

# **BRONS & SALAS**

## **LAW FIRM**

### **DOING BUSINESS IN ARGENTINA**

#### ➤ **BRONS & SALAS. Background.**

Our firm has been engaged in the practice of law since the nineteen sixties and has been well known by its current name since 1973. its founding members were Stanley A. Brons (1930-1983) and Acdeel E. Salas (1911-1981).

Ever since it was organized, Brons & Salas has taken pride in the high level services rendered. Special emphasis is placed on the expertise, promptness and personalized attention furnished to serve clients' needs. The firm maintains a special commitment with clients' interests by giving creative made-to-measure legal assistance. It has developed the experience required to provide the most qualified specialist or team to deal with each particular issue.

Brons & Salas renders legal advice on all areas of law practice relating to general corporate issues, except criminal matters (major criminal matters are accepted upon request and handled jointly with specialized law firms).

At present the firm has offices in Buenos Aires, Córdoba and Rosario, Argentina, and in Montevideo, Uruguay.

We are qualified in the following areas:

- ✓ Administrative Law. Customs. Privatizations.
- ✓ Antitrust
- ✓ Banking and Finance. Foreign Investment
- ✓ Biotechnology.
- ✓ Corporate Law. General Practice. Mergers and Acquisitions
- ✓ Insurance and Reinsurance.
- ✓ Environmental Law.
- ✓ Information Technology. Intellectual Property. Trademarks and Patents and Related Rights.
- ✓ Labor Relationships and Labor Law.
- ✓ Litigation, Bankruptcy and Other Reorganization Procedures.
- ✓ Migration and Naturalization.
- ✓ Mediation and Arbitration.
- ✓ Mining, Oil and Gas.
- ✓ Real Estate.
- ✓ Taxation and Tax Planning.

#### ➤ **Organizing business in Argentina**

- ✓ **Background to demography and political and economic organization.**

#### **Demography**

The Republic of Argentina is a highly cosmopolitan nation in South America. Located on the southeastern extreme of the South American continent, Argentina has a total surface area of 3,761,274 km<sup>2</sup>, out of which about three-fourths are located on the continent, while the rest consists of a sector of Antarctica and a group of islands in the South Atlantic Ocean.

Based on its area, Continental Argentina is the eighth largest country in the world, and the second largest in Latin America. It ranks among the world's top 30 most populated countries, with an overall density of 12.7 per km<sup>2</sup> for the continental portion. Some 88% live in urban areas and almost 36% live in the Buenos Aires metropolitan area, which has a density of 14.287 inhabitants per km<sup>2</sup> in the city of Buenos Aires.

Argentina's climate ranges from subtropical in the northeast, to temperate in the central region, to arid and semiarid and cold in the south and along the mountains; each of these main three climatic zones covers approximately one third of the

country's area. About one-third of continental Argentina consists of grasslands, and 16 percent is classified as natural forests. Nearly 11 percent is under cultivation. The rest represents urban development, undeveloped land, bare rock, and inland waters.

Central Argentina holds the country's main agricultural resources: its fertile pampas, noted for production of grains, oilseeds and cattle raising. Argentina ranks 11<sup>th</sup> in the world in wheat production and is a major producer of oilseeds, corn and meat. Argentina also produces substantial quantities of wine grapes, cotton, sugar, tobacco, rice and fruits. Its mineral resources include oil and natural gas, manganese, lead, zinc, iron, copper, tin, gold and uranium.

Unlike the people in other areas of Hispanic America, argentinians are mostly of european origin (at least 85% of the population).

Between the 1850s and 1940 more than 3.5 million immigrants arrived in Argentina, about 45% of them from Italy and 32% from Spain. Prior to the 1960s substantial numbers also came from Britain, Germany, France, Switzerland, Denmark, Poland and Russia.

Spanish is the official language and is spoken universally, but a good number of argentinians also speak English, Italian, German or French.

### **Political organization**

Argentina has a democratic government that is Representative, Republican and Federal in form. the Republic of Argentina is made up of 23 Provinces and an autonomous city. Each Province has legislative powers pursuant to their respective Constitutions in which they expressly declare their support to the Republic. The Executive Branch of each Province is vested in a governor, who is elected by the inhabitants of the Province.

Each Province is divided into Departments, except the Province of Buenos Aires, which is divided into districts. Each Department is, in turn, divided into districts, and these are made up of neighborhoods. On an administrative basis, neighborhoods are classified mainly in terms of number of inhabitants.

### **Economic background**

**Farming and ranching.** Argentina's wealth has traditionally come from ranching and grain growing, and agricultural commodities continue to be a mainstay of argentine exports. Since 1997 Argentina has been declared free of foot and mouth disease.

**Fishery and forestry.** The agricultural sector includes forestry, fishing and hunting for economic purposes and also the production of secondary products (paper, paper paste, lumber, laminates, boards, etc.).

**Industry.** The industrial sector includes manufacturing, mining, and construction. The development of this sector began during the world war I era, and has accelerated in the last few decades. Industrial development is heavily concentrated in the province of buenos aires –40% of the manufacturing plants– as well as in centers in Santa Fe and Cordoba. Most plants are small; companies with fewer than 30 persons employ the vast majority of industrial workers and few industries employ more than 500 workers.

The prospect of being able to reach larger markets on more favorable terms through the Mercosur (South Common Market – Brazil, Uruguay, Paraguay-) is spurring interest in industrial investment and production.

**Mining.** In recent years, a major reform in the legal framework has created incentives such that production grew drastically, and so did foreign investment. To improve output value and increase this sector's export share, the government has added a favorable tax treatment as a further incentive to attract new capital.

**Petroleum.** Exploration and development permits were offered to foreign firms following the deregulation and privatization of the state-run petroleum monopoly in 1991 (YPF).

**Manufacturing.** Increases in investment by local and foreign firms contributed to modernization and improved efficiencies in areas such as textiles, apparel, nonmetallic mineral products, wood products, food and beverage, paper, chemical, aluminum and automotive industry.

Argentina industrial policy now operates within an open economy framework. the country's participation in Mercosur is having a major effect on market-based development as industry begins to grow and supplement that in member countries' economies.

**Services.** - The services sector includes utilities, transportation and communication, commerce (which includes retail and wholesale trade, lodging, restaurants, and entertainment), financial services and miscellaneous (including professional, personal and government services). The sector's share in GDP is between 50% and 60%.

### **Argentina's International Role**

Argentina has long been a member of a variety of international associations. Recently it has taken a greater role in regional and international activities as its new open economy pushes it into greater interaction with its international neighbors. Argentina is a charter member of the United Nations and of most of its affiliated bodies. It is a member of the International Monetary Fund (IMF), The World Bank (WB), The Organization of American States (OAS) and The Latin American Integration Association (LAIA).

Argentina subscribes to the General Agreement on Tariffs and Trade (GATT), to its successor, The World Trade Organization (WTO), and to Mercosur, while maintaining a variety of bilateral treaties with many nations.

Argentina adheres to most international conventions, including the Berne and Paris Conventions regarding intellectual property, the International Chamber of Commerce (ICC), and the Customs Cooperation Council (CCC), among others.

#### ➤ **Business Company Law.**

The most customary corporate forms in Argentina are the "Sociedad Anónima" (Corporation) and the "Sociedad de Responsabilidad Limitada" (Limited Liability Company). A company organized abroad (hereinafter, the "Foreign Company") may also conduct its business ordinarily in the country by acting as a "Sucursal" (Branch).

#### I. **Sociedad Anónima**

a Sociedad Anónima ("S.A.") is the most usual and practical corporate form to do business in Argentina. It enables its shareholders to limit their liability to the par value of the shares they have agreed to subscribe.

- an S.A. may be considered as the equivalent of a US "Corporation".
- an S.A. is a stock company which requires prior authorization by the General Inspection of Corporations ("GIC"), which is the division in charge of the Public Registry of Commerce where organizational documents are filed and recorded so that the S.A. may do business efficiently in Argentina.

The main aspects involved in organizing an S.A. are as follows:

1. **Shareholders:** A minimum of two is required; they may be residents or non-residents (whether natural or artificial persons) in Argentina.
2. **The minimum capital currently required by law is \$12,000 (approximately, US\$ 4,000), out of which only 25% must be paid-in at the time of the corporate organization and the balance, within a maximum term of two years.**

It must be borne in mind, however, that the GIC requires that the corporate capital then fixed be reasonably related to the corporate purpose. Therefore, the GIC may require an initial corporate capital amount higher than \$12,000 if notice is taken that, due to its nature, characteristics or plurality of businesses covered by the corporate purpose, the corporate capital is overtly inappropriate. Consequently, a review must be made of the businesses to be conducted by the S.A. to make the corporate capital conform to it.

The management of an S.A. is vested in the Board of Directors. Its members need not be shareholders or reside in Argentina. However, the Business Company Law ("BCL") requires the Board of Directors to meet at least quarterly, with the physical presence of the majority of its members. The BCL also requires that most board members be domiciled in Argentina.

Any person acting as a Director of an S.A. shall furnish in favor of the S.A. a guaranty in an amount not less than \$10,000 (approximately, US\$ 3,300), to ensure the faithful discharge of his/her duties, no matter the corporate purpose, capital or duties assigned to or performed by each Director. Such a guaranty may be created by direct funding into the S.A., or through public bonds, securities, sureties or bank bonds or the taking of liability insurance.

Statutory auditors are in-house legal auditors and are not entitled to a vote. Shareholders may remove statutory auditors at their sole discretion.

The corporate authority governing the S.A. and making resolutions is the Shareholders' Meeting. The ordinary Shareholders' Meeting may, among other things, approve the Company's annual balance sheet, appoint and/or remove its directors and statutory auditors and deal with any other matter in connection with the Company's ordinary course of business.

proceedings for the filing and registration of an S.A. generally take around 10 business days.

## II. Sociedad de Responsabilidad Limitada

A Sociedad de Responsabilidad Limitada ("S.R.L.") enables its quota-holders to limit their liability to the par value of the quotas they have agreed to subscribe, except for their joint and several liability for the actual payment of any amounts agreed to be subscribed by the other quota-holders.

An S.R.L. must register with the Public Register of Commerce to be authorized to operate effectively in Argentina.

Organizing an S.R.L. involves the following requirements:

- Partners or Quota-holders: not less than two and not more than fifty. Partners or quota-holders may be residents or non-residents (whether natural or legal persons) in Argentina.
- The management of an S.R.L. is vested in a manager or a Board of Managers or Managing Board (more than one manager). Managers need not be partners but most of them must be residents in Argentina. Managers must also furnish a guaranty in favor of the S.R.L. to ensure the faithful discharge of their duties.
- the corporate authority governing an S.R.L. and making resolutions is the Quota-holders' Meeting.

Proceedings for the filing and registration of an S.R.L. generally take around 10 business days.

Special requirements for a foreign company to organize an S.A. or an S.R.L.

For a foreign company to organize an S.A. or an S.R.L., it must file evidence with the Public Register of Commerce that it has been organized under the laws of its country of origin and must register its Memorandum of Association and By-laws, and any and all amendments thereto, if any.

Companies organized abroad must meet certain requirements to be qualified to act as shareholders of a local company.

One of the goals sought is to limit and control the use of "off-shore" companies organized abroad with a sole main corporate purpose to be conducted in Argentina and to prevent legitimization of assets of illegal source and violation of tax rules.

## III. Branch

Section 118 of BCL states that a foreign company may conduct business regularly in our country through the settlement of a branch.

The main features of a Branch are as follows:

- A branch may carry out business transactions within the scope and limitations to be determined by its Parent Company.
- There are no minimum capital requirements for a branch. Its Parent Company may or may not assign capital to it.
- A branch has no Board of Directors. Local transactions are handled by a duly appointed representative(s). No statutory auditors are required.
- Transactions performed by the Branch do not entail limited liability. Courts do not admit that the liability of the Parent Company is limited to the net assets or capital assigned to the Branch. Thus, the Parent Company becomes fully liable for all transactions carried out by the Branch.

- The Branch must keep books of account separate from those of the Parent Company, where local operations will be recorded. As is the case with an S.A. or an S.R.L., A Branch must file its annual balance sheet.
- Taxwise, the Branch is subject to a 35% income tax. Profits distributed to the Parent Company shall not be levied with other taxes.
- Proceedings for the filing and registration of a Branch generally take around 10 business days.

The main difference between an S.A. and an S.R.L. lies on the tax treatment applicable to the profits obtained by a non-resident shareholder or partner from the transfer of shares of an S.A. or quotas of an S.R.L., as applicable.

Likewise, it must be pointed out that proceeds from the sale of shares of an S.A. by a non-resident shareholder (whether a natural or artificial person) shall not be subject to income tax. Contrariwise, transfers of quotas in an S.R.L. by a non-resident quota-holder (whether a natural or artificial person) will be subject to income tax at an effective rate of 17.5% on the sales price (35% on 50% of estimated income) or at least at a 35% rate on the difference arising between the purchase price and the sales price, at the taxpayer's option.

Conduct of business through an S.R.L. may have a tax advantage if the foreign company is organized in the United States of America. This is so provided the S.R.L. qualifies as a "look through entity".

## ➤ **Foreign investments in Argentina**

### **1. Foreign investment law.**

In 1976, the Argentine Government by enacting law No. 21,382 set a new legal system for the promotion of foreign investments in Argentina, based on the principle of nondiscrimination as regards the treatment of national and foreign investors.

The above law was from time to time amended and then restated by the National Executive branch in 1993 through Decree No. 1,853. Pursuant to the Foreign Investment Law and Decree 1,853,

- (i) Foreign investors<sup>1</sup> may make investments in Argentina with no prior approval, on an equal footing with investors domiciled locally.
- (ii) Foreign investors investing capital in Argentina<sup>2</sup> for the promotion of economic activities<sup>3</sup>, or the enlargement or streamlining of existing ones, have the same rights and obligations as those granted by the Constitution and the laws to National investors (pursuant to the provisions of the law and those of special or promotional systems). The concept of foreign investor includes Argentine natural or legal persons domiciled outside the National territory.
- (iii) "foreign capital investment" means (a) any capital contribution made by foreign investors for economic activities conducted in Argentina; and (b) the acquisition by foreign investors of ownership interests in an existing local company.

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<sup>1</sup> "Foreign investor" is any natural or legal person domiciled outside the Argentine territory that owns a foreign capital investment, and any local companies with foreign capital as defined in the next paragraph of this section, when they are investors in other local companies.

<sup>2</sup> Pursuant to the provision of sect. 3 of Law No. 21,382, investments may be made by any of the following: (a) Freely-convertible foreign currency; (b) Capital assets, their spare parts and accessories; (c) Profits or capital in Argentine currency owned by foreign investors, provided they meet all legal qualifications to be transferred abroad; (d) Capitalization of foreign funding in freely-convertible foreign currency; (e) Intangible assets, in accordance with specific legislation; or (f) Any other manners of contribution contemplated by special or promotional systems.

<sup>3</sup> Economic or productive activities are understood to be any and all industrial, mining, agribusiness, commercial, financial, service-providing or other activities related to the production or exchange of goods or services.

- (iv) “Foreign capital local company” is any company domiciled in the territory of the Republic of Argentina, in which natural or legal entities domiciled outside such territory own, directly or indirectly, over 49% of its capital or hold directly or indirectly the number of voting securities required to prevail in shareholders’ meetings or partners’ meetings.
- (v) Foreign investors may transfer abroad net realized profits derived from their investments and also repatriate their investment. This right may be exercised at any time. Upon the elapsing of the minimum term to be fixed from time to time by the Central Bank of the Argentine Republic in accordance with the exchange control rules then in force.
- (vi) Foreign investors may use any of the legal forms of organization provided for by the Argentine law.
- (vii) Foreign Capital Local Companies may have access to local funding with the same rights and under the same conditions as Argentine companies with local capital.
- (viii) Inclusion within the foreign investment system of temporary contributions of foreign capital made on account of performance under a lease agreement, a contract for works or for services or otherwise, is at the contributors’ discretion.
- (ix) Juridical acts performed between a foreign Company Local Company and the company directly or indirectly controlling it or other affiliate of the latter are deemed to be made on an arm’s length basis whenever their terms and conditions fall within normal arm’s length market practices.

## **2. Promotional treaties and treaties for the mutual protection of investments.**

Since the early 1990s, and for purposes of promoting foreign investment in the country, the Republic of Argentina has signed promotional treaties and treaties for the mutual protection of Investments with countries such as Italy, Great Britain, Germany, Switzerland, France, Poland, Chile, Spain, Canada, Sweden, United States of America, Denmark, China, Venezuela, Ecuador, Portugal, Peru, Bolivia, Australia, Israel, and Mexico.

In general terms, under those treaties the Republic of Argentina (i) committed to give fair and reasonable treatment to national investors of the other party states, in no case less favorable than that given to local investors or the most favored nation, and (ii) submitted itself to the competent jurisdiction of international arbitration courts should any disputes arise with investors from the other signatory country, pursuant to certain conditions that may vary from one treaty to another.

## **3. Foreign Exchange Rules and Regulations Issued by the Central Bank of the Republic Of Argentina**

### **3.1. Introduction.**

The foreign exchange system is used as an additional economic policy tool, particularly for controlling both the value of local currency against foreign currency and the flow of capitals.

### **3.2. Current Investment system.**

As concerns foreign investments, the foreign exchange system currently in force states as follows:

Registration of incoming and outgoing foreign currency: Incoming and outgoing foreign currency is subject to recording by the Central Bank of the Republic of Argentina (the Argentine Central Bank). Registration is made simultaneously with the purchase or sale of currency in the foreign exchange market.

Payment of profits and dividends: Transfer of funds abroad is allowed for the payment of profits and dividends to foreign shareholders.

Minimum term required for investments to remain in the local market: Investments are subject to minimum terms during which they must remain in the local market. At present such term is 365 calendar days.

Repatriation of direct investments (long-term investments in local companies): repatriation of direct investments is allowed (due to the sale or liquidation of the investment in the country), under certain restrictions regarding amounts and terms. Repatriation of irrevocable capital contributions is subject to the Argentine Central Bank’s prior authorization.

Portfolio Investments: Funds flowing into the market for portfolio investments are subject to a 30% withholding or “*encaje*”, consisting in a non-interest bearing US dollar deposit to be made in an Argentine financial institution for a 365 calendar day term. In addition, the minimum term for investment to remain in the local market is 365 calendar days.

## ➤ Argentine Tax System

In Argentina there are three levels of authorities that may create and levy taxes, namely the Federal Government, the Provinces (or States) and the Municipalities (or Counties).

Below is a description of the main Argentine taxes applicable to individuals, companies, branches of non-resident companies and permanent establishments.

### Federal level:

Income Tax- Tax on Minimum Presumed Income - Value Added Tax - Tax on Personal Assets -Tax on Bank Credits and Debits - Excise Taxes

### Provincial level:

Turnover Tax - Stamp Tax

### Municipal level:

Dues and Fees

## **Federal Taxes.**

1. Income Tax.
- 1.1. Residents.

Generally speaking, it can be said that Income Tax Law (“ITL”) subjects to tax all income from Argentine and/or foreign source obtained by Argentine residents (on a worldwide basis). Non-residents are taxed only on their Argentine source income. Permanent Establishments are considered as residents and taxed accordingly.

### 1.1.1. Corporate Tax.

Corporate Income Tax is paid as follows:

- a. Corporations pay 35% on their net taxable income at the end of the fiscal year.
- b. Branches of foreign companies pay 35% on their net taxable income at the end of the tax year, regardless of whether they remit profits to their Home Offices.

Corporate taxpayers must file their tax returns and pay this tax within five months following their fiscal year closing date. Notwithstanding this, ten monthly advance installments must be paid on account of the Income Tax that is ultimately due at the end of the fiscal year. In the first fiscal year of business, advance installments are not payable.

The net operating losses of a fiscal year may be carried forward up to five years. Losses originated in the transfer of shares, quotas of limited liability companies or interest in other companies may only be used to offset income stemming from the same transactions.

Net operating losses of foreign source may only be used to offset income of the same origin. There is no carry-back of losses.

Losses originated in (i) the transfer of shares, quotas of limited liability companies or interest in other companies; and (ii) rights or obligations stemming from derivative instruments or contracts (except for hedging transactions), may only be used to offset income stemming from the same transactions, respectively.

ITL does not provide for a system of group tax consolidation, allowing a group of companies to file a consolidated tax return or enabling Income Tax to be assessed as a tax unit.

### 1.1.2 Individuals taxation.

Individuals subject to this tax must pay it on the basis of an annual fixed tax amount (maximum 28,500 Pesos) plus 35% on the excess of 120,000 Pesos of annual taxable income

Employees are taxed through a pay-as-you-earn (PAYE) system, by means of withholdings made by the employer on each payment.

#### 1.1.3 Foreign tax credit.

Income or similar taxes paid abroad on income obtained therein may be credited against Argentine Income Tax. The credit is limited to the amount of Argentine tax that would be imposed on that foreign-source income if no credit for foreign tax were given.

#### 1.1.4 Withholding systems.

Import of assets to be sold in the Argentine market is subject to an Income Tax withholding amounting to 3% on the value of the assets (as determined in calculating Custom duties but deducting Excise Tax and Value Added Tax). This withholding is not applicable on the import of fixed assets. Import of assets to be used or consumed by the importer is subject to an 11% Income Tax withholding.

There are other Income Tax withholding regimes applicable to different kinds of payment made to a taxpayer.

Withholdings are deemed to be tax paid and, therefore, they may be computed by the importer in his Income Tax return. Should this withholding system generate a balance in favor of the taxpayer, the taxpayer may use this balance to pay other taxes.

#### 1.2 Non-Residents.

Non-residents are taxed only on their Argentine source income by means of a 35% withholding on a certain percentage of net presumed income (which varies according to the different kinds of payment) provided for in the ITL, as a single and final payment.

#### 1.3 Thin Capitalization.

Any business-related interest is, in principle, deductible. Notwithstanding the above, due to the limitations imposed by thin capitalization rules applicable to business entities (excluding banks, finance trusts and leasing companies), the deductibility of interest on financial debt may be limited in the case the creditor is a non-resident controlling entity and the interest payment is not subject to an effective Income Tax withholding at a 35% tax rate. Transfer pricing rules contained in the ITL must be followed in order to ascertain the existence of control by non-resident entities.

Interest is not deductible in the same proportion if the funding subject to thin capitalization rules exceeds two times the net worth stated in the financial statements of the debtor at the end of the fiscal year. Any interest exceeding the abovementioned ratio would be non-deductible for the local company and would be treated as a dividend.

#### 1.4 Transfer Pricing.

Transfer pricing rules apply when an Argentine company enters into business transactions with: (i) A related company located abroad, or (ii) A non-related company located in a low tax jurisdiction, and the prices agreed upon in such transactions do not reflect normal market practices (i.e. are not at arm's length). An arm's length price is the price independent parties would have agreed upon under the same or similar circumstances.

Pursuant to transfer pricing rules, any transaction between an Argentine company and an individual or a company, organized, domiciled or located in a low-tax jurisdiction is deemed not to be at arm's length. Implementation rules have provided a list of jurisdictions and tax regimes of some countries that are considered low-tax jurisdictions.

Transactions between related parties must be carried out at arm's length. As far as the taxpayer cannot prove the foregoing, tax authorities can make transfer pricing adjustments to the income and expenses allocated between the parties.

#### 1.5 Sale of Shares.

It should be stressed that any income stemming from the sale of shares in a corporation by non-resident shareholders (and by shareholders that are resident individuals, unless they are engaged in selling shares on a frequent basis) is not subject to Income Tax. On the contrary, the transfer of quotas in a Limited Liability Company (or “Sociedad de Responsabilidad Limitada”) by a resident or non-resident corporation is subject to Income Tax.

#### 1.6. Dividends.

In principle, dividends paid by local corporations, either to residents or non-residents, and remittances of profits abroad, are not subject to Income Tax withholdings. Dividends paid or profits remitted abroad in excess of the taxable income of the relevant fiscal year (minus any Income Tax paid plus any dividends received) are subject to a 35% Income Tax withholding (Equalization tax).

#### 2. Tax on Minimum Presumed Income.

Tax on Minimum Presumed Income is levied at a 1% rate on assets, either located in Argentina or abroad, owned (among others) by companies, branches of non-resident companies, permanent establishments, rural real property owned by natural persons and undivided estates, non-financial trusts and mutual investment funds set up in Argentina which do not engage in public offerings.

In the case of Argentine banks (or other financial entities authorized by the Argentine Central Bank) or duly authorized insurance companies or leasing companies, the taxable base is limited to 20% of their respective assets.

For consignees of livestock, national products and domestic commodities, the taxable base is limited to 40% of the assets exclusively used in such activity.

In the case of rural real property owned by natural persons and undivided estates, the taxable base shall be reduced in an amount equal to 25% of the value of the land.

the following assets, among others, are exempted from this tax:

- (i) Assets owned by registered mining companies affected to the mining activity; and
- (ii) Shares and interest in other companies or establishments subject to this tax.

Dividends and profits received from other companies or permanent establishments are non-computable. Likewise, the following assets are not to be computed within the taxable base:

- a) Capital contributions made by shareholders on account of future subscription of shares;
- b) The value of brand-new fixed assets (except automobiles) in the fiscal year of its purchase; and
- c) The value of investments in constructions of (or improvements to) real Estate in the fiscal year in which they are made and in the following one.

Income Tax assessed for the same fiscal year may be computed as a payment on account of this tax. Any balance of this Minimum Presumed Income Tax may be carried forward up to a maximum of ten fiscal periods, to absorb any Income Tax payable on such future fiscal periods.

#### 3. Value Added Tax.

Value Added Tax (“VAT”) is levied on: the sales of movables in Argentina, on contracts for works and for services in general, and on imports of movables. Also, VAT is payable on services rendered from abroad which are effectively used in Argentina and on leases of real estate (with some exemptions).

The general rate of this tax as established in the VAT law is 21%, while some taxable events are subject to a 27% rate. For certain activities or goods a reduced rate applies amounting to 10.5%. For example, interest on loans granted by Argentine banks (or other financial entities authorized by the Argentine Central Bank) and on loans granted by banks of countries whose central banks apply the rules issued by the Basle committee.

The tax payable is the difference between Output VAT (or VAT applicable to the sales made or services rendered by them) and Input VAT (or VAT charged by their suppliers or providers). VAT balances for the taxpayer cannot be offset against other taxes or reimbursed. Tax credit balances are carried forward month by month.

Export of assets and/or services are not subject to VAT. Exporters are allowed to request the reimbursement of the export-related input VAT (that could not be offset against output VAT), generating a balance favorable to the exporter.

Import of movables into Argentina is subject to an additional VAT withholding amounting to 10% on the value of the assets (as determined in calculating Customs duties but deducting Excise Tax and Value Added Tax). In the case of assets subject to a reduced 10,5% VAT rate, withholding amounts to 5%. This withholding is not applicable on the import of fixed assets or assets to be used or consumed by the importer.

#### 4. Personal Assets Tax.

This tax is basically imposed on assets existing as of December 31 each year held by:

- (i) Resident individuals and estates, which are located in Argentina and abroad; and
- (ii) Non-resident individuals and estates, WHICH are located in Argentina.

Non-residents pay this tax exclusively on their assets in Argentina, unless they become Argentine residents (for example upon being granted a permanent residence permit or by staying in the country for more than twelve months), in which case they also pay on their assets located abroad.

This tax is paid at a rate of 0.5% on assets whose aggregate value exceeds \$102,300; and 0.75% if their value exceeds \$ 200,000.

Shareholdings and/or interests in local companies owned by resident or non-resident individuals or non-resident entities<sup>4</sup> are subject to this tax. The local company should pay the tax, as a substitute taxpayer<sup>5</sup> in connection with the equity interests of its shareholders, at a rate of 0.5% of the net worth value per share of the company, as reflected in the last balance sheet ended December 31 of the fiscal year in which payment is made. Branches of foreign companies are not obliged to act as a substitute taxpayer of this tax.

#### 5. Tax on Bank Credits and Debits.

This tax is levied on bank accounts credits and debits. The general tax rate applicable is equal to 0.6% for each credit and 0.6% for each debit. There are specific tax rates for specific circumstances (such as avoidance of the use of a bank account by means of an organized system of payments) or activities. A 34% of 0.6% on the amounts credited in the said accounts, may be computed as a credit for payment of Income Tax or Tax on Minimum Presumed Income.

#### 6. Excise Tax.

Excise Tax (or Internal Tax) is levied on producers, manufacturers or importers of goods expressly specified by the law (e.g., insurance, tobacco, spirits, soft drinks, certain automobiles, motors, wine, etc.) and apply to only one stage of production. The applicable rates vary according to the goods concerned and are generally imposed on the sales price.

### **Provincial Taxes.**

#### 7. Turnover Tax.

Turnover Tax (“Impuesto sobre los Ingresos Brutos”), which is a tax on gross income, is the most relevant tax within the general Argentine Provincial Tax system. It is also levied in the City of Buenos Aires.

This tax is levied on all kinds of industrial or commercial activities carried out regularly and for a consideration. The tax base comprises gross income (or the total amount received in cash, in kind or as a service) arising from the taxpayer's commercial activity and its tax rate varies depending upon the activity and the jurisdiction. Exemptions are available for many

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<sup>4</sup> In the case of non-resident entities being the direct holder of shares or interest in a local company of any kind, the law presumes *iure et de iure* that such shares or interest are held indirectly by non-resident individuals and, therefore, they will be taxed accordingly.

<sup>5</sup> The local company will pay the tax, and has the right to be reimbursed by the shareholders for the tax paid; and for that purpose it may withhold and/or request the realization of the assets that originated the tax (i.e. shares, quotas, etc.).

industrial activities, subject to certain conditions, as a result of a tax agreement entered by and between the Federal Government and the Provinces.

In the City of Buenos Aires, the applicable rates are:

3% for the sale of goods (either wholesale or retail) and for works and services;

1% for certain primary activities; and

3% for industrial activities (only if the activity or transaction is not exempted).

Other rates are applied on certain specific activities (such as 1.5% on construction; 4.9% on commissions paid to agents or brokers; 5.5% on financial activities developed by non-financial entities; etc.).

#### 8. Stamp Tax.

Stamp Tax is levied by most Provinces on documents evidencing transactions for a consideration, such as contracts, acknowledgment of debts, incorporation of companies, promissory notes, corporate capital increases, transfer of real estate, etc.

In general, the rate applied is 1% on the economic value of such instruments, except on the transfer of real estate which rate is usually higher (for example in the Province of Buenos Aires it is 4%). In the City of Buenos Aires, Stamp Tax is only levied on the transfer of real estate.

Some Provinces have repealed this tax on financial and insurance transactions related to agricultural, industrial, mining and construction activities.

#### **Municipal Taxes.**

#### 9. Duties and Fees.

Municipal taxes are grouped in various categories. Their configuration and amount depend on the jurisdiction in question, but, in general, they are not relatively significant.

#### **Double Tax Treaties.**

Argentina has signed treaties, still in force, for the avoidance of double taxation and fiscal evasion with the following countries:

Australia	Canada	Germany	Sweden
Austria	Chile	Italy	Switzerland
Belgium	Denmark	Netherlands	United Kingdom
Bolivia	Finland	Norway	
Brazil	France	Spain	

Through the application of the treaties a non-resident might, among other benefits, considerably reduce (or avoid) Argentine withholding taxes as described in item 1.2 above (Income Tax). Further, under the provisions of some of these treaties, shareholdings owned by non-residents may be excluded from THE TAX on Personal Assets.

Treaties with Latin American countries follow the Andean Group model while the others follow, in general, the terms of the OECD and of the UN Model Convention. Argentina and the United States have not signed a treaty to avoid double taxation regarding Income Tax but negotiations have been carried out and are expected to continue in the future.

#### ➤ **Labor law and social security system.**

Argentine labor legislation provides for a comprehensive coverage of all aspects related to employment contracts, social security, and organization and operation of trade unions.

In Argentina employment relationships are governed mainly by the following laws:

No. 20,744 - Employment Contract Law

No. 24,013 - National Employment Law

## No. 24,557- Occupational Accidents Law

In addition to the above laws, employment relationships are subject to Collective Bargaining Agreements entered into between the Associations which bring together and represent employers according to their specific activity and the trade unions which represent employees according to their particular lines of work. Due to their characteristics, some specific activities are subject to special statutes, which supplement or substitute the Employment Contract Law.

### 1. Employment Contract Law (ECL)

The ECL regulates in detail all aspects related to the rights and duties of the parties to an employment contract, such as working hours, remuneration protection, weekly rest period, vacations, disciplinary system and termination of the employment contract.

The ECL is deemed to be a "public policy" rule; this means that an employment contract will inevitably be ruled by it and the parties may not establish working conditions less beneficial to the worker than those imposed by the ECL, while on the contrary, they may agree upon more favorable terms.

### 2. Employment Contract

#### 2.1 General Principle

The general principle is that the employment contract remains in force for an indefinite period of time, i.e., until it is terminated due to one of the causes established by law.

Furthermore, according to the ECL, the labor relationship does not require formal instrumentation since the rendering of services by the employee and the payment of the remuneration by the employer entail the existence of such relationship.

#### 2.1. Fixed term contract

According to the ECL, an employment contract may be executed for a predetermined length of time only in the following circumstances:

- a) when its duration has been expressly fixed in writing;
- b) when a reasonable appreciation of the work or activity to be performed by the employee so justifies.

#### 2.2 Temporary work agencies

These are understood as those entities which, having been organized as corporate persons, have, as their exclusive purpose, the assignment to third parties of industrial, administrative, technical or professional personnel to render on a temporary and extraordinary basis services previously specified or to meet extraordinary temporary needs of a company without stipulating a definite term for the expiry of the work contract.

The corporate user will be jointly and severally liable with the agency for all labor and social security obligations due.

Workers hired by users via temporary work agencies not authorized by the Ministry of Labor and Social Security shall be regarded as permanent personnel of the user.

### 3. Remuneration

Remuneration consists in the payment received by the worker in return for discharging his duties. The minimum base salary to be paid is established by the Collective Bargaining Agreement applicable to activities developed by the Company.

The Minimum Living Salary represents the minimum consideration to be collected in cash by employees, if no Collective Bargaining Agreement applies to such employee. The National Employment, Productivity and Adjustable Minimum Living Salary Council will fix such salary.

Any stipulation for a salary lower than the Minimum Living Salary or the Salary fixed by the applicable Collective Bargaining Agreement is null and void.

Remuneration may be paid in cash, in kind, through housing, food or the opportunity to obtain fringe benefits. Payment in kind may not exceed 20% of the full remuneration.

On June 30 and December 31 of each year, the employee must be paid an additional 50% of the highest monthly salary received during the semester in question (legal annual bonus). When employees have not worked the full six months, the legal annual bonus is paid proportionately.

#### 4. Work schedule and rest period

Basically, the work schedule may not exceed 8 (eight) daily hours or 48 (forty-eight) weekly hours. Overtime is understood to be the time in excess of the maximum work schedule.

On business days, overtime entails a 50% surcharge calculated according to the regular and habitual remuneration and on Saturdays after 1 p.m., Sundays and holidays the surcharge is 100%.

Overtime is paid jointly with the salary pertaining to the period during which the extra work was performed.

#### 5. Termination of the employment contract

Labor legislation authorizes the employer to dismiss the employee for cause or without cause.

Firstly, the laws in force allow a probationary period for contracts executed for an indefinite period of time.

In case of dismissal without cause, upon the expiry of the probationary period, it is mandatory for the employer to serve notice of the dismissal and pay an indemnity based on seniority.

Dismissal for cause

The ECL provides for the dismissal of an employee for cause. It does not include a specific enumeration of the worker's actions considered to be causes that justify dismissal.

#### 6. Situations that may render severance pay more burdensome

- 6.1. Maternity
- 6.2. Marriage
- 6.3. Union Representatives

#### 7. Vacation

The Employment Contract Law ensures that workers will have the right to receive their remuneration while enjoying their annual vacation, which varies according to seniority, as follows:

Seniority	Vacation
under 5 years	14 consecutive days
between 5 and up to 10 years	21 consecutive days
between 10 and up to 20 years	28 consecutive days
more than 20 years	35 consecutive days

The employee, in order to be entitled to vacation, must have worked for more than half the business days of the year to which vacations apply. When the employee does not meet the minimum time required, he will be granted one day of vacation per every twenty days worked.

In general, collective bargaining agreements provide for other leaves of absence that are added to the foregoing.

#### 8. Occupational Accidents

Law 24,557 creates a special system to prevent occupational accidents and a special procedure to be followed in case an accident actually occurs and until the employee may resume work.

This law requires that personnel be insured by Labor Risk Insurers (known as ARTs), which must provide the necessary medical care and prosthesis and pay salaries and indemnities in case of occupational accidents.

On the other hand, subject to specific requirements, the employer may take out “self-insurance” to cover its employees’ occupational accidents.

## 9. Social Security System

### 9.1. Dues and contributions

The Argentine Social Security System is financed with employees’ dues and employers’ contributions calculated upon employees' salaries.

The percentage of dues and contributions varies depending on the geographic area where the employee performs his duties and is also periodically adjusted by the Government.

The current dues and contributions rates payable in respect of employees working in the City of Buenos Aires are the following:

Item	Dues (employee)	Contributions (employer)
(a) Pension	11% payable by employees that contribute to the Public System and 7% payable by those employees that have elected to contribute to the Private System (Pension and Retirement Fund Administrators). As from July 2006, the 7% rate applicable will be increased to 9% and then as from October 2006, to 11%.	Maximum of 17% or 21% depending on the business of the employer and its location.
(b) National Institute of Pensioners	3%	-
(c) Public Health Care	3%	6%
(d) Pension Fund under a Collective Bargaining Agreement		(*)
(e) Union dues		(*)

(\*) The existence of these items depends on the Collective Bargaining Agreement (CBA) applicable to the Company. Several CBA have dues and/or contributions regarding the employees under the scope of the CBA and/or the payroll of the Company.

### 9.2. Pensions and Retirement Pay

Law 24,241 governs the pension and retirement pay system applicable to all those people who render services under a permanent employment relationship -or on a fixed-term basis- and also to all independent workers in Argentina.

The system consists in a Share System, which is public (i.e. in charge of the National Government) and a Capitalization System, which is private (i.e. in charge of Pension and Retirement Fund Administrators).

The system is financed basically on a two-way basis: a) via the dues payable by employees, pro rata their remuneration which is withheld by the employer for depositing with the respective official agency; and b) via a contribution by the employer on the basis of a percentage of the aggregate remuneration paid to its employees. The dues payable by independent workers are established on the basis of a percentage (27%) of their assumed income as fixed by law.

The dues payable by the employee and 11% of the dues payable by the independent workers are allocated to the Share System or to the Capitalization System, at the employee’s discretion. The contributions payable by the company and the remaining 16% of dues payable by independent workers are allocated to finance the share or public system.

### 9.3. Mandatory collective life insurance.

The employer is obliged to take out group life insurance to cover the risks of death and full, absolute, permanent and irreversible disability of all employed workers. The amount to be received by the beneficiaries of such insurance in the event of the worker’s death is currently \$6,000.

Failure to take out the insurance shall make the respective employer directly responsible for paying the benefit.

## 10. Labor Unions

The system currently in force provides for the existence of one legally recognized trade union for every line of business.

The legally recognized trade union represents all the workers who fall within the scope of its representation and is exclusively entitled to negotiate and execute the applicable collective bargaining agreement.

### ➤ **Intellectual Property**

#### **Copyright**

Acknowledgment of copyright in Argentina can be traced back to the Argentine Constitution, which in its Section 17 states that all authors are the proprietary owners of their works for as long as the law determines.

Particularly, Intellectual property rights are governed by Law No. 11,723, as well as the Berne convention and the Universal Copyright Convention.

Copyright protects the formal aspect of creations, that is, only the manner and mode of expression, while the idea remains in the public domain, being a part of the common heritage.

As a general rule, copyright protection is valid all through the author's life and remains with the author's heirs for the next 70 years. Moral rights are perpetual and inalienable.

For a foreign work to be protected, its author must meet the protection formalities currently in force in the country where the work was first published. Once such requirement has been fulfilled, a foreign work will enjoy the same protection as an Argentine work.

Even though registration of a works is not compulsory (It is acknowledged as such from the moment it is created), it is advisable to have it registered to preserve it from any eventual infringements to its rights as conferred by law. Registration process is simple and fast. Copyright registration grants a presumption "iuris tantum" to the author. Assignment of rights must be registered.

Reproducing or publishing a works without its author's consent is, inter alia, an infraction to intellectual property rights. Such infringement is enforceable before courts of both civil and criminal jurisdiction.

#### **Patent rights and Utility models**

Legislation currently in force is Law N° 24,481. In addition, Argentina is a member of the Paris convention (Law N° 17,011) and of the TRIPS (Trade-related aspects of Intellectual property rights) Agreement (Law N° 24,425). Argentina is not a member to the Patent Cooperation Treaty (PCT).

Legal protection is valid for 20 years from the filing application date.

It is possible to claim the Paris Convention priority right, which states a 12-month term counted from the date an earlier application has been filed.

It is necessary to exploit the patent to prevent it from becoming null and void. Such exploitation may be done by the patent holder himself or by a third party. The law defines exploitation as the production, distribution, marketing or import of the subject matter of the patent.

Utility models are inventions relating to improvements made to the functionality of utensils, tools, etc.

The protection term of utility models is 10 years from filing application date and, in general, they are governed by the same provisions as those regulating patents.

#### **Trademarks**

Trademark is governed by Law N° 22,362 and by the Paris Convention for the Protection of Intellectual property rights.

To receive protection, a trademark must be registered with the Trademark office. Notwithstanding the above, case law has allowed unregistered trademarks but only in exceptional cases for very well-known trademarks, used ostensibly, continuously and uncontestedly.

The protection term is 10 years and is renewable for like periods on an indefinite basis.

Foreign trademarks are acknowledged by our system provided they are duly registered in our country, except for well-known trademarks, which are ruled by the protection principle for well-known trademarks provided for by the Paris Convention.

It is possible to claim the Paris Convention priority right, which states a 6-month term counted from the date an earlier application has been filed.

### **Domain names (.ar)**

NIC Argentina is the entity which identifies the Ministry of Foreign relations, international trade and worship as the Argentine Internet domain Manager.

Registration of the domain name will be valid for a year computed as from registration date, and is renewable. Renewal may be applied for during the last month of the valid registration term. Should the owner not apply for renewal before expiration of that period, the name will be automatically deregistered.

NIC Argentina will not serve as a mediator or an arbitrator, nor get involved in any manner whatsoever, in any conflicts that may eventually arise among owners and/or applicants and/or third parties, in connection with the registration or use of a domain name.

### **Industrial models and designs**

They are locally governed by Decree Law N° 6673/63 and internationally ruled by the provisions of the Paris Convention.

foreign industrial models and designs are protected in Argentina provided they are duly registered in it.

It is possible to claim the Paris Convention priority right, which states a 6-month term counted from the date an earlier application has been filed.

Legal protection is valid for 5 years and is renewable for two like consecutive periods.

### **Technology Transfer**

Technology transfer is governed by Law N° 22,426, regulated by Decree N° 580/81. The main purpose of this regulation is to promote modernization of productive businesses of the National industry, by creating the conditions for the introduction of new technologies.

To such effects, the authority's prior approval is no longer required in connection with agreements for the transfer of, and license to, use technology and trademarks, entered into between companies or persons related with one another, which means that registration is done for informative purposes only. Agreements are registered with the National Institute of Industrial Property.

Under the Technology Transfer law there fall all juridical acts done for a consideration whose main or secondary purpose is the transfer, assignment or license of technologies or trademarks by people domiciled abroad to natural or legal persons, whether private or public, domiciled in Argentina, provided those acts have their effects in the territory of the Republic of Argentina.

The failure to register the above agreements will not impair the validity of the agreement or of any of their clauses, but Licensee's services provided to licensor may not be deducted as expenses, for tax purposes, by Licensee and the aggregate amounts paid in respect of those acts will be deemed as Licensor's net profit.

#### **➤ Visas for foreigners (\*)**

(\*) Some aspects may vary according to the nationality of the foreign person.

**Tourist Visa** – This visa is intended for people who want to come into Argentina only for tourist purposes. It does not authorize foreigners to do business or work.

Generally, this permit is obtained upon the foreigner arrives at the pertinent frontier and shows his/her valid passport or identity document if he/she is a national of a neighboring country.

Under this permit, residence in Argentina is authorized for a maximum ninety (90) day term.

**Entrepreneurial Visas** - This visa is intended for people who are engaged in conducting their own businesses or have a significant interest percentage in the companies they manage.

A) Business Visa:

The business visa is designed for short periods (up to 90 days) and authorizes foreign citizens to travel to the Republic of Argentina to take part in business meetings, analyze Argentine investments and participate in market research.

The holder of a business visa is not authorized to get involved in hand-on training or in any other productive activities, such as giving advice for a consideration or being engaged by an Argentine company.

B) Visa for foreign company representatives:

This visa is intended for foreign businessmen who come into the country as attorneys in fact or representatives of companies settled abroad. This visa is the most suitable for cases when the foreign company has no representation office in Argentina.

This permit is generally granted for periods of up to one year, it is renewable and authorizes its holder to work, obtain a National Identity Document and a Driving License, and bring in his/her personal belongings.

C) Visa for entrepreneurs:

This visa is intended for foreigners who are engaged in regularly conducting their business or commercial or economic transactions for their own account, at their own risk or with their own capital, or by having a significant interest in companies or legal entities engaged in the above businesses and who are interested in, and capable of, settling or investing in the Republic of Argentina.

This visa is generally granted for periods of up to one year, it is renewable and authorizes its holder to work, obtain a National Identity Document and a Driving License, and bring in his/her personal belongings.

**Employment Visas.** – This classification includes those workers who will be engaged by an Argentine company on an employer-employed basis, or who maintain an employer-employed relationship with a foreign company.

A) Technical Visa

This visa is granted to technical personnel transferred to Argentina and remaining on the payroll of the foreign company.

The technical visa authorizes its holder to work, obtain a National Identity Document and a Driving License, and bring in his/her personal belongings.

Due to certain discrepancies between migration regulations and labor and social security laws, this type of visa is advisable only for periods not exceeding three months.

B) Temporary Work Visa

This visa is intended for foreign citizens who are transferred to Argentina for long periods to work as employees of local companies.

The beneficiaries of this kind of visa may extend their stay for several consecutive years and upon three years' residence in Argentina, they may be entitled to apply for the permanent residence permit.

The holder of a work visa may obtain a National Identity Document and a Driving License, and bring in his/her personal belongings.

## **Special Visas**

A) Income-earner visa:

This visa is intended for foreign citizens who earn a minimum \$ 2.500 monthly income, or any equivalent sum, collectible for a minimum two (2) year term, on a steady basis.

This visa is generally granted for one year, it is renewable and authorizes its holder to work, obtain a National Identity Document and a Driving License, and bring in his/her personal belongings.

**B) Visa for migrants with a capital of their own**

“migrants with a capital of their own” is understood as foreigners who have made a minimum \$ 100.000 investment in the Republic of Argentina, in a productive, commercial or service activity in which they can preferably evidence some prior experience.

In this event, the foreign citizen will obtain a permanent residence permit and, consequently, the national identity document and the driving license.

A migrant with a capital of his/her own is also a foreigner who evidences to be the holder of a minimum \$100.000 investment, applicable to a productive, commercial or service activity to be developed in Argentina, in which he/she can preferably evidence some prior experience.

In this event, the foreign citizen will obtain a temporary residence permit and, upon making the investment, will be granted a permanent residence permit. He/she may obtain a National Identity Document and a Driving License, and bring in his/her personal belongings free of duties.

**Special Permits**

**Work Permit:**

A work permit is an authorization to work which the Argentine Migration Department (*Dirección Nacional de Migraciones*) grants to foreigners located in the Republic of Argentina under a migration qualification (such as tourist or business) which does not entitle them to work.

This work permit is granted for a 15-calendar day term and is renewable for a like term. Upon its expiration, the foreigner is not allowed to continue working in Argentina, unless his/her migratory situation is regularized.