

Doing Business in Argentina

2009



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1. Introduction

UHY is an international organisation providing accountancy, business management and consultancy services through financial business centres in over 70 countries throughout the world. Business partners work together through the network to conduct trans-national operations for clients as well as offering specialist knowledge and experience within their own national borders. Global specialists in various industry and market sectors are also available for consultation.

This detailed report providing key issues and information for investors considering business operations in Argentina has been provided by the office of UHY representatives:

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Information in the following pages has been updated so that they are effective at the date shown, but inevitably they are both general and subject to change and should be used for guidance only. For specific matters, investors are strongly advised to obtain further information and take professional advice before making any decisions. This publication is current at November 2009.

We look forward to helping you do business in Argentina.

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2. Business environment

Geography

Argentina is in the southern part of South America. Excluding the Antarctic territories and South Atlantic islands, it covers 2.8 million sq km (1.1 million square miles). Argentine Antarctica and the South Atlantic islands account for another 970,000 sq km.

Argentina borders with Chile, Bolivia, Paraguay, Brazil, and Uruguay and has a long coastline along the South Atlantic Ocean.

Weather conditions range from subtropical to sub Antarctic. Between these two extremes there is a wide 'climate belt' perfectly suited for agriculture because of the richness and fertility of its soil and the rainfall regime.

History and government

Until 1810, Argentine had been part of the Spanish Viceroyalty of River Plate. In that year, Argentina raised against the Spanish rule. After unsuccessful attempts to regain control, the Spaniards were finally defeated and independence was proclaimed on July 9th, 1816.

Different governmental systems were applied until 1853 when the General Assembly voted in the Constitution. Amendments have been introduced but it has remained essentially the same since then.

The Constitution organised the country as a federal republic with 23 provinces and a federal capital (the city of Buenos Aires). The federal government consists of the Executive, headed by the President; the Legislative Power (Congress), consisting of two chambers, the Senate and the Chamber of Deputies; and the Judiciary Power, represented by the Courts of Justice, headed by the Supreme Court of Justice.

Population

Argentina has a population of 37 million people, mostly of Spanish and Italian descent. Almost 45% of its population live in the federal capital and the province of Buenos Aires. There are no colour, racial, religious or other minority group conflicts.

The main and largest cities are Buenos Aires, Córdoba, Rosario, Santa Fé, Tucumán and Mendoza.

Language

Spanish is the official language. The literacy rate is high (96.3%) and the labour force compares with most developed countries in terms of skill and capacity. Technical and professional standards achieved are also comparable. This issue becomes especially important when the availability of human resources is considered for undertaking productive activities in the country.

Economy

Since 1991, Argentina has been undergoing remarkable changes affecting its structure and governmental policies.

After years of high inflation, the increase in the wholesale price index has been brought into line with levels of international inflation. The consumer price index is also approaching that mark. In 1999, it ranked among the lowest in the world.

Simultaneously, Argentina's economy has registered a high rate of growth and its free economic structure has become one of the most open in the world. This means, among other things, that:

There is complete freedom to set prices, to develop domestic and international commerce, to transfer foreign currency overseas, to make investments and to carry out all transactions in financial and capital markets.

All economic activities have been deregulated: domestic trade, overseas trade, professional services, transport of cargo and passengers, ports, insurance and many others.

A vast process of privatisation has allowed the transfer, both to local and foreign investors, of public utilities as well as most activities formerly run by the State.

Significant reductions have been introduced in tariff and non-tariff barriers on imports since 1990. Import duties have been established on a scale that runs from zero to 24%, although certain goods are taxed at a rate which may even reach 33%. In addition, a 0.5% statistical tax must be added.

Since January 2002, a new economic environment has come into being affecting the exchange rate and bank deposits. Although the essentials of the model described above were not changed, devaluation and political problems brought the country to a profound recession that led to one of the biggest financial crises in history. After one year and the resolution of some structural problems, the economy has started to show positive signs of recovery and analysts are identifying many business opportunities in a market which has considerable potential.

From January 1st 1995, Argentina entered into an agreement with Brazil, Uruguay and Paraguay to constitute a common market called 'Mercosur'.

Since that date, the liberalisation of trade among member countries has been applied to most products, and it will be extended progressively to all products in the next few years.

With some exceptions, the rates of customs duties for imports from non-member countries were unified from 1995, and exceptions are being eliminated gradually.

Mercosur member countries have subscribed to an agreement with Chile and Bolivia for economic co-operation. These two countries are expected to become full members of Mercosur soon.

Along with the new administration which took office in Dec 2007, the economic frame got back to a more interventionist role of the Government, including re-nationalisations of certain activities, formerly private.

Currency

The currency unit is the peso (\$), which was devalued by the Government on January 4th 2002. This situation changed the 10-year convertibility that was in effect sustaining a \$1 = USD1 exchange rate.

There are currently some restrictions regulated by the Central Bank, on inward or outward investment or on the repatriation of dividends, profits, interest, or any other amounts payable in foreign exchange.

Weights and measures

Argentina uses the metric system.

Financial system

Monetary and banking authorities

The 'BCRA' (through its different agencies) is the financial agent of the federal Government, which conducts its monetary policy; handles the foreign currency reserves of the country; controls financial entities (including banks), exports and financings; and issues related regulations and special rules.

Financial institutions

Financial Entities' Law No. 21,526, as amended (the 'FEL'), defines six categories of operators in the financial market:

- Commercial banks
- Investment banks

- Mortgage banks
- Financial companies
- Savings and loan institutions
- Co-operative (savings) banks.

Commercial banks may engage in almost any type of transaction and related services traditionally performed by commercial banks around the world. Some relevant restrictions on financial entities are:

- They may not run companies engaged in commercial, industrial or farming activities, or any other activities, without prior BCRA authorisation;
- They may not encumber their assets without prior BCRA authorisation;
- They may not accept their own shares as collateral security for any kind of transaction;
- They may not enter into any kind of transaction with their directors, officers, managers, or any other persons directly related to the institution, under more favourable conditions than those offered to independent third parties.

Operating restrictions

Certain minimum capital requirements must be maintained permanently.

Loans to any client or any related group of clients may not exceed 25% of the financial entity's net worth, and are subject to certain restrictions depending on the type of loan.

Authorisation of new financial entities

In reviewing an application for the authorisation of a new financial entity, BCRA gives special consideration to the financial market condition; the appropriateness of increasing the number of authorised financial entities; and the background of the applicant. The background and technical knowledge of the founders, directors and officers of the new financial entity are particularly important.

Transactions must start no later than one year after BCRA's approval. Under present regulations, a financial entity 'starts its transactions' when it begins doing business with the public.

Foreign financial institutions

Executive Order No. 146/94 had a significant impact on foreign financial institutions such as banks, financial companies and savings and loan institutions interested in operating in the local market.

It has two remarkable features. Firstly, it abrogated the 'reciprocity principle' set out in Section 16 of the FEL and enforced by the Argentine banking legislation for almost 60 years. Pursuant to this principle, BCRA considered applications of foreign financial institutions only from countries that granted the same treatment to Argentine financial institutions. However, the full power of BCRA to reject applications on the basis of its discretionary powers still remains.

Secondly, financial institutions in which more than 30% of their corporate capital is held by individuals or entities domiciled abroad, and branches of foreign financial institutions, enjoy the same treatment granted to domestic financial institutions.

So, foreign financial institutions may request authorisation from BCRA to engage in any banking business contemplated in the FEL. Before this Executive Order, foreign financial institutions could act only as investment or commercial banks.

Executive Order No. 146/94 was clearly intended to increase competition among financial institutions allowing the access of new ones to the growing local banking market.

At present, all sections of the FEL related to foreign limitations or specific regulations have been repealed or otherwise amended in accordance with new foreign investment policies implemented by the Argentine Republic. In this regard, foreign investors should receive the same treatment given to local investors.

Mergers and acquisitions

Mergers and acquisitions of financial entities are subject to BCRA's prior approval.

BCRA regulations require directors and statutory auditors of a financial entity to report any acquisition of shares, the result of which may:

- Change the qualification of the financial entity
- Alter the control structure among the shareholders or
- Adversely affect at least 5% of the outstanding capital or votes of the entity.

All purchases of shares in financial entities must also be reported to BCRA for its approval within ten days of the execution of the agreement, or letter of intent, or the receipt of any payment, whichever occurs first, regardless of the amount involved. In the absence of such approval, the sale may not be performed, shares may not be delivered, and no payment in excess of 20% of the purchase price may be made.

In analysing applications for approval, BCRA emphasises the following:

- The acquisition agreement and the control structure resulting from the acquisition
- The financial background, expertise and solvency of the purchasers
- The financial statements, financial condition and background of directors and managers
- The submission of appropriate evidence of the origin of funds to be paid for the transaction
- The background and personal data of the Board members and statutory auditors to be appointed after completion of the acquisition.

New branches

Requirements for opening new branches of domestic financial institutions are:

- Fully paid-in minimum capital
- No reserve deficiencies during the previous six months
- Compliance with regulations concerning financial condition and financing
- Absence of economic or financial difficulties
- Absence of excessive risks
- Absence of organisational problems – they should have an updated, electronic reporting regime
- They should have an investment ranking of 1, 2, or 3 according to
 - (i) the CAMEL procedure, and
 - (ii) duties related to the evaluation of the internal control system.

Capital markets

Securities market

During 2003, securities markets recovered in part after the financial and economic crisis of December 2001. Owing mainly to an increase in exports and partially to other factors, the US dollar exchange rate decreased and savings and investments were strongly directed to the securities market.

The Comisión Nacional de Valor, 'CNV' (National Securities Commission) regulates markets dealing with public offering of securities. The CNV was established in 1937. Individuals and entities dealing in public securities markets, as well as in the public offering of all securities other than primary issues of Government securities, are subject to the CNV's control.

Since May 1st 1993, all securities are exclusively traded on the stock exchange. Government and debt notes can be traded either on the stock exchange or in the over-the-counter market (the 'OTC market').

The Public Offering Law No. 17,811, as amended by Executive Order No. 677/011 and subsequent regulations, govern the public trading of securities.

In accordance with the Public Offering Law, the public trading of securities in exchanges must be made within the 'Mercados de Valore' (Securities Markets), which are institutions organised as stock corporations that must be affiliated with the different stock exchanges, or 'Bolsas de Comercio'. Each Mercado de Valores is liable for all transactions performed by its stockbrokers and may impose sanctions on them. Transactions entered into between stockbrokers are guaranteed by each Mercado de Valores.

The main stock exchanges are in the cities of Buenos Aires, Rosario, Córdoba, La Plata and Mendoza. The Buenos Aires Stock Exchange ('the BASE') is the oldest and largest, founded in 1854, and where nearly 90% of all securities are traded.

To be a member of the BASE and authorised to operate as a stockbroker, individuals and corporations must own a share in the Mercado de Valores de Buenos Aires S. A. ('MVBA').

Pursuant to Law No. 20,643, debt and equity securities traded on the exchanges and the OTC market are to be deposited in the Caja de Valores S.A. ('CDV'), which acts as a central depository and clearing house for securities trading. The CDV is a corporation, the shares of which are held by the BASE and the MVBA.

"Obligaciones negociables" (Promissory Notes)

Law No. 23,576 (Ley de 'Obligaciones Negociables'), as amended by Law No. 23,962 (the 'ON Law'), helped develop the corporate bond market. Pursuant to provisions of this Law, debt notes may be issued to bearer, registered or book-entry forms, and may be denominated in either local or foreign currency.

Rates on debt notes may be fixed or floating, and may vary substantially in accordance with market conditions and the issuer's creditworthiness.

Pursuant to the ON Law, Argentine corporations, co-operatives, and branches of foreign corporations are empowered to issue debt notes upon compliance with the legal requirements of the ON Law.

Different classes of debt notes belonging to the same class have the same rights. Different series of the same class of debt notes may be issued by the same issuer, but new series pertaining to the same class may not be issued until all of the debt notes corresponding to previous issuances have been

sold. It is not necessary that by-laws expressly contemplate the issuance of debt notes. Such a decision must be adopted by an ordinary shareholders' meeting that may delegate to the Board of directors all necessary powers to approve the terms and conditions of the debt notes to be issued.

Equities

During the 1990s, and following the enactment of the Convertibility Law in April 1991, the stock market had an outstanding performance as a financing source. Many privatised companies became publicly traded corporations and had access to European and American public and private markets. However, access to international financial markets reduced after the collapse of the economy and default in most of the country's public and private debt.

New issues may be underwritten by investment banks, brokerage firms and securities dealers, and are required to be previously registered with the CNV, which reviews the issuer's compliance with regulatory and disclosure procedures. The CNV currently imposes no requirements on listing with respect to an issuer's size, capital, number of shares outstanding or earnings. However, for listing purposes, the issuer must also be previously approved by the relevant stock exchange, which reviews the issuer's net worth or shareholders' equity, financial standing and prospects.

Generally, the BASE requires an issuer to show profits during the previous two years, though a separate procedure is available for companies without an operating history.

Shares are issued at par, and their offering price may be of any value (except below par) as long as it is adequately justified by the company, taking into account market quotations and the net worth and profit prospects of the company, and that it would not result in any unjustified dilution of the existing shareholders' entitlement to pre-emptive rights on new issuances of shares.

Argentina has a relatively active market of securities and bonds and a corporate bond market. The CNV regulates markets dealing with public offering of securities. The CNV was established in 1937. Individuals and entities dealing in such markets as well as in the public offering of all securities, other than primary issues of Government securities, are subject to CNV's control.

Since May 1st 1993, all securities have been exclusively traded on the stock exchange. Government and debt notes can be traded either on the stock exchange or in the OTC market.

The Public Offering Law No. 17,811, as amended by Executive Order No. 677/011 and subsequent regulations, govern the public trading of securities. In accordance with the Public Offering Law, the public trading of securities in exchanges must be made within the 'Mercados de Valores' (Securities Markets), which are institutions organised as stock corporations that must be affiliated with the different stock exchanges or 'Bolsas de Comercio'. Each Mercado de Valores is liable for all transactions performed by its stockbrokers and may impose sanctions on them. Transactions entered into between stockbrokers are secured by each Mercado de Valores.

Pursuant to Law No. 20,643, debt notes and public securities traded on the stock exchanges and the OTC market are to be deposited with 'Caja de Valores S.A.' ('CDV'), which acts as a central depository and clearing house for securities trading. The CDV is a corporation, the shares of which are held by the BASE and the MVBA.

3. Foreign investment

Foreign investors enjoy the same rights and undertake the same duties as domestic investors when investing in financial or productive activities.

Generally, Argentine Law does not set any restrictions or prohibitions on foreign investments. They are no longer subject to prior government approval beyond those applicable to any domestic or foreign investor in each particular activity.

The Ley de Inversiones Extranjeras (Foreign Investment Law - FIL) (Law No. 21,382/76) was amended several times for the purpose of achieving liberalisation and deregulation of these investments. It was recently amended by Law No. 23,697 and Executive Order No. 1,853/93.

The FIL sets out that foreign investors shall be treated as local investors, provided they invest in productive activities (ie: industrial, mining, agricultural, commercial, service or financial activities, or any other activities related to the production or exchange of goods or services).

Investments may be made in:

- Foreign currency
- Capital assets
- Profits from other investments
- Repatriable capital resulting from other investments made in the country
- Capitalisation of foreign credits
- Certain intangible assets
- Other forms acceptable to the foreign investment authorities or contemplated by special legislation.

4. Setting up a Business

Argentine Law recognises the following types of artificial persons or legal entities:

- Branches
- Partnerships (general and limited)
- Corporations
- Limited liability companies.

Although the Companies' Law provides that a corporation may not be a partner or quota-holder in a general or limited partnership, or a limited liability company, Argentine courts have ruled that foreign corporations are not subject to this limitation.

Most foreign corporations organise local activities through a branch or a stock corporation, but the use of limited liability companies (which in the past had a rather negative reputation) is now becoming more common.

Branch of foreign corporation

A foreign corporation does not need to assign corporate capital to its branch unless the branch is engaged in certain specific activities (e.g. insurance, banking). The foreign corporation is liable for the obligations of the branch. The local manager of the branch may also be liable for such obligations if the branch were improperly established.

To establish a branch, a foreign corporation must appoint a local attorney-in-fact who applies to the 'Registro Público de Comercio' (Public Registry of Commerce - PRC) for registration purposes.

The PRC normally registers the branch within three weeks, provided the application contains the following documents:

- A certified copy of the articles of incorporation of the foreign corporation;
- A certificate of good standing of the foreign corporation;
- A certified copy of the by-laws of the foreign corporation;
- Certified documentation evidencing whether the foreign corporation is, or is not, permitted to conduct business at the place where it is incorporated or registered;
- Certified documentation evidencing that the foreign company meets at least one of the following conditions: i) that it has one or more branches or permanent representations registered or incorporated outside the Argentine Republic; ii) that it holds equity holdings or interests in companies incorporated or registered outside the Argentine Republic that are regarded as

- A certified abstract of the minutes of the Board of directors' meeting that approved the establishment of the branch;
- A power of attorney authorising the local attorney to register the branch;
- A broad power of attorney authorising an individual (i.e.: the local manager) to manage the branch.

Additionally, the foreign corporation should not meet any of the following conditions:

- it is not to own assets outside the Argentine Republic;
- the value of its non-current assets are not as significant as: (a) the value of the shares or interests of the foreign corporation in Argentine companies and/or the assets of the foreign corporation in the Argentine Republic; or (b) the amount of economical transactions carried out by and between the foreign corporation and Argentine residents; or
- the activities involving the administration and management of the foreign corporation's affairs and businesses are effectively carried out at the place of business (corporate premises) of the foreign corporation in the Argentine Republic.

If the PRC were to evidence one of the conditions detailed above, it might require the foreign corporation to carry out the so-called 'domestication' process (i.e. adapt its by-laws to provisions set by the Argentine Commercial Companies, regarding Argentine companies).

If the foreign corporation were not to carry out the 'domestication' process, the PRC might request the court to wind-up and cancel the registration of its branch with the PRC.

Stock corporations

A stock corporation ('sociedad anónima') must have at least two shareholders. The PRC currently considers that a stock corporation, the corporate capital of which is owned by two shareholders, one of them holding 99.99% of the shares and the other the remaining 0.01% of the shares, has in fact only one shareholder, and not two (the PRC has off-the-record disclosed that the second shareholder must hold at least 5% of the shares), and shall thus reject the registration of the stock corporation.

Shareholders generally are not liable for corporate debts and obligations beyond the total amount of their capital subscriptions. The Board of directors of the corporation may consist of one or more directors. An absolute majority of the directors must actually be domiciled in the Argentine Republic.

All directors, whether or not domiciled in the Argentine Republic, must establish a 'special domicile' within the Argentine Republic. The articles of incorporation may provide for a statutory auditor, who must be a lawyer or an accountant domiciled in the Argentine Republic. Such a statutory auditor is mandatory if the capital of the corporation exceeds \$10,000,000.

Currently, a corporation must have a capital of at least \$12,000. Nevertheless, according to the PRC, the corporate capital must be proportionate to the corporate purpose. The capital must be divided into nominative shares (either non-endorsable or endorsable) of equal par value. The shares may be common or preferred. All shares must be subscribed before the corporation is formally incorporated. Upon incorporation, the shareholders shall have paid in all of their contributions in kind, and at least 25% of their contributions in cash. The remaining cash contributions must be paid in within two years of the incorporation date.

To incorporate a stock corporation in the city of Buenos Aires, the incorporators must file its proposed articles of incorporation and by-laws with the PRC for approval and publish an abstract of the company's by-laws in the Official Bulletin.

Each foreign shareholder of an Argentine corporation must apply for registration with the PRC. The foreign shareholder must be duly registered before filing the proposed articles of incorporation and by-laws of the stock corporation with the PRC.

The PRC usually registers the foreign shareholder within three weeks, provided the application contains the following documents:

- A certified copy of its articles of incorporation;
- A certificate of good standing;
- A certified copy of its by-laws;
- Certified documentation evidencing whether the foreign corporate shareholder is, or is not, permitted to conduct business at the place where it is incorporated or registered;
- Certified documentation evidencing that the foreign corporate shareholder meets at least one of the following conditions:
 - i) that it has one or more branches or permanent representations registered or incorporated outside the Argentine Republic;

- ii) that it holds equity holdings or interests in companies incorporated or registered outside the Argentine Republic that are regarded as non-current assets, as defined by the generally accepted accounting principles; or
 - iii) that it owns fixed assets at its place of incorporation or registration, the existence and value of which shall be evidenced pursuant to generally accepted accounting principles.
- A certified abstract of the minutes of the Board of directors' meeting that approved its registration as a foreign corporate shareholder in the Argentine Republic; and
 - A power of attorney issued by the foreign corporate shareholder authorising a local attorney to register it.

Additionally, the foreign corporate shareholder should not meet any of the following conditions:

- It is not to own assets outside the Argentine Republic;
- The value of its non-current assets are not as significant as:
 - (a) the value of the shares or interests of the foreign corporate shareholder in Argentine companies and/or the assets of the foreign corporate shareholder in the Argentine Republic; or
 - (b) the amount of transactions carried out by and between the foreign corporate shareholder and Argentine residents.
- The foreign corporate shareholders' affairs and businesses are administered and managed and effectively carried out at the place of business (corporate premises) of the foreign corporate shareholder in the Argentine Republic.

If the PRC were to evidence one of the conditions detailed above, it might require the foreign corporate shareholder to carry out the so-called 'domestication' process (i.e. adapt its by-laws to the provisions set by the Argentine Commercial Companies regarding Argentine companies). If the foreign corporate shareholder were not to carry out the 'domestication' process, the PRC might request in court the cancellation of its registration with the PRC.

5. Labour

Argentine Law applies to employment within the Argentine territory, irrespective of the place where the contract was entered into.

Hiring

Unless otherwise agreed upon by the parties, the Employment Contract Law ('ECL') sets out the presumption that an employment relationship is agreed for an indefinite term and with an initial 'trial period' of three months.

During the trial period, the contract may be terminated without just cause, and the employee shall not be entitled to the mandatory severance pay due upon unfair dismissal.

In the case of termination during the three-month trial period, the employer must give a prior written notice 15 days before the termination date. The employer's failure to do so entitles the terminated employee to receive a severance pay in lieu of omitted prior termination notice.

Indefinite term employment contracts do not need to be evidenced in writing, whereas the ECL sets out the rights and duties of both parties along with minimum benefits.

Indefinite term employment contracts, except for 'seasonal contracts' are subject to a trial period of three months from the beginning of the contract. However, in certain cases, a written contract is required and/or advisable, namely:

- Fixed term contract: its term may not exceed five years and employers must have an extraordinary cause;
- Temporary contract: executed to perform a specific piece of work or to provide a specific service, whenever extraordinary circumstances so determine;
- Seasonal contract: executed based on the kind of activity performed by the employee, who provides his/her services only at a specified time of the year;
- Apprenticeship and scholarship contracts: executed by young individuals who meet certain requirements for the purpose of learning a craft, trade or profession.

Under the ECL, employers must register their employees' basic data (including hiring date and salary) within a Special Payroll Book, which is provided by the labour administrative authority and subject to periodic controls by the Ministry of Labour. Failure to register triggers severe fines.

Employees' rights

Minimum salary

Parties may not agree on a salary below the minimum amounts set by law. Most industries and activities have minimum salaries stated by Law No. 25,877, effective from March 28th 2004, that were agreed between employers' chambers and trade unions, and which may not be lower than the minimum salary fixed by the Government (at present, the minimum salary is \$1,500).

Equal pay

The rule 'equal pay for equal task' applies. Nevertheless, employers may pay incentives to those employees who perform outstanding services, or pay an additional amount to employees under certain circumstances or categories (like those who have a higher seniority, a professional degree, etc).

Overtime pay

Regular employees (those who are subject to mandatory rules regarding working hours) are entitled to overtime pay whenever they work in excess of the working schedule (i.e. more than 48 hours per week or eight hours per day). Employees who work under an irregular daily schedule are entitled to overtime when they exceed nine hours per day. Additionally, night work and hazardous work have reduced working schedules. Executives and other special categories of employees are not subject to such mandatory rules on working hours and, subsequently, are not entitled to overtime pay.

Thirteenth Mandatory Salary

Employers must pay the so-called 'Sueldo Anual Complementario' ('SAC') or Supplementary Annual Bonus, or 'Thirteenth Mandatory Salary', in two instalments: the first on June 30th, and the second on December 31st each year. The amount of each instalment is equivalent to 50% of the highest remuneration earned by the employee over the pertinent semester.

Paid vacation leave

This leave ranges from 14 to 35 calendar days, depending on the employee's seniority.

Paid sick leave

Employees are entitled to paid sick leave from three to 12 months, depending on the employee's seniority and family responsibilities (e.g. minor children).

Paid holidays and special leave

Employees are given 13 holidays and special leaves set out by the ECL, or the particular Collective Bargaining Agreement ('CBA').

Life insurance

Employers must hire collective life insurance for the benefit of their employees. The minimum coverage per employee is 9,000 - CBAs may establish mandatory additional coverage.

Labour Risks Insurance or Workers' Compensation Insurance

Employers must hire insurance covering labour diseases and accidents with a private and authorised Aseguradora de Riesgos de Trabajo (ART) (Labour Risk Insurance Company).

Medical Assistance provided by Health Care Organisations or Health Care Providers (Obras Sociales)

Coverage is paid for by the Public Social Security System, through employees' and employers' contributions. Blue-collar employees are entitled to choose from a list of health organisations managed by the trade unions, and white-collar employees (in certain situations) are entitled to choose from a list of health organisations managed by executives.

Subsidies

Family Allowances and Unemployment Subsidy, supported by the social security system, are paid from employees' and employers' contributions. Family allowances include three-month pregnancy/maternity paid leave and the unemployment subsidy may extend to one year of monthly payments (provided that the respective beneficiaries meet legal requirements).

Small companies

Certain small and medium-sized companies known as PyMEs ('Pequeñas y Medianas Empresas') are subject to a specific regulation and receive a particular treatment from the authority. After fulfilling the corresponding legal requirements, PyMEs may be entitled to receive benefits in specific areas (eg: government subsidies for credits, preference in public bids, etc.).

Argentine Law No. 24,467/1995 specifically regulates all employment relationships in so-called 'Small-sized Companies' ('Pequeñas Empresas'). Pursuant to this law, Small-sized companies are those that comply with the following conditions:

- Have fewer than 40 employees
- Their annual billing (net of VAT) is lower than:
 - (i) \$2,500,000 (rural)
 - (ii) \$5,000,000 (industrial)
 - (iii) \$3,000,000 (commercial)
 - (iv) \$4,000,000 (services).

For companies existing before the legally effective date, August 6th 1995, the number of employees is based on staffing at January 1st 1995. *Small-sized companies* exceeding one or both of the above-mentioned conditions may remain under the special regime set out in this law for three years provided they do not double either their staff (number of employees in their headcount/payroll) or their billing.

Termination

Procedure

The employer and/or the employee may terminate the employment relationship by:

- Mutual consent
- Employee's resignation
- Employer's dismissal, with or without just cause
- Employee's death or total disability
- Employee's retirement
- Employer's bankruptcy
- Expiration of an agreed fixed term employment.

The employer may terminate the employment relationship with just cause when the employee commits a serious offence. Activities that may be considered offensive or prejudicial to the employer are evaluated case by case, and determined in accordance with the general principles of law and legal precedents. The employer must give the employee a written explanation of the grounds for his dismissal. The employee may object to the termination grounds by filing a legal action in court; the employer bears the burden of proof. Employees may also terminate the employment contract with just cause (constructive dismissal).

When an employee is dismissed with just cause or resigns, or when the parties agree to terminate the employment relationship by mutual consent, the employer has to pay only the accruals (i.e. wages for days worked during the month of termination, proportional compensation for accrued and non-enjoyed vacations and accrued thirteenth mandatory salary), and need not make any other mandatory severance payments (i.e. severance pay based on seniority, severance pay in lieu of prior termination notice, etc.).

Employers may reduce the mandatory severance payment package by paying 50% of the severance pay based on seniority in the case of justified redundancies, by proving '*force majeure*' / 'lack or reduction of work' / 'economic or technological reasons' not attributed to the employer and beyond the employer's control. In such a case, lay-offs must be carried out in order of seniority.

Mass lay-offs must comply with a special procedure before the labour authorities in the presence of the trade union, and the employer must give evidence of the critical situation. In such cases, the parties (the employer and the trade union) may agree upon a reasonable severance pay package, which the Ministry of Labour then evaluates for approval.

Employees may object to the reduced severance payment package when they have not reached any settlement (labour courts usually accept such claims).

In all cases, employers are free to make additional payments (over the minimum and mandatory severance payments) to the terminated or resigning employees. These additional payments are bonuses subject to income tax withholdings, but exempt from social security contributions because they are considered as extraordinary and exceptional bonuses (i.e. only paid upon termination of the employment contract).

When employees are dismissed without just cause, in addition to the accruals (i.e. wages for worked days during the month of termination, proportional compensation for accrued vacations, and accrued thirteenth mandatory salary), employers shall pay a mandatory package that comprises a severance pay based on seniority and, if no prior written notice was given, a severance pay in lieu of omitted prior termination notice.

Mandatory severance pay based on seniority

Employees are entitled to a severance pay based on seniority equivalent to one gross month's salary (i.e. the employee's highest monthly and regular salary of the last 12 months) for each year of service or any fraction thereof (in excess of three months). In no event may this severance pay be lower than two actual gross monthly salaries.

To calculate this severance pay based on seniority, the highest monthly and regular salary of the last year has a statutory ceiling: it may not exceed three times the average of all the remuneration contemplated by the applicable CBA. If more than one CBA is applicable to the employer's activity, the most favourable one to the employee shall be applied. This statutory ceiling is applied to unionised and non-unionised employees.

The Supreme Court of Justice of the Province of Buenos Aires has ruled that employers who dismiss their employees without just cause within the jurisdiction of the Province of Buenos Aires must also pay the proportional part of the thirteenth mandatory salary on this item, which is an additional one-twelfth of the mandatory severance pay based on seniority.

The severance pay based on seniority is not subject to any taxes or social security contributions or withholdings. The mandatory severance payment in lieu of prior termination notice and the balance salary of the month of termination are subject neither to social security contributions nor withholdings, but to income tax withholdings.

The National Supreme Court has ruled that the limit of three times the average of the remuneration mentioned above, does not apply if this limit is lower than 67% of the highest monthly regular salary of the last year.

Based on jurisprudence, income tax withholding does not apply up to the 67%.

Severance payment in lieu of prior termination notice

Absence of a prior written termination notice in due time entitles employees to claim the following severance pay:

- Employees dismissed during the three months trial period are entitled to half of the employee's monthly salary;
- Employees with less than five years of seniority are entitled to one month's salary;
- Employees with more than five years of seniority are entitled to two months' salaries.

The mandatory severance pay in lieu of prior termination notice for employees of small-sized companies, as defined by Law No. 24,467, is equal to one month's salary. In addition, employers must pay the salary for the days remaining in the month in which the termination occurred (balance salary of the month of termination) and the employer must pay the proportional part of the thirteenth mandatory salary on this item, which is an additional one-twelfth (employees who work for Small-sized companies as defined by Law No. 24,467 are not entitled to this payment).

The mandatory severance payment in lieu of prior termination notice and the balance salary of the month of termination are not subject to social

security contributions or withholdings, but they are subject to income tax withholdings.

Protected categories

Legislation protects certain categories of employees in a different way.

Pregnant, recent mothers and just-married employees who are dismissed without just cause are entitled to an additional severance pay equal to one year of salaries.

Employers may not change work conditions of trade union representatives without any just cause within one year of the end of their representation.

The employer must follow a special procedure before the Labour Courts to dismiss a union representative with just cause. However, if the procedure is not followed, the representative may choose between being reinstated to his job or receiving, apart from the mandatory severance pay package, an additional severance pay equal to all the salaries that he would have received up to the end of his representation period, plus salaries for one additional year.

According to the Anti-Discrimination Law No. 23,592, those employees dismissed on the grounds of discrimination because of their race, religion, nationality, ideology, political or union opinion and sex, financial, social and/or physical condition may request their reinstatement, or any other measure to remove the effect of the discriminatory act, or to cease in its performance by means of summary proceedings, according to Section 43 of the National Constitution.

Discriminated employees who are reinstated are entitled to back wages. The employees also have the option to terminate the employment contract with cause and claim the mandatory severance pays from their employers under constructive dismissal. Under the provisions of the Civil Code, adversely affected employees may also claim for compensation for pain and sufferings or emotional distress.

Employees who are not properly registered in the employer's payroll are entitled to additional amounts that significantly increase the mandatory severance pay package.

Other cases in which employers are exposed to additional payments include travelling salesmen, breach of a fixed-term employment contract, lack of payment of the mandatory severance pay package in due time, and failure to deliver employment certificates in due time.

Collective Bargaining Agreements (CBAs)

Law governing CBAs rules that parties may negotiate the scope and enforceability of the CBA based on:

- The employer's industry
- Jobs within an industry
- The worker's job duties
- Company wide representation.

Under this law, companies may not operate union-free. Almost all industries and activities already have a trade union that collectively represents those employees.

Unless previously agreed upon in the CBA, executive or senior employees and managers are subject neither to its provisions nor to union representation. However, employees who do not qualify as executive or senior employees or managers are subject to CBA's and union representation.

Employees may freely become members of a union or opt-out, but the trade union shall still maintain collective representation.

The Ministry of Labour must approve CBAs. If such approval is obtained, CBAs are binding, not only on the members of the trade unions and employers' associations party to them, but also on all workers and employers in the particular activity or industry involved. To secure compliance with the agreements, workers must be represented by recognised (acknowledged) trade unions.

CBAs may impose additional contributions on the trade union that negotiated the agreement.

Collective disputes

The Law governing collective disputes sets out that the Ministry of Labour may summon the parties to settle a collective dispute. During a specific term while the Ministry is intervening in the dispute, the parties may not take direct action. The Labour Ministry is empowered to direct the parties to retract any measures that may have caused the dispute.

If during the appropriate period the parties do not agree to a settlement or arbitration, they are free to take whatever legal action they may deem suitable, including direct action (e.g. a strike, lockout, etc).

Special laws

Several laws have been passed to regulate the activities of various categories of employees. The most important of them include the activities of travelling salesmen, seamen, workers who work at their homes, farmers

or agrarian workers, professional journalists, private teachers, and domestic workers.

Social security regulations

Employees' salaries are subject to social security payments. Both employers and employees must contribute to the social security system. Employers must pay their part of the contributions and must also withhold the employees' part from their remuneration. Social security contributions must be made for:

- Retirement and pension plans
- 'Obras Sociales' (healthcare organisations or healthcare providers)
- INSSJP (national institute providing medical assistance for retirees and pensioners)
- Family allowances
- Unemployment fund
- ARTs (labour risk insurance companies or workers' compensation insurance companies).

Levels of contributions required from employers and employees have varied significantly. Currently, employers' contributions depend upon their activity and turnover amount:

- 27% if the employer is engaged in the provision of services or in commercial activities
- 23% for all other employers.

Subject to specific regulations, certain employers enjoy reductions in their social security contribution amounts as follows:

- The exemption is raised to one-half of the employers' contributions if the employee hired to hold the new position is a beneficiary of the Head of Household Program ('Plan Jefes de Hogar')
- Employees' contributions 17% in the public regime (public retirement and pension fund system).

For the purpose of calculating social security contributions paid by employees, there is a 'legal ceiling' or 'legal cap' (maximum amount) to be applied to the employee's monthly gross salary. Currently, this legal ceiling is \$9,351,30. The portion of the employee's monthly salary over the legal ceiling (i.e. the portion which exceeds \$9,351,30) is not subject to social security contributions. The Retirement and Pension Fund System is a public regime where the retired workers are entitled to an earnings-related retirement pension (i.e. the amount of the pension depends on their earnings level during their employment).

Employers must pay the premium of the so-called *ART* (labour risk insurance company), because it is not included in the above-mentioned contribution rates. This premium, agreed upon with the pertinent *ART*, depends on the activity, and is usually an average of 3% of the payroll.

6. Taxation

Source of income rules

The Income Tax Law (Law No. 20,628/73, as amended), and its regulations, apply to all worldwide source income of individuals living in the Argentine Republic, and Argentine corporations, branches or other permanent establishments of foreign entities located in the Argentine Republic, and to all local source income of foreign beneficiaries.

Broadly defined, local source income is income deriving from assets situated in the Argentine Republic, or activities carried out in the Argentine Republic. Individuals and corporations subject to tax on global source income are entitled to a credit for similar taxes paid abroad, the amount of which may not exceed the increase of Argentine income tax payable as a consequence of including the foreign source income in the taxable base.

Imports

Profits obtained by foreign individuals and corporations from exports of goods into the Argentine Republic are usually considered as foreign-source income of the foreign exporter.

If the import price of the goods agreed upon by the foreign exporter and the local importer is higher than the wholesale price of these goods in the country of origin (plus any applicable freight and insurance), it is presumed that there is an economic link between the parties and, unless there is sufficient evidence to the contrary (i.e. the burden of proof is on the taxpayer), the difference between the import price and the wholesale price in the country of origin (plus any applicable freight and insurance) is considered net profit of the foreign exporter and taxed at the usual 35% rate.

Branch

A branch is taxed at the rate of 35%, whether or not branch profits are actually distributed. A 35% withholding applies, after certain adjustments, to the distribution of profits not subject to the 35% corporate income tax at branch level.

Corporation and limited liability companies

Corporations and limited liability companies are taxed at the rate of 35%. A 35% withholding applies, after certain adjustments, to dividend and revenue distributions corresponding to profits not subject to the 35% corporate income tax at corporate level. Dividends are not included in the taxable income of the recipients.

Selected tax computation rules

Losses

Business organisations may generally deduct expenses and losses incurred in obtaining local source income. Net operating losses ('NOLs') may be carried forward for up to five years.

Depreciation

Fixed assets may be depreciated on a straight-line basis. The usual annual depreciation rate for machinery and equipment is 10%; for dies, tools and vehicles, 20%; and for buildings, 2%. In special cases, tax authorities may authorise higher depreciation rates.

Transactions between related parties

Special rules apply to deductions arising from transactions between an Argentine corporation, or branch of a foreign corporation, and a foreign related party.

In the case of payments under the Know-How Transfer Law, an Argentine licensee may deduct royalty payments only if the corresponding License Agreement has been previously registered with the INPI.

For other inter-company transactions, an Argentine taxpayer may deduct its expenses if the charges are consistent with arm's-length practices.

Presumed net income for foreign beneficiaries

Payments of income made to foreign beneficiaries are generally subject to 35% income tax withholding. For certain kinds of income, described below, the Income Tax Law presumes a fixed level of net income to which the 35% income tax withholding rate applies, which generates an effective rate lower than a flat 35%.

Agreements to Avoid Double Taxation (the 'Agreements')

The 'Agreements' are executed to avoid superposition of taxes among residents in two or more different contracting states on the same taxable issue, within the same period of time, and charged against the same taxpayer.

Thus, it is intended to soften the tax burden on the taxable issue in a transaction between two residents in different contracting states under the Agreement.

Until now, the Argentine Republic has executed and ratified Agreements with:

- Germany
- Australia
- Austria
- Belgium
- Bolivia
- Brazil
- Canada
- Chile
- Denmark
- Spain
- Finland
- Great Britain and Northern Ireland
- Italy
- The Netherlands
- Sweden
- France
- Norway
- Switzerland.

In general, the Agreements ratified by the Argentine Republic are applied to taxes on income or revenue, shareholders' equity, and potential benefits.

In this sense, these Agreements prevail over the Income Tax Law and, therefore, foreign residents would benefit by the application of reduced rates established in the Agreement whenever they made a payment subject to the tax withholding, as already explained.

Value Added Tax (VAT)

Argentina's VAT is similar to the European Union's VAT. It consists of an output tax and input tax levied on the sale of goods located within the country, contracts for work or contracts for the provision of services, or lease agreements executed within the country or in a foreign country, and imports of movable goods and services.

The excess of the output tax over the input tax must be paid within a certain period (e.g. 20 days from the end of each calendar month). There are exemptions for some products and services. VAT is applied to the net price of the goods, service or work, generally at the rate of 21%. This rate is different in some specific cases.

Minimum presumed income tax

The Minimum Presumed Income Tax ('MPIT'), established by Law No. 25,063, is applied at the rate of 1% to assets located in the Argentine Republic or abroad. It is a tax generated on a presumption of income obtained by the taxpayer; this presumption is assessed in relation to the taxpayer's assets at the end of the calendar year or the fiscal year for individuals and corporations, respectively.

Individuals and corporations subject to this tax

The following taxpayers are subject to MPIT:

- Companies incorporated in the Argentine Republic
- Foundations and non-profit organisations
- Permanent establishments of Argentine residents
- Argentine residents and 'sucesiones indivisas' (undivided estates of deceased persons) who own rural properties
- Trusts, excluding financial trusts
- Closed-end investment funds ('Fondos Comunes de Inversión cerrados')
- Permanent establishments of companies or individuals located outside the Argentine Republic.

Tax exemptions

The following assets are not computed to calculate this tax:

- Assets located in the Province of Tierra del Fuego, Antarctica and South Atlantic Islands (in accordance with Law No. 19,640)
- Assets belonging to entities engaged in mining investment activities falling within the scope of Law No. 24,196
- Assets belonging to entities exempt from income tax
- Assets exempt by federal laws or international conventions

- Shares of companies subject to this tax
- Assets transferred by trustors to trustees of non-financial trusts
- Interests in non-financial investment funds
- Capital contributions and irrevocable capital contributions
- Assets with an aggregate value not exceeding \$200,000.

Related parties

Law No. 25,063 establishes that foreign-owned Argentine companies should consider as computable assets for minimum presumed income tax purposes, all credits against their parent company or individual owner or any parent's branches, or those corporations that directly or indirectly 'control' the former.

Non computable assets

The following should not be computed in the tax base:

- The value of new personal property subject to depreciation (except for automobiles) during the fiscal year in which they have been acquired and the following one; and
- The value of any investments in new buildings or such improvements on previously built ones during the fiscal year in which such total or partial investments have been made, and in the following one.

Tax credit against income tax

Income tax paid in a given fiscal year is credited against the tax liability arising from MPIT for the same fiscal year. If there is no income tax to pay, the payment on account of the MPIT may be carried forward against the income tax liability corresponding to the following ten fiscal years.

Foreign tax credit

Taxpayers are to compute for the purpose of this tax and as tax credit, any tax levied and effectively paid upon its assets located outside the Argentine Republic up to the increase of the Argentine presumed minimum income tax deriving from the inclusion of such assets in the taxable base.

Personal asset tax ('PAT')

Personal asset tax is levied at a national level and on all property owned by the taxpayer. PAT is applied at the rates described below to the total assets, for taxpayers who own assets valued at more than \$305,000 at the end of the calendar year, on taxable assets located within the Argentine

Republic and abroad, belonging to individuals and estates domiciled in the Argentine Republic.

- 0.50% between \$305,000 and \$750,000
- 0.75% between \$750,000 and \$2,000,000
- 1% between \$2,000,000 and \$5,000,000
- 1.25% over \$5,000,000.

Individuals and estates not domiciled in the Argentine Republic and non-Argentine companies are subject to this tax at the rate of 0.5% on their equity holdings or interests in Argentine companies.

Individuals and estates not domiciled in the Argentine Republic are subject to this tax at the rate of 1.25% on their other assets located in the Argentine Republic.

A 2.5% rate is applied (instead of the 1.25% rate) on unexploited urban real property owned by non-Argentine companies, among others.

In the case of corporate vehicles organised in the Argentine Republic, non-resident equity holders (individuals, estates or legal entities) and individual residents who own equity interests subject to the 0.5% personal assets tax, the personal assets tax should be determined and paid by the corporate vehicle.

For the purposes of this tax only, individuals are considered as domiciled in the Argentine Republic, *inter-alia*, if they have their actual domicile in the Argentine Republic or, for expatriates, if they have resided in the Argentine Republic for more than five years.

Individuals domiciled in the Argentine Republic are entitled to a credit for similar taxes paid abroad, the amount of which must not exceed the increase in the Argentine personal assets tax as a consequence of including taxable assets located abroad in the taxable basis.

Tax on debits and credits on checking accounts and other transactions

This tax applies:

- To all credits and debits made in any bank account, whatever their nature may be, opened with the entities governed by the *Ley de Entidades Financieras* (Financial Entities' Law);
- To all transactions carried out by the entities mentioned in the previous paragraph, the beneficiaries of which do not use the accounts specified therein, irrespective of the denomination given to the transaction and the methods applied to carry it out, including the payment in cash, and its legal implementation;

- To all own or third parties' funds movements, even in cash, that any individual, included those falling within the scope of the *Ley de Entidades Financieras* (Financial Entities' Law) made on its own account or on account and/or in the name of any third party, by any means, their denominations and legal implementation, including those methods to credit to establishments adhered to credit and/or debit card systems.

The general tax rate is 0.6% for credits and 0.6% for debits. In certain other cases the rate is 1.2%. Moreover, there are special tax rates for certain transactions performed by specified individuals.

Gross sales tax

This is a municipal or provincial tax levied on the gross sales of independent activities performed for profit. In the City of Buenos Aires, for instance, the general rate for fiscal year 2005 is 3%.

Stamp tax

The stamp tax is a local tax on documents usually applied at the rate of 1% on any document or exchange of documents evidencing the creation, amendment and/or extinction of pecuniary rights and/or obligations. In each of the provinces this tax is payable upon local execution of what is considered to be a 'taxable document'.

It also applies to a document having 'effects' in a given province (local effects would be the acceptance, protest, or performance of the obligation or the filing of the relevant document with an administrative or judicial local authority for enforcement purposes) other than the one in which it was executed.

In the City of Buenos Aires, this tax is payable only on transactions involving real estate property not intended as primary residence. The applicable rates are 0.5% on lease agreements, 2.5% on transfer of real estate property, and 0.8% on others.

7. Accounting & reporting

Books and records

Company Law sets basic requirements for keeping accounting records and financial statements of business entities.

All commercial entities must keep official accounting records in books registered in the Public Register of Commerce. Transactions must be entered chronologically and in such a fashion that each one can be identified.

The different regulatory entities set rules governing the accounting records and submission of financial statements for certain types of regulated entities, such as banks, insurance companies and companies which are listed on the stock exchange.

Argentinean generally accepted accounting principles are set by the Institute of Public Accountants, of which all Public Accountants practising in Argentina should be members.

Financial reporting

All companies have to prepare annual financial statements which have to be audited by an independent public accountant. Their financial statements with the auditor's report must be filed with the regulatory and tax authorities.

The National Securities Commission requires that companies whose shares are listed on the stock exchange submit quarterly financial statements.

Accounting records and financial statements should be written in Spanish and expressed in Argentine pesos.

Dividends are payable provided they arise from realised and net income as per the annual financial statement approved by the shareholders' meeting.

Contents of financial statements

Annual financial statements must include:

- A report from the Board of directors
- Balance sheet
- A profit and loss statement;
- A chart showing the expenses breakdown
- A statement of changes in shareholders' equity
- A cash flow statement.

The last item is mandatory only for companies whose shares are listed on the stock exchange, and those subject to permanent government supervision. In both cases, they will also have to submit comparative financial statements for the current and preceding year.

Financial statements of holdings

Consolidated financial statements are also required if a company controls more than 50% of the voting shares of another company.

When a company does not own 50% of the voting rights of another company but nevertheless exercises significant influence over its decisions, the presentation of consolidated financial statements is recommended, although not mandatory.

Accounting principles

Generally accepted accounting principles in Argentina are very much alike to those applied in the US.

Due to inflation over the past year, an adjustment for inflation was put into effect once again. Currently, inflation has been controlled and a one-digit inflation is projected. As a result, elimination of the referred adjustment process is being considered.

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