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ESTABLISHING A BUSINESS ENTITY IN ARGENTINA**



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ESTABLISHING A BUSINESS ENTITY IN ARGENTINA

**“Establishing a Business Entity in Argentina”**

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company (“Sociedad de Responsabilidad Limitada” or “SRL”) and the corporation (“Sociedad Anónima” or “SA”).

In 2017, Argentina incorporated a new type of legal entity, the Simplified Company (“SAS”), which was expected to simplify procedures, corporate bodies and reduce costs for new companies. However, as of the time of writing an amendment to the regulation of the SAS is being considered by the Legislative Branch, which could significantly reduce the access to this type of entity as well as increasing the bureaucratic burden.

Below you will find a comparative analysis of the most relevant characteristics and the basic differences between SRL, SA and SAS.

**“Establishing a Business Entity in Argentina”**

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Types of business entities

The two most common types of legal entities adopted in Argentina are the limited liability

CORPORATION	SIMPLIFIED CORPORATION	LIMITED LIABILITY COMPANY “SOCIEDAD DE RESPONSABILIDAD LIMITADA”
<p><u>Creation:</u> A <i>sociedad anónima</i> (“SA”) must be formed through a public deed, and then be registered with the Public Registry of Commerce.</p> <p>The name of the company must include the words “Sociedad Anónima” or the abbreviated form “S.A.”</p> <p>In the City of Buenos Aires, the maximum duration for new companies has been set at 30 years.</p>	<p><u>Creation:</u> A <i>sociedad por acciones simplificada</i> (“SAS”) may be formed through a public deed or through a private document. The name of the company must include the words “Simplified Company” or the abbreviated form “S.A.S.”. The duration of the existence of the SAS is 20 years, which can be renewed by the shareholders.</p>	<p><u>Creation:</u> A <i>sociedad de responsabilidad limitada</i> (“SRL”) may be formed through a public deed or through a private document, and then it must be registered with the Public Registry of Commerce.</p> <p>The name of the company must include the words “Sociedad de Responsabilidad Limitada” or the abbreviated form “S.R.L.” In the City of Buenos Aires, the maximum duration for new companies has been set at 30 years.</p>
<p><u>Capital:</u> The corporate capital is divided in shares. The SA may issue classes of shares having the right to more than one vote per share. Shares must be issued in</p>	<p><u>Capital:</u> The corporate capital is divided in shares. The SAS may issue classes of shares having the right to more than one vote per share. Shares must be</p>	<p><u>Capital:</u> The corporate capital is divided in quotas. All quotas must have the same face value and voting rights. Quotaholders may own more</p>



<p>registered form.</p> <p>The minimum registered capital to create a SA is AR\$ 100,000 (approx. US\$688). Subscribers must pay in at least 25 % of the subscribed capital amount at the time of the creation of the SA. If the SA has only one shareholder the capital must be paid in a 100% at the time of incorporation.</p>	<p>issued in registered form.</p> <p>The capital cannot be less than an amount equivalent to two (2) times the minimum wage (this currently amounts to approx. U\$S 658). The capital has to be proportionate to the company's purpose and the Registry can request a higher initial capital (the usual requirement is now AR\$ 100,000). Subscribers must pay in at least 25 % of the subscribed capital amount at the time of the creation of the SAS if it is in cash, if it is in kind the 100 % must be paid at the time of incorporation.</p>	<p>than one quota.</p> <p>Although there is no minimum registered capital to create an SRL, the Registry usually requires approx. 30% of the minimum capital of an SA, i.e., AR\$ 30,000 (approx. US\$206). Subscribers must pay in at least 25 % of the subscribed capital amount at the time of the creation of the SRL.</p>
<p><u>Shareholders:</u> The SA may have one (1) or more shareholders. Shareholders may be individuals or companies, whether local or foreign.</p> <p>Should the company have two or more shareholders, the Public Registry of Commerce requires that the minority shareholder hold at least 2% of the corporate capital.</p>	<p><u>Shareholders:</u> The SAS may have one (1) or more shareholders. Shareholders may be individuals or companies, whether local or foreign.</p>	<p><u>Quotaholders:</u> The SRL requires at least two quotaholders with a maximum of fifty. Quotaholders may be individuals or companies, whether local or foreign.</p> <p>Should the company have two or more quotaholders, the Public Registry of Commerce requires that the minority shareholder hold at least 2 % of the corporate capital.</p>
<p><u>Participation in other companies:</u> An SA can only be part of another SA (corporation) or SRL. A single-shareholder SA cannot be a shareholder of other single-shareholder companies.</p>	<p><u>Participation in other companies:</u> A single-shareholder SAS cannot be a shareholder of other single-shareholder companies.</p>	<p><u>Participation in other companies:</u> SRL are not subject to limitations regarding participation in other companies.</p>
<p><u>Board of Directors:</u> The administration of the SA is performed by a Board of Directors, with at least one member. Directors must be individuals and not legal persons. The directors do not need to be shareholders. Directors must procure a tax ID in Argentina. The majority of the directors must have their domicile in Argentina (please note that the requirement is residence and not nationality). Directors may hold office for a maximum period of</p>	<p><u>Board:</u> The board may have one or more members, of whom at least one should be an Argentine resident. Directors must be individuals and not legal persons. Board members who are not Argentine residents should obtain a foreigner tax ID (CDI) and appoint a representative in Argentina, the special power of attorney for the appointment of the representative in Argentina has to be presented before the Public Registry of Commerce.</p> <p>One of the board members must act as</p>	<p><u>Managers:</u> The administration of the SRL is performed by one or more managers. The managers may act individually or as a corporate body similar to a board of directors. Managers must be individuals and not legal persons. The managers do not need to be quotaholders. Managers must procure a tax ID in Argentina. The majority of the managers must have their domicile in Argentina (please note that the requirement is residence and not nationality). Managers may hold</p>



<p>three consecutive terms. However, their appointment is renewable without limitations.</p> <p>The board must meet at least once every three months.</p> <p>The representation of the SA is carried out by the Chairman of the Board of Directors.</p> <p>Directors have to obtain assurance while they are members of the Board. For alternate directors it is optional, until they occupy a position in the board.</p>	<p>legal representative of the SAS.</p> <p>Directors may hold office for a determinate or indeterminate period. Directors have to obtain assurance while they are members of the Board. For alternate directors it is optional, until they occupy a position in the board.</p>	<p>office without term limitations.</p> <p>Directors have to obtain assurance while they are members of the Board. For alternate directors it is optional, until they occupy a position in the board.</p>
<p><u>Directors Liability:</u> Directors are jointly and severally liable vis-à-vis the company, shareholders and third parties for the poor performance of their duties, as well as for non-compliance with the law, bylaws or regulations and for any damages caused by fraud, abuse of their faculties or serious fault. They must fulfill their obligations in a loyal way and as a "good businessman". There are some exceptions to the rules described above.</p>	<p><u>Directors Liability:</u> The directors are individually or jointly liable, depending on the organization of the management and the regulation of its operation established in the contract. If a plurality of directors participated in the same events generating responsibility, the court may determine their liability pursuant to their personal involvement in the events. Provisions relating to the responsibility of directors of an SA are applicable when management is organized as a board.</p>	<p><u>Managers Liability:</u> The managers are individually or jointly liable, depending on the organization of the management and the regulation of its operation established in the contract. If a plurality of managers participated in the same events generating responsibility, the court may determine their liability pursuant to their personal involvement in the events. Provisions relating to the responsibility of directors of an SA are applicable when management is organized as a board.</p>
<p><u>Shareholders' Meeting:</u> Annually, the Shareholders' Meeting considers the financial statements, and if profit has been obtained it can approve the distribution of a dividend to the shareholders.</p>	<p><u>Shareholders' Meeting:</u> Annually, the Shareholders' Meeting considers the financial statements, and if profit has been obtained it can approve the distribution of a dividend to the shareholders. Resolutions may be adopted through written consents.</p>	<p><u>Quotaholders' Meeting:</u> Annually, the Quotaholders' Meeting considers the financial statements, and if profit has been obtained it can approve the distribution of a dividend to the quotaholders</p>
<p><u>Corporate Records:</u> An SA must have at least four corporate books, as follows: Shareholders' Meetings Minutes, Board Meetings Minutes, Shareholders Registry and Attendance to Shareholders' Meeting Registry plus accounting records.</p>	<p><u>Digital Records:</u> The SAS must keep the following electronic records: Minutes Book, Shareholder's Registry and accounting records.</p>	<p><u>Corporate Records:</u> An SRL may have only one corporate book for Quotaholders' and Managers' Meetings Minutes plus accounting records.</p>



<p><u>Syndic/Syndic's Committee:</u> Syndics act as internal auditors of an SA, verifying that it complies with applicable law. All syndics must be lawyers or accountants. The appointment of one or more syndics is optional, unless the SA (i) has a corporate capital in excess of AR\$ 50,000,000 (approx. USD 344,000), (ii) has only one shareholder, (iii) is a public company, (iv) is owned by the government (51 % or more of shares), (v) is engaged in financial or savings activities, (vi) is a public utilities company, or (viii) controls or is controlled by a company included in items (i) through (vi) above.</p>	<p><u>Syndic/Syndic's Committee:</u> The appointment of one or more syndics is optional, unless the SAS (i) has a corporate capital in excess of AR\$ 50,000,000 (approx. USD 344,000), (ii) has only one shareholder, (iii) is a public company, (iv) is owned by the government (51 % or more of shares), (v) is engaged in financial or savings activities, (vi) is a public utilities company, or (viii) controls or is controlled by a company included in items (i) through (vi) above.</p>	<p><u>Syndic/Syndic's Committee:</u> Only an SRL with a corporate capital in excess of AR\$ 50,000,000 (approx. USD 344,000) must appoint a syndic.</p>
<p><u>Transfer of Shares:</u> Shares may be transferred without limitations, and any transfer is registered in the Shareholders Registry.</p>	<p><u>Transfer of Shares:</u> Shares may be transferred without limitations, and any transfer is registered in the Shareholders Registry, along with the stock purchase agreement.</p>	<p><u>Transfer of Quotas:</u> Quotas may be transferred without limitations. However, the transfer must be registered with the Public Registry of Commerce to be enforceable against third parties.</p>
<p><u>Shareholders' liability:</u> Shareholders are granted limited liability for the liabilities in which the SA may incur. Only in certain cases of bankruptcy or of fraud (in particular, in the fields of labor and tax law) the shareholders may be held liable for the SA's obligations.</p>	<p><u>Shareholders' liability:</u> Shareholders are granted limited liability for the liabilities in which the SAS may incur. Only in certain cases of bankruptcy or of fraud (in particular, in the fields of labor and tax law) the shareholders may be held liable for the SAS' obligations</p>	<p><u>Quotaholders' liability:</u> Quotaholders are granted limited liability for the liabilities in which the SRL may incur. Only in certain cases of bankruptcy or of fraud (in particular, in the fields of labor and tax law) the quotaholders may be held liable for the SRL's obligations.</p>
<p><u>Corporate Obligations:</u> Annually, the SA must file its financial statements with the Public Registry of Commerce, as well as a service fee to the Public Registry of Commerce (which is not significant).</p>	<p><u>Corporate Obligations:</u> Annually, the SAS must file its digital financial statements with the Public Registry of Commerce.</p>	<p><u>Corporate Obligations:</u> Only SRL with a corporate capital in excess of AR\$ 50,000,000 must file its financial statements with the Public Registry of Commerce.</p>



2. Other relevant corporate matters

- Shareholders: Any foreign person (individuals or legal entities) can be a shareholder of a company organized in Argentina. In order to participate in local companies in Argentina, foreign companies must register before the local Public Registry of Commerce. The Public Registry of Commerce of the City of Buenos Aires has extensive requirements and limitations relating to this registration. Both individual and legal entities shall obtain a foreign Tax ID before local Tax Authorities.
- Directors: Depending on the type of entity, one or more of the board members must be Argentine residents. Non-Argentine board members will need to obtain a local Tax ID before local Tax Authorities and pay social security taxes in connection with their position as directors.
- Permits: Depending on the company's purpose and industry in which company's activities are carried out, certain permits might be necessary to operate.

3. Outline of Argentine Tax Regulations (notwithstanding the application of Double Tax Treaties)

Please find below a general description of the main taxes applicable to companies in Argentina. This should be analysed on each specific case as exceptions or special regimes may apply.

NATIONAL TAXES:

Corporate Income Tax (CIT): Resident companies are subject to CIT on a worldwide basis. The income tax law has recently been amended in relation to CIT. The current law

changes the fixed tax rate (30%) applicable until fiscal year 2020 for a progressive one, according to the following criteria:

- a) if the net income of the company does not exceed ARS 7.604.948 million (approximately USD 28,000) in the fiscal year, a 25% tax rate applies;
- b) if the net income range exceeds ARS 7.604.948 million but is less than ARS 76.049.485 million (approximately USD 280,000), a tax rate of 30% applies to the income exceeding ARS 7.604.948 million; and
- c) if the net income exceeds ARS 76.049.485 million, a tax rate of 35% applies to the income exceeding ARS 76.049.485 million.

Withholding tax in dividends: A withholding tax of 7% applies to the payment of dividends.

Value Added Tax: the general VAT rate for Argentine local transactions is 21 %. For certain goods or services could be 10,5%. There are also exemptions that may apply. For example, exports are levied at a 0% VAT and exporters can be reimbursed for the local VAT paid related to its exportation.

Bank credits and debits tax: credits and debits on local bank accounts are subject to a 0.6 % tax rate on the debits and a 0.6 % tax rate on the credits. In general, depending on the kind of activity of the local entity certain exceptions may apply. There is an additional 1.2% tax rate for cash withdrawals, except for SMEs (Small and Medium Size entities). In general, this tax generates a tax credit of 33% that can be used to offset income tax or its instalments.

Social security taxes (SST):

Employers Contribution for SST: The social security tax rate for employers which activities are related to commerce or services and who



are not a SMEs¹ is 20,40% and for the rest of employers the tax rate is 18,00%. The health care tax rate is 6%. So, it is 26,4% for the first case and 24% for the second one and it applies on the gross salary.

Employee Payment for SST: Please note that the local company shall withhold the relevant social security taxes from the employee's salaries which represent approximately 17% of the gross salary, health case included. Also, the company shall withhold the income tax from the employee's salaries if applicable.

TAXES ON SHAREHOLDERS:

Capital gains tax (Direct or Indirect Sale): In broad terms, direct or indirect sale is taxable at a 15 % on the net gain (sale price minus acquisition cost) or 13.5% of the total sale price (gross price of the operation). There are some requisites to comply with for the indirect capital gains to be taxed. If there is a seller located abroad and in a non-cooperative jurisdiction the tax rate will be higher (35% net gain or 31,5% gross price of the sale).

Wealth tax on shares: A 0.50 % tax rate on the book value of the equity held in the local company. The local company pays this tax on behalf of the shareholders.

Transfer Pricing Rules: Transfer pricing rules in Argentina follow the OECD Model, based on the principle that transactions between an Argentine company and related companies based outside of Argentina (or with companies located in non-co-operative, low- or no-tax jurisdictions) must be done in arm's length conditions. Argentina's rules include the five methods from the OECD model, but in addition to the five OECD methods, Argentina has an additional rule, called the 'sixth method', which in general applies to the import and export of

commodities made through an international related intermediary or an intermediary located in a non-co-operative jurisdiction or low-tax jurisdiction.

Thin Capitalization Rules: In line with international standards (OECD guidelines), interest on financial debts (excluding, as a consequence, debts generated by acquisitions of goods, leases and services related to the company's business) owed to related parties (Argentine residents or not) will be deductible subject to certain quantitative limitations. The deductibility limitation on the interests does not apply to financial entities, certain financial trusts, or when a WTX (withholding tax) apply in relation to the interest paid, among others.

CFC Rules: In broad terms, local residents in Argentina having participations on foreign entities that don't pay taxes abroad in the relevant jurisdiction (despite the fact that the relevant jurisdiction has a corporate tax regulated) or local residents that have direct or indirect participations of 50% or more on entities that obtain passive income in certain ratio, or local residents having control over trust or foundations located abroad have to monitor this particular set of rules on a case by case basis to determine if they have or they have not to recognize income from such entities or trusts on an accrual basis.

Tax Havens and non-cooperative jurisdictions: The Income Tax Law includes different tax effects when a jurisdiction qualifies as tax haven or non-cooperative. Such effects should be analyzed on a case by case basis, but in general the qualification of a jurisdiction for those concepts are as follows: 1- countries, territories or tax regimes that establish a corporate income tax rate that is lower than 15% will be considered low or no tax jurisdictions 2- jurisdictions that do not have a tax Information Exchange Agreement or a

¹ SME: small and medium-sized enterprises.



Double Taxation Treaty with broad clauses of Information Exchange in force will be considered non-cooperative jurisdictions. The Income Tax Implementing Decree includes a list of “non-cooperative jurisdictions” in Section 24.

LOCAL TAXES:

Turnover tax: A 3 % average tax rate on gross income. Such rate may be increased to 5 % in accordance with the company’s annual gross income. Note that such tax rate may also vary depending on the activity developed. Exemptions may apply.

Stamp tax: A 1 % tax rate over the value of written contracts. This tax may not apply if the instrumentation of the document is made by offer/acceptance letters.

Municipal tax: city councils apply different taxes which usually amount to 0,5% or 1 % of the gross income of the company.

4. Outline of Labor Regulations.

Argentina has a clear pro-employee labor legislation.

The usual practice in Argentina regarding labor agreements is to use verbal agreements (as opposed to written agreements) for indeterminate duration, whose main conditions (wages, initial date, etc.) are registered with the tax authorities and in the company’s registry. Lack of registration of the employees is considered labor fraud.

Wages must be paid by way of a wire transfer to the employee’s bank account.

Dismissals require paying a severance compensation, which amounts to one monthly wage per year of seniority or fraction exceeding 3 months, in addition to one or two monthly wages of as pre-notice.

Failure to comply with Argentine labor laws could result in labor fraud penalties imposed on

the employer and payable to the employee (e.g., 25% of all amounts irregularly paid) in addition to the social security and tax contingencies of the employer vis a vis the Tax Authorities.