

DOING BUSINESS

▪ DOING BUSINESS IN ARGENTINA

Hereinbelow, we briefly describe the main characteristics of our country and the regulations ruling the business activity regarding administrative, labor, tax and accounting matters.

It is important to be aware of the business scenario of your company. This document is only a summary; in no way it substitutes a complete and appropriate professional counseling as the one offered by **Convexia**.

▪ ARGENTINA:

Argentina is located in the Southern Cone of South America and borders Bolivia, Brazil, Chile, Paraguay and Uruguay and is the eighth biggest country in the world and the second in Latin America.

The current population of Argentina is about 41 million people and its total population density is 14 people per square kilometer; however 12 million people lives in the Autonomous City of Buenos Aires (hereinafter referred as CABA) and its surrounding areas.

Argentina is organized under a Federal Republican Representative framework of government with a political system separated into three branches: Executive, Legislative and Judicial.

The Executive power resides in the President elected by the popular vote; the Legislative Branch consists of two chambers: the Chamber of Deputies (*Cámara de Diputados*) and the Senate (*Senado*); and the Judicial Branch is vested in courts, chambers of appeal and the Supreme Court of Justice.

The federal system of government consists of 23 provinces and the Federal Capital, the CABA.

The National Constitution was approved in 1853. Each of the federal provinces also has its own constitution and separation of powers. The Provincial Executive Branch is vested in the Governors and the structure of the Judicial and Legislative branches is the same as in those of the Nation.

▪ HOW TO ORGANIZE YOUR BUSINESS

Businesses can be carried out by individuals or through legal entities.

▪ LEGAL TYPES OF CORPORATE STRUCTURES:

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The types of corporate structures established by the Business Associations Law (Law 19,550) (hereinafter BAL) are the following:

Sociedades Anónimas (Stock Companies)
Sociedades de Responsabilidad Limitada (Limited Liability Companies)
Partially Government-owned Corporations
Sociedad en Comandita Simple (Limited Partnership)
Sociedad en Comandita por Acciones (Type of limited partnership in which the limited partners are issued stock and the general partners are not)
Sociedad Colectiva (General Partnership)
Sociedad de Capital e Industria (Limited partnership where some partners invest money and others invest their services and labor)
Branch of a Foreign Company

Companies shall be registered with the Public Registry of Commerce, regulated in every Province by a special control agency. In the CABA, such agency is the Office of Corporations (*Inspección General de Justicia (IGJ)*).

The types of companies most used in Argentina are:

- *SOCIEDADES ANÓNIMAS*

The capital is composed of registered and non-endorsable shares. It requires a minimum of two shareholders and the minority can not have less than 5% of the stock capital.

The liability of the shareholders is limited to the contributed capital. Foreign shareholders in the form of legal entities shall be registered as such with the same Registry.

The corporate Bylaws or articles of incorporation regulate the organization to which they are applied and establish its main characteristics (object, life, management, etc.)

The Board of Directors is in charge of the Direction and Management. Most of the members of the Board of Directors shall be Argentine citizens and shall constitute a surety bond for their performance.

In the event of publicly traded corporations or those specially regulated with permanent supervision, the Board of Directors shall at least be formed by three members and the Company shall have a Statutory Auditing Committee.

- *SOCIEDAD DE RESPONSABILIDAD LIMITADA:*

Their operational characteristics are similar to those of the *Sociedades Anónimas*.

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Their capital is composed of units of interest and the administration is responsibility of the Managers.

- **BRANCHES OF FOREIGN COMPANIES:**

For the start-up of its operations, every branch must prove the existence of a parent company abroad and register its articles of incorporation or bylaws with the Public Registry of Commerce.

A representative must be designated.

Branches as well as Stock Companies are subject to the regulations issued by the control agencies.

The Office of Corporations establishes important requirements for the registration of a foreign Company, not only for the organization of a branch but also for being a shareholder of a local entity.

- **ACCOUNTING RECORDS:**

Any and all business organizations in Argentina and legally domiciled in such country must record their operations in the pertinent accounting books.

The Commerce Code defines as mandatory accounting books the Journal and the Inventory and Financial Statements Book as well as other auxiliary books.

Books can be kept by means of numbered records, movable sheets or digital records as applicable.

All business organizations must prepare a balance sheet and income statement that must be recorded in the Inventory and Financial Statements Book, which must be copied within the four months subsequent to year-end.

The BAL establishes the information requirements and each control agency defines the special requirements for its jurisdiction.

It is mandatory for the companies to include in the financial statements an Auditor's Report issued by an independent Public Accountant containing his/her opinion on such financial statements in accordance with the accounting and auditing standards in force.

- **PUBLICLY TRADED COMPANIES:**

It is applicable to stock companies that issue common shares to the public, and are subject to a special administrative and information regime. The control agency is the *Comisión Nacional de Valores (CNV)*.

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▪ PROFESSIONAL ACCOUNTING STANDARDS

The accounting standards applied in our country are issued by the *Federación Argentina de Consejos Profesionales de Ciencias Económicas (FACPCE)*, which is the body that coordinate and control the bases and principles that regulate the profession at the national level. Such body is committed to find the uniformity in the rules of the different jurisdictions (provincial), provided that this is consistent with the individual or typical characteristics of each region.

The *FACPCE* is promoting a process of adoption of the International Financial and Reporting Standards (IFRS). For this purpose there is a proposed schedule for the next years, depending on the characteristics of the entities that adopt them and their way of operating in the market.

The current accounting standards are similar to the International Financial and Reporting Standards.

▪ LABOR AND SOCIAL SECURITY ASPECTS

▪ REGIME OF CONTRIBUTIONS:

In our country the labor relationships are ruled by the Law of Contract of Employment (Law 20,744 – LCE) and complementary legislation.

The LCE rules the duties and obligations to be assumed by the employers and the employees. The execution of contracts of employment is not mandatory; therefore they are not usually used.

Each activity is also ruled by Collective Bargaining Agreements, labor contracts between a trade union and the entrepreneurial chambers of the activity, also with the approval of the government through the Ministry of Labor.

The Collective Bargaining Agreement establishes working and economic conditions implying improvements on the general legislation.

Due to the existence of the Collective Bargaining Agreement, there are differences in the labor relationships of workers according to the trade union they belong to and also according to the region of the country in which their labor relationship is developed.

▪ TYPES OF CONTRACT OF EMPLOYMENT:

The LCE comprises a privileged basic type and three restricted derived types. It establishes the principle of indefinite term as the main condition of the contract of employment.

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The three types of restrictive contract comprise the **fixed-term** contract (*contrato a plazo fijo*), the **seasonal** contract (*contrato por temporada*), and the **specific** contract (*contrato eventual*).

Automatically, the indefinite term contract shall be understood as executed on a trial basis for the first three months. During the trial period, any of the parties thereto may terminate the labor relationship without any reason and without prior notice. In such case, such termination does not grant any compensatory right.

• RIGHTS OF THE WORKERS

WORK DAY:

The work day could not exceed eight hours daily or forty-eight hours weekly. The employer must pay the worker for extra working hours a surcharge of fifty per cent (50%) calculated on the habitual salary and of one hundred per cent (100%) on others. Furthermore, there are benefits for night or unhealthy work.

REMUNERATION:

It is the consideration that the worker must receive as a consequence of the contract of employment. Such remuneration could not be lower than the minimum wage. The employer must pay the remuneration to the worker, though he/she does not render services for the mere circumstance of putting his/her labor force to the employer's disposal. The worker can receive **other social benefits not considered** remuneration, but restricted.

The employer must deposit the worker's remuneration in an *ad hoc* bank account.

COMPLEMENTARY ANNUAL SALARY:

The complementary annual salary is the accrual of the thirteenth month salary, assessable on the calculation of the 50% of the best accrued monthly salary for all concepts within the semesters ending June and December every year.

FAMILY ALLOWANCES:

The scope of the family allowance regime is national and mandatory. The contribution system is based on a compensations account (*caja de compensaciones*) by means of which all the employers deposit the contributions to the system calculated on a percentage of the remunerative concepts. Family allowances are deposited directly by the State in each worker's salary account.

VACATIONS (ANNUAL LEAVE)

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The worker will enjoy a minimum and continuous period of **remunerated** annual leave for periods between 14 and 35 running days.

- **SOCIAL SECURITY RESOURCES:**

The Social Security Resources allocated to this system comprise the worker and employer' contributions. Both are constituted in the *Contribución Unificada de la Seguridad Social (CUSS)*, the collection and supervision of which is responsibility of the *Sistema Único de Seguridad Social (SUSS)*. The tax authority (*Administración Federal de Ingresos Públicos (AFIP)*) is in charge of the collection, supervision and judicial execution of the Social Security resources as well as any and all national taxes.

The worker's contributions constitute about **18%** of his/her remuneration and mainly comprise pension/retirement insurance, medical assistance and trade union contributions.

The employer's contributions about **23%** of the remuneration and comprise the above-mentioned allocations plus the contribution to the Family Allowances system.

Some unfavorable regions have direct social security benefits or they are granted by means of credits against other taxes such as the VAT.

- **LABOR RISKS**

In Argentina, the prevention of risks and the remedy of damages resulting from work are ruled by Law 24,557 and its regulations.

The payments derived from this Law, made by the Labor Risk Insurance Companies, shall be financed by a monthly installment to be paid by the employer.

- **TERMINATION OF THE LABOR RELATIONSHIP – TERMINATION OF THE CONTRACT:**

In the event of termination of the labor relationship, the employers must fulfill the strict procedures established for these cases.

In the event of dismissal, the workers have the right to receive several compensations: seniority, notice, payment of the whole month of dismissal. The final payment is calculated on the basis of the best remuneration received by the worker at the rate of 1 month per each year worked. This benefit is established by the jurisprudence and the rules complementary to the Law.

- **AUTONOMOUS WORKERS SYSTEM**

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There is a special system for those workers that due to their independent activity are not subject to the employee's general regime. These individuals are bound to monthly deposit a fixed amount according to their category.

The Regular Directors of Stock Companies and the Managers of the Limited Liability Companies are obliged to pay this tax. According to the AFIP's interpretation, foreign non-resident directors should compulsorily contribute to this pension and retirement system, whether they receive fees for their performance or not.

If the Director does not receive fees for his/her performance in Argentina, he/she can use the right of compensation, computing the amount paid in the first fiscal year to the subsequent ones.

▪ TAX ASPECTS

The Argentine tax system is structured on the basis of the tax-paying capacity externalized through income, consumption and turnover.

Such taxes coexist within a federal tax co-participation system and different taxes are controlled and collected by the national, provincial or municipal tax authorities (in this last case, they are taxes on services). Also, there are several information systems.

Argentina is governed by the worldwide income principle and has entered into several agreements with other countries to avoid double taxation.

For further information on the tax regulatory framework visit www.breasolans.com.ar

▪ REGISTRATIONS

All the companies shall be registered with the *Administración Federal de Ingresos Públicos (AFIP)*. This registration generates a national tax identification number, *Código Único de Identificación Tributaria (CUIT for its acronym in Spanish)*. Companies must also be registered with the tax authority of the Province where they conduct their business. In the event of international operations, the company must also be registered with the *Registro Nacional de Exportadores e Importadores*.

Other registrations will be necessary according to the activity, the products to be commercialized or the nature of the firm.

▪ INCOME TAX :

Income Tax: the net taxable income obtained by all residents for the exploitation of assets located in Argentina and also obtained abroad under a special regime is levied with this tax.

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In the particular case of companies, the tax levies the net taxable income at each year-end with a rate of 35%. There are some restrictions on the deduction of some expenses as those generated by vehicles, interest on loans, Directors' or Managers' fees or representation expenses. There are also presumptive incomes such as interest on loans given to third parties or rental value of real estate not included in the productive process

The tax losses recorded in a fiscal year can be offset against the income obtained in the next 5 fiscal years.

The tax is assessed on an annual basis. The tax returns must be filed within the fifth month subsequent to the fiscal year. There is a prepayment system by means of which the tax payment is prepaid in 11 monthly installments.

Furthermore there are complex systems of tax withholding or collection at source by means of which the companies must withhold to their suppliers or collect from their clients certain amounts of money paid to the tax authority in their capacity of withholding or collection at source agents.

In the particular case of employees, the employers must withhold the tax on behalf of the tax authority. Every month, prepayments creditable against the final tax liability are assessed and an information tax return is filed every year.

Companies must file transfer pricing tax returns by means of which they report and assess taxes in the event that the prices of the assets or services sold or rendered to related parties are different from those that could have been obtained from third parties.

Moreover, dividends, the distribution of which is approved by the shareholders' meeting shall only be levied with the tax if the income subject to distribution was not levied with the income tax.

Minimum Presumptive Income Tax: it is levied on all those resident companies that do not obtain income taxable by the Income Tax.

The applicable rate is 1% on the Taxable Assets at year-end and some restricted deductions are allowed.

The payment made for this tax may be used as credit against the Income Tax determined for the 10 immediately next fiscal years.

Income Tax for non-residents: those non-resident individuals or legal entities that obtain in their country of residence income for services or other renderings carried out in Argentina are subject to tax withholdings on the basis of presumptive income determined by the law. This withholding may be computable as credit in the country of residence. For example, the rendering of services is presumed at the 90% of the value of the service rendered.

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• TURNOVER TAX:

This tax is collected by the provincial tax authority and levies the taxable turnover accrued for the fiscal year.

It is meant by turnover the amount received from sales, renderings of services or other remunerations for the work done.

As this is a tax legislated by each province, the applicable tax rates vary in each of them. The average tax rate could be set in 3% on the turnover. There are differential rates according to the location of the productive plant, for example.

The tax returns are filed on an annual basis; however there is a system of monthly prepayments by means of which payments are deposited in the month subsequent to the one accrued.

Also, there are complex withholding and collection at source systems by means of which companies are obliged to act as agents.

• CONSUMPTION TAX:

This kind of taxes applies to a wide variety of taxes levied on consumption and directly paid by the final consumer of such goods as components of the price paid for a good. Direct taxes in the sale of tobacco, vehicles, luxurious goods, energy cots (light, gas, telephone) are paid by the direct consumers of each of those goods.

Manufacturing and commercializing companies of these goods or services are obliged by the State to make the collections on its behalf in relation to the different collection at source and withholding systems.

Value Added Tax: The tax levies each of the stages of production and commercialization of goods or services at a general rate of 21%. There are differential tax rates: 10.5% (for example, the first sale of a real property) or 27% (for example, sale of energy or telephone services). Furthermore, there are restricted exceptions to the tax.

The tax is monthly assessed and each company must deposit the value added of its production to the tax authority, i.e., it must assess and pay the tax authority 21% on the taxable sale (called Tax Debit), net of 21% paid to its suppliers of goods or services (called Tax Credit).

Also, there are complex withholding and collection at source systems by means of which companies are obliged to act as agents.

• OTHER TAXES:

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Tax on bank credits and debits: Any deposit or withdrawal recorded in a bank current account is levied with a tax rate of 0.6%. The tax is assessed and directly collected by bank institutions on behalf of the AFIP. This tax may be considered as a tax credit in the assessment of Income Tax or other national taxes.

Stamp Tax: it is levied on business transactions executed under written document. This tax is collected by each Province and the City of Buenos Aires; therefore the tax rate varies depending on each of them.

The tax is paid to each collecting entity as from the date of execution of the instrument that backs the operation. The tax authority determines the value of the tax to be paid before the deposit in the bank institution that would have been designated as collecting agent by the provincial entity.

Municipal Taxes: In each municipality or city there are different taxes levied on taxpayers for services related to cleaning, lighting, safety and hygiene.

In general, these taxes are paid on a monthly or bimonthly basis in the collecting banks appointed by each municipality.

- **NET WORTH TAX:**

Tax on Personal Assets: it levies with a rate of 0.5% the personal assets of individuals residing in the country. The tax is assessed and paid on an annual basis.

Tax on Shareholders or Quotaholders: it levies with a rate of 0.5% the ownership interest of non-resident shareholders in the shareholders' equity of the company. The tax is assessed and paid on an annual basis, as of December 31 every year; and the company must pay the tax granting the tax authority unlimited powers to recover it from its shareholders.

- **OTHER TAX REGULATIONS TO BE CONSIDERED**

- Any and all payments made by any company for amounts higher than AR\$ 1000 (about US\$ 250) must be made through bank. Otherwise, they may be considered non-deductible in the Income Tax and non computable in the VAT.
- Representation expenses are only deductible in the Income Tax up to a limit of 2% of the accrued remuneration.
- Upon importation of goods, the State receives VAT collections at a 21% rate and income tax collections at a 3% rate. These amounts are duplicated if the company does not have the pertinent registration in certain registers of the AFIP.
- Exemptions to collection at source or withholding systems are not automatic and, in general, should be half-yearly renewed.

- **RULES ON MONETARY AND EXCHANGE REGULATIONS:**

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The competent authority is Banco Central de la República Argentina.

The set of rules is complex; however we summarize them as follows:

- EXCHANGE RULES:

At present, the access to the exchange market has certain restrictions that should be considered when planning an investment in the country. Restrictions vary in the case of residents or non residents and depending on their application.

Similar restrictions are applicable to the payment of debts, dividends or refunds of capital contributions.

- RULES ON MONETARY REGULATION:

Nowadays, currency movements are controlled and restricted. There are information rules for the entry of investments resulting from non-residents' capital contributions.

Restrictions for loans taken by local companies from abroad may be levied with financial withholdings of 30% of the capital for a year depending on the terms and conditions of the loan and its allocation.

For all those collections for exports of goods or services that resident companies make abroad, there are rules establishing the obligation of settling such collections for a definite term in our country.

- INFORMATION REGIME:

All the companies that have debts with foreign entities must file information affidavits to the *BCRA* on a quarterly basis (Communication A 3602).

Companies having a capital investment exceeding certain amount must file affidavits also on a quarterly basis. (Communication A 4237).

- BANK OPERATIONS:

The Argentine bank system is ruled by its leading institution, *Banco Central de la República Argentina (BCRA)*.

The main international banks have branches or representative offices in Buenos Aires.

Banking current operations are carried out through Current Accounts only stated in local currency. At present, there are no current accounts stated in foreign currency (US\$); however, there are special custodial accounts in foreign currency by means of

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which it is possible to make funds transfer to beneficiaries' accounts within the local bank system.

Two check systems coexist in the bank system, namely:

- the "common check" as labeled by the law
- the "deferred check"

The first one is a pure and single payment instrument payable to the order of a payee from a bank account where the payer has enough funds. The deferred check is only a payment instrument payable on a date subsequent to the effective date of issuance.

Checks may be issued in different ways, payable only to the mere payee or restricted to be transferred to third parties and payable only through deposit in the payee's bank account.

In addition, and as it has been mentioned above, each credit or debit in a bank account of any category is levied with a 0.6% tax rate for each operation.

The clearing for the settling of operations is 48 hours. Up to date, there are no transfers of immediate execution. The minimum term for an operation to be executed is 24 hours.

WE HOPE THIS DOCUMENT HELPS YOU UNDERSTAND THE COMPLEXITY OF THE ADMINISTRATIVE, TAX AND CORPORATE RELATIONS THAT REGULATE THE COMMERCIAL AND MANUFACTURING ACTIVITIES IN OUR COUNTRY. WE ARE AT YOUR SERVICE TO HELP YOU UNDERSTAND AND APPLY THEM.

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