**Foreign Investment and M&A Legal Overviews for Argentina**

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**1.** **Foreign Direct Investment (Greenfield Investment)**

**1.1. Are there any governmental and regulatory approvals required for FDI? If so, please give brief details (e.g. trigger threshold, relevant authority and timing requirements)?**

In principle, foreign investors may carry out business in Argentina without any special restriction or limitation (certain restrictions exist for particular activities or real estate acquisitions in rural areas, security and border zones).

Under the Argentine Companies Act No. 19,550 (as amended, the “ACL”), foreign companies may conduct business in Argentina as follows:

* by performing isolated acts, in which no registration in Argentina is necessary; or
* by regularly conducting business, in which case they set up a branch or incorporate a local entity (subsidiary).

Pursuant to Title I, Chapter VIII of the National Securities Commission Act (“CNV”), foreign issuers must meet the same requirements as local issuers. In this sense, article 1 states that: “*a) At the time of filing the application to participate in the public offering, issuers incorporated and/or registered abroad must prove that: 1. They are not subject to any legal restriction or prohibition in the country of incorporation and/or registration that prevents them from carrying out the activities contemplated in their by-laws in such country. 2. They have one or more branches and/or permanent representations in the country, informing, as the case may be, the branches and/or representations they have abroad. 3. They own non-current assets in other companies. 4. They own assets in the place of incorporation of the company.*”

Furthermore, Act No. 2,382 of Foreign Investment constitutes the legal framework for FDI in Argentina.

**1.2. Are there any industry sector controls on foreign investment?**

All sectors of the economy are open to foreign investment on an equal level with the national investment. Generally, foreign investors in Argentina have the same status and the same rights as local investors. However, there are certain industries, such as aviation, in which foreign investors are not allowed to own a majority of the shares. Broadcasting is also restricted, as foreign ownership of Argentine broadcasting companies is limited unless reciprocity treatment applies.

Also, foreign investors who wish to purchase land located in a frontier zone and other security areas, or companies owning such land, must obtain prior approval from the government. Furthermore, acquisition of rural land by foreigners is limited by Act 26,737 and its regulations.

In particular, there are not many restrictions on foreign investment. Still, in some industry sectors, such as rural areas, the possibility of selling certain lands to foreigners is limited. In this regard, the amount of national land ownership is also limited.

**1.3. Are there any localization requirements for FDI in your jurisdiction (e.g. minimum ratio of local employees, minimum ratio of local procurement)?**

According to the aforementioned regulations, there are no specifications on localization requirements such as those referred above.

**1.4. What are the requirements for granting foreign employees work visas?**

Pursuant to applicable regulations, any foreigner wishing to reside and work in Argentina shall obtain an authorization issued by the Argentine National Migration Department (“DNM”). This permit can be requested from the DNM or technical and business visas can be also requested at the Argentine Consulate corresponding to the country where the foreign employee is domiciled.

The different Visa and the documentation to be filed before the DNM varies depending on the nationality of the foreigner. Mainly, in case of Mercosur citizens, the procedure is simple. The employee must file before the DNM certain personal documents (among others, the birth certificate and the non-criminal records) and the agency will grant him a “temporary residence” which will allow him to work and reside in Argentina. On the other hand, non-Mercosur citizens must file additional documents, for example a work contract between the employee and a local company.

In addition, please note that citizens of certain countries (e.g. China) are also requested an initial permit in order to enter the country, and on a second stage they will file the Visa permits before mentioned in order to reside and work in Argentina.

Please note that when speaking about working visas, the Argentine entity that hires the foreign citizen must also make an application to the National Register for Foreigners (“RENURE”).

**1.5. Are there any exchange control restrictions for remittance of capital, profits and dividends?**

As of September 1, 2019, the Argentine government reinstated exchange controls and restrictions on transfers abroad through means of Decrees of Necessity and Urgency No. 609/2019 and No. 91/2019, as well as the Foreign Exchange Regulations issued by the Central Bank of the Republic of Argentina along with several regulations applicable to the matter herein issued by other regulatory bodies. These new controls and restrictions currently apply with respect to access to the Argentine foreign exchange market for purchase of foreign currencies, the payment of external financial debts, the payment of dividends and corporate profits, payments of imports of goods and services, among other things, and impose the obligation to repatriate and settle the proceeds from exports of goods and services in Argentine pesos. In addition, the Central Bank of the Republic of Argentina established certain regulations to avoid practices and transactions aimed to circumvent, through the use of securities and other instruments, the restrictions set forth by the current foreign exchange control regulations.

**1.6. What are the most common types of corporate legal entities established for FDI? For each type of corporate legal entity, please introduce the internal corporate governance structure.**

The main types of investment vehicles used by foreign companies in Argentina are the ones detailed below:

a. “SA” or Corporation;

b. “SRL” or Limited Liability Company; and

c. “Branch” in accordance with Section 118 of the ACL.

Basic rules governing the formation and operation of SA, SRL and Branches are contained in the ACL as well as the current regulations of the Public Registry of Commerce of the City of Buenos Aires (“Public Registry”, “Inspección General de Justicia” or “IGJ”).

There are other types of legal structures that can be used to organize a company. However, the SA, the SRL and the Branch are the customary vehicles utilized by the vast majority of investors for purposes of conducting business in Argentina.

SAs and SRLs have autonomy and functional organization to operate and they are a distinct entity, independent from the head office. The latter is not responsible for the obligations of the SAs and SRLs. Branches constitute investment vehicles which allow foreign companies to conduct business in Argentina directly. Branches need to be registered with IGJ pursuant to Section 118 of the ACL. This process includes, among other requisites, the registration of the resolution of the parent company approving the opening of the Branch and the appointment of the legal representative and legal domicile.

Below please find a summary of the main feature of SAs, SAUs and SRLs under the ACL:

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| --- | --- | --- |
| **CORPORATIONS** | **LIMITED LIABILITY COMPANIES** | **BRANCHES** |
| **Shareholders:**  Unless it is a sole-owner corporation or “sociedad anónima unipersonal” (“SAU”), a minimum of two shareholders is required (the minority shareholder shall be the owner of at least 5% of the capital).  Shareholders may be Argentine or foreign individuals or legal entities. Foreign legal entities need to be previously registered with the local Public Registry of Commerce. | **Partners:**  A minimum of two partners is required and a maximum of fifty partners is allowed (the minority partner shall be the owner of at least 5% of the capital)  Partners may be Argentine or foreign individuals or legal entities. Foreign legal entities need to be previously registered with the local Public Registry of Commerce. | **Partners / Shareholders:**  It does not have partners or shareholders. |
| **Organization:**  Execution of a Deed of Incorporation. | **Organization:**  Execution of a Deed of Incorporation or of the corresponding private document. | **Organization:**  Registration of the resolution of the parent company approving the opening of the branch and the appointment of the legal representative and legal domicile. Also it must evidence that the parent company conducts relevant business outside the Republic of Argentina, proving that it has one or more agencies or branches, and/or fixed non current assets and/or participations in other companies not subject to the public offering regime and/or that pursuant to the corporate purpose of the company, it usually invests in the stock exchange market. |
| **Corporate Name:**  It has to include the words “S.A.” | **Corporate Name:**  It has to include the words “S.R.L.” | **Corporate Name:**  It has to include the words “SUCURSAL” (“BRANCH”) |
| **Capital:**  Represented by registered non-endorsable shares or shares in book-entry.  Minimum of AR$100,000. | **Capital**:  Divided into quotas which are not represented by certificates.  The Public Registry of Commerce recommends a minimum of AR$100,000 | **Capital**:  It is optional and must be appointed by the parent company and it is not represented by certificates. It does not have a minimum. |
| **Shareholders Liability:**  Liability limited to the subscribed capital. | **Partners Liability:**  Liability limited to the subscribed capital. | **Partners Liability:**  It is a representation of the parent company in the country and the parent company is liable with all its assets. There is no limitation of liability. |
| **Shareholders’ Meetings:**  Shareholders’ shall meet at least once a year to approve the Financial Statements and appoint the authorities (in case directors / syndics hold office for one year).  Shareholders are allowed to exercise its voting rights by proxy. | **Partners’ Meetings:**  Partners’ shall meet at least once a year to approve the Financial Statements and appoint the authorities (in case managers / syndics hold office for one year) Partners are allowed to exercise its voting rights by proxy. | **Partners’ Meetings:**  Not applicable. |
| **Corporate Bodies:**  Board of Directors and Syndics (statutory comptrollers). | **Corporate Bodies:**  Board of Managers and Syndics (statutory comptrollers) | **Corporate Bodies:**  Legal representative |
| **Board of Directors and legal representation**:  Board of Directors: minimum one director and one alternate in case private surveillance is not appointed (the majority of the principal directors shall be domiciled in Argentina). Term of office of the Directors will be stated in the by-laws and it shall not exceed three financial years.  The Chairman of the Board of Directors represents the company unless the by-laws establish something different. | **Management and legal representation**:  Board of Managers: minimum of one manager. No need to appoint an alternate manager (the majority of the principal managers shall be domiciled in Argentina). Managers may be appointed for a determined or undetermined period of time.  Unless something different is established in the by-laws, any of the managers may indistinctly act on behalf of the company and can indistinctly represent the company. | **Management and legal representation**:  One or more legal representatives. Its faculties must be included in the power of attorney which must be granted together with his appointment. The registered manager is the legal representative vis a vis third parties |
| **Syndics:**  The election of syndics is optional for corporations with capital up to Ar$ 50,000,000. One or more syndics (and an equal number of alternates) must be elected where the company has capital stock of Ar$ 50,000,000 or more. | **Syndics:**  The election of syndics is optional for companies with capital up to Ar$ 50,000,000. One or more syndics (and an equal number of alternates) must be elected where the company has capital stock of Ar$ 50,000,000 or more. | **Syndics:**  Not applicable. |
| **Corporate Books duly legalized with the Public Registry of Commerce:**  Minutes of Shareholders´ Meetings Book, Minutes of the Board of Directors´ Meetings Book, Stock Ledger and Shareholders´ Meetings Attendance Register.  Accounting books. | **Corporate Books duly legalized with the Public Registry of Commerce:**  Minutes of Partners´ resolutions. Management resolutions may also be included therein (it is not mandatory but we recommend such inclusion).  Accounting books. | **Corporate Books duly legalized with the Public Registry of Commerce:**  Minutes of Corporate Resolutions adopted by the Legal Representative. Accounting books. |
| **Transfer of shares**:  It is free, unless it is restricted in by-laws. It is not necessary to register the transfer of shares with the Public Registry of Commerce. It is valid *vis a vis* third parties since its registration in the Stock Ledger. | **Transfer of quotas**:  It is free, unless it is restricted by the by-laws. Such provisions may be more restrictive than in the case of corporations. The transfer of quotas must be registered with the Public Registry of Commerce to be valid vis a vis third parties. | **Transfer of ownership**:  Not applicable. |
| **Financial Statements**:  Shall be filed with the Public Registry of Commerce. | **Financial Statements**:  Shall not be filed with the Public Registry of Commerce in the case of companies with capital up to Ar$ 50,000,000. | **Financial Statements**:  Shall be filed with the Public Registry of Commerce. |
| **Accounting Period**:  Twelve months. The end of the accounting period shall be determined in the Bylaws. | **Accounting Period**:  Twelve months. The end of the accounting period shall be determined in the Bylaws. | **Accounting Period**:  Twelve months. The end of the accounting period shall be determined in the Bylaws. |
| **Distribution of Dividends:**  After the corresponding approval of the annual financial statements of the company reflecting realized profits. | **Distribution of Dividends**:  After the corresponding approval of the annual financial statements of the company reflecting realized profits. | **Remittance of profits:**  Can be made on a cash basis |

**1.7. What is the procedure of registration and incorporation of foreign-owned companies?**

1. Organization of a local company

SAs and SRLs must be incorporated and registered in the IGJ. Registration of a new company in the City of Buenos Aires should take place approximately 7/10 business days from filing all required documents in proper form and applying for the “Urgent” type of proceedings.

Prior to the incorporation of a company in Argentina, the foreign companies which will be shareholders of the local company, need to register with the IGJ in accordance with Section 123 of the ACL.

SAs must be created by a public deed and SRLs by a private incorporation instrument. For the organization of a SA or SRL the following is required:

* Preparation of the proper instrument (public deed in case of SAs or certified private instrument for SRLs) which states the shareholders' decision and intention to organize a corporation and the by-laws or rules that shall govern it. Such by-laws shall meet the structure requirements determined by the ACL and its regulations.
* Information regarding the founding shareholders/partners, directors and, if applicable, syndics; and
* Certification of the bank deposit evidencing the payment of at least 25% of the initial capital stock.
* An affidavit declaring if each of the directors is or not a “politically exposed person".
* An affidavit regarding the company’s final beneficiaries. This affidavit must be filed annually, and it must identify the individuals that hold at least 10% of the company’s capital or voting rights, or that by other means exercise final control (directly or indirectly) over the company.

The Articles of Incorporation and the other documents shall be filed with IGJ for its due registration.

1. Registration of a branch

Registration of branches in the City of Buenos Aires should take place approximately in 30/45 days from filing all required documents in proper form. A branch has certain autonomy and functional organization to operate. Even if it is treated as a distinct entity, independent from the head office, the latter is directly responsible for the obligations of the branch.

1. Documents required for registering a Branch with the IGJ

Branches have to file with IGJ the following documents to prove its creation and existence in its home country, as well as the power and authority to be registered in Argentina:

* An updated copy of its articles of incorporation and by-laws, and documentation evidencing the date of closing of its fiscal year (if it is not included in the by-laws);
* A certificate of good standing granted by the appropriate governmental authority, evidencing that the entity is (i) validly in existence as of that date, (ii) that it is not comprised in a winding-up process and (iii) that it is not subject to any legal proceeding which may imply restrictions to the disposition of its assets or for carrying out its activities;
* A true copy of the validly adopted board resolution (or its home country equivalent), approving the following: (i) to register the entity with IGJ for the purpose of establishing a branch, agency or other form of representation office in Argentina; (ii) to appoint one or more legal representatives of the branch;
* To grant the following powers of attorney (i) to register the branch with IGJ; and (ii) to represent the branch;
* To establish a domicile in the City of Buenos Aires; and
* If necessary a capital amount may be assigned to the branch;
* The acceptance of position issued by the legal representatives appointed;
* Documents signed by a representative of the company or officers’ certificate evidencing that the company has outside the Republic of Argentina one or more agencies or branches, and/or fixed non-current assets and/or participations in other companies not subject to the public offering regime and/or that pursuant to the corporate purpose of the company, it usually invests in the stock exchange market. The ownership of fixed non-current assets or participations in companies can be evidenced with the financial statements, or through an officers’ certificate;
* A certification signed by an officer of the company identifying the shareholders’ of the company.
* An affidavit declaring if each of the legal representatives is or not a “Politically Exposed Person”.
* An affidavit regarding the company’s Final Beneficiaries. This affidavit must be filed annually, and it must identify the physical individuals that hold at least 10% of the company’s capital or voting rights, or that by other means exercise final control (directly or indirectly) over the company.

***The above answers are prepared by 2 March, 2023.***

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