ARGENTINA

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IN LATIN AMERICA AND THE CARIBBEAN

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DOING BUSINESS IN LATIN AMERICA AND THE CARIBBEAN

This publication has been prepared by the lawyers of Meritas firms to provide an overview to foreign investors and business people who have an interest in conducting business in Latin America and the Caribbean. The material in this publication is intended to provide general information only and not legal advice. This information should not be acted upon without prior consultation with legal advisors familiar with the specifics of your particular matter.

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The following currency notations are used in this book.

ARS	Argentinean Peso	DOP	Dominican Republic Peso
BSD	Bahamian Dollar	GTQ	Guatemalan Quetzal
BRR	Brazilian Cruzeiro Real	HNL	Honduran Lempira
KYD	Cayman Dollar	MXN	Mexican New Peso
COP	Colombian Peso	NIO	Nicaraguan Córdoba
CRC	Costa Rican Colón	PYG	Paraguayan Guarani
USD	United States Dollar	UYU	Uruguayan Peso

Please be aware that the information on legal, tax and other matters contained in this booklet is merely descriptive and therefore not exhaustive. As a result of changes in legislation and regulations as well as new interpretations of those currently existing, the situations as described in this publication are subject to change. Meritas cannot, and does not, guarantee the accuracy or the completeness of information given, nor the application and execution of laws as stated.

Bordering the south Atlantic Ocean, Argentina is the second largest country in South America. Argentina's population is over 40 million people, and the country is organized as a federal republic consisting of 23 provinces and the autonomous city of Buenos Aires. Its legal system is a mixture of U.S. and West European systems with an executive, legislative and judicial branch.

The president and vice president are elected on the same ticket by popular vote for four-year terms. Congress is divided in two houses, the Chamber of Deputies and the Senate. The federal judiciary is headed by the National Supreme Court, and is present throughout the country by trial and appellate courts; federal jurisdiction is predicated on subject matter and personal jurisdiction.

All provinces and the city of Buenos Aires replicate this structure with executive, legislative and judicial branches formally separated from the other.

Argentina benefits from rich natural resources, a highly literate population, an export-oriented agricultural sector and a diversified industrial base. The GDP is estimated at USD435 billion as of 31 December 2011.

FOREIGN INVESTMENT

The Argentine Constitution guarantees foreign persons equal protection with regard to working, investing, and buying, owning and selling property in Argentina. (See Argentine Constitution, Sec. 20). The Foreign Investment Act (Law 21,382, as amended by Laws 22,208 and 23,697; hereafter the FIA) regulates general foreign investment. Under its provisions, foreign investors (i.e., natural and corporate persons domiciled outside Argentina, regardless of citizenship) enjoy the same rights and are subject to the same obligations as domestic investors, regardless of citizenship or the amount and purpose of the investment.

Generally, investments may be made without prior government authorization even when the investment involves the denationalization of the asset, unless specific legislation regulating the activity or asset provides otherwise.

In 2004, the Central Bank created a Foreign Investment Survey System. This system requires all local entities with at least 10% of their equity held by one or more foreign investors to identify the name and domicile of the foreign investor(s) and the investor(s) ownership percentage. The system further requires persons who manage real property investments owned by nonresidents to disclose, in certain cases, the identity of such owners.

Argentina is party to 58 bilateral investment treaties (BITs), 55 of which are currently in effect. These include treaties with the United States, the United Kingdom, Spain, France, the Netherlands, Germany, Australia, Canada, Chile and Mexico. Like the FIA, these treaties provide foreign investors with equal protection and mandate reciprocal benefits and repatriation of capital. Most treaties contain a "most-favored-nation" clause, entitling a foreign investor from a signatory nation of a BIT with Argentina to avail itself of the provisions of a BIT between Argentina and any other country. Additionally, Argentina is a party to investment treaties negotiated within the framework of the MERCOSUR Treaty.

FOREIGN EXCHANGE REGULATIONS AND RELATED ISSUES

As a result of substantial amendments introduced in foreign exchange regulations in 2002, foreign currency proceeds from exports of goods and services, loans and certain types of contracts (e.g., intellectual property licenses and real property leases) must be liquidated in the Argentine free exchange market.

All loans made with foreign lenders must be registered with the Central Bank. Only registered loans may be serviced through currency transfers without prior Central Bank authorization. Repayment of principal may not occur until 365 days after the disbursed loan proceeds have been liquidated in the Argentine exchange market. Interest can be paid by currency transfers on the terms and conditions agreed upon by the parties. In addition, the private sector may access the Central Bank's exchange market to transfer abroad currency to pay obligations for imported goods, to pay for the rendering of services and to distribute dividends declared pursuant to duly approved and audited financial statements. However, such access and transfers may be hampered by informal interference by government officials.

Also, since October 2011, entities authorized by the Central Bank to perform currency transactions are required to register said transactions online with the Federal Tax Bureau; purchases of foreign currency must first be authorized by said Bureau through its website. That website only allows the purchase of foreign currency for certain specific purposes, and it actually does so very restrictively.

A 2005 measure (Decree 616/2005) endeavors to control "capital flight" risk from temporary inflows of foreign capital. This control involves the imposition of a one-year, 30% reserve *(encaje)* on all currency transferred from abroad, subject to specified exceptions related to "direct investments" and the purchase of capital goods. This reserve account is automatically created by the receiving institution as a registered, non-assignable, non-interest-bearing account. The

account funds are maintained in U.S. dollars and the account cannot be used as a guaranty or collateral for any credit transaction.

ANTITRUST LAW

Argentine antitrust regulations are contained in Law 25,156 enacted in 1999 (hereinafter the Antitrust Act). The Antitrust Act enacted an independent body with investigative and adjudicatory powers, the *Tribunal Nacional de Defensa de la Competencia*, which has not been created yet. Competition matters are still controlled by the *Comisión Nacional de Defensa de la Competencia*, which was created by the prior antitrust law and whose members are appointed directly by the Administration.

The Antitrust Act addresses two antitrust issues: anti-competitive practices and control of economic concentrations.

The Antitrust Act is applicable to individuals and legal entities performing business in Argentina and to foreign entities or individuals in connection with their activities in Argentina.

ANTICOMPETITIVE PRACTICES

The Antitrust Act does not follow the per se approach, instead applying the rule of reason. Therefore, there are no practices forbidden per se. The Antitrust Act generally prohibits conduct that may harm general economic interest, expressed in any form, related to production and trade of goods and services, whose purpose is distortion or restriction of competition or access to markets.

The Antitrust Act contains a non-exhaustive list of specific practices that, assuming the above requirements are met, will be deemed anticompetitive and illicit. These include price fixing, manipulation or exchange of information for that purpose, market sharing, bid rigging, boycott, discrimination, predatory pricing, tying and refusal to sell. Abuse of a dominant position is also considered illicit if it harms the general economic interest.

The Antitrust Act establishes fines from ARS10,000 to ARS150 million as well as cease and desist orders. Directors, managers and legal representatives can also be considered jointly liable. The Antitrust Act allows damnified parties to file indemnification claims with ordinary local courts.

CONTROL OF ECONOMIC CONCENTRATIONS

The Antitrust Act requires scrutiny and approval of various transaction types that produce "economic concentration." Economic concentration is defined broadly to cover myriad forms of business transactions, including mergers, the transfer of a business as a going concern, acquisitions of securities, and asset transfers.

Notice to the regulators on an economic concentration must be given for its review if it causes actual or potential effects in the country, and the total volume of business of the group of affected companies in Argentina exceeds ARS200million.

The exceptions to the filing requirement under Argentine law are:

- Acquisition of a company of which the buyer already owns 50% of the shares;
- Acquisition of bonds, debentures, nonvoting shares or other nonconvertible debt securities;
- Acquisition of a single company by a company that did not previously have any other assets in Argentina or shares of an Argentine company;
- Acquisition of liquidated companies that had no activity in the previous year;
- Transactions involving a purchase price and asset value in Argentina, which in either case does not exceed ARS20 million, unless any of the parties were involved in one or more transactions of economic concentration in the same relevant market in an amount exceeding ARS20 million in the previous 12 months or ARS60 million in the previous 36 months.

An economic concentration is not enforceable in Argentina either between the parties or with respect to third parties until it is approved by the Argentine antitrust authorities. However, there is no precedent in which the regulators have disapproved a transaction and demanded its unwinding with retroactive effects.

ENFORCEMENT OF FOREIGN JUDGMENTS

The enforcement of foreign judgments is governed according to the terms and guidelines established in treaties that Argentina is a party to. If no treaty exists with the ruling court's country of origin, Argentina's National Code of Civil and Commercial Procedure applies. Articles 517-519 of said Code outline the following four prerequisites to domesticating a foreign judgment.

- The judgment must be final in the jurisdiction where rendered and arise from a court with proper subject matter and personal jurisdiction according to Argentine law.
- The defendant must have been personally served and must have been guaranteed due process of law.
- The judgment must not violate Argentine public policy.

- The judgment must not conflict with prior or contemporaneous Argentine judgment on the same dispute involving the same parties.

Argentine courts will likely domesticate an arbitration award that satisfies the requirements listed above for the domestication of foreign judgments.

INSOLVENCY AND BANKRUPTCY

The Argentine Bankruptcy Act (Law 24,522, or the ABA) sets forth two different schemes for insolvent individuals or entities: reorganization and bankruptcy.

REORGANIZATION *(CONCURSO PREVENTIVO)*

The ABA provides procedural guidelines for composition proceedings that permit an insolvent debtor under court protection and supervision to craft restructure and repayment agreements with creditors. To initiate the proceeding, an individual or company must file information demonstrating an inability to pay debts as they mature. An intervening court decides whether to open a composition proceeding.

Opening a composition proceeding places a debtor under the supervision of a trustee. The debtor remains in possession of the business, subject to restrictions imposed by law.

Despite their restrictive character, composition proceedings are largely designed to benefit the debtor. Filing a composition proceeding stays accrued interest on unsecured claims as of the filing of the petition. In addition, the insolvent party may request that the court terminate or continue executory contracts. Where no notice of continuation is issued, parties operating under these contracts may terminate them. Though reorganization proceedings do not terminate labor contracts, the commencement of such a proceeding will suspend collective bargaining agreements for three years, during which time the *Administración para la Cooperación Económica* (ECA) will govern labor relations. Reorganization proceedings also ensure the continuation of public services provided to the insolvent party as such services cannot be terminated based on debts existing prior to the commencement of said proceeding.

For the allowance of claims *(verificación de créditos)*, all creditors must submit proofs of claims stating their credits and preferences to the trustee. The court will subsequently determine the admissibility of each claim. Approval requires an absolute majority of creditors representing at least two-thirds of the claims allowed in each class.

Within three days of the filing of the acceptance, the court must rule that a reorganization arrangement exists.

OUT OF COURT RESTRUCTURING *(ACUERDO PREVENTIVO EXTRAJUDICIAL)*

Sections 69 to 76 of the ABA offer parties a means to restructure without judicial involvement. These sections allow a debtor to agree with the majority of its creditors on a "prepackaged" out-of-court reorganization plan (*acuerdo preventivo extrajudicial*, or APE) which, upon judicial confirmation, becomes binding on creditors. Despite their appeal to debtors, as well as major creditors looking to efficiently restructure without a bankruptcy proceeding, APEs leave bondholders in a much more tenuous position.

APEs are negotiated between the debtor and its unsecured creditors, subject to judicial endorsement. Once endorsed, the APE is enforceable against all unsecured creditors, including those refusing to be party to the agreement.

The APE is favorable to reorganization because it affords the parties more flexibility in resolving disputes. Likewise, it presents far fewer limitations to the debtor. However, it does present certain disadvantages as the debtor has a smaller negotiating voice when contrasted against its creditors. Furthermore, interest and tax obligations are not suspended as a result of the agreement.

"CRAMDOWN" PROCEDURE

Argentine insolvency law also provides a process (referred to by statute as "cramdown") by which dissenting creditors or other third parties may acquire control of a debtor that fails to obtain approval for a restructuring plan.

Registered parties, as well as the debtor, must present a reorganization plan to creditors. The reorganization must be approved by an absolute majority of creditors representing at least two-thirds of the claims allowed in each class.

BANKRUPTCY

The second scheme set forth by the ABA is bankruptcy, in which the insolvent debtor must liquidate and distribute his assets to satisfy creditors' claims. Debtors must be insolvent before bankruptcy becomes a viable option for a company in financial distress. A bankruptcy proceeding is available after the failure of a reorganization proceeding or if a debtor voluntarily seeks bankruptcy or upon request of at least one creditor. A request by the creditor requires evidence that the debtor failed to pay debts as they matured. The debtor has five days to challenge the creditor's petition.

Declaring bankruptcy immediately imposes obligations and restrictions on the debtor, its representatives and its administrators.

Ascertaining the date of insolvency is critical in a bankruptcy proceeding. Depending on the date of insolvency, the bankruptcy court may grant a

retroactive reach-back period (*período de sospecha*) not exceeding two years prior to the declaration of bankruptcy or the filing of a reorganization plan.

In bankruptcy, creditors may only enforce rights in divested assets in the manner prescribed in the ABA. All creditors must file proofs of claims, requesting the verification of respective credits and preferences.

Some creditors may enjoy a preference with respect to the distribution of the debtor's assets. A "special" preference refers to specific assets over which the creditor holds a preferential right (e.g., the mortgagee—creditor—in relation to the mortgaged asset).

A "general" preference typically refers to a class of claims (e.g., wages, social security and taxes) payable first out of the debtor's estate.

The receiver may elect to continue a company's operations. Within 20 calendar days of accepting the charge, the receiver must inform the court of the practicability of maintaining the company as an ongoing concern.

The preservation of jobs is a cause for the immediate continuation of the company's operations or of the operations of any of its business concerns, if two thirds of the employees or labor creditors, organized as a cooperative (even in process of being formed), request so to the receiver, or to the judge if the receiver had not accepted his appointment yet, after the bankruptcy declaration and until five days after the last publication of notices in the official journal of record corresponding to the location of the business concern.

The receiver also possesses the right to liquidate the company. There are three methods of liquidation available to the receiver: sell the entire company as an ongoing concern, sell company assets in bulk or sell company assets gradually.

Proceeds from these sales will be applied to administrative costs, with any surplus being distributed to creditors, according to their preferences.

LITIGATION

If a lawsuit becomes necessary, there are two types of proceedings used to sue for mature debts: ordinary proceedings and summary proceedings (*vía ejecutiva*). Both require a plaintiff to pay a court tax, which is typically 2% to 4% of the amount in controversy, depending on jurisdiction. This tax, though ultimately recoverable from the debtor should the plaintiff prevail, is a formidable cost that often discourages judicial action. Additionally, the losing party in each petition to the court challenged by the prevailing party generally bears the costs of the litigation. Local courts are required to award fees to intervening counsel in contemplation of the amount being litigated.

Creditors with qualifying documents may request a summary proceeding. Examples of such documents are letters of credit, promissory notes, bank drafts and bonds, so long as they comply with specific legal requirements. A summary proceeding precludes numerous defenses otherwise available to a debtor. This proceeding also entitles the creditor to seize and auction the debtor's assets to satisfy the debt.

Any claim not eligible for a summary proceeding must prove both existence and amount through an ordinary proceeding. In an ordinary proceeding, the debtor has access to all legal defenses. Prior to filing a complaint, the creditor must comply with a mandatory mediation proceeding. Nonresident creditors with no assets in Argentina may have to post a bond to guarantee the payment of fees and costs. Consequently, ordinary proceedings often involve more time and expense than summary proceedings.

BUSINESS ENTITIES

The two principal types of business organizations in Argentina are corporations *(sociedades anónimas)* and limited liability companies *(sociedades de responsabilidad limitada)*. Joint ventures, or unincorporated temporary unions of companies, also play a significant role in business.

CORPORATIONS

The most popular business organization model in Argentina is the stock corporation or *sociedad anónima*, abbreviated S.A. Rules governing the formation and operation of Argentine corporations are similar to those of the United States and other nations. The basic laws governing corporations are contained in Law 19,550, as amended (the Argentine Companies Act). In Buenos Aires, where most stock corporations are incorporated, regulations issued by the Registry of Commerce also govern different aspects of corporate structure.

Formation

Argentine law requires the following items to form a corporation.

Purpose Clause. A corporation may be formed for any lawful purpose, but the corporate purpose clause must be specific (i.e., it cannot merely provide that the corporation shall perform any lawful activity), so that it includes all the activities that the corporation is expected to engage in. Corporations may only hold shares in other corporations or in corporate silent partnerships (*sociedades en comandita por acciones*). They cannot create or hold equity interests in other entities whose capital is not represented in shares. Furthermore, Argentine law sets forth a quantitative cap (applicable, with certain exceptions, to all forms of

companies) for holding equity interests in other companies; said cap is defined according to certain accounting standards.

Corporate Name. Any corporate name not previously registered is available. All corporate names must contain the expression "*sociedad anónima*" or the initials "S.A." If a corporate subsidiary plans to include in its name the corporate name of its foreign parent, a letter from the foreign parent authorizing such use must be addressed to the authorized incorporators.

Incorporators. At least two shareholders are required to establish a corporation and prevailing administrative interpretations require the minority shareholder to hold at least a 5% interest in the Argentine entity. Shareholders may be either domestic or foreign corporations or individuals.

Deed of Incorporation. The deed or articles of incorporation must be executed in Argentina before a notary public by the incorporators. If the shareholders are corporations, the deed must reference the status of the shareholder corporations (e.g., place of incorporation, domicile, etc.). The deed of incorporation must also reference each shareholder's expected participation in the new company.

To become a shareholder in an Argentine corporation or limited liability company, a company domiciled abroad must file certain documents with the Registry of Commerce, pursuant to Sec. 123 of the Argentine Companies Act.

Capital. Domestic corporations must have a share capital of at least ARS100,000, 25% of which must be paid in at the time of incorporation. The remaining 75% must be paid in during a term not to exceed two years from the date of incorporation.

Incorporation Procedure. Articles of incorporation and bylaws must be submitted to the Registry of Commerce, which verifies compliance with all regulations applicable to corporations at their inception.

Corporate Governance

Directors. The board of directors may be composed of one or more members selected by shareholders to run the company. Corporations with assets in excess of ARS10 million must appoint a minimum of three directors. Ordinarily, bylaws specify a maximum and minimum number of directors determined by shareholders at each annual meeting.

A single term for directors may not exceed three fiscal years; there are no term limits. Directors are not required to be shareholders and Argentine citizenship is not mandatory even though a majority of the principal directors must be domiciled in Argentina. All directors must establish a domicile for service of process in Argentina.

Once composed, the board will designate one member as president (chairperson) who will serve as the corporation's legal representative. The board may also create an executive committee, if the bylaws so provide.

Corporate directors must register with the social security and tax authorities, and pay monthly social security contributions. These requirements are applicable also to directors domiciled out of the country, and to directors that do not receive fees for the discharge of their duties.

Directors must meet at least quarterly unless corporate bylaws stipulate more frequent meetings. Official board meetings by conference call are prohibited in Argentina but, under a broad statutory interpretation, such meetings may be held abroad.

Syndics. The election of syndics (statutory comptrollers) is optional for corporations with capital up to ARS10 million. One or more syndics, and an equal number of alternates, must be elected by shareholders when a company has capital stock of ARS10 million or more. If the corporation's stock is listed, or the corporation falls within other particular provisions of Section 299 of the Argentine Companies Act, an uneven number of syndics (larger than one) must be elected. The syndics so appointed form a body usually referred to as "*Comisión Fiscalizadora*."

Syndics must examine the corporation's books and records and convene shareholders' meetings when necessary, or when the board fails to do so. Likewise, syndics shall issue annual reports on the balance sheet, inventories and other financial statements. Syndics are jointly and severally liable for negligence with regard to their duties.

Audit Committee. Publicly traded companies are required by applicable regulations to have an audit committee composed of a majority of independent directors.

Shareholders' Meetings. There are two types of shareholders' meetings, ordinary and extraordinary. Ordinary meetings must convene annually to consider the financial statements of the corporation as well as the election of directors and syndics. Capital increases of up to five times the original amount stated in the bylaws may also be considered during ordinary meetings. Extraordinary meetings must convene to consider, inter alia, amendment to the corporate bylaws, capital increases (other than the aforementioned), capital reductions, the reacquisition of shares, mergers, dissolution, and the issuance of bonds and debentures.

Shareholders' meetings are normally convened by the board and they must be preceded by notice published in the Official Gazette. Ordinary meetings for the

consideration of financial statements and the election of directors and syndics must convene within four months of the end of the fiscal year. Should the board fail to convene a meeting, syndics must do so. No prior notice is required if all shareholders are present or represented at the meeting and all decisions are unanimously approved.

Financial Statements. Corporations are required to file an annual balance sheet, a profit and loss statement, and an annual report. Holding companies must file consolidated statements. All financial statements must be audited by a certified public accountant.

Dividends and Other Distributions of Profits. Dividends can be distributed only from available liquid profits, according to an approved annual balance sheet. Only corporations with capital in excess of ARS10 million, or those listed on the stock exchange, those who operate public utilities, or that fall in other specific exceptions, may distribute anticipated dividends.

SOCIEDAD DE RESPONSABILIDAD LIMITADA (SRL)

The limited liability company may not have more than 50 partners. In addition to qualifying in various countries for "look-through" tax treatment, the SRL is often an attractive alternative as it limits each partner's liability to the partner's investment while entitling the partner to direct the business and affairs of the entity.

The capital of the company is not represented by shares but by capital interests recorded in the bylaws. The company must file its bylaws in the Registry of Commerce and must publish it in the Official Gazette. Only upon completion of these formalities will the SRL be considered officially created.

SRLs whose capital does not exceed ARS10 million are not required to disclose financial statements and are not regulated by the Registry of Commerce.

One or more appointed managers, who may also be stakeholders, govern an SRL.

The Argentine Companies Act provides managers with rights, duties and limitations identical to those possessed by corporate directors. To enjoy these privileges, a majority of a company's managers must reside in Argentina. In an SRL, a majority of stakeholders approve decisions and subsequently relay them to managers, unless the bylaws provide otherwise.

The words "limited liability company," or its abbreviation, SRL, must precede or succeed the name of the limited liability company in all documents, invoices, advertisements and publications. Any omission of such renders managers jointly and severally liable with respect to all relevant transactions.

Capital must be fully subscribed and at least 25% of it must be paid in at the time of creation of the company, and (if not done so at that moment) be fully paid in within the two following years. The transfer of interests, regardless of the number of the company's partners, does not require the consent from the remaining partners unless a company's contract provides otherwise. The transfer of interests must be documented through a public or private instrument, and be recorded with the Registry of Commerce.

Even though SRLs are less formal than stock corporations, they are not as common. However, because U.S. federal tax rules treat them as "look-through" entities, SRLs are becoming an increasingly favored corporate structure.

FOREIGN CORPORATION BRANCHES

As opposed to organizing a local corporation or a limited liability company, a foreign company may register a branch in Argentina. To register, the company must file certain documents with the Registry of Commerce, and establish a domicile in Argentina.

Pursuant to recent regulations, a nonresident may be appointed as legal representative of a branch, as long as he establishes a special domicile within Argentina.

Branches are required to file their annual financial statements with the Registry of Commerce.

TAXATION

CORPORATE INCOME TAX (CIT)

The basic CIT burdens on corporations, limited liability companies and local branches of foreign corporations are similar, but substantive distinctions exist. The following paragraphs analyze how CIT rules apply to each type of business entity.

Applicable Rate

Under current law, a 35% CIT rate applies to a company's (corporation or limited liability company) taxable income. Dividends or other corporate distributions paid to a foreign shareholder of a domestic corporation are not subject to any additional withholding tax unless distributed from exempt income realized by the distributing company. In that case, a 35% withholding tax is assessed on the exempt income portion of the dividends.

Branches are also subject to a 35% CIT on annual net income. Remittances of profits to foreign headquarters are not subject to any additional income or

withholding tax unless distributed from the branch's exempt income. If exempt income is remitted, a 35% withholding tax applies.

Tax Basis

Domestic corporations, limited liability companies and branches are taxed on worldwide income. Foreign income taxes can be credited against Argentine CIT as a relief from double taxation on foreign-sourced income.

Taxable income is assessed by deducting from gross income ordinary business expenses and other allowable deductions. Gross income involves all income from whatever source derived regardless of its character, whether passive (investment) or active (business income), unless expressly excluded or exempt.

Capital Gains and Losses

No reduced capital gain rate exists. Thus, gains from the sale or exchange of real estate and other capital assets are taxed at the ordinary CIT rate (35%). Notwithstanding the above, capital gains from the sale of stock in Argentine corporations, as well as public securities and corporate bonds, are generally exempt from tax in Argentina (unless if realized by Argentine corporate taxpayers).

Payment and Tax Accounting

Income must be accounted for annually (tax year). The tax year is the normal accounting period. With a few exceptions for certain deferred-payment sales, corporate entities must report their income and deductible expenses on an accrual basis.

Consolidation of income of associated entities within the same economic group is not permitted under CIT rules. Each entity must report its income separately, and one associated corporation's losses cannot be offset against the income of another.

Companies must make advanced payments on account of their annual CIT liability. The amount of each advanced payment is calculated on the basis of the CIT liability of the immediately previous tax year. Within five months after the end of their tax year, companies must file an annual CIT return and pay the difference between the annual CIT liability and the advanced payments made (as well as any withholdings that may have been applied on payments collected by the company).

Net Operating Losses

Net operating losses may be carried forward for five years, starting with the year immediately following that in which the loss was incurred. Unused losses after the five-year carryover period are not deductible. No carryback of losses is allowed.

Foreign-Controlled Domestic Companies

Foreign-controlled domestic companies are generally taxed like any other domestic company. However, under certain circumstances special rules apply. Intercompany dealings between a foreign-controlled domestic company and its directly or indirectly related parties are subject to transfer pricing rules.

Tax Treatment of Nonresidents; Tax Rates on Argentine-Sourced Income

Foreign-domiciled entities and nonresident individuals without presence in Argentina are taxed on Argentine source income by way of withholdings at the source to be made by the local payor of the income.

The statutory withholding rate currently stands at 35% but the effective withholding rate may be less. As a general rule, foreign beneficiaries are not taxed on an actual net income basis, but rather on a presumed net income basis which varies depending on the type of income. As a result, actual expenses or other deductions otherwise allowable in determining net taxable income may not be claimed in the case of foreign beneficiaries.

CORPORATE REORGANIZATIONS

Corporate reorganizations effected in Argentina (e.g., mergers, spin-offs, transfers of ongoing concerns within the same economic group) can be granted tax-free treatment.

If structured as a tax-free reorganization, gains or losses realized from the transaction are not recognized as taxable income or deductible losses for Argentine CIT purposes. In addition, certain tax attributes are carried over to the surviving company.

Tax neutrality is achieved as long as the reorganization meets certain requirements:

- Continuity of business enterprise
- Continuity of proprietary interest by substantially the same shareholders (80%) for two years after the reorganization
- Notice of reorganization to the Argentine tax authorities

In addition, for the reorganized company's net operating losses to be carried over, ownership of an 80% interest for two years prior to the reorganization is also required.

Should the reorganizing companies not satisfy any of the above referred requirements, the reorganization would be deemed a taxable transaction for Argentine tax purposes.

THE CHECK-THE-BOX REGIME

In December 1996, the U.S. Internal Revenue Service (IRS) and the Department of the Treasury issued final entity classification regulations under §7701 of the Internal Revenue Code. These regulations permit taxpayers to elect to treat most business entities as a corporation or partnership (if the entity has two or more members) for U.S. federal income tax purposes, or to disregard the entity (if the entity has one member) altogether.

The Argentine limited liability company *(sociedad de responsabilidad limitada)* is eligible for partnership treatment for U.S. federal income tax purposes. In the U.S., partnerships are taxed as pass-through entities. This means that the partnership itself is not subject to income tax. Instead, the income and deductions of the partnership are calculated and distributed to each partner in proportion to its participation.

VALUE-ADDED TAX (VAT)

The value-added tax (VAT) is levied on three different classes of transactions, namely, the sale of tangible personal property within Argentina, the import of tangible personal property and services into Argentina, and the provision of services within Argentina. Taxable services include financial services. The general VAT rate is 21%, although certain sales and services may be subject to a 10.5% rate or exempted altogether. Utilities (e.g., telephone, electricity, water and gas supplies) provided to VAT-registered taxpayers are subject to a 27% rate. Exports of tangible personal property and services are subject to a zero rate system. Argentine exporters are allowed to recover, by way of compensation or refund, VAT paid to their suppliers for the inputs utilized to manufacture exported goods or perform exported services.

Services rendered by nonresidents to Argentine registered VAT taxpayers are always subject to VAT. A reverse charge system is applied in these cases. Argentine purchasers of services provided by nonresidents must pay the corresponding VAT directly to the Argentine tax authorities, and an equivalent input VAT credit is available to the taxpayer the month following that in which the VAT was paid.

MINIMUM PRESUMED INCOME TAX; PERSONAL ASSETS TAX

Argentina levies a minimum presumed income tax (MPIT) on Argentine companies (e.g., an Argentine subsidiary of a foreign corporation) and permanent establishments of foreign corporations located in Argentina (e.g., a registered branch). The MPIT is levied on the taxpayer's total assets (with certain exceptions) at a rate of 1%, to the extent the value of total assets within

Argentina (inventories included) exceeds ARS200,000 (approximately USD42,300). If assets do not exceed this threshold amount, no MPIT is payable.

The CIT paid by the Argentine taxpayer may be credited against its MPIT liability. If the taxpayer's MPIT liability is greater than its CIT liability, it is required to pay the excess MPIT. This tax may be carried over and credited against its CIT liabilities arising in future years for a maximum 10-year period.

In addition, foreign entities and individuals owning stock in an Argentine corporation are subject to personal assets tax at a rate of 0.5% on the proportional net worth value (*valor patrimonial proporcional*) of their interest. The tax is assessed and collected by the Argentine corporation.

FINANCIAL TRANSACTIONS TAX

All bank credits and debits held at Argentine financial institutions, as well as particular cash payments, are subject to this tax at a rate of 0.6%. A credit against the CIT/or the assets tax is granted for a portion of this financial transactions tax. Argentine financial institutions are required to withhold tax when a transfer of funds is effected on both the transferor and the transferee. In the case of international wire transfers, this tax applies only to the Argentine transferor or transferee.

GROSS RECEIPTS TAX

Argentine provinces and the city of Buenos Aires levy a tax on the gross receipts generated by entities that engage in business activities within their respective jurisdictions. The applicable tax rate varies depending on the province, with an average rate of approximately 3%. It is deductible for CIT purposes.

If a company engages in business activities in several provinces, it would likely be subject to gross turnover tax in each of them. In that case, it would have to allocate its gross receipts among the relevant provinces based on a formula that considers the amount of revenues and expenses and the places where obtained or incurred respectively.

STAMP TAX

Most Argentine provinces and the city of Buenos Aires assess a stamp tax on contracts, agreements and other instruments documenting transactions entered into for a consideration, to the extent:

- They are executed within their jurisdiction, or
- The obligations set forth therein are to be fulfilled therein

Applicable stamp tax rates vary depending on the taxing jurisdiction and the type of transaction. Depending on the province and the circumstances involved, it may be possible to legally avoid the tax by documenting the transaction in a

special format (which essentially consists in the issuance of a letter with an offer, which is tacitly accepted by the performance of a conduct specified in the offer, or by a letter which does not transcribe the terms and conditions of the offer).

TAX ON REAL PROPERTY

Argentine provinces impose a tax on real property; applicable rates vary depending on the taxing jurisdiction.

INTELLECTUAL (INDUSTRIAL) PROPERTY

The Argentine Constitution offers broad protection of intellectual property. Article 17 makes authors or inventors the exclusive owners of their works, inventions or discoveries for a legally designated term. To buttress Article 17, Argentina enacted legislation articulating the terms of the intellectual property protection. Furthermore, Argentina became a signatory to numerous international intellectual property treaties and agreements.

INDUSTRIAL MODELS AND DESIGNS

Industrial design rights are protected under the Industrial Models and Designs Act (Law-Decree 6673/63, ratified by Law 16,478), which grants owners exclusive exploitation rights during five years—registration renewals for two consecutive five-year terms are also available. Depending on the circumstances, authors, contractors or employers may avail themselves of these rights.

Models or designs registered in foreign countries may receive protection in Argentina through supplemental registration. The owner typically must solicit this protection within six months of filing in the country of origin.

TRADEMARKS AND TRADE NAMES

The Trademarks Act (Law 22,362) and Decree 558/81 govern trademarks and trade names. The regulatory body governing trademark registration is the Registry of Trademarks, a division of the National Institute of Industrial Property (NIIP). Argentina utilizes the Classification of Goods and Services established in the Nice Agreement.

The name of a product or service, or the name of a characteristic of a product or service, may not be trademarked.

Proper registration with the Trademarks Registry grants the trademark owner exclusive exploitation rights for 10 years. The owner may indefinitely renew registration for 10-year terms if it uses the trademark to commercialize products, render services, or as part of a trade name. This must occur within five years of the trademark's expiration date.

Although registration of licenses for the use of trademark is not compulsory, the Transfer of Technology Act (Law 22,426, which encompasses trademark law) requires the registration of agreements between foreign licensors and Argentine residents, in order to grant the benefits required therein.

PATENTS AND UTILITY MODELS

Argentina became a party to the agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which directs the application of Argentine patent, model and trademark law with respect to member countries. Consequently, the Argentine Congress enacted Law 24,481, the Invention Patent Act, to amend former Patent Act, Law 111. This enactment made Argentine patent law mirror the standards of TRIPS.

The Invention Patent Act (IPA) defines inventions that may be patented, whether products or processes, as any human creation that permits a person to transform matter or energy for its benefit. An inventor may patent an invention that is novel, involves inventive capacity and possesses industrial application. Under the IPA, the results of investigations carried out by pharmaceutical companies may meet such requirements and thus may be patented.

Inventors must deliver a patent application to the National Administration of Patents (NAP) for each invention or group of related inventions. A patent lasts 20 years from the date of application, and there is no option for renewal. The patent holder must pay fees established by the IPA to preserve a valid patent.

The IPA also protects rights over utility models. A utility model's creator must apply for a certificate, which will provide the creator with exclusive exploitation rights for 10 years. Like patents, these certificates are not renewable. The applicant must also pay fees to preserve the certificate's validity.

COPYRIGHT

Author's works, but not ideas, are protected under Argentina's Intellectual Property Act (Law 11,723, as modified by Law 25,036). The Intellectual Property Act (the IP Act) extends to items such as scientific, literary or artistic works (which includes software), musical compositions, pictures, sculptures and architecture and maps and photographs.

Property rights in literary works last throughout the author's lifetime. In Argentina, unlike in many other countries, an author may not be divested of rights in his or her works through licensing. Heirs and assignees receive protection for 70 years beginning the year after the author's death. This is the same protection granted to posthumous works. For works resulting from collaborative efforts, the 70-year term begins the year after the death of the last collaborator. Anonymous works that belong to institutions, corporations or legal entities receive protection for 50 years after the date of publication.

Foreigners seeking copyright protection in Argentina must evidence compliance with copyright laws in the country of publication. Argentine copyright law mandates that the first publication of all copies of the published work bear the copyright symbol, the copyright proprietor's name and the year of initial publication. Argentina will only grant protection equal to that granted by the country of publication. If the relevant country's copyright laws grant superior protection, the IP Act governs.

LABOR LAW

No single code of rules or regulations governs Argentine labor law. The main source of law relating to employment is the Employment Contract Act (Law No. 20,744, as amended). Many other laws refer to employment, working conditions and related matters specific to collective bargaining agreements, professions and individual employment contracts.

Unlike most other domestic laws that can be waived or modified by agreement, Argentine labor laws generally embody public policy principles. As a result, employees may not waive rights afforded under labor regulations and employers or third parties may not adversely affect these rights. This status reflects a policy presumption that employees are disadvantaged in negotiating with employers. Argentine courts generally apply this rebuttable presumption *(in dubio pro operario)* in favor of the employee when resolving labor disputes. This presumption aims to foster parity in employer-employee relationships.

SALARIES

Salaries are paid on a monthly, daily or hourly basis, depending on the job category. The mandatory minimum wage is currently ARS2,670 (approximately USD568) per month for workers who are paid on a monthly basis and work during standard working hours, and ARS13.35 (approximately USD2.84) per hour for workers who are paid on a weekly or fortnightly basis. The standard workweek is 40 to 48 hours, with an average of eight hours per day. If rendered during a day that is a normal working day for the employee, overtime is paid with a 50% surcharge over the habitual wages, and with a 100% surcharge if the overtime rendered during other days or official holidays.

CONTRIBUTIONS AND WITHHOLDINGS

Argentine law requires employers and employees to contribute a percentage of salaries to the social security system (this includes contributions to pension fund, social services for pensioners, national employment fund and family subsidy fund), as well as to medical care fund.

There are social security contributions withheld from an employee's gross salary (and paid over to the social security system by the employer) that represent the 14% of the gross salary currently capped at ARS21,248.45 (approximately USD4,520.95), and contributions paid (and borne) by the employer, without any cap.

Contributions paid by the employer are 21% of the employee's gross salary if the main activity of the employer is the provision of services or the wholesale or retail sale of goods, and the employer's annual sales are in excess of ARS48 million. Otherwise, the employer shall pay contributions for 17% of the employee's gross salary.

Medical care coverage for employees is provided by health care entities called *Obras Sociales* (hereinafter, OS) that are autonomous entities, and are financed with mandatory contributions from both employees and employers. An employer must pay a contribution to the relevant OS of 6% of each employee's gross salary without any cap. Also, each employee must pay his or her OS a contribution of 3% of his or her gross salary currently capped at ARS21,248.45 (approximately USD4,520.95). The employee's contribution must be withheld by the employer and be paid over to the OS.

Certain qualifying employers are entitled to temporary contribution reductions.

VACATIONS AND LEAVES OF ABSENCE

Employees are entitled to paid vacation time ranging from 14 to 35 calendar days, depending on seniority. They are also entitled to unpaid leaves of absence for marriage, birth, death of a close relative and school exams.

In case of illness not related to their work, employees are entitled to a paid leave of up to a maximum of between three months and one year, depending on the employee's seniority and the number of family members under his charge.

A pregnant employee is entitled to maternity leave of up to 45 days before childbirth and 45 days after, and to a social security benefit equivalent to the salaries she would have received during that period. Once the maternity leave finishes, she may choose to extend her leave (unpaid) for up to six more months.

PAYMENT OF ANNUAL LEGAL BONUS

According to the Employment Contract Act, employers must pay a complementary annual bonus *(aguinaldo)* on June 30 and December 31 of each year. The amount to be paid in each of those dates is equivalent to one half of the best monthly salary of the corresponding semester.

EMPLOYMENT CONTRACTS, SEVERANCE PAYMENTS

Under the Employment Contract Act, employment contracts shall be deemed to be for an indefinite term, except in certain circumstances (i.e., in case it is justified to be entered into for a fixed term). Contracts may be terminated without severance penalty by mutual agreement between the parties.

Employees are not entitled to severance payments in case of caused dismissal. Terminations without cause entitle employees to collect a mandatory seniority severance payment calculated on the basis of their best monthly, normal and habitual wages and their seniority.

Employee labor stability is protected by rules that establish a standard procedure for dismissal and compensation, in order to discourage employers from firing employees arbitrarily without a lawful motive other than gross misconduct. However, the Employment Contract Act 20,744 states that employers have the right to terminate employees at will by basically providing:

- Advanced written notice of dismissal
- Severance payment based on seniority
- Prorated accrued and unpaid vacation time and statutory bonus (*aguinaldo*)

INJURY AND ILLNESS INSURANCE

Under Law 24,557 employers must either insure themselves against workers' work-related injuries and illnesses or hire a "work risk insurer" *(Aseguradora de Riesgos del Trabajo* or ART). ARTs will normally compensate injured or sick employees and provide medical, orthopedic and prosthetic benefits, among other services.

Employers pay monthly premiums to ARTs. Such premiums are determined on the basis of a percentage of a fixed sum based on the employers' statistical losses and damages.

Under the ART system, each possible occurrence is listed in a casualty table and assigned a set value. If an ART accepts a claim, it will only pay the claimant the amount indicated in the table. The Argentine Supreme Court has ruled in several decisions in recent years that this system is against constitutional rules, to the extent it limits the compensation for a worker's actual loss. As a result, workers are entitled to seek full compensation from their employers for work-related injuries.

Employers may also hire additional insurance coverage against their workers' work-related injuries and illnesses, for any amount not covered under the ART system and that they eventually have to pay due to the court doctrine described in the preceding paragraph.

This system has been amended by Law 26,773 (effective 26 October 2012), which requires the worker or his heirs to decide between two mutually exclusive options: to seek compensation from an ART or to bring a civil action to recover all damages suffered. Also, Law 26,773 adds to the compensation paid by the ART 20% of the amount of that compensation, as recovery of any other damages suffered, except in the case of accidents sustained by the worker during the direct journey between his home and workplace and vice versa.

MANDATORY LIFE INSURANCE

Decree 1567/74 requires mandatory life insurance for all dependent employees. The insurance costs are the exclusive responsibility of the employer. Thus, no withholding must be made from employees' salaries. The insurance amount is currently ARS12,000 (approximately USD2,553).

SOCIAL SECURITY SYSTEM EXEMPTIONS

Social security exemptions are applicable (on a one-time basis) to foreign professionals, researchers, technicians and scientists hired abroad to render services in Argentina for no more than two years, provided (i) they are not Argentine residents, and (ii) they are covered against age, disability and death contingencies under the laws of their country of origin or permanent residence.

There are also social security treaties (e.g., with Spain, Chile, etc.) relating to social security matters, under which employees who are carrying out activities in a treaty country other than of their nationality or permanent residence are exempt from social security contributions in that country, provided they are making such contributions in the country of origin or permanent residence.

Both exemptions are not automatically granted and may only be applied for upon completion of specific administrative procedures.

FOREIGN EMPLOYEES

Argentine law does not provide for restrictions or quotas related to the hiring of foreigners, who may be employed as long as they hold a valid residence permit.

Foreigners may only perform activities for pay, either as self-employed or employees, if they hold permanent or temporary resident status, in which case they are entitled to the same rights provided by law for Argentine self-employed individuals or workers.

The Permanent Resident status can only be applied for by: (a) parents, spouses and children of Argentine citizens or of foreigners who hold permanent resident status, or (b) foreign individuals who have worked at least three years in Argentina with proper immigration status. Any other foreigners can only

apply for Temporary Resident status in certain specific cases (most notably, with sponsorship by a potential employer).

Also, the process to obtain Permanent or Temporary Resident status is simplified for foreign nationals of MERCOSUR member states or associated countries (i.e., Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay and Venezuela); most notably, the applicant is not required to provide documentation of an employment relationship.

AGENCY AND DISTRIBUTORSHIP AGREEMENTS

In Argentina, there is no body of statutory law that regulates agency and distributorship agreements. However, there is ample case law and legal literature that define them, and establish guidelines for prospective contractors. They may be concluded for an unlimited period of time, which is generally assumed by jurisprudence in cases of oral agreements.

These agreements may be terminated unilaterally at will. However, the termination must be preceded by prior notice; otherwise liability for damages may arise. According to case law, the period for termination depends on the duration of the agreement and the parties' expectations, and in general terms it should not be shorter than three to six months.

Unless otherwise set forth in the agreement, fixed-term agreements may only be terminated before expiry due to good and just cause, such as a severe breach of the agreement by the nonterminating party. Courts have decided that allowing termination without good cause would unjustly deprive the agent of reasonable expectations. Therefore, liability for damages may arise in cases of unfounded early termination. These principles are also applicable to agreements concluded for an unlimited period of time, that is, the agreements also can be terminated due to good and just cause without observing the aforementioned prior notice.

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