a Board composed of one or more directors appointed at the shareholders' meeting or by the supervisory board, if applicable.

In corporations subjected to permanent state control, except SAUs, the Board shall have at least three directors. If the Shareholders' Meeting is entitled to determine the number of directors, the Articles of Association must specify the minimum and maximum number allowed.

A director or directors usually run general day to day management of the business and make all decisions except for those reserved to shareholders. Directors owe fiduciary duties to the company as provided under company laws. Corporate representation lies with the Board Chairperson.

Absolute majority of directors must actually reside in Argentina. All directors must establish a special address in Argentina, where all notices related to fulfilment of their duties, including those regarding liability actions, will be served.

The Board of Directors shall meet at least once every three months, unless the Articles of Association require a larger number of meetings. Meetings can be held at any director's request. Where requested, the Chairperson will be in charge of calling the meeting, which must be held within five days after receiving the request.

Financing of a Company

Companies are financed in several ways:

- Capital contributions from shareholders in the form of shares.
- Loans, debt and bank financing.
- Debentures and Negotiable Debt Securities.
- Equity investment from private equity funds.
- Grants.

Commencement of business

There are various procedures to be followed before a company may commence business. A simple company formation will generally take about three days for registration plus any additional days for drafting the articles of association, legal opinions, and publications in the Official Gazette. For ‘urgent’ procedures, with absolute priority, the full procedure could take from 5 to 7 days.

A company will be registered with the tax authority and a bank account will be opened.

Since the second semester of 2017, there has been another company type, the SAS, which can be incorporated in 24 hours online. Model Articles of Association are used in this case, thus saving time and money. Only a capital stock equivalent to two index-linked minimum wages is required. The cost of the procedure is very reasonable and includes the costs of registration and automatic publication in the Official Gazette. A Taxpayer’s Identification Number (CUIT) can automatically be obtained together with the registration.

For an overseas company to start operations, it may take between 6 weeks to 12 weeks.

Mergers & Acquisitions

Private limited companies are normally sold via private negotiations.

Where one entity acquires the shares of another it is referred to as a “share-sale”.

Sometimes it can be more preferable to purchase the assets of another entity, leaving liabilities with the target corporate entity. This is referred to as an “asset-sale” — “transferencia de fondos de comercio” as it is called in Spanish, governed by Act 11687—.

Due to inherent tax advantages, however, the most commonly used mechanism is acquisition through takeover or buying/selling the shareholding.

There are restrictions on offering shares publicly in private companies and such negotiations are usually conducted with a small number of interested parties on a confidential basis.

Corporate Insolvency

Under Act 24522, insolvency proceedings may occur in two different ways:

- insolvency or business reorganisation proceeding, and
- direct (straight) bankruptcy.

A business reorganisation proceeding is a system for the benefit of debtors, allowing them to continue managing and administering their property. Debtors are able to continue performing the usual operations and activities and given the opportunity to reach an agreement with their creditors.

A direct (straight) bankruptcy proceeding, on the other hand, is a process through which debtors lose the administration of their property and cease their business operations and activities. All their property is liquidated and debts are paid off with the proceeds. If enough capital is raised, debts are paid off in full. If not, debts are paid partially, on a pro rata basis, according to the rights, categories and privileges that creditors may have and hold, observing a basic principle of equality among all creditors. This principle is called *par condicio creditorum*.

If debtors fail to reach a satisfactory agreement through insolvency or business reorganisation proceedings or, if reached, they have not been able to comply with it, insolvency or business reorganisation proceedings turn into a bankruptcy proceeding. This form of bankruptcy, which results from a creditor filing for debtor's bankruptcy, is called indirect bankruptcy.

It is worth mentioning that there are cases in which bankruptcy of a person causes the bankruptcy of another person or is related to it, which implies a liability of the latter for the liabilities of the first person. These cases are called *quiebras dependientes* (dependent bankruptcies), *reflejas* (reflex bankruptcies) or *por extensión* (extended bankruptcies).

Quiebras dependientes take place when bankruptcy of an organisation, which has unlimited liability members, causes the bankruptcy of those members, or when bankruptcy of a subsidiary company can bring about the bankruptcy of its parent company, or in extended bankruptcy cases stated by law.

Act 25589, Section 18, amended Chapter II, Title II of Act 24522. This created a new Non Judicial Plan of Arrangement, which has the same effects as judicial plans of arrangement if the agreement reached and approved by a double majority of creditors (persons and capital amount) is confirmed by the Court.

Company Winding-Up

The Company Act provides that a number of steps will be followed in order to liquidate a company. These include:

- Preparation of an inventory and balance sheet of the company for liquidation purposes;
- Realisation of corporate assets and cancellation of liabilities;
- Preparation of the final liquidation balance sheet;
- Request for any contributions owed by Members;
- Publication of partial distribution agreements;
- Submission of the final balance sheet and plan of distribution to members;
- Performance of final distribution;
- Registration of the final balance sheet and plan of distribution, once approved, with the Public Registry of Commerce; and
- Once the company has been liquidated, cancellation of registration of the Articles of Association at the Public Registry of Commerce.

Author: Daniel Roque Vitolo, Maria Agustina Vitolo

Contact:

Daniel Roque Vitolo
vitolo@vitolo-abogados.com.ar
Tel: + 54 11 4312 8099 (Office)
+ 549 11 4409 5680 (Mobile)
Maria Agustina Vitolo
mavitolo@vitolo-abogados.com.ar
Tel: + 54 11 4312 8099 (Office)
+ 549 11 3166 5619 (Mobile)

Tax overview

Company registration with tax authorities

In Argentina, every new business or anybody who wants to conduct business, whether an artificial or natural person, must register with the Administración Federal de Ingresos Públicos – AFIP (Federal Administration of Public Revenue).

Setting-up taxation

There are no set-up costs for taxation in Argentina. The first and the most important step is to obtain a tax identification number (CUIT) and a fiscal password (Clave Fiscal) to gain access to the AFIP website. The fiscal clearance can be done online on AFIP webpage. The only cost is accountant's fees for his/her professional work.

National current benefit taxation

Corporate Income Tax

The current income tax rate for partnerships/companies is 35%.

A new tax reform has been approved (but not yet brought into force). Such reform establishes that by 31/12/2018 and 31/12/2019 the rate will be 30% and by 2020, 25%.

At the time of publication, it is being considered whether the inflation adjustment method will be adopted for taxes.

Trade Tax (Local profit tax)

Tax on gross income

The tax is administered on a regional basis and trade, services, leases or any other similar activity may be subject to tax. It is payable whatever the financial outcome, the nature of the lender or investor, or the location where the activity occurs.

Rates applicable to the tax basis for calculating the tax range are between 0.5% and 12%, depending on the activity in question.

The general rate is 3%.

Other Taxes (VAT - property taxes)

Value added tax

This applies to both artificial or natural persons. VAT is incurred when one party sells goods, provides independent services, grants the use or temporary enjoyment of goods or imports goods or services.

VAT may apply to:

- Sales of personal property located or placed in Argentina.
- Works or services carried out in Argentina.
- Goods imported into Argentina.
- Services imported into Argentina.

VAT rate is 21%; however, the application rate is 27% for telecommunication services, gas supply, electricity and running water supply.

There are also special cases where the rate is reduced to 10.5%. These cases include primary activities and construction.

Tax on personal property

This applies to individuals residing in Argentina and abroad.

It is charged on properties, plant and equipment, deposits, inventories, credits in Argentine currency and foreign currency, personal and household things and general personal assets.

The current rate is 0.25% for assets valued in excess of USD 26,000.

Treaties against double taxation

General Rules

To this date, Argentina has signed a number of agreements to avoid double taxation with the following countries: Germany, Australia, Austria, Belgium, Canada, Bolivia, Brazil, Chile, Denmark, Spain, Finland, France, Italy, Norway, the Netherlands, United Kingdom, Sweden and Switzerland.

Following a tax law reform, Argentine laws and their double taxation treaties seek to:

- Increase international tax transparency
- Deal with permanent residence issues
- Confront countries with low or no tax activity
- Deal with non-cooperative jurisdictions
- Look unfavourably on jurisdictions with low or no tax activity

Distribution of dividends

Tax is charged progressively at 7% (for fiscal years 2018 and 2019) to 13% (for periods starting as from 1 January 2020) on individuals and beneficiaries abroad. For artificial persons this remains a non-chargeable income.

Additionally, the tax authority may assume that dividends or profits have been made available, thus having an impact on the tax to be paid, when:

- Shareholders and other companies receive funds in the same amount as dividends withdrawn,
- Shareholders and other companies use or enjoy any assets belonging to the entity or receive legal title over such assets.

Loss carried forward options

Whenever a loss is sustained in a year, it may be deducted from the taxable profits obtained in the following 5 years.

Employer's obligations

In general, an employer is obliged to deduct wage tax, including social security, from payments to employees and then pay such tax to tax authorities. Deduction and payment of the correct wage tax amount is employer's responsibility.

Wage tax and social security are normally paid on a monthly basis prior to the end of the month after that month in which the benefit or wages were received.

Labour costs in Argentina often reach 43% of salary. They include social security, workers' compensation insurance, and contributions to unions. This makes the tax burden for employers one of the heaviest in Latin America.

Author: Fernando Agliano, Agliano & Bianchi

Contact:

Buenos Aires
AGLIANO & BIANCHI
de Septiembre st.. N°2682 7° piso. oficina 5
CP 1428 BUENOS AIRES
Tél. +54 11 47 06 3651
Fax +54 11 47 06 3651
E-mail : fagliano@aglianocg.com.ar site
web: www.aglianocg.com.ar Fernando AGLIANO