BERETTA GODOY

DOING DEALS IN ARGENTINA

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Argentina overview

Argentina is a key member of the Common Southern Market or MERCOSUR, which also has Brazil, Paraguay and Uruguay as full member countries and Bolivia, Chile, Colombia, Ecuador, Peru, and Venezuela as associate members.

Based on its abundant natural resources and its highly educated and flexible workforce, Argentina has a strong economy. Its GDP for 2013 was USD 611.8 billion.[1] It also has a GDP to debt ratio of only 18.8%.

Argentina offers a profitable investment opportunity for foreign companies with historically high returns. In 2012, the average annual return on foreign direct investments was 7.8%.[2]

There are currently around 2,000 multinational companies operating in Argentina in the agribusiness, energy and natural resources, automotive, chemical and petrochemical, pharmaceutical, information technology and telecommunications sectors, among others.

Argentina is geographically the eighth largest country in the world. It has an Atlantic Ocean coastline and access to the Pacific Ocean. It also has substantial fertile land and water within its territory, rich with natural resources:

- Ninth largest agricultural area in the world with 140 million hectares of arable lands.
- Third largest producer of genetically modified crops, offering competitive advantages.
- 4,500 km of mountain ranges with mining resources: gold, copper, lithium, carbon, lead, zinc, tin, silver and potassium.
- 4,700 km coast along the Atlantic Ocean with rich fisheries.
- It has vast oil and gas resources with exploration and exploitation opportunities.
- It is ranked third worldwide in shale oil and shale gas reserves.

Argentina offers investment opportunities in several sectors. It is a traditional exporter of commodities, with soybean, corn and soybean oil among others. In 2012 exports exceeded USD 25 billion.

Argentina is the world's third largest producer of genetically modified crops.

Additionally, Argentina shows accelerated development in: renewable energy, biotechnology, software and creative industries among others. According to the World Bank, Argentina is ranked second in Latin America in the Logistics Performance Index of the World Bank.

In short, Argentina is a country with great potential and countless investment and trade opportunities. With access to expert professional advice, Argentina is a reliable and straightforward destination for foreign direct investment.

[1] The World Bank Country Data – Argentina: http://data.worldbank.org/country/argentina.
[2] Argentine Ministry of Foreign Affairs: www.inversiones.gov.ar/es/economia-y-negocios.

How to set up a business

I. INTRODUCTION

In order to do business on a permanent basis in Argentina, foreign investors may make use of any of the legal forms considered by the local legislation. In that sense, foreign companies may (i) carry out isolated acts; (i) set up a branch; or (ii) incorporate or participate in an Argentine company of any of the corporate types set forth in the Argentine Companies Law No. 19,550 ("ACL")

Local companies and branches must be registered with the Public Registry of Commerce ("PRC"), of the jurisdiction applicable to their legal domicile established in Argentina.

II. BRANCH OF A FOREIGN COMPANY

In order to set up a branch in Argentina, foreign companies must submit evidence of their good standing under the applicable laws of their country of incorporation, establish a domicile and appoint a legal representative in Argentina. Legal representatives are subject to the same obligations as directors of a corporation and their powers are established in a power of attorney granted in its favor.

The branch must keep separate accounting from its parent company, and file its annual financial statements with the PRC within 60 days of the closing of the fiscal year.

In the PRC of the City of Buenos Aires, as well as in many of the provinces, branches must comply with an annual information regime by evidencing (i) that its parent company is engaged in business outside Argentina;[3]and (ii) shareholders of the foreign company.

Under the ACL, branches are not considered as separate entities from their parent companies; therefore, the parent companies are liable for all of the branch's liabilities. However, the parent company may provide the Argentine branch with resources, such as capital allocation

III. PARTICIPATING IN LOCAL COMPANIES

There are basically two kinds of legal entities by means of which commercial activities may be carried out in Argentina: the corporation ("SA") and the limited liability company ("SRL").

The ACL requires SAs to be incorporated with a minimum capital stock, as of ARS100,000. The ACL does not require SRLs to be incorporated with a minimum capital stock, but it should be proportional to the company's purpose.

Companies incorporated in Argentina need to have at least two shareholders in the case of SAs or quotaholders in the case of SRLs holding a minimum of 5% of the capital stock, in accordance with the PRC criteria.

In addition, it is convenient that the minority share or partners should be entitled to, at least, 10% of the capital stock of the company in which it is a shareholder, so that their capital contributions sent from abroad are not subject to the non-interest bearing mandatory deposit set forth by the Argentine Central Bank ("BCRA") in relation to the remittances sent from abroad.[4]

[3] The regulations establish that the branch must evidence that it has current agencies, branches or representations outside Argentina, and/or non-current fixed assets or rights, and/or interests in other companies not subject to public offering and/or that it usually carries out investment transactions in stock markets set forth in their corporate purpose. This information can be evidenced by submitting the parent company's financial statements or a statement issued by an authorizing officer.
[4] Insert cross reference to tax section, when finalized.

(1) Limited Liability Companies (SRLs")

SRLs are divided into membership interests. Quotaholder liability is limited to the full payment of their equity participation in the company. Membership interests can be freely transferred unless the company's operating agreement establishes otherwise. The transfer of quotas must be reported to the Managing Partner and can be relied upon by and against third parties as from registration with the PRC.

SRLs are managed and represented by the Management, which may be composed of a sole manager or a group of managers.

SRLs can be created by means of a public or private document, which must be registered with the IGJ, after being published in the Official Gazette.

SRLs are not subject to the payment of an annual fee to the IGJ; instead, they pay a fee per registration proceeding. They are not subject to the filing with the IGJ of the annual financial statements either, except in the cases that their capital exceeds ARS 10,000,000.

Finally, SRLs must commence their registration proceedings with the Federal Tax Authority ("FTA") in order to comply with the tax obligations resulting from its business activities.

(2) Corporations ("SAs")

An SA must be incorporated by a public document and the incorporation documents must be registered with the IGJ, after being published in the Official Gazette.

SAs, as any other corporate type, must be registered with the FTA and be granted the pertinent permits and/or authorizations from other government authorities if their activity so requires (e.g., insurance, financial entities, mutual guarantee companies, etc.)

Capital is represented by shares of stock, which must be registered, non-endorsable, and can be common or preferred. The latter will entitle their holders to one dividend of preferred payment, whether cumulative or not, pursuant to the issue conditions and they may also be given an additional interest in the company's profits. Preferred shares will not entitle their holder to any voting rights, except for the cases set forth by law. The issue of bearer shares is prohibited.[5]

SAs must keep corporate and accounting books (which must be registered in advance with the PRC), and must file their financial statements on an annual basis with the PRC.

The affairs of an SA are managed by a Board of Directors composed of directors, the number of directors is established by the Bylaws. Directors are appointed through a shareholders meeting or by the statutory auditor's committee, as applicable. The term of office ranges between one and three years, pursuant to the Bylaws, and they can be reelected.

The directors of an SA must be registered with the FTA for the purpose of being listed under the self-employed workers system and obtaining their Unique Code for Tax Identification (CUIT).

SAs can also have internal surveillance bodies. If it is an individual, it is called Statutory Auditor; if it is more than one person, it is called the Statutory Auditors' Committee. They have an obligation to attend all shareholders' and Board of Directors' meetings, with the right to speak (not to vote). In addition, they keep

[5] Law No. 24587.

a number of powers that had been granted to them by law with the main purpose of protecting the corporate interest.

Moreover, a much stricter control regime by the State is in effect in relation to SAs:

- with shares or debentures are listed on a stock exchange;[6]
- with a capital stock higher than ARS 10,000,000;
- that are partially owned by the State or perform capitalization or savings transactions or request money or securities from the public in any other manner under the promise of future benefits or presentations;
- that exploit public utilities or concessions; or
- that control or are controlled by another company subject to this type of surveillance.

Finally, SAs can have a Surveillance Committee which can act jointly with the Statutory Auditor or replace him. Their functions are much wider that those applied to the Statutory Auditor and the appointment of it is not mandatory.

(3) Common basic characteristics of SAs and SRLs.

In particular, the Bylaws of both types of companies must include their basic characteristics, such as activity, company life, fiscal year, administration, etc), which once published in the Official Gazette, must be registered and approved by the PRC.

(a) Governing body

The maximum authority is the shareholders or quotaholder meeting. The shareholders or quotaholders must call for an Annual General Ordinary meeting within four months of the closing of the fiscal period, with the objective of approving the financial statements, the profit distribution and the election of the Board of Directors or Managers and Syndics, if required.

(b) Members of the Board of Directors or Management, amount and type of surety

The absolute majority of the Directors or Managers must reside in Argentina. The Directors or Managers must be registered with the FTA for the purpose of being listed under the self-employed workers system and obtaining their CUIT.

In order to validly conduct business at meetings, in principle a simple majority is needed. In general, the President or the Manager is the company's legal representative, but the Bylaws may authorize the Vice President or one or more Directors in the case of Corporations, or other Managers in case of SRLs, to take such office.

[6] In this case, the controlling entity will be the Argentine Securities and Exchange Commission (*Comisión Nacional de Valores*) and the Stock Exchange where the company is listed.

(c) Surveillance

Furthermore, SAs and SRLs can appoint a Statutory Auditor. Such appointment is mandatory for SAs and SRLs when their capital stock is more than AR 10,000,000 and for SAs with the special governmental control.

(d) Corporate name

If the company's corporate name includes part of the name of a foreign company, authorization to use the name must be obtained. In addition, if the corporate name includes the expressions "of Argentina'', "Argentina'' or other terms that may refer to or imply financial or legal dependence in relation to entities incorporated abroad, evidence of their actual existence and their consent to the use of the name adopted by the company will be required.

(e) Description of the corporate purpose

The ACL sets forth that the corporate purpose must be precise and determined and clearly detailed in the Bylaws.

(f) Amount of the capital stock denominated in Argentine pesos

Irrespective of the amount of the capital stock, 25% of it must be paid in upon subscription of the shares. Such amount must be deposited into an official bank ("*Banco de la Nación Argentina*") upon incorporation of the company, and can only be withdrawn from the bank once it has been registered with the PRC. It is important to highlight that until the company is registered, it will not be able to open bank accounts.

In addition, pursuant to the BCRA regulations, all remittances of funds from abroad are subject to a non-transferable and non-interest bearing deposit of 30% of the currency that came into Argentina for a term of one year ("Mandatory Deposit"), except that such funds are deemed direct investments (equal to or higher than 10% of the capital stock or votes).

(g) Date of closing of the fiscal year

If the company's financial statements are consolidated with those of a foreign company or group, it is convenient that the date of closing of the fiscal year coincides with the date of the other companies.

(4) Partners or shareholders

Quotaholders of an SRL and shareholders of an SA can be individuals or legal entities, irrespective of their nationality or domicile.

Foreign companies that wish to participate as partner/shareholder of an Argentine company must have previously registered their Bylaws with the PRC. In addition, they must appoint a legal representative to act on their behalf at shareholders meetings of the companies in which they hold an interest.

In the City of Buenos Aires, the IGJ requires compliance with additional requirements, similar to those required for setting up a branch, tending to evidence the foreign company's activity outside Argentina. In this case, foreign companies must comply with annual filings with the IGJ.

The IGJ releases foreign companies that cannot evidence their activities outside Argentina, from complying with certain obligations, if they are investment vehicles. In that case, the controlling shareholders of the investment vehicle are authorized to comply with the requirements set forth in the applicable laws.

The IGJ will not register offshore companies from offshore jurisdictions, except in the cases of vehicle companies if their controlling companies can evidence activities outside Argentina. Something similar occurs with companies from zero or low tax jurisdictions or those that do not collaborate with the fight against money laundering or transnational crime. In this case, the IGJ can require a higher number of documents in order to obtain the registration.

Even though it is permitted from the regulatory point of view, the IGJ applies very restrictive criteria when registering vehicle companies controlled by individuals residing abroad.[7] In most of the cases, the IGJ refused to register these types of companies, and it was only obtained after the refusal was appealed with the National Court of Appeals in Commercial Matters.

[7] In all cases, it must be evidenced that the individual is not an Argentine resident and accurate information and documents related to his/her activity abroad must be submitted through ownership titles, bank account statement, registries of companies in which he/she holds an interest, filings evidencing the payment of taxes in the country of origin and all documents tending to evidence the capacity as businessmen of the controlling shareholder.

Tax matters

I. ACQUISITION OF ARGENTINE BUSINESSES

International acquisitions of Argentine businesses may take the form of either the purchase of an equity participation in a target Argentine company or the purchase of the company's assets. In practice, most acquisitions by foreign corporations take the form of purchases of equity in the target Argentine company.

In practice, sellers normally prefer to sell the shares of the Argentine company rather than the company's assets. Among other reasons, this is due to the fact that under certain circumstances the sale of shares is not levied with income tax.

Notwithstanding the above, this acquisition structure has several implications for the buyer, as it become liable before the tax administrations for any known and unknown tax liability. Thus, when acquiring the stock of an Argentine target company, tax due diligence is an essential part of the due diligence process.

On the contrary, buyers may prefer to acquire assets, where possible, as the transfer of undetermined tax debts could be avoided if all the requirements stated by the Bulk Transfer Law[8] are complied.

I. OVERVIEW OF ARGENTINE TAXES

The Argentine tax system has three different levels of taxation (federal, provincial and municipal) that generally levy corporate presences and business in Argentina.

In order to conduct business in Argentina, taxpayers must be registered with the Federal Tax Administration ("FTA") and the provincial and municipal authorities to obtain their tax ID number, and register under the taxes and information regimes applicable to their activities.

Below is an overview of the most relevant taxes applicable to business conducted in Argentina.

II. INCOME TAX

Companies incorporated in Argentina, as well as branches or other permanent establishments in Argentina belonging to foreign companies or individuals are subject to income tax at a rate of 35% on their net income determined on worldwide basis.

Expenses incurred in order to obtain, maintain and preserve the income levied by this tax are generally deductible to determine the income tax. If those expenses exceed the income obtained in a given fiscal year, the tax losses may be carried forward and offset against the income obtained in the following five fiscal years.

(1) Taxation of non-residents and cross-border payments

Argentine source income obtained by foreign residents is levied with an income tax withholding at a rate of 35% over the net income. The Income Tax Law[9] sets out presumptions of net income (without admitting

[8] Law No. 11,867.
[9] Law No. 20,627.

evidence to the contrary), at different rates according the nature of the payment made to a foreign beneficiary.

(a) Sale of shares of an Argentine corporation

The sale of shares of an Argentine corporation performed by an Argentine company is levied with income tax at a rate of 35% on the net benefit derived from the transfer.

Argentine resident individuals or undivided estates are subject to the payment of income tax at a 15% rate over the profits obtained from the sale of shareholding participations, securities and other financial instruments that do not trade on the Argentinean Stock Exchange Market.

Non-residents are subject to a withholding of income tax at a 13.5% rate over the gross income or, alternatively, at a 15% rate over the net income.

(b) Dividends

Distribution of dividends or profits by Argentine companies is subject to an income tax withholding at a rate of 10% over the total amount of the dividends or profits paid or distributed.

If the amounts of the distributed dividends exceed the accumulated earnings at the end of the previous fiscal year, the 10% rate shall be applied after deducting the amount to be withheld, by means of the equalization tax, i.e. a 35% rate applicable on profits not previously taxed.

(c) Payments of interest

Interest paid to foreign residents are subject to income tax withholdings at the following rates: (i) 15.05% if paid by an Argentine financial entity, or paid by an Argentine legal entity to a foreign financial entity not incorporated in low-tax jurisdiction, or for financing of imports of certain goods; and (ii) 35% in most other cases.

Please note that thin capitalization rules deny an interest deduction paid by Argentine residents on loans granted by controlling creditors if company's debt-to-equity ratio exceeds twice the net equity of the local debtor. The excess interest will be treated as a dividend payment.

Thin capitalization rules do not apply when the interest payment has been subject to an effective withholding income tax of 35%.

(d) Royalties

Payments of royalties are subject to an income tax withholding at a general rate of 31.5%. Preferential withholding rates applicable for royalties paid pursuant transfer of technology agreements duly registered with the Argentine National Institute of Industrial Property.

(2) Tax Treaties

Argentina has executed Tax Treaties with the following countries: Australia, Belgium, Bolivia, Brazil, Canada, Denmark, Finland, France, Germany, Italy, Norway, the Netherlands, the United Kingdom, Russia, Spain and Sweden.

Agreements executed with other countries, whose scope of application is particularly related to the income resulting from international transportation activities, are also in effect.

In general these treaties follow the OECD model to avoid double taxation. In this regard, among other provisions, limits or reductions in withholding tax rates for certain types of income are established, e.g. dividends, interests and royalties.

Please note that Argentina has recently renegotiated a double taxation treaty with Switzerland which is not yet in force.

(3) Transfer pricing

Transfer pricing provisions are applicable to cross-border transactions entered into between an Argentine resident and a foreign related party, or with a non-related party located in a low-tax jurisdiction.

In general, companies performing transactions subject to transfer pricing rules must submit two tax returns per year and carry out annually a transfer pricing study evidencing that such transactions have been entered into on an arm's length basis. If necessary, taxpayers must make the corresponding adjustments and pay the resulting taxes.

III. MINIMUM PRESUMED INCOME TAX ("MPIT")

MPIT is levied on the value of assets of companies located in Argentina and abroad at the end of each fiscal year. The effective tax rate is 1% and the taxable base is represented by the value of the assets in excess of ARS 200,000. Companies with less than ARS 200,000 in assets are not levied.

The income tax paid in a given fiscal year can be offset against the resulting MPIT of the same fiscal year. If there is no Income Tax to pay, the MPIT paid will be allowed to be computed as payment on account of the income tax for a period of ten years.

IV. VALUE ADDED TAX ("VAT")

This tax is levied on all different stages of the domestic trade, production and import of movable goods, as well as on a wide range of services. The general tax rate is 21%, with differential tax rates of 10.5% and 27% for certain specific cases.

Every time taxpayers supply services or commercialize any levied products they collect VAT at the corresponding tax rate, over the net value of the services or the products supplied or sold.

The amount collected as VAT is considered a tax debit that can be offset against the tax credits from the same fiscal period (assessed on a monthly calendar basis) arising from the VAT paid for levied transactions. Taxpayers must pay the balance, if any, to the FTA.

V. INCOME ON PERSONAL ASSETS

Foreign individuals or companies which hold stock in Argentine entities must pay an annual tax of 0.5% of the value of the stock.

This tax must be paid by Argentine companies in their capacity as substitute taxpayers and will be considered a single and final payment. Companies may request the reimbursement of the amount paid on behalf of the shareholders.

VI. TAX ON BANK DEBITS AND CREDITS

This tax applies to all credits and debits made in any bank account, among other financial transactions. The general tax rate is 0.6% for credits and 0.6% for debits. Certain transactions are levied at a rate of 1.2%.

34% of the tax paid (17% if the tax rate is 1.2% instead of 0.6%) can be considered as a credit against the income tax and/or minimum presumed income tax and the rest is deductible for income tax purposes.

VII. GROSS RECEIPTS TAX

This provincial tax is levied on the gross income arising from primary activities, manufacturing activities, business and services carried out within the respective provincial jurisdictions.

The rate of this tax usually ranges from 1 to 4% depending on the activity and the province in which it is carried out (higher or lower rates may apply for certain activities).

If activities take place in two or more jurisdictions, it is necessary to be registered under the Multilateral Tax-Sharing Agreement to apportion the corresponding revenue to each relevant jurisdiction.

Expenses incurred in a given jurisdiction must also be considered for assessing the tax, even when no income is obtained in such jurisdiction.

VIII. STAMP TAX

This tax is imposed on instruments or documents that evidence acts or agreements made for consideration in the Argentine provinces or the City of Buenos Aires, with the execution of the document itself being the taxable event and not the fulfillment of the transaction stated in it.

The tax rate depends on the act instrumented and the Province where it is performed or has effects.

In general, tax rates range between 0.5% and 3% of the economic value of the document. It should be highlighted that this tax can be lawfully avoided, in many instances, through the execution of agreements under an offer letter accepted by a positive act.

Foreign exchange control matters

I. EXCHANGE CONTROL SYSTEM

The Argentine Republic has had an exchange control system in place since January 2002.[10]

In order to enforce exchange controls, the Argentine Foreign Exchange Market ("AFEM") was established, through which most transactions in foreign currency are to be settled.

The Argentine Central Bank ("ACB") is the authority that enforces the foreign exchange control system and issues regulations determining the requirements for foreign exchange transactions, fund transfer operations, imports and exports payments and, in general, the access to the AFEM.

In recent years, the FTA has also issued certain regulations that impact on the foreign exchange control system and the access to the AFEM.

In this regard, since October 2011 the ACB and the FTA have tightened the controls and regulations to access the AFEM, establishing new formal requirements and certain non-regulated restrictions in order to perform cross-border payments.

The most relevant regulations in effect to date are described below.

II. FOREIGN EXCHANGE REGULATIONS FOR FOREIGN TRADE

(1) Imports of goods

Access to the AFEM is permitted for the payment of imports, including deferred and advance payments, irrespective of the type of goods imported.

In all cases, the clearance of the goods must be proved within 365 days after the date of the advance payment or within 90 days after the date of sight payment. If the goods were not cleared due to reasons attributable to the importer, the amount of the payment must be re-entered (or the difference, if the amount of the goods nationalized is lower than the amount paid) within a term of 10 business days after the expiration of the above-mentioned terms.

In relation to the transactions for the financing of imports, certain requirements must be met, because they would otherwise be assimilated to financial loans and, therefore, be treated equally.

(a) Anticipated Return of Import Program

Since February 1, 2012, the implementation of the "Anticipated Return of Import Program" ("ARIP") has required local importers to file a return with the FTA providing information on their import transactions before issuing their purchase orders.

Once the FTA and the relevant federal agencies have examined the information, an online notification will be sent to the applicant through the FTA's website, either authorizing the operation or informing the importer of any observations made.

[10] As from the enactment of the Emergency Law No. 25,561, Executive Order No. 1606/2001, among others, and certain resolutions passed by the Argentine Central Bank.

The approval of the ARIP is necessary for clearing customs as well as for paying abroad such imports.

(b) Foreign exchange consequences of the anticipated return of import program

Importers can access the AFEM to settle debts for imports no earlier than 5 business days prior to the applicable payment due date (prepayments earlier than 5 business days are subject to the prior approval of the ACB).

In order to have access to the AFEM to make advanced payments within this 5-day period and to make spot payments to cancel import debts, the importer must evidence to their bank that the ARIP return has been filed and approved.

(2) Imports of services

Access to the AFEM is permitted for the payment abroad of services rendered by non-residents, irrespective of what they consist of (freights, insurance, royalties, technical consultancy, fees, etc), as long as the documentation supporting the legitimacy of the operation and the amount to be paid is duly filed.

Additional requirements may apply if the service to be paid has no relation with the activity performed by the local company, such as an auditor's certificate, among other things.

Certain payments (inter alia, royalties, technical consultancy, professional services, etc.) exceeding USD 100,000 on an annual basis to be submitted to (i) related parties or (ii) providers incorporated in low-tax jurisdictions, require the prior authorization of the ACB.

Also, by means of the "Anticipated Return of Services Import Program" ("ARSIP"), similar to the ARIP described above, prior authorization of the FTA shall be required for services provided by or to non-residents for an amount equal or higher than USD 100,000 (in total) or USD 10,000 (per payment).

Once the ARSIP is approved, the local party will have to report the Return ID to the bank through which it will make the payment to the foreign provider of services.

(3) Export proceeds

Currently, 100% of export proceeds must be remitted to Argentina.[11] The periods for exporters to enter funds obtained abroad from export proceeds into the AFEM range from 30 to 360 calendar days according to the good exported tariff position.

In the case of transactions between related companies, exporters must repatriate the export proceeds within 30 calendar days, counted from the date that the shipment has been completed. The Argentine exporter can file an application with the Ministry of Economy for an extension of the 30-day term.

Also, there is a 15 business day term to transfer such amounts to Argentina and convert them into Argentine Pesos thought the AFEM, as from the date the export proceeds are deposited on the foreign bank account of the Argentine Exporter. This term does not add to the 30-360 day terms mentioned above.

[11] Executive Order No. 1606/2001.

III. FOREIGN EXCHANGE REGULATIONS FOR FOREIGN INVESTMENTS

Investment in Argentina is currently open to all entities or individuals, foreign or Argentine. No government approval is required for investments of foreign capital in Argentina and, in principle, there are no restricted areas of investment for foreigners.

Foreign investors may (with minor exceptions) acquire going concerns or participate in companies in Argentina even if, as a result of the participation, the previous Argentine company becomes a foreign-controlled local company.

Legal entities that are residents in Argentina that participate in non-residents' direct investments, and the managers of the real property belonging to non-residents, must report the holdings of non residents' direct investments in Argentina, and their changes throughout the semester reported.

This reporting is mandatory if the value of non-residents' holdings in Argentina, considering their participation in the company's accounting shareholders' equity and/or in the overall fiscal values of the real property is equal to or higher than USD 500,000.

(1) Inflows of funds - Mandatory Deposit

Executive Order No. 616/2005 imposes a twelve month, non-interest-bearing, local currency denominated, 30% mandatory deposit ("Mandatory Deposit") on funds remitted to Argentina, unless the remittance qualifies under one of the many exceptions to be provided under the ACB's regulations, such as inflows of funds corresponding to direct investments (e.g. investments in shares of stock issued by local companies by non-resident parties with an equity interest in such companies greater than ten percent) or contributions to corporate capital.

(2) Financial loans

According to the general rule described above, unless specific exceptions apply, financial loans granted by foreign residents to local residents are also subject to the Mandatory Deposit.

Financial loans and rollovers of external liabilities should be made and kept for at least 365 consecutive days. These loans cannot be paid before maturity, regardless of the mode of settlement and whether or not it involves access to the AFEM.

Payments of interest and amortizations of principals of loans are permitted as long as the amounts lent have been settled through the AFEM and these payments are made at a date not earlier than 10 days from the date determined under the relevant agreements for the payment of interest and amortizations of principal.

In order to perform such payments, the debtor must have complied with the foreign indebtedness information system, consisting of the filing of an affidavit informing the indebtedness with foreign residents on a quarterly basis.

If the lender and the debtor are part of the same economic group, the Argentine debtor must also comply with the reporting requirements set for direct investment in Argentina of non-residents and Argentine residents' direct investment abroad.

Also, an Advanced Return of Payments Abroad ("ARPA") approved by the FTA is required to transfer such funds, similar to the ARIP and the ARSIP explained above.

(3) Dividends

There is no legal restriction on the remittances of dividends other than (i) evidencing that they derive from closed and audited financial statements, and (ii) obtaining an approved ARPA.

However, certain non-regulated restrictions are currently applied, by which any transaction must be, in practice, approved in advance by the ACB.

(4) Repatriation of direct investments

For direct investments, in order to repatriate funds, they must have remained in the country for not less than 365 consecutive days, and it should be proven that the funds have entered the country by the AFEM. Such repatriation should be by any of the following:

- Sale of the direct investment
- Final liquidation of the direct investment
- Capital reduction performed by the local company
- Return of an irrevocable contribution

In cases in which the beneficiary is resident abroad or constituted in one of the jurisdictions considered non-cooperating for the purpose of fiscal transparency (i.e. a tax haven), this repatriation will require the prior approval of the ACB.

Argentine labor law

I. MAIN CHARACTERISTICS OF LABOR LAW

The Argentine Constitution and the Employment Contract Law[12] (the "ECL") establish the protection principle in favor of the employee. For the purpose of balancing the labor relationship, the law imposes on the parties, as a public policy, a set of material conditions that cannot be repealed. Contractual freedom is not eliminated but limited.

The minimum conditions set forth in the ECL or in the applicable collective bargaining agreement must be respected by the parties. The employer may be entitled to grant the employee more favorable conditions, but not conditions below those established by law or the collective bargaining agreement.

II. EMPLOYMENT CONTRACTS

The ECL establishes, as a rule of thumb, that the employment contract is for an indefinite term. This type of contract will be in effect until the employee retires or any of the grounds for termination of the employment relationship arise. The employment contract begins with a trial period of three months without severance consequences in case of dismissal without cause. Notwithstanding this, there are extraordinary circumstances that allow other kinds of employment contracts such as fixed term, seasonal or temporary contracts.

III. PRINCIPAL OBLIGATIONS AMONG PARTIES

Among the principal rights of the employer, the ECL recognizes the power to organize and direct the conditions under which the employee has to perform its duties. The excise of this management may not imply unreasonable measures, nor alter essential patterns of the contract, or cause moral or material injury to the employee. Within the same limitations, the ECL recognizes the disciplinary power of the employer to correct the employee's bad behavior, represented by disciplinary offenses and breaches of their obligations.

Among the principal duties, the ECL sets forth the duty to provide work, to pay remuneration in due course, safety and protection, not to discriminate and to provide equal treatment and to comply with trade unions and social security related obligations.

As for the employees, the ECL sets forth the duties of diligence and cooperation, loyalty, obedience and non-competition and the rights of privacy and equal treatment, among other things.

IV. EMPLOYER AND EMPLOYEE'S PAYMENTS AND CONTRIBUTIONS

According to Argentine social security regulations, employers and employees must pay social security contributions. In general, employers' payments are 23% of their employees' salary (in some cases there are reductions of such payments). Employees' contributions are 17% of their salary up to the maximum ceiling. Employers must withhold employees' contributions and deposit them together with employer's payments to the Federal Tax Administration. Employer's payments do not have a maximum ceiling. Employer's payments are deductible for income tax purposes.

[12] Law No. 20,744.

V. UNIONS

Unions are organized by activity, by profession or by company. They must be acknowledged as such by the Ministry of Labor in order to have legal capacity to act. They represent the employees in the collective negotiation. The employee's affiliation to the union is not mandatory; however, a collective bargaining agreement may establish the payment of union contributions not only by the employer but also by the employee not affiliated thereto.

VI. TERMINATION OF THE EMPLOYMENT RELATIONSHIP

(1) Resignation

The resignation is a legal act that communicates the will of the employee to dissolve the employment relationship with the employer. It must be notified through a registered letter sent to the employer.

(2) Termination by mutual consent

The termination of the employment relationship by mutual consent consists of both parties agreeing to terminate their employment relationship. In principle, this type of termination does not generate any kind of obligation to compensate. It must be implemented through an agreement recorded by a public notary and/or by an agreement filed within administrative or judicial authority.

(3) Dismissal

An employee may be dismissed with or without cause:

- Dismissal with cause enables an employer or employee to terminate the employment relationship on the basis of a serious offense. It is called direct dismissal when it is decided by the employer, or constructive dismissal, when decided by the employee. In both cases, the communication of the dismissal must be in writing and must clearly state the grounds for the dismissal.

- Dismissal without cause decided by the employer does not require the expression of the grounds and it is only necessary to communicate the termination of the employment relationship. Even though the law does not establish a means of communicating the dismissal without cause, it is convenient to do it by a registered letter.

(4) Severance payment

Irrespective for the grounds of the termination of the labor relationship, the following items must be paid by the employer on the fourth business day from the extinction.

- *Proportional additional annual salary:* The portion of the additional annual salary accrued in the semester through to the moment of termination of the relationship.

- *Proportional vacations:* The unused vacations corresponding to the year beginning on January 1 until the last day actually worked.

- *Days worked until the date of dismissal:* The days actually worked during the month of the dismissal.

In case of direct dismissal the following items must be paid by the employer within the four business days of the termination of the labor relationship. In case of constructive dismissal, the following items may be rejected by the employer jointly with the cause of the constructive dismissal, and the case will be decided by a labor judge:

- *Based on seniority:* The employer must pay the employee a compensation equivalent to 1 month's salary per year of service or fraction higher than 3 months, taking as the calculation basis the highest monthly, ordinary and usual salary accrued during the last year or during the time of rendering of services, if it is less than a year.

- *Payment in lieu of notice:* The payment in lieu of notice, when the parties do not establish a higher term, must be given by the employee with an advance of: a) 15 days if done during the trial period, b) 1 month when the seniority of the employee does not exceed 5 years, and c) 2 months, if the seniority is higher than 5 years. If notice is not given or if it is defectively given, a payment in lieu of notice must be paid, which is equal to the remuneration of the employee during those terms.

- *Days worked between the date of dismissal and the end of the month:* If the employment relationship is not terminated on the last day of the month, payment must be made through until the end of the month.

Upon termination of the employment relationship, irrespective of the grounds for doing so, the employer must give to the terminated employee his certificate of work, document-supported proof of payment of social security contributions and the certificate of remunerations and services rendered.

Failure to provide these documents will result in the imposition of the fine established by Law No. 25,345, equal to three (3) times the highest ordinary remuneration of the employee during the last year of employment, or during the term of the rendering of the services, if it is shorter.

Laws No. 24,013 and No. 25,323 provide fines in cases where employment is either not registered or improperly registered.

VII. OCCUPATIONAL RISKS LAW

The Occupational Risks Law requires employers to self-insure, or to purchase an insurance policy with insurance companies specialized in occupational risks (known as "ARTs").

The Occupational Risks Superintendent ("ORS") controls both the ARTs and self-insured companies. The Argentine Ministry of Labor, in its capacity as enforcement authority, supervises the ORS.

Compensation payable as a result of workplace injuries may be either on a lump sum basis or through monthly instalments. It is noted that the ARTs do not provide 100% coverage and employees often claim for and are granted higher compensation amounts for workplace injuries that are directly payable by their employers.

Contracting with government entities

I. PROCUREMENT AND TENDERING PROCESSES

As a general rule, Argentine governmental entities are obliged to conduct a selection process to choose the contracting party according to principles of equality and transparency. Competitive bidding aims at obtaining goods and services at the lowest prices by stimulating competition, and by preventing favoritism. As an exception, only in restricted and urgent cases governmental entities are allowed to avoid this selection process and directly appoint a contracting party.

An entity wishing to obtain goods or services will first specify its requirements. Subsequently, it will start a tender process. Among the most frequently used processes are:

- Public tender or contest: The tender will be public when the invitation to submit an offer is addressed to an undetermined number of potential bidders. The invitation must be advertised in the Official Gazette, in other newspapers and also in the webpage of the bidder. This process is applied as a general rule and it is mandatory for material contracts.

- Private tender or contest: In this process the offers can only be submitted by the individuals that were personally and directly invited by the Administration. No advertising is required and generally a minimum number of parties should be invited to bid. This process is often used when special technical conditions are required from the contracting party.

In national tender processes, the invitation is addressed to individuals, whose residence or principal place of business is settled in Argentina or have a registered branch in the country.

The tender will be international when the invitation is extended to bidders from abroad; which are those whose main principal place of business is in foreign countries, and who have no registered presence in the country. Notwithstanding this, international tender processes often include requirements to provide documents that can only be obtained by entities that have a registered presence in Argentina, so interested companies may need to seek clarification on the bid requirements from the corresponding executive authority even before the terms are released.

II. SELECTION CRITERIA

The respective procurement regulation and the bidding documents include the criteria and standards to be considered for awarding a contract. The governmental entity is not obliged to grant the contract to the lowest price offer and should also consider qualifications, performance and background of the bidder, plus quality and suitability of the products or services to be provided.

III. GUARANTEE OF PERFORMANCE AND AWARDING OF THE CONTRACT

According to regulation, the bidder is obliged to maintain its bid for a period of time that is determined in the bidding documents. This period may be renewed automatically until termination of the bidding contest, unless the bidder revokes the bid before the end of the applicable period. Bidders may also be requested to submit a bid bond, to be returned after the contract is awarded.

After analyzing and comparing the offers, the procurement authority will decide which offer best suits its requirements and award the contract, and the respective documents will be signed by the parties. Also, when the contract is awarded, the contracting party must submit a performance guarantee. Usually the guarantees can consist of Argentine government bonds, surety bonds, insurance performance policies or bank guarantees.

Environmental considerations

I. CONSTITUTIONAL RIGHT TO A HEALTHY AND BALANCED ENVIRONMENT

In 1994, the Argentine Constitution was amended to include a specific provision concerning environmental protection. It provides as follows in Article 41:

> All inhabitants are entitled to the right to a healthy and balanced environment fit for human development in order that productive activities shall meet present needs without endangering those of future generations; and shall have the duty to preserve it. As a first priority, environmental damage shall bring about the obligation to repair it according to law.
>
> The authorities shall provide for the protection of this right, the rational use of natural resources, the preservation of the natural and cultural heritage and of the biological diversity, and shall also provide for environmental information and education.
>
> The Nation shall regulate the minimum protection standards and the provinces those necessary to reinforce them, without altering their local jurisdictions. The entry into the national territory of present or potential dangerous wastes, and of radioactive ones, is forbidden.

Argentina has also ratified several international treaties referring to environmental care and sustainable development, including the Framework Convention on Climate Change, the Kyoto Protocol, and the Protocol on Environmental Protection to the Antarctic Treaty, the United Nations Convention Concerning the Protection of the World Cultural and Natural Heritage, among others.

Given its constitutional status, environmental matters invariably are a key consideration in many Argentine transactions. Consideration is required to be given not only to present needs but to the rights of future generations. The focus is on sustainable development.

II. LEGAL FRAMEWORK

The federal, provincial and municipal governments each regulate different aspects of environmental protection and, specifically, the maintenance of the minimum environmental requirements.

Environmental Impact Assessments must be approved for all new projects and updated every two years thereafter. The biannual updating requirement also applies to existing projects. In addition to general approvals, certain activities require specific permits particularly those that concern emissions, effluents and waste.

Compliance with environmental obligations is essential for the longevity of a project. Enforcement authorities have the power to impose penalties ranging from a pecuniary fine through to closing down a project.

When projects are acquired, environmental liability is transferred at the time of purchase. Accordingly, a thorough due diligence of environmental issues is essential to any transaction.

III. ENFORCEMENT AUTHORITIES

The Argentine Office of the Environment and Sustainable Development is the highest authority in Argentina, however, there are also provincial and municipal authorities charged with specific responsibilities to ensure environmental protection.

The appropriate authorities relevant to a project must be determined on a case-by-case basis, having regard to both the location of the project and the activities it performs which affect the environment.

IV. SUSTAINABLE DEVELOPMENT

In order to reduce environmental impact, in the last decade Argentina has issued several policies to encourage the increase of renewable energy. Argentina's significant natural resources place the country at a significant advantage over competitors when attracting investments for the production of renewable energy. With respect to wind power generation, Argentina is the country with the highest potential in Latin America. The country also has regions with outstanding conditions for solar generation.

To reduce dependence on liquid fuels and encourage the activities to diversify energy generation sources, Argentina enacted Law 26,190 in 2006, which established the "National promotion scheme for the use of renewable energy sources for the production of electricity" (called "GENREN") to attract investment to diversify the Argentine energy matrix.

Law 26,190 declared that activities related to renewable energy generation were of national interest and gave rise to different promotion measures, including: (i) setting a goal of reaching, in a 10-year term, a contribution to energy generation, through renewable energy sources, representing at least 8% of the national electric power; (ii) creation of an investment promotion program for the construction of new works intended to the production of renewables to be used by the Spot Market or to supply public services; and (iii) premium compensation to be paid for this type of energy generation with public funds.

The GENREN Program, including premium prices, was the first step in promoting investment in the sector and now the provincial governments, and even some municipal governments, are being encouraged to develop new projects. Such is the case of the province of San Juan which for the past few years has been strongly encouraging solar energy through the Program "Solar San Juan", and currently is working on long-term research projects to manufacture solar panels in situ. Argentina also has natural resources with the same outstanding potential in terms of solar generation in the Cuyo and Puna regions to be exploited.

With respect to wind power generation, Argentina is the country with the highest potential in the region, especially in certain mid and southern areas of Patagonia, in mountain areas of several provinces and along the seaside of the province of Buenos Aires (close to the most populated urban areas in Argentina). By the end of 2013 Argentina only had 218 MW of global installed wind power capacity, making it a largely untapped resource.

The production of biodiesel is an industry that has blossomed beyond expectations. Biodiesel in Argentina is mostly made by processing soybean oil, and can be used as fuel or to be blended with conventional hydrocarbon-based diesel in order to power any conventional diesel vehicle. Between January and August 2014 Argentina has exported over 1.3 million tons of biodiesel, representing USD 1.115 billion in sales.

In the current scenario, Argentina continues working on alternatives that further the sustained growth of its economy through mid and long term energy policies. In light of this, developing a renewable energy generation investment project is undoubtedly one of the options with the highest potential.

Argentina is clearly moving toward a situation of having greater reliance on renewable energy sources rather than conventional sources which creates a solid opportunity for renewable energy companies to enter the Argentine market.

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If you have any question or comment regarding the foregoing, do not hesitate to contact us by calling at (54-11) 4326-7386, via fax to (54-11) 4326-7396 or via e-mail addressed to godoy@berettagodoy.com.