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LEGAL VEHICLES TO DO BUSINESS IN ARGENTINA

1. Introduction to business in Argentina

There exists many ways to do business in Argentina but some of them are the ones most preferred by foreign business people or investors and on those we will focus below.

2. Legal vehicles to do business in Argentina

To conduct business on a permanent basis, foreign companies usually set up a branch or incorporate a local company (subsidiary) -either a *sociedad anónima* or a *sociedad de responsabilidad limitada*-. They can also become partners of an already existing domestic company. In all cases, foreign companies must first comply with certain registration procedures before the Public Registry of Commerce (*Registro Público de Comercio* or "RPC")[1]. On the contrary, to take interest either in a new brand local company or in a previously incorporated one, foreign individuals need not fulfilled with any prior requirement but to register with the tax authorities to get their fiscal identification key (*Clave de Identificación* or "CDI")[2].

The legal regime applicable to branches or subsidiaries is mainly set forth by the Commercial Companies Law N° 19,550 (*Ley de Sociedades Comerciales* or "LSC") and resolutions issued by the RPC within each jurisdiction -the Autonomous City of Buenos Aires (*Ciudad Autónoma de Buenos* Aires or "CABA") or any of the provinces-. Within the CABA, the RPC is run by a federal regulatory agency called General Inspection of Justice (*Inspección General de Justicia* or "IGJ").

Finally, it has been common to resort to trusts for securitization structures or to channel investments in the real estate market.

2.1. Registration procedures to be followed by foreign companies

[1] The RPC registers and controls business companies and other legal entities domiciled in Argentina (stock corporations, limited liability partnerships, branches of foreign companies, savings and loan organizations, joint ventures agreements, non-profit associations and foundations). The RPC is empowered to examine books and accounting records, request information and any documents it deems necessary, attend shareholder meetings and lodge complaints with administrative authorities and courts of law.

[2] For the company to obtain its own tax identification code (*Código Unico de Identificación Tributaria* or "CUIT"), all foreign partners are supposed to have their individual CDIs.

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To have interest in locally incorporated companies or open a branch, foreign companies must, in accordance with Section 123 of the LSC, be previously registered with the RPC. For that purpose they must file:

(i) Copy of the articles of incorporation, charters or bylaws as amended;

(ii) Certificate of incorporation in the country of origin issued by the appropriate authorities -or similar documents- assessing that the company is validly existing according to the law of the country where it was formed ("certificate of good standing"); and

(iii) Appropriate corporate resolutions appointing a legal representative in Argentina granting the corresponding power of attorney and indicating a local domicile for legal purposes.

All documents must be certified by a public notary and legalized with the Hague Apostille. It is worth considering that within the jurisdiction of the CABA, the IGJ has enacted additional tougher regulations providing for further control and information[3].

[3] According to Resolution 7/2005 of the IGJ, foreign companies shall also:
(a) inform whether the company is subject to prohibitions or legal restrictions to develop the activities related to its corporate purpose in its place of origin;
(b) prove that the foreign company fulfills with any of the following conditions outside Argentina: (1) the existence of one or more agencies, branches or permanent representations, (2) the ownership of interest in companies which qualify as non-current assets; or (3) the ownership of fixed assets in its country of origin; and
(c) file documents by means of which shareholders are individualized.
Resolution 7/2005 of the IGJ also requires annual filing by already registered foreign companies aimed at showing proof that they keep assets outside Argentina.
According to Resolution 7/2005 of the IGJ, when a company applying for registration is a company to be incorporated for the sole purpose of being a vehicle for investing in other companies and consequently cannot comply with the above mentioned (a) and (b) exigencies its controlling company is supposed to comply with the aforementioned resolution and file the following documentation with the IGJ:
(A) a declaration of the board of directors or shareholders' meeting of both companies informing that the investing company is only a vehicle for investing in other companies;
(B) the documentation described in (a) through (c) above; and
(C) a statement of a representative of the foreign company informing the structure of the group of companies and the personal information regarding the partners of the investing and the controlling companies.
Pursuant to the provisions of Resolution 12/05 of the IGJ, foreign companies with economically significant and internationally known business carried out abroad may be exempted from filing the documentation set forth in Resolution 7/2005 if, in place thereof, such companies at any time file information that provides evidence of such status. The information that may be filed includes, on a non-restrictive basis: (i) commercial advertising made outside the Argentine Republic; (ii) any data related to businesses, projects or investments published in specialist magazines or in economy or business sections

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2.2. Branch of a foreign legal company

Any foreign legal company is able to set up a branch (*sucursal*) in Argentina, without allocation of capital to the local branch required by law, with the exception of branches acting in certain industries (e.g. banking or insurance).

The branch is a mere part of the foreign company and does not require a local board or any other officers. Nevertheless, a legal representative must be appointed and registered before the RPC. The management of the branch falls on the legal representative with similar obligations and rights as those described in 2.3.4. below.

The branch must keep accounting records in Argentina -separately from those of their head office- and file annual financial statements with the RPC.

Advantages of a branch over a subsidiary are the greater simplicity of getting it established in Argentina and the fact that local board and shareholders' meetings are avoided. Disadvantages are the inability of a branch to attract the participation of local capital and the fully legal liability of the head office.

2.3. *Sociedad Anónima* (or "SA")[4]

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of international newspapers sold in Argentina; or (iii) excerpts from Web pages or other information, certified by a Notary Public.
Regarding the information to be filed on an annual basis, the companies which are not "widely known" will not be required to file in the future the documentation provided for by General Resolution N° 7/2005 if, having complied with it in the past, file a statement of the board of directors -or person authorized by said board-, by means of which it is declared that: (i) there have not been substantial changes in the composition and value of the non-current fixed assets located outside Argentina and the economic volume and/or composition and value of the assets located outside Argentina; and (ii) due to the comparative significance of the aforementioned assets regarding the activity of the foreign company in Argentina, it is proved that its main activities continue being performed abroad.
Notwithstanding the aforementioned, the RPC will be empowered to require an accountancy certificate of the net worth of the company in case it may consider necessary due to the importance of the activities of the foreign company in Argentina or the amount of its participation in local companies.
To perform isolated business acts in Argentina and to participate in lawsuits, foreign corporations need not register their business. However, the above-mentioned right has been restricted by Resolution 8/2003 issued by the IGJ that created the "Registry of Isolated Acts" where all sales of real estate should be registered. The IGJ will analyze real estate transactions involving unregistered entities and recorded as isolated acts in this registry in order to determine if they constitute "habitual acts" and therefore require to be made by registered entities.

[4] In English, they are commonly referred to as corporations, or stock corporations.

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Sociedades anónimas (publicly or closely held) are by far the most chosen legal vehicle to do business in Argentina and the only one that may be listed on a stock exchange.

2.3.1. The main characteristics of SAs (corporate purpose, duration, management, etc.) are provided for in the articles of incorporation, charters or bylaws. These documents are to be executed in a public deed, published in the official bulletin (*Boletín Oficial* or "BO") and approved by the RPC[5].

2.3.2. At least two shareholders -either legal entities or individuals- , are mandatory to incorporate an SA[6]. Except for specific and very exceptional cases provided by law, there are no nationality or residence requirements to become shareholders of a SA; foreign individuals (whether residents in Argentina or not) or foreign legal entities may hold the whole share capital.

Shareholders' liability is limited to the amount of capital they individually obliged themselves to contribute in accordance to the articles of incorporation as amended.

2.3.3. Minimum capital stock is AR$[7] 12,000[8]. While the share capital must be fully subscribed upon incorporation, if cash is paid in consideration for the stock only 25% need be paid-up on such shares and the balance within two years thereafter. When the consideration for the stock is other than cash (contributions in kind such as real estate, equipment or other non-monetary assets), it must be made in full at the time of subscription.

[5] Both, shareholders and directors may be jointly and severally liable for the consequences of any acts undertaken by the corporation before completion of the registration procedure.

[6] The IGJ will not register commercial companies where the plurality of owners is merely formal or in name only (for example, when one of the shareholders owns 99.99% of shares). Although the LSC does not establish minimum or maximum amounts of capital or percentages that a person should own in a company or corporation in order to be considered a shareholder, current IGJ criteria is that the maximum participation allowed to be owned by a sole shareholder is 95% of the capital stock and the remainder 5% should be owned by at least another shareholder. Should one shareholder disclose the fact of his owning 100% of the capital, this company would enter into a dissolution status.

[7] Please note that all references to currency in this article refer to the Argentine Peso.

[8] Due to Resolution 7/2005 of the IGJ, capital stock must be appropriate for the development of the corporate purpose. Therefore, the IGJ may request that companies fix an amount of capital higher than the referred to minimum.

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Equity is divided into shares of stock, which must be nominatives, non-endorsable and denominated in Argentine currency. Shares may be represented by titles of a certain number of shares and registered in the company's Shares Registry Book or otherwise be implemented as records kept in shareholders accounts on a special register held by the issuing company or by commercial or investment banks or by authorized share depositary entities.

Different classes of shares may be created. Shares must be of equal par value and have equal rights within the same class. According to the rights they grant, shares may be classified into common or preferred. The latter usually have priority upon payment of dividends and do not carry voting rights.

Transfers of shares are generally unrestricted, but limitations may be included in the bylaws provided that they do not effectively prevent the assignment of them.

2.3.4. The SA is managed by a board of directors (made up of one or more individuals) elected at a shareholders' meeting. There are no nationality requirements, nor is it required that directors also be shareholders. Directors and even the chairman of the board may be foreigners; however, the majority of the members of the board of directors must be Argentine residents (even though they may be foreign nationals). The board must appoint a president, who has the legal representation of the corporation. Absolute majority of the entire board constitutes sufficient quorum to pass resolutions.

Directors of an SA are subject to a standard of loyalty and diligence; non-compliance with these standards results in unlimited, joint and several liabilities for damages arising there from. As regards public companies, the members of the board of directors have further regulated duties.

Stock corporations that, given their particular characteristics, fall under permanent government supervision, are required to have at least three directors (see footnote 10).

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Bylaws must establish the directors' guarantee[9]. Alternate directors are not required to provide a guarantee until they just potentially may hold office to replace one of the regular directors.

2.3.5. Shareholders meetings are the governing body of the corporation. Unless shareholders meetings be unanimously held (100% of the capital stock present at the meeting and all resolutions adopted by unanimity) meetings should be summoned by means of publications for a period of five days in the Official Gazette, and in specific cases[10] in a nationwide newspaper, with at least 10 days of anticipation and no more than 30 days as of the day of the meeting. Quorum and majorities are different for ordinary and extraordinary shareholders' meetings.

Shareholders' meetings may be ordinary or extraordinary on the basis of the issues to be transacted therein. The following subjects must be dealt with at ordinary shareholders' meetings: (a) Approval of the company's financial statements; (b) Election of directors and syndics and approval of their compensation; (c) Definition of potential liabilities of directors and syndics; (d) Increase in capital up to five times the current amount, if such increase is allowed under the bylaws. All other matters must be approved at extraordinary meetings. To consider the issues stated in (a) and (b) above, ordinary meetings must be summoned within four months of year-end.

Any shareholder with interests in conflict with those of the company has a duty to abstain from voting on any matter which relates to such conflict. Failing to comply with this provision will hold shareholders jointly and severally liable for any damages resulting from a final resolution of the matter in conflict if such vote contributed to form the majority vote necessary to adopt the resolution.

[9] According to IGJ General Resolution 7/05, guarantee should consist in bonds, government securities or amounts in local or foreign currency deposited with financial institutions or securities clearing houses, to the company's order, or in sureties, bank guarantees, surety bonds or business liability insurance, the cost of which should be borne by each director. Under no circumstances can the guarantee be funded using the direct inflow of company cash. When the guarantee consists in deposits of bonds, government securities or amounts of money in local or foreign currency, the conditions to create this guarantee should ensure that it remain unavailable while the statute of limitations concerning legal liability actions is still running (at least three years as from the end of the term of office). The amount of the guarantee will be the same for all directors and cannot be lower than AR$ 10,000 per director (for limited liability companies with capital amounting to less than ARS 12,000, the guarantee amount shall be AR$ 2,000 for every manager).

[10] Corporations subject to permanent government supervision. See footnote 11 below

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Directors cannot represent shareholders at any meeting. Shareholders' resolutions must be recorded in the appropriate minutes book.

2.3.6. SAs may be subject to the internal supervision of controllers or supervisors (*síndicos* or *comisión fiscalizadora*) allowed for in the articles of incorporation and appointed by the shareholders. When shareholders decide not to have controlling officers, a substitute director must be appointed and shareholders are empowered to directly and individually exercise control over the company. Yet a statutory audit committee is mandatory when SAs are subject to permanent government control as described in 2.3.7 below.

2.3.7. Government control over commercial companies is in general limited to the articles of incorporation, their amendments and changes in authorized capital. However, stock corporations with special characteristics are under permanent government supervision[11].

Stock corporations subject to permanent supervision should have their own supervisory position within the company that, depending on the circumstances, may be filled by an individual statutory auditor (*síndico*) or by a statutory audit committee which must have an uneven amount of members appointed by the Shareholders' Meeting (*comisión fiscalizadora*). All stock corporations can also have a surveillance committee that will work alongside the statutory audit auditor or committee or even replace them (*comité de vigilancia)*.

[11] According to Section 299 of the LSC, corporations encompassed in any of the following circumstances must be subject to permanent government supervision:
(i) those that offer their equity or debt securities to the general public;
(ii) those whose corporate capital is above AR$ 10,000,000 (this limit is subject to adjustment when deemed necessary);
(iii) state-controlled corporations and mixed ownership companies (these differ from standard business corporations, but are subject to similar regulations in many respects);
(iv) those engaging in capitalization or savings and loan operations, or otherwise soliciting funds or commercial papers from the public with the promise of future consideration or benefits;
(v) those operating government concessions or public utilities;
(vi) any corporation that controls or is controlled by another that is comprised in one of the above mentioned situations.
Certain types of corporations are also subject to additional permanent controls. Those whose equity or debt securities are publicly traded come under the National Securities Commission, banks and finance companies are monitored by the Argentine Central Bank, insurance companies by the National Insurance Superintendence, cooperatives by the National Institute of Cooperative and Mutual Action, companies handling workers compensation insurance by the Superintendence of Risks of Work

2.3.8. SAs must keep the following corporate books: Share Registry book, Attendance Record book for shareholders' meetings, Board's meetings minutes book, Shareholders' meetings minutes book, and, if applicable, a Supervisory Committee minutes book.

2.3.9. SAs no matter their capital amount are required to prepare annual financial statements (balance sheet, statements of income, changes in equity and cash flows, or changes in working capital).

2.3.10. Within the jurisdiction of the CABA, the IGJ charges an annual registration fee, which will depend on the amount of the corporation's capital stock, ranging from AR$ 100 to AR$ 2,500. The registration fee is payable regardless of whether the corporation has engaged in any business activity. Similar charges may be imposed by the other country´s jurisdictions.

2.4. *Sociedad de Responsabilidad Limitada* (or "SRL")

2.4.1. A minimum of two[12] and a maximum of 50 partners –either individuals or legal entities- may set up an SRL.

Partners can be domestic companies (except for SAs and Argentine limited liability companies with share capital (*Sociedades en Comandita por Acciones*), foreign companies, or individuals, and no nationality or residency requirements apply. Their liability is limited to payment[13] of the equity subscribed by all of the partners.

2.4.2. Capital must be fully subscribed, denominated in Argentine currency and is represented by quotas. One quarter of the capital must be paid-up by the partners at the time the SRL is formed and any balance must be paid up within two years thereafter. Where quotas are issued in consideration for contributions in non-monetary assets they must be fully paid up from inception.

There is no minimum capital requirement as in the case of the corporation.

[12] The same criterion explained for the corporations regarding the maximum and minimum percentage of capital to be owned by each partner is applied by the IGJ to the SRL.

[13] Resolution 7/2005 of the IGJ also applies to the SRL. Consequently, the corporate capital must be appropriate to the development of the corporate purpose and the IGJ may request the companies to fix a higher amount of capital than the one decided by the partners.

Partnership quotas must be of equal par value and entitle the holder to one vote each.

2.4.3. The partners may appoint one or more managers to manage the company, who may be partners or not. The managers represent the company, either individually or jointly, as provided for in the by-laws.

As with the directors of the corporation, a manager is not subject to any nationality requirement but the absolute majority of all managers appointed by the partners must reside in Argentina. In general, similar rules apply to SRLs and SAs concerning manager´s liabilities

Bylaws must establish the managers' guarantee[14]. Alternate managers are not required to provide a guarantee until they just potentially may hold office to replace one of the regular directors.

2.4.4. SRL´s bylaws normally contain the rules for adopting resolutions. Unless it is otherwise stipulated, resolutions may be passed in writing without the need for holding a meeting. In case of amendments of the by-laws, if one partner holds the majority vote, the vote of another partner will be necessary in order for the partners' meeting to be considered valid.

2.4.5. The appointment of a statutory supervisor or the creation of a supervisory committee is optional for SRLs, unless their capital amounts to AR$ 10,000,000 or more in which case one or more statutory supervisors or a supervisory committee must be appointed.

2.4.6. SRLs with a capital exceeding 10 million Argentine pesos are required to prepare annual financial statements (balance sheet, statements of income, changes in equity and cash flows, or changes in working capital).

2.5. Trusts

[14] IGJ´s General Resolution 7/05 also applies to this topic (see footnote 9 above). For limited liability companies with capital amounting to less than ARS 12,000, the guarantee amount shall be AR$ 2,000 for every manager.

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A trust is set up upon the transfer of certain assets by one person (the settlor) to another person (the trustee), the latter undertaking to exercise the rights attributable to ownership of such assets with a certain purpose or commitment for the benefit of a person designated in the relevant agreement (the beneficiary) and to transfer the assets, upon the expiry of the trust term or upon fulfilment of a certain condition, to the settlor, trustee or beneficiary.

Pursuant to Argentine law, assets held in a trust are a separate estate from the estates of any other party to the trust agreement (settlor, trustee, beneficiaries). They therefore will not be affected by any legal actions brought by the trustee's, settlor's or beneficiaries´ creditors, except in the case of fraud by the settlor.

There are specific regulations regarding financial trusts. The trustee of a financial trust may only be a financial entity or a corporation specifically authorized by the National Securities Commission to act as financial trustee. Trusts permit securitization of funds flowing from projects, thus opening up access to the capital markets for financing purposes.

This newsletter does not purport to render legal advice and you are to contact your trusted lawyer for counsel.

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