



Fall | 19



INTERNATIONAL LAWYERS NETWORK



**SALABERREN & LÓPEZ-SANSÓN ABOGADOS
ESTABLISHING A BUSINESS ENTITY IN ARGENTINA**



This guide offers an overview of legal aspects of establishing an entity and conducting business in the requisite jurisdictions. It is meant as an introduction to these marketplaces and does not offer specific legal advice. This information is not intended to create, and receipt of it does not constitute, an attorney-client relationship, or its equivalent in the requisite jurisdiction.

Neither the International Lawyers Network or its employees, nor any of the contributing law firms or their partners or employees accepts any liability for anything contained in this guide or to any reader who relies on its content. Before concrete actions or decisions are taken, the reader should seek specific legal advice. The contributing member firms of the International Lawyers Network can advise in relation to questions regarding this guide in their respective jurisdictions and look forward to assisting. Please do not, however, share any confidential information with a member firm without first contacting that firm.

This guide describes the law in force in the requisite jurisdictions at the dates of preparation. This may be some time ago and the reader should bear in mind that statutes, regulations and rules are subject to change. No duty to update information is assumed by the ILN, its member firms, or the authors of this guide.

The information in this guide may be considered legal advertising.

Each contributing law firm is the owner of the copyright in its contribution. All rights reserved.



ESTABLISHING A BUSINESS ENTITY IN ARGENTINA

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

Mr. Juan Manuel Campos Alvarez
Partner
SyLS – Buenos Aires

Types of business entities

The two most common types of legal entities adopted in Argentina are the limited liability 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 is expected to simplify procedures, corporate bodies and reduce costs for new companies.

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

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><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.”.</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.”</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 registered form.</p> <p>The minimum registered capital to create a SA is AR\$ 100,000 (approx. US\$1,700). 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><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 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 400). 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><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 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\$500). 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</p>	<p><u>Shareholders:</u> The SAS may have one (1) or more shareholders. Shareholders may be individuals or companies, whether local or</p>	<p><u>Quotaholders:</u> The SRL requires at least two quotaholders with a maximum of fifty. Quotaholders may be individuals</p>



<p>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>foreign.</p>	<p>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 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><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 resident should obtain a foreigner tax ID (CDI) and appoint a representative in Argentina.</p> <p>One of the board members must act as legal representative of the SAS and must obtain a local tax ID (CUIT).</p> <p>Directors may hold office for a determinate or indeterminate period.</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 office without term limitations.</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</p>	<p><u>Shareholders' Meeting:</u> Annually, the Shareholders' Meeting considers the</p>	<p><u>Quotaholders' Meeting:</u> Annually, the Quotaholders' Meeting considers the</p>



<p>financial statements, and if profit has been obtained it can approve the distribution of a dividend to the shareholders.</p>	<p>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>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 800,000), (ii) has only one shareholder, (iii) is a public companies, (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 syndics is optional.</p>	<p><u>Syndic/Syndic’s Committee:</u> Only an SRL with a corporate capital in excess of AR\$ 50,000,000 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.</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> N/A.</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. 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 office 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: the current corporate income tax rate is 30 % on the net income of

the local company. From 2020 onwards, this rate will be of 25 %.

Withholding tax in dividends: A withholding tax applies to the payment of a dividends of a 7 % rate. From 2020 onwards, such rate will be of 13 %.

Minimum presumed income tax: A 1 % tax on the total value of the entity's assets, as a down-payment for income tax. Note that this tax has been abolished as from 2019.

Value Added Tax: the general VAT rate for Argentine operations is 21 %. Exemptions may apply to certain activities.

Bank credits and debits tax: All movements on bank accounts are subject to a 0.6 % tax rate on the debits and a 0.6 % tax rate on the credits.

Customs duties: Import/export of "goods" are taxed at different rates according to each tariff position (identification N° for customs purposes). Pursuant to the recently enacted Act No 27,467, during fiscal years 2019 and 2020 exports of "services" are considered merchandise under the Customs Code, and subject to export duty. This export duty has been established a rate of 12% on the amount invoiced for the export of services, with a cap of ARS4 per USD1 invoiced. For SMEs (Small and medium-sized enterprises) there is a non-taxable minimum amount of USD600,000 per year.

Social security taxes:

Type of employer	Until 31/12/2018	Until 31/12/2019	Until 31/12/2020	Until 31/12/2021	Until 31/12/2022
No SMEs* contributions	20,70%	20,40%	20,10%	19,80%	19,50%
SMEs* contributions	17,50%	18,00%	18,50%	19,00%	19,50%
Health care	6%	6% **	6% **	6% **	6% **

*SME: Small and medium-sized enterprises.

**May be subject to change.

Please note that the local company shall withhold the relevant social security taxes from the employee's salaries which represent approximately 17 % of the salary.

TAXES ON SHAREHOLDERS:

Capital gains tax: A 15 % on the net gain (sale price minus acquisition cost) of the sale of equity.

Wealth tax on shares: A 0.25 % rate on the book value of the equity held in the local company. The local company pays this tax on behalf of the shareholders.

Finally, a recent enactment of an overall amendment to the Corporate Income Tax (CIT) law (2017 Tax Reform) has updated regulations on:

Transfer Pricing Rules: Transfer pricing rules in Argentina follow the OECD Model, based on the principle that 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 made 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), the 2017 Tax Reform establishes that 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 does not apply to financial entities, certain financial trusts, or when a WTX (withholding tax) apply in relation to the interest paid, among others.

New definition of Tax Havens and listing of non-cooperative jurisdictions: The Tax Reform includes different tax effects when a jurisdiction qualifies as tax haven or non-cooperative. Such effects must be monitored in a case by case basis, but in general the definitions are as follows: 1- The Tax Reform stipulates that countries, territories or tax regimes that establish a corporate income tax rate that is lower than 15%, such jurisdictions will be considered "low or no tax jurisdictions"; 2- On the other hand, jurisdictions that do not have a tax Information Exchange Agreement or a Double Taxation Treaty with broad clauses of Information Exchange in force with Argentina will be considered "non-cooperative jurisdictions".

The Tax Administration is expected to publish a list of "low or no tax jurisdictions" and "non-cooperative jurisdictions" soon.

LOCAL TAXES:

Turnover tax: A 3 % average rate on gross income. Such rate may be increased to 5 % in accordance to the company's annual gross income. Note that the rate may also vary depending on the activity and that exemptions may apply.

Stamp tax: A 1 % rate on 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 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, which 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 from the local company's bank account to the employee's bank account in Pesos.

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.