

Argentina

Legal Provisions

Swiss Embassy in Argentina

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GENERAL/PRELIMINARY REMARKS

As a member of the Southern Common Market (MERCOSUR), Argentina maintains low trade barriers with Brazil, Paraguay, Uruguay and Venezuela¹ but applies a high tariff on all goods and services coming into Argentina from countries outside MERCOSUR. The basic legislation affecting import and export transactions is contained in the Customs Code

<http://www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/16536/texact.htm> .

<http://www.afip.gob.ar/aduana/arancelIntegrado> provides detailed information about argentine tariff rates.

Argentina maintains some non-tariff barriers.

TARIFF AND IMPORT TAXES

Argentina and its MERCOSUR partners established the MERCOSUR common external tariff (CET) on January 1, 1995. The CET ranges from zero to thirty five percent. It gradually eliminated all non-tariff restrictions and other limitations to trade among the member countries, reaching zero duty and removing all tariff restrictions for approximately 85 percent of traded goods. For a product to qualify, it must have a certificate of origin from a Mercosur country showing that a sufficient percentage of the process of completion of the product occurred in that country.

¹ Recently accepted as MERCOSUR member. Implementation of low trade barriers is currently pending.

Argentine Customs has incorporated the Harmonized Commodity Description and Coding System (HS) for classifying goods and assigning tariffs. Basic rates are calculated on the CIF (cost, insurance, and freight) value of imports.

CET levels range from 0% to 35%, which is the WTO's consolidated rate for MERCOSUR countries. In 2010, Argentina applied an average rate of 11.4% to all imported goods as a whole, an average rate of 7.5% for agricultural goods and 11.9% for manufactured goods.

In addition to the tariffs, the following fees and taxes are applied:

- 0.5 percent of statistics fee is paid on the CIF value, except capital goods. This fee must not exceed US\$ 500 and it is not levied on MERCOSUR intra-zone trade

- 21 or 10.5 percent (depending upon the product) of Value Added Tax (VAT) on the CIF value plus tariff plus statistics fee

- 20 or 10 percent (depending upon the product) of advanced VAT on CIF plus tariff and statistics fee on all goods imported for resale, if certain requirements are met. Goods imported directly by end-users and those which constitute fixed assets for the importer are exempted.

- 6 percent advanced income tax on all goods, except for goods imported directly by end-users, which pay 11 percent. Goods which constitute fixed assets for the importer are also exempted.

- 3 percent advanced turnover tax on all goods imported for resale.

NON-TARIFF BARRIERS

According to regulations issued by the Federal Tax Bureau in 2012, before issuing the purchase order, the importer must file an advance import affidavit (in Spanish, 'DJAI' *declaración jurada anticipada de importación*). Such affidavit will be analyzed and, if no objections are made by other governmental agencies, approved by the above-mentioned authority. If objections are made, the importer must solve them by dealing directly with the relevant agency.

At the same time, the importer should file a 'requirement note' (in Spanish, '*nota de pedido*') with the Secretariat of Interior Commerce by e-mail. This is an informal import requirement, since there is not any written regulation establishing it.

TAXES

VAT "IVA / Impuesto al Valor Agregado"

The value added tax shall apply on:

- A. sales of movable property within the territory of the country
- B. the supply of services within the country and works on immovable property
- C. the importation of movable property
- D. the rendering of services abroad, when the effective use or exploitation of the services takes place in Argentina and the user is a registered VAT taxpayer

The standard rate is 21%.

A reduced rate of 10,5% applies, among others, in the following cases: works on immovable property for housing (excluded those constructions on existing property which do not constitute works in progress); sales and imports of living bovine animals, meat or eatable spoils from bovine animals, fruits, pulse and vegetables; interest and other costs on loans granted to registered VAT taxpayers by financial institutions under Law 21,526 and interest and other costs on loans to enterprises engaged in the transportation of passengers by land granted by financial institutions under Law 21,526. Some capital goods are also taxed with the reduced rate of 10,5%.

Corporate Income Tax (Impuesto a las Ganancias)

Resident Corporations

Taxable income of corporations is subject to taxation only at a corporate level, because dividends from resident corporations are tax-exempt (with some limitations).

Tax Rates

Corporations, including subsidiaries of foreign companies, are taxed at a flat 35% rate.

Territoriality

For resident corporations, worldwide income is taxable, including the income of foreign branches and subsidiaries, even if such income is not repatriated. Income of foreign subsidiaries is taxable only to the extent of dividends actually paid, unless the subsidiary is organized in a tax haven country and dividends are distributed out of passive income, in which case the Argentine company is taxed on their allocable share of the subsidiary's income regardless of whether a dividend is paid. Corporations formed under Argentine law, as well as commercial, industrial, agricultural, mining, and other types of permanent establishments of foreign entities are considered to be residents. This treatment

demonstrates the importance of keeping separate books and records for a permanent establishment in Argentina.

Business Income

Business income includes income from the sale of goods, depreciable assets, shares or real estate; income from dividends other than from resident corporations; interest; royalties and fees; and foreign-exchange gains.

Capital Gains

Corporations' capital gains are not subject to a specific tax. They are included in the scope of income tax and, consequently, are subject to a 35% rate, the same as ordinary income.

Specific Losses

Tax losses arising from the sale of stock or other securities in Argentine companies can only be offset with income arising from similar transactions.

Valuation of Assets

Tax regulations generally provide for valuation of assets in such a way that current values are usually reached.

Inventory

Specific methods of inventory valuation must be used, depending on the nature of the inventory.

Merchandise held for resale and raw materials must be valued at the price of the latest purchase made during the last two months before the end of the year. If no purchase was made during that period, the last prior purchase must be considered.

For manufactured products, companies that can determine their production costs are allowed to use it for tax purposes. Indirect costs must be included. If a company cannot determine its production cost, it must value its inventories at their sales price less the direct selling expenses incurred and net profit margin realized in the last two months before the end of the year. If no sale was made in that period, the last prior sale must be considered.

Fixed Assets

Fixed assets are valued at cost less accumulated depreciation.

Non-resident Companies

Foreign corporations are taxed on only Argentine-source income. They are generally taxed through withholding taxes, which apply at different rates depending on the nature and origin of the income.

Income from Imports

Income earned by a foreign corporation on imports into Argentina is not taxable, provided title to goods passes overseas and, consequently, the local buyer clears goods through Argentine customs.

Branch Profits

Profits of Argentine branches of foreign companies are taxable at a 35% rate on worldwide income. Subsequent profit remittances are not subject to tax, if they do not exceed taxable income.

Portfolio Income

Dividends paid by resident corporations, that do not exceed taxable income, are not subject to withholding tax. A withholding tax is imposed on payments of interest to non-residents. The withholding rates for the payment of interest to beneficiaries who are abroad are as follows:

- 15.05% when the borrower is a local financial entity, or when it is related to the financing of imports of fixed assets, or when the borrower is a legal entity or an individual and the creditor abroad is a financial or banking institution non-settled in a tax haven, or when the interest comes from deposits in local financial entities.
- 35% for all other cases.

However, interest from the following portfolio investments is not taxed if paid to non-residents:

- Obligations of the Argentine government;
- Obligations (bonds) issued by resident corporations and other non-government entities through public offer.

Proceeds from the sale of shares of local corporations and public bonds are not taxable for non-residents.

Limited liability companies

- They are taxed in the same manner as corporations.

Partnerships

To compute the income of individuals who are partners in a general partnership allowed under Argentine law taxable income is first computed for the partnership as a whole and is then generally allocated to the partners in accordance with their capital or profit-sharing agreement. Each partner is subject to income tax on his or her allocated taxable income.

Joint ventures

For joint ventures, taxable income is allocated among the members, whether companies or individuals. Each joint venture member is then subject to income tax on the allocated taxable income under the rules appropriate for the type of member (company or individual). Tax losses are also allocated to partners and joint venture members.

Excise Taxes [Ley 24,674](#) "Impuestos Internos"
(also known as "Impuestos a los Objetos Suntuarios")

The Excise Taxes Law establishes that the following products are subject to this tax: Tobacco, alcoholic drinks, champagne², beer, soft drinks, syrup and spirits, automobiles and motors, **luxury goods**, recreation or sport ships and aircraft, cellular and satellite telephone services, certain electronic appliances.

Chapter VIII of the Excise Taxes Law does have particular interest for the Swiss watch industry. The following articles are taxed with a 20% quote: "Precious or semiprecious natural or reconstitute stones; hard carved stones and natural or cultivated pearls; objects for whose confection is used in any form or proportion, platinum; palladium, gold, silver, crystal, jade, ivory, amber, tortoiseshell, coral,"

The taxable amount is the net sale price payable to the taxable person, except in the case of cigarettes where the taxable amount is the sale price payable by the final consumer. It is understood that the term "net sale price" means the price after deduction of discounts, interests and VAT. The Excise Tax shall be considered in the taxable amount in order to assess said tax. So the 20% nominal quote, results in a 25% real tax.

In the case of importation, the taxable base will be 130% of the amount resulting from the addition of the taxable base for custom duties plus any tax applied on the transaction, except VAT.

When the imported taxable products are sold, the importer is allowed to credit against the tax charged on the outlay, the tax previously paid on the importation.

² Until 1/2/2013 Champagne does not tribute this tax (Decree 185/2012)

INTELLECTUAL PROPERTY RIGHTS, SERVICE AND INVESTMENT BARRIERS

Patents

Argentina's lack of adequate and effective patent protection has been a long-standing irritant in trade relationship. Many of the TRIPS inconsistencies in the Argentine patent law were not previously actionable in the WTO, because Argentina availed itself of the developing country transition period. However, most of Argentina's TRIPS obligations came into force on January 1, 2000.

In March 1996, Executive Decree 260, which consolidated Argentine patent law, authorised the National Intellectual Property Institute (INPI) to approve pharmaceutical patents starting in October 2000, but contained numerous problematic provisions. In December 1996, the Argentine Congress passed legislation that permits Argentine companies to use data submitted by innovative companies to obtain marketing approval in Argentina. The shortcomings in the patent law included Argentina's failure to protect confidential test data submitted to government regulatory authorities for pharmaceuticals; its denial of certain exclusive rights for patents; its failure to provide such provisional measures as preliminary injunctions to prevent infringements of patent rights; and its exclusion of certain subject matter from patentability. By mid 2002 most of these controversial topics have been resolved.

INPI's board has changed several times over the last several years. The organisation is chronically short of funds, which has impaired its efforts to modernise and improve service.

Copyrights

Argentina's copyright laws provide generally good protection and are under review by the Government of Argentina to ensure that these laws fully meet TRIPS requirements. Argentina adopted legislation in 1999 to ratify the World Intellectual Property Organisation (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty. To better protect software, the Argentine Government promulgated legislation in November 1998 establishing software piracy as a criminal offence, thus avoiding problems generated by previous court rulings. Despite vigorous efforts by the software industry, the Government of Argentina has yet to fully legalise software used in all government offices.

Enforcement of copyrights on recorded music, videos, books, and computer software remains inconsistent. Although Argentine Customs and other Government authorities generally cooperate with industry efforts to stop shipments of pirated merchandise, inadequate resources and slow court procedures have hampered the effectiveness of enforcement efforts. Inadequate border controls, particularly at the Paraguayan-Brazilian border, contribute to the regional circulation of pirated goods.

Trademarks

Registering of trademarks generally takes over five months. Once a trademark is registered, however, enforcement is relatively efficient and reliable.

Service Barriers

Although Argentina enacted liberalization in the services sector as part of its broader economic reform program in the 1990s, some barriers continue to exist. For example, the Argentine Government obliges cable/pay television operators to register their programming with a government body. In addition, restrictions regarding the showing, printing and dubbing of films have burdened foreign exports, as has the practice of charging ad valorem customs duties based on the value of authors' rights, rather than solely on the value of the physical materials being imported, which is the WTO standard.

In the WTO, Argentina has committed to provide substantially full market access and national treatment to foreign suppliers of non-insurance financial services. A remaining issue is lending limits for foreign bank branches that are based on local paid-in capital, not parent bank capital. This effectively removes the rationale for establishing in branch form.

In the WTO negotiations on telecommunications services, Argentina made commitments on most basic telecommunications services and adopted the reference paper on regulatory commitments. Argentina ratified the Fourth Protocol to the

General Agreement on Trade in Services (GATS) in July 1998. Argentina opened long distance services to increased competition in November 1999, and allowed full market access for local, domestic and international long distance, cellular and other wireless and international data services in November 2000.

Electronic Commerce

Argentina has made a broad range of value-added and basic telecommunications GATS commitments that have helped support the development of electronic commerce. Argentina has taken steps to lower the cost of Internet usage. Despite supporting electronic commerce, the Government of Argentina does not participate in the WTO Information Technology Agreement (ITA). In addition, Argentina does not allow the use of electronically produced air waybills, slowing the customs processing of critical just-in-time shipments and interfering with Argentina's ability to conduct electronic commerce transactions.

PAYMENT PROCEDURES*

Goods imports payments

In the case of consumer and final goods imports comprised in the Annex to Communication "A" 4372 shipped after 06/23/2005 and lacking documentary credits granted by local financial institutions as to that date, access to foreign exchange market to pay for those goods must take place before the shipment of goods to the market or within the following 30 consecutive days to that date or before their entry into the International Free Zone.

When local financial institutions finance foreign currency denominated payments of imported goods comprised in the Annex to Communication "A" 4372, funded with that local institution's external liabilities, such payments should not exceed the maximum term set to access the foreign exchange market in order to pay these goods.

Other goods imports may be wholly paid in advance, or by sight or deferred payment. Access to the foreign exchange market to pay for imported goods shipped to the same destination is subject to regulations applicable to goods whose total CIF value proportionally represents the highest value shipped, and in case they have the same value, it will be subject to the most restrictive foreign exchange regulations.

In all cases, nationalization of such goods should be proven within 360 days of the advance payment, or within 90 days of the sight payment.

If goods are not nationalized in time, the amount of the advance payment (or the difference, when the nationalized amount is lower than that paid) must be repatriated.

In that case, foreign exchange must be converted into pesos at the lowest exchange rate of that for the advance payment date and that of the MULC offered in the SIOPEL CAM 1 round (buying rate) for the date foreign currency is exchanged.

In addition, debt from imports may be prepaid, regardless of the due date.

Payment of services

There are no restrictions whatsoever to the payment abroad of services provided by nonresidents, regardless of the item (freight, insurance, royalties, technical advice, fees, etc)

Source: Banco Central de la República Argentina
<http://www.bcra.gov.ar/pdfs/comunica/P48372i.pdf>

INVESTMENT

Argentina is a liberal and investor friendly country. The foreign investment law 21,382 from 1976 has been amended by the principle of equal treatment of foreign investors in 1989. Decreto 1853 eradicated all remaining barriers for foreign investment. Since 1993 companies from abroad are allowed to hold up to 100% of stock of all kind of argentine companies. The free transfer of capital used to be guaranteed until recently. Although during the first half of 2002 the ACB restricted capital transfers to abroad, nowadays payments abroad of financial or commercial debts and distribution of dividends are no longer restricted provided that certain conditions are met (mainly, compliance with information regimes before the ACB).

SETTING UP COMPANIES

Foreign investors in Argentina commonly use the following types of commercial entities: Sociedad Anónima (Incorporated Company or Corporation), Sociedad de Responsabilidad Limitada (Limited Liability Company) and Sucursal de Sociedad Extranjera (Branch Office of a Foreign Company or Rep. Office), as encompassed by Argentine Companies Law ("ACL"), Nr. 19.550.

1. Sociedad Anónima ("S.A.")

The "*Sociedad Anónima*" is the most commonly used type of legal entities in Argentina for the development of all kinds of business. According to the ACL, a minimum of two shareholders is required in order to incorporate a *Sociedad Anónima*. Furthermore, no restrictions are imposed regarding the percentage of capital stock held by a foreign company.

This is by far the most common legal construction used by foreign investors.

Moreover, although the directors and even the president of the company may be foreigners, the absolute majority of the members of the board of directors must be Argentine residents. Directors need not be shareholders of the company. The president, elected from amongst the members of the board, has full powers to act on behalf of the company and his authority vis-à-vis third parties cannot be limited.

To set up a Sociedad Anónima, the following requirements must be met:

Documentation and procedure

Preliminary filing of the proposed corporate name with the Inspección General de Justicia ("IGJ") which is the public agency in charge of the Public Registry of Commerce and thus controlling the corporate matters in Argentina. The applicant must present up to three proposed corporate names, each of which must include the words "Sociedad Anónima" or its abbreviation "S.A." For a period of thirty days, the filing will preempt any corporate name requests made by a subsequent applicant.

Preparation of the incorporation documents, e.g. Articles of Incorporation and by-laws of the Sociedad Anónima, which must be done through a public deed. The articles of incorporation must be submitted for approval to the "IGJ" and, once approved, published in the Boletín Oficial (Official Gazette).

Issuance of a "pre-qualification certificate" required by the "IGJ". Such certificate, provided by the attorney or notary hired to formalize the registration of the Sociedad Anónima, states that the required documents are complete and certified to the satisfaction of the attesting attorney or notary. To provide the certificate, the attorney or notary will require:

- (i) Proof of deposit of at least the 25% of the par value of the relevant *Sociedad Anónima's* capital stock. This deposit must be done at the Banco de la Nación Argentina. The minimum capital stock required by the ARC is AR\$ 12,000 up to October 5, 2012; however, since October 6, 2012 the new minimum capital stock required will be AR\$ 100,000. (The deposit may be cashed out after the *Sociedad Anónima* is incorporated);
- (ii) Payment of an administrative filing fee (*tasa de registro*) to the "IGJ"; and
- (iii) Proof of the publication in the Official Gazette (*Boletín Oficial*) of the incorporation of the *Sociedad Anónima*, pursuant to Section 10 of the ACL.

Filing of Form Nr. 1 with the "IGJ" requesting consent to the organization of the *Sociedad Anónima*. Such filing must be accompanied by:

a public deed or a self-authenticated private instrument containing the by-laws;
proof of the preliminary filing of corporate name with the "IGJ".

Proof of the deposit of at least 25% of the par value of the *Sociedad Anónimas's* capital stock;

Proof of payment of administrative filing fee required by the "IGJ",

Proof of publication of incorporation in the Official Gazette; and

The "pre-qualification certificate" establishing the *Sociedad Anónima*.

- Foreign shareholders, not being private persons and intending to hold part of the share capital of a company must file their legalized and translated articles of incorporation with the "IGJ". The Republic of Argentina is member of The Hague Convention of 1961; therefore all foreign documents may be legalized with Apostille.
- Shares must be registered non-endorsable; they may be ordinary or preferred; ordinary shares may be divided in several classes, with different voting rights. Preferred shares may have preferences of various kinds, concerning dividends, refunds, convertibility, etc.
- The corporation must have a board of directors composed by at least one person, depending on the size of the company. Moreover, small entities need not appoint a *síndico* (syndic), but in this case, an alternate director must be designated. Big corporations have larger board of directors and at least one *síndico*. The *síndico* is a kind of statutory auditor acting on behalf of the shareholders and established by the ACL. The directors may be Argentine or foreign residents, but the majority must be resident. In either case, they must report a domicile in Argentina for the purpose of related proceedings.
- The initial capital may be increased, generally requiring a change of the articles of incorporation.
- There must be at least two shareholders. This is an essential requirement for corporations in Argentina and should one shareholder disclose the fact of his owning 100% of the capital of one particular company, it must be liquidated. Furthermore, "IGJ" requires that, in corporations with two shareholders, that the minority shareholder holds, at least, the 5% of the total shares.
- The foundation of a *Sociedad Anónima* normally takes about one to two months.

The *Sociedad Anónima* is the only form of business organization that may be listed on the Stock Exchange. It has a legal identity separate from that of their shareholder and continue in existence despite the death or disability of its shareholders. The shares may be transferred freely without obtaining approval of the remaining shareholders.

Directors act as temporary and revocable agents, responsible for the execution of the mandate given to them at the time they take office. Directors' duties may not be delegated. The board, however, may delegate part of its powers to the corporation's managers or assistant managers; to one director or to a committee of directors; and, for specific purposes, to other persons.

The board of directors must hold meetings at least once quarterly. The by-laws must state whether directors will be compensated. If so, the amount of the compensation ("*Honorarios*") must be set annually by the shareholders. Compensation or reimbursement for activities other than those pertaining to the directors' office, such as salaries, fees, travelling expenses or allowances for their roles as delegates of the board, whether in cash or in kind, or any sort of benefits, including entertainment expenses, must be authorized by the shareholders.

2. Sociedad de Responsabilidad Limitada ("SRL")

Since most of the requirements, documentation and local procedures that have been explained in the *Sociedad Anónima* section apply to the *Sociedad de Responsabilidad Limitada* (which is similar to Limited Liability Company –LLC-), only the main characteristics regarding the ACL will be addressed.

To set up a *Sociedad de Responsabilidad Limitada*, the following minimum requirements must be met:

- The incorporation may be performed by public deed or private instrument with certified signatures.
- Foreign members, not being private persons and intending to be a member of the company, must file their legalized and translated articles of association with the "IGJ".
- There is an A\$ 3,000 minimum capital; only 25% of the capital must be paid in at the time of foundation.
- The company is run by the *gerentes* (managers), who can be the members themselves.
- There must be at least two members and up to 50.
- Similar to *Sociedad Anonima*, the liability of the members of the *Sociedad de Responsabilidad Limitada* is limited to the amount of their investment.
- These types of companies are treated as a corporation for tax purposes
- The foundation of a *Sociedad de Responsabilidad Limitada* normally takes about one to two months.

3. Sucursal de Sociedad Extranjera (Branch)

Another type of legal entity sometimes utilized by foreign investors is that of *Sucursal* (Branch). In this case, any company existing and duly organized in accordance with the laws of its country of origin may set up a Branch. In principle, no allocation of capital is required. The parent company shall appoint a legal representative of the Branch, who generally will be the manager of the Branch, and a power of attorney must be issued in his favor.

The Branch is simply a part of the foreign company and does not require a local board, syndics, etc. Thus, the parent company is liable for all the liabilities of the Branch, as they are not separate entities. The manager of the Branch is subject to the same liabilities as a corporate director under Argentine law. The parent company and the Branch are not two different entities.

The legal requirements to set up a Branch are:

- a translation of the articles of incorporation of the foreign company into Spanish, duly legalized through Consulate or Apostille, must be transcribed into the records of an Argentine Public Notary,
- a translation of the minutes of the Board meeting where a resolution is passed deciding: (i) to establish a Branch in Argentina, (ii) to authorize the persons in charge to register the Branch in Argentina, and (iii) to designate the legal representative of the Branch. All pages of the Minutes must bear the notarized signature and seal of such legal representative.
- A Certificate of Good Standing attesting to the parent company's lawful organization in its place of incorporation, to its status as a legal entity and to its authorization to do business in such jurisdiction.
- Affidavit by a lawyer qualified to practice in the parent company's place of incorporation, stating whether the parent company is subject to prohibitions or restrictions to conduct business in that jurisdiction.
- A statement that indicates the corporate headquarters and legal domicile of the foreign corporation in its place of incorporation and constitutes a "special domicile" for the Branch

in Argentina, as well as a statement of personal data of the legal representative evidencing his acceptance of the relevant position.

- At least one of the following items:
 - a. Evidence on that the parent company has one or more branches outside Argentina. In such a case, the corresponding certificates issued by the competent authorities of the place where the branch or branches are located must be produced; or
 - b. Certified copies of audited financial statements of the parent company, elaborated according to GAAP of its place of incorporation and signed by an authorized corporate officer showing that the parent company either holds shares or other types of ownership interests in other companies, qualified as non-current assets by its home jurisdiction's GAAP; or owns fixed assets in its home jurisdiction, as defined by its home jurisdiction's GAAP.

- Issuance of a "pre-qualification certificate" required by "IGJ". Such certificate, generally provided by the attorney or notary hired to formalize the registration of the branch, states that the required documents are complete and certified to the satisfaction of the attesting attorney or notary.

- A notarized power of attorney granted in favor of the persons in charge of the registration and also notarized power of attorney in favor of the legal representative of the branch in Argentina.

Copy of the above documentation must be filed with the "IGJ" and published in the Official Gazette. Accounting requirements for branches of foreign companies are similar to those for a corporation (*Sociedad Anónima*) formed in Argentina and also they are taxed as Argentine *Sociedad Anónima*. The whole process normally takes about one to two months.

Notes: Foreign documents requested must be legalized either through the nearest Argentine consulate or through an Apostille (Hague Convention of 1961).

Documents in a foreign language must be translated into Spanish by a certified translator in Argentina and legalized by the Public Translators Bureau.

A branch, together with the filing of its annual financial statements before the BAOC, must file a certification by a Certified Public Accountant of its parent company's current and non-current assets located outside Argentina

4. Joint Ventures

Argentine legislation permits the establishment of temporary unions of enterprises, which are equivalent to joint ventures. Argentine companies, branches of foreign companies and individuals residing in Argentina, may form a temporary union of enterprises ("UTE"). Its purpose must be to perform work or render services within or outside Argentina. A temporary union of enterprises is neither a company nor a partnership, and it is not considered a legal entity.

The companies or individuals establishing the "UTE" are responsible for the actions performed. The contract must be filed with the "IGJ" and must contain a number of specific clauses providing the appointment of a legal representative in charge of the management.

ENTRY CONDITIONS, WORK PERMITS AND CURRENCY

Visa Requirements

Visitors from most countries do not need a temporary visa for Argentina (if they stay, as tourists, for periods shorter than 90 days). An extension for another 90 days is available at the immigration office. Permanent visas have become more difficult to attain and should be applied for at the country of residence of the immigrant. There is absolutely no pressure on immigrants to become Argentine citizens, once settled in Argentina, and there are therefore many people who keep their original citizenship, after living many decades in Argentina. Any person born in Argentina, except in the case of the children of diplomats, becomes automatically an Argentine citizen.

Work permits

Immigration laws provide that foreigners may enter and stay in the Argentine Republic as follows:

- Permanent residents may perform all kinds of remunerated or profitable activities, as employees or self-employed persons.
- Temporary residents may also perform such activities during their authorised stay in Argentina.
- Transitory residents, tourists and students are not allowed to carry out any remunerated or profitable activity unless expressly authorised to do so by the immigration authorities.

For detailed information please contact the Argentine embassy or consult (<http://www.cancilleria.gov.ar>) or visit the following internet page: <http://www.migraciones.gov.ar>

To obtain temporary or permanent resident status, foreigners must file documentation with the immigration authorities such as valid passport, including their birth and marriage certificates. Also, certificates of good conduct (no criminal record) within Argentina and in their country of origin are required. These documents have to be stamped at the Argentinean consulate in the country of origin and afterward in front of the Ministry of Foreign Affairs or has to be legalised with "Apostille".

Employers who violate the above rules are subject to penalties, but employees are always entitled to receive compensation for their services and protection from Argentine labour laws. Further, employers are legally obliged to comply with social security regulations and must make social security payments, except for foreign professional, scientific or technical research personnel hired for a maximum of two years. These expatriates can request an exemption.

FOREIGN EXCHANGE REGULATIONS

Income and current transfers.

There exist no regulations establishing –in general- any settlement obligation. Only the companies acquiring external assets for direct investments, and provided that for the amount of the investment they have duly requested the previous authorization from the Central Bank of the Argentine Republic in order to have access to the exchange markets, and that the same had been financed totally or partially with a foreign indebtedness, must

prove -before accessing to the exchange markets in order to pay debt services or redemptions of such financing- that they have received and settled the income corresponding to such assets.

Reference: Communication "A" 4634.

Capital

Foreign indebtedness transactions corresponding to the non-financial private sector and the financial sector by means of bonds, loans and/or financial credit lines from abroad must be received and sold off through the Local Free Exchange Market.

Reference: Communications "A" 3712, 3820, 3972, 4634, 4643.

Minimum terms of financial indebtedness

All new financial indebtedness incoming the local exchange market and the renewal of foreign debts corresponding to residents in the country, either from the financial sector or the non-financial private sector, as from 10.06.2005 inclusive, must be agreed upon and kept for minimum terms of 365 calendar days, and cannot be cancelled in advance before the respective due date.

Reference: Communication "A" 4359, "C" 46296 and 46307.

Placement of mandatory non-profitable deposits in foreign currency for a term of 365 days – Decree 616/2005

Pursuant to the provisions set-forth by Decree Nr 616/2005 dated 9.06.2005, Communication "A" 4359 establishes the rules for mandatory non-profitable deposits in local financial entities according to the terms and conditions indicated in Communication "A" 4360, which shall be placed in US Dollars for the 30% of the equivalent in US Dollars of the total of the transaction giving rise to the deposit, at the time of registering -since 10.06.2005- an inflow of funds in foreign currency into the exchange markets, due to –among others- any of the following concepts:

Financial debts corresponding to the financial sector and non-financial private sector.

- a) Primary stock and debt security issuance corresponding to resident companies not publicly offered and not listed, as long as the same do not constitute direct investment funds.

- b) Portfolio investments made by non-residents allocated to the holding/possession of local currency as well as financial assets and liabilities corresponding to the financial sector and non-financial private sector.
- c) Portfolio investments made by non-residents allocated to the acquisition of any right on secondary markets regarding values/securities issued by the Public sector.
- d) Inflow of funds in the local exchange market due to the sale of external assets corresponding to private sector residents, for the amount exceeding the equivalent of US Dollars 2.000.000 for each calendar month, in the group of entities authorized to make exchange transactions.

Reference: Communications “A” 4359, 4377, 4632 and 4633, “B” 8599.

Exceptions to the placement of mandatory non-profitable deposits

The following transactions –among others- are exempt from placing the mentioned deposit:

- The settlement of foreign currency corresponding to residents as a result of loans in foreign currency granted by the participating local financial entity.
- The inflow of foreign currency in the exchange market due to Contributions for direct investments in the country.

Reference: Communications “A” 4178, 4377, 4359, 4386, 4427, 4447, 4507, 4554, 4574, 4632, 4633, 4662, 4669, “B” 8814, 8901 and 8978, “C” 42303, 42884, 43075, 44048, 44670 and 46394.

Payment of services

There exists no restriction whatsoever in relation to payments made abroad for services rendered by non-residents, under any concept whatsoever (freight, insurance, royalties, technical advice, fees, etc.).

Reference: Communication “A” 3826.

Income (Interest, profits and dividends)

Access to the Local Free Exchange Market is admissible for the payment of interest services corresponding either to the non-financial private sector and the financial sector, under the conditions detailed below:

1) 15 running days in advance before the expiration date of each interest installment.

2) Accrued in any moment of the current interest period.

Access to the local exchange market for payment services of debt interest, shall take place in connection with the accrual of income since the date the exchange rate has been agreed for the sale of the foreign currency in the local exchange market, or the effective day in which the funds were disbursed, if the same had been credited in the account of entities duly authorized for their proper liquidation in the local exchange market, within 48 working hours from the date of such disbursement.

Before paying the interest of any kind of debt kept abroad, the participating entities must verify that the debtor has submitted/filed, whether corresponding, a sworn statement of the debt pursuant to the information system established by Communication "A" 3602 dated 7.05.2002 and has complied with the requirements set-fort by Communication "A" 4177.

The companies acquiring external assests for direct investments, provided that for the resulting amount of the investment they have required a previous authorization from the Central Bank in order to have access to the exchange markets, and which have been financed –totally or partially- with external indebtedness, must prove -before accessing the exchange market to pay services of such financing- that they have entered in the country the inflowing funds and have settled the income amount received for those assets or the amounts received from their sale, according to the particular case.

Access to the Local Free Exchange Market is allowed for remittances overseas due to the payment of profits and dividends, provided the same correspond to financial statements already closed and audited.

Reference: Communications "A" 3602, 3859, 4177, 4634, 4643 and "C" 41002.

Sale of Currencies to non-Argentine residents

Communication "A" 4662 has released a new order and the new applicable regulations for non-Argentine residents to access the exchange market (according to the definition included in the Payments Balance Manual issued by the IMF –fifth edition, Chapter IV-).

To this respect, it establishes that the following transactions can be performed without the requirement of previously requesting the approval of the Central Bank:

1. Purchase of foreign currency to be transferred/remitted overseas, provided the documentation required in the mentioned regulation is duly fulfilled, in the following cases, whenever the transactions are performed by or correspond to collections in the country of:

- 1.1. International organizations and institutions carrying out duties as official agencies for exportation credits, according to a list established by the Central Bank of the Argentine Republic.
- 1.2. Diplomatic and Consular Representations as well as diplomatic personnel/officers residing in the country due to overseas transfers in the performance of his duties.
- 1.3. Representations in the country of Courts, Authorities or Offices, Special Missions, Bilateral Committees or Organizations established by International Treaties or Conventions, in which the Argentine Republic is a signatory party thereof, as long as the transfers are arranged in the fulfillment of their respective duties.
- 1.4. Payment of Argentine imports at sight/on demand.
- 1.5. External Debts of residents due to the importation of Argentine goods.
- 1.6. Services, income and other usual transfers overseas.
- 1.7. Financial Debts originated on foreign loans to non- residents.
- 1.8. Income of Bonds and Loans Guaranteed by the National Government and issued in local currency.
- 1.9. Recovery of credits from local bankruptcy proceedings and collections of debts corresponding to rehabilitation proceedings, provided always that the non-resident client has been the holder of a credit legally acknowledged during the bankruptcy or creditors' meeting proceedings, with a final judgement resolution.
- 1.10. Inheritances, according to the determination of heirs of the decedent.
- 1.11. Benefits granted by the National Government within the framework of the provisions set-forth by Laws Nr 24.043, 24.411 and 25.914, in relation to the services or sale of the securities received.
- 1.12. For transactions performed through reciprocal payment and credit agreements ALADI and Dominican Republic as well as bilateral agreements with the Russian Federation and Malaysia, discounted by foreign entities, collected through the agreement and being credited on accounts belonging to local entities, provided the exporter has received and sold off the funds from abroad with the discount, in the Local Free Exchange Market.
- 1.13. Repatriations of direct investments on companies belonging to the non-financial private sector, not controlling the local financial entities, as long as the investor can evidence a permanence of such investment in the country for a period not less than 365 running days, under the following concepts:
 - 1.13.1. Sale of the direct investment.
 - 1.13.2. Final settlement of the direct investment.
 - 1.13.3. Capital reduction decided by the local company.
 - 1.13.4. Restitution of irrevocable contributions made by the local company.

In these cases, access to the exchange market is also admissible for the resident who must perform the transfer in favor of a non-Argentine resident, under the concept of "repatriation of direct investments to non-residents".

- 1.14. Collection of services or liquidation for sale of other portfolio investments (and income thereof), provided always that together do not exceed the equivalent of US\$ 500.000 for each calendar month per natural or legal person, in the group of entities/agencies authorized to perform foreign exchange transactions.

In such cases, a certificate must be obtained from a local financial entity or exchange agency, concerning the date and amount of the incoming investments in the country, either through a liquidation in the exchange market, or otherwise a crediting at a foreign currency bank account in the country, no less than 365 running days in advance since the date on which the local exchange market has been accessed.

2. Purchase of bills, cheques and traveller's cheques in foreign currency, for the amounts necessary for the performance of their duties in the country of:
 - 2.1. International Organizations.
 - 2.2. Diplomatic and Consular Representations as well as diplomatic personnel/officers in the country.
 - 2.3. Representation offices in the country of Courts, Authorities or Offices, Special Missions, Bilateral Committees or Organizations established by International Treaties and Conventions being the Argentine Republic a signatory party thereof.
3. Purchase of foreign currency by the non-resident, not exceeding the equivalent of US\$ 5.000 for each calendar month in the group of entities/agencies authorized to make foreign exchange transactions.

All transactions not included hereinbefore, shall only be performed provided the same have obtained the prior approval of the Central Bank.

The entities/agencies authorized to operate in the foreign exchange market, are allowed to exchange currencies and bills or vice versa, due to transfers from and to abroad made in relation to the performance of their duties in the country by international Organizations, Representations in the country of Courts, Authorities or Offices, Special Missions, Bilateral Committees and Organizations established by International Treaties and Conventions being the Argentine Republic a signatory party thereof as well as diplomatic and consular representations and diplomatic personnel/officers accredited in the country.

For capital services and income due to public securities/bonds issued by the National Government in foreign currency as well as to other bonds issued by residents in foreign currency, which according to the exchange rules in force are payable abroad and are deposited by non-Argentine residents on local escrow accounts, the non-Argentine resident can choose between the following alternatives: its collection in foreign currency bills, the crediting of the funds in a local foreign currency account opened in his name or the re-transferring of the funds to an own account overseas. In these cases, no exchange vouchers are issued. If after the payment of the services has been made, the beneficiary of the funds wishes to convert the collected funds in foreign currency to local currency, the currency must be purchased in the exchange market based on the general rules related to portfolio investments by non-Argentine residents.

Transactions performed for account and order of non-resident clients through brokers either framed under the Law of Financial Entities or not, and are not Retirement and Pension Funds Administrators or Mutual Investment Funds, must be performed in the name of the non-Argentine resident client accessing the exchange market, complying with the requirements established by the exchange rules in force at the time the exchange operation takes place, and subject to the provisions established by Communication “A” 4603, Communication “C” 38965 as well as their complementary regulations.

Reference: Communication “A” 4603, 4662, “C” 38965 and 39316.

LINKS AND INFORMATION

Ministerio de Economía

<http://www.mecon.gov.ar>

Banco Central de la República Argentina

<http://www.bcra.gov.ar>

Administración Federal de Ingresos Públicos (Impuestos + Aduana)

<http://www.afip.gov.ar>

Instituto Nacional de Propiedad Industrial (Geistiges Eigentum)

<http://www.inpi.gov.ar>

Inspección General de Justicia de la Nación

<http://www.jus.gov.ar/minjus/ssjyal/igj/inicial.htm>

Oficina Nacional de Migraciones

<http://www.migraciones.gov.ar>

Mercosur

<http://www.mercosur.org.uy>

Cámara de Comercio Suizo Argentina

www.suiza.org.ar

Cámara de Importadores de la República Argentina

<http://www.cira.org.ar>

Asociación de Importadores y Exportadores de la República Argentina

<http://www.aiera.org.ar>

Cámara Argentina de Comercio

<http://www.cac.com.ar>

Cámara de Exportadores de la República Argentina

<http://www.cera.org.ar>

Centro de Despachantes de Aduana

<http://www.cda.argentina.org.ar>

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