Argentina

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COUNTRY OVERVIEW

Argentina is the eighth largest country in the world and the second largest country in Latin America in terms of surface area, covering some 1.5 million square miles, with a population of approximately 41 million. It is organized as a federal republic with a democratic political system and a government consisting of an executive branch headed by the president, a legislative branch, and a judiciary. The president is elected by direct vote and may serve a maximum of two consecutive four-year terms.

Argentine Congress is composed of two houses, the Senate and the Chamber of Deputies, and has exclusive power to enact laws concerning federal legislation—including international and interprovincial trade, immigration and citizenship, and patents and trademarks—and to enact the civil, commercial, criminal, mining, labor, and social security codes, which are applicable nationwide.

The judicial system is divided into federal and provincial courts, with each system having lower courts, courts of appeals, and supreme courts. The supreme judicial power of Argentina is vested in the Supreme Court of Justice.

Each of the 23 provinces enacts its own constitution, elects its own governor and legislators, and appoints its own judges to the provincial courts.
Chapter 1

ESTABLISHING A BUSINESS PRESENCE

Permanent Structures
To conduct business on a permanent basis, a foreign company can either (i) incorporate or participate in a local entity or (ii) qualify a representative or a branch. Foreign companies wishing to participate in local companies must file and register with the Public Registry of Commerce (PRC) (i) a copy of their articles of incorporation and bylaws, (ii) proof that they validly exist according to the laws of the country where they were formed, and (iii) the corporate resolution appointing legal representatives and establishing a local domicile. They shall also (i) inform if they are subject to business prohibitions or restrictions in their place of origin and (ii) demonstrate that, outside of Argentina, they either (a) have one or more agencies, branches, or permanent representations; (b) hold a participation in companies that qualifies as noncurrent assets; or (c) own fixed assets in their country of origin. In case a foreign company was incorporated for the sole purpose of being a vehicle for investing in other companies, compliance of the above requisites by its controlling entity suffices.

Suitable Corporate Forms
Commercial activities in Argentina are usually carried out through one of the following: the corporation (sociedad anónima or SA), the limited liability company (sociedad de responsabilidad limitada or SRL), or the branch of a foreign company. The first two are the most common, since they limit the liability of the parent company to the extent of its interest in the local company. Applicable rules are comprised in the Argentine Commercial Companies Act (ACCA) 19,550, which is applied nationwide. Provincial laws set forth rules for registration and other requirements.

The structure and rules for SAs and SRLs are quite similar although the latter has slightly less operational costs. Certain activities, such as banking and insurance, require that the company be incorporated as an SA. The minimum stock capital required for SAs is equivalent to some USD 12,500. There is no minimum requirement for SRLs. However, the stock capital needs to be consistent with the corporate purpose. SAs and SRLs can be managed and represented by one or more individuals, in which case decisions shall be adopted by a majority vote. The board shall hold meetings at least quarterly, and the majority of directors need to be Argentine residents (there being no nationality requirements). The directors must also register with the tax and social security authorities.

Resolutions on matters that go beyond day-to-day decisions are to be decided by the stockholders and, unless a unanimous meeting and vote are expected, all others need to be summoned. SA stockholders shall be notified by means of a notice in the Official Gazette within a specific time frame. Companies under permanent governmental supervision as well as specific situations also require notices in a
nationwide newspaper. The summoning rules for SRLs are more flexible. There are certain specific statutory quorum and majority requirements depending on the kind of meeting (ordinary or extraordinary).

**Wholly Owned Entities**

ACCA rules require at least two stockholders. According to the regulations and policies in force in the city of Buenos Aires, the minority holder shall own no less than 5 percent of the stock capital. If stockholders are foreigners, they shall own no less than 10 percent to avoid the mandatory deposit (*encaje*) established by the Central Bank. The two stockholders may belong to the same group; thus, ultimately, the local company may be a wholly owned entity.

**Joint Ventures**

The ACCA provides for contractual joint ventures, which are not granted legal personality and thus do not have a legal existence separate from their members. These agreements need to be registered with the local PRC in order to have effects vis-à-vis third parties and must contain term of duration, name, domicile, liability of each of the members, and the details on the decision-making process, among other specifications.

**Investments in Mergers with Existing Entities**

There are basically two ways of participating in or acquiring a local business: (i) purchase of shares: the continuity of the legal entity entails risks associated with hidden liabilities, particularly tax and social security ones, and (ii) asset purchase: this option provides reasonable protection against hidden liabilities if executed through the Transfer of Going Concerns Act and federal and provincial tax regulations. This alternative is more expensive than a “share” deal.

Merger processes are quite common in Argentina. Subject to compliance with certain fiscal requirements, corporate reorganizations (mergers included) can be carried out in a tax-free fashion. Corporate reorganizations encompass a number of agreements, valuations, and stages and must be registered with the PRC.

**Agency/Reseller/Franchising/Distribution Networks**

Agency, distribution, and franchising agreements lack specific regulation by law in Argentina. Thus, their main characteristics and those of other distribution networks (commercial agents, licenses, etc.) have been shaped by doctrine and case law. As such, the parties can, in principle, freely regulate their relationship.

- In an agency agreement, the principal entrusts the agent with the promotion and marketing of the former’s business. The agent sponsors a principal business and receives a commission from the sales of the products or services. The agent can either simply intermediate in the sale of goods by marketing
the products and/or services and/or, on the other hand, act as attorney-in-fact of the principal, carrying out negotiations and executing purchase agreements on its behalf. The main characteristic of this structure is the financial and operative independence of the agent. Courts have ruled that the agent is an independent contractor, not a subordinated businessman or an employee. However, when agents are natural persons, there is a potential risk that they may be considered by labor law as formal employees.

- Distribution agreements also make use of independent contractors, but—in this structure—the middleman does not sponsor or handle the products or services as an attorney-in-fact. The distributor acquires the products or services with the purpose of reselling them. Courts have ruled that one of its material traits is the need to have an established independent organization in order to provide services related to the said products or services. As opposed to the agent, the distributor carries out the invoicing, delivery, and post-sale servicing at its own risk and receives commercial objectives, quotas, and other instructions from the principal. The distribution of certain products (e.g., newspapers, magazines, and films) requires specific regulations.

- Franchising agreements have been recognized by case law, and their use has spread out quite widely. Though the franchisee is an independent contractor, the contractual bond is stronger than in the distribution agreement, in terms of organization, trademark, objectives, and overall economic dependence. By this agreement, the franchisee uses the franchisor’s business model, commercialization system, and know-how.

- Absent a fixed term, said contracts are valid and enforceable until the parties decide to terminate them. However, problems have arisen when one of the parties terminates the agreement without reasonable forewarning notice and a cause for “damages” arises. Case law has provided that the lack of a specific contractual term does not imply that the bond is perpetual but that the terminating party needs to serve the other with a reasonable forewarning notice. How “reasonable” the forewarning has been will be adjudged considering (i) whether there is a proportional relation between the term of the agreement and the term of the prior notice; (ii) the investment made by the distributor, agent, or franchisee; (iii) the exclusivity, or not, of the agreement; and (iv) the time that would be required for the “weaker” party to reestablish its financial situation.

**Representative Offices and Other “Nonpermanent” Establishments**

Foreign companies may also perform activities through a branch with a duly registered representative. Branches, as opposed to the local corporate entities, do not limit the liability of the parent company. Branches prepare their annual financial