

CODE: S-1001
DATE: 23rd August 2010
REF: Types of business organizations

Introduction

Business in Argentina may be conducted by:

- incorporated companies,
- partnerships,
- individuals, and
- branches of foreign constituted enterprises.

Conduct and behavior of the entities are governed by the Commercial Code, supplementary laws and regulations.

In the case of a general partnership of a non-commercial nature, or not covered by the Commercial Code, the Civil Code applies.

Corporations of partnerships of a single shareholder are not allowed by the law.

The following report summarizes the main alternatives for incorporated companies:

- Sociedad Anónima (Corporation), or
- Sociedad de Responsabilidad Limitada (Limited Liability Partnership)
- Joint Ventures

Corporation (Sociedad Anónima - S.A.)

Owned by shareholders with limited liability, they are similar to the incorporated “limited liability companies” of the United States, the United Kingdom and elsewhere.

There must be at least two shareholders, which can be either corporate entities or individuals. Notional participations are not allowed and might be rejected by the Companies Inspection Board.

The shares of the corporations may be privately held or quoted publicly. Their operation is governed by statutes in which the name, object, duration, capital, election and powers of the board of directors, and all other rules are established. The board may have one or more directors but the absolute majority must be domiciled in Argentina. The term “sociedad anónima”, which may be shortened to S.A., must be included in the corporate name.

All corporations are subject to certain supervision and control by government entities, as follows:

- Publicly held quoted corporations - by the Comisión Nacional de Valores (National Securities Commission).
- Banks - by the Argentine Central Bank

- Insurance companies by the Superintendence of Insurance
- Other types of business organizations are mostly under the supervision and control by the Companies' Inspection Board (these are provincial entities)

Capital

Capital is divided into shares which must be in registered form and denominated in Argentine currency.

Except for specific cases there are no nationality or residence requirements. Foreign individual (residents in Argentina or not) or foreign companies may hold up to 100% of the share capital.

Shares must be of equal par value and have equal rights within the same class. However, different classes of shares may be created.

Transfers of shares are generally unrestricted, but restrictions may be included in the by-laws provided that they do not effectively prevent the transfer of shares.

The corporate capital must be fully subscribed.

If the capital is in cash, at least 25% must be paid at the time of incorporation.

When the subscription consists of non-monetary assets it must be fully contributed before approval is requested to the control authority.

The remaining subscribed capital must be paid within 2 years by the stockholders, who are held responsible for interest and damages arising from any default in payment thereof, and all voting and other rights corresponding to shares whose payment is in default are automatically suspended.

The minimum capital is \$12.000. Anyway, as a legal requirement for any type of corporation the capital must be appropriate for the development of the corporate purpose, so it is advisable to do a proper projection of the capital to be needed, and set an amount related to that one.

A stockholders' meeting may decide to increase the corporate capital fivefold followed by appropriate publications and registrations, without having to obtain official approval, provided this possibility has been included in the bylaws and all previous issues have been fully subscribed. In all other cases, official approval is required and the corresponding publication and registration must be carried out.

The corporate capital may be reduced by the decision of an extraordinary meeting of stockholders, which must be supported by a special report from the syndic, and entails fulfillment of certain formalities in order to safeguard creditors' rights.

Stockholders' Meetings

They are the governing body of the corporation.

Unless shareholders meetings are unanimously held, which means that 100% of the capital stock is present at the meeting and all resolutions are adopted by unanimity, meetings should be summoned by means of publications for a period of five days in the Official Gazette, and in

specific cases in a nationwide newspaper, with at least 10 days of anticipation and no more than 30 days as of the day of the meeting.

Shareholders' meetings may be ordinary or extraordinary. This classification is made solely on the basis of the issues to be transacted therein, and not with regards to the date when they are held.

Ordinary shareholders meetings must be held for the approval of the financial statements, appointment of directors and the payment of dividends, while all other businesses, i.e. the amendment of the by-laws, mergers or spin-offs, must be transacted at extraordinary shareholders meetings.

Financial statements, distribution of profits and the appointment, removal and compensation of directors and syndics must be dealt with by an annual general meeting of stockholders that must be convened within four months of the annual financial closing date.

A general meeting may also be convened (at any time) if it becomes necessary to determine the responsibility of the directors and control bodies or for increasing the capital within the fivefold limitation.

Directors and syndics have the right and duty to attend stockholders' meetings.

Stockholders' Liabilities

Shareholders who have fully paid-up their subscribed shares are in general not liable for the company's obligations beyond their capital contributions.

Shareholders with partly paid up shares are required to pay any outstanding balance within a maximum period of two years from the date of subscription.

Any shareholder with interests in conflict with those of the company has a duty to abstain from voting on any matter which relates to such conflict. The shareholder that does not comply with this provision will be responsible for any damages resulting from a final resolution of the matter in conflict if such vote contributed to form the majority vote necessary to adopt the resolution. Further, shareholders who vote in favor of a resolution which is subsequently declared null shall be jointly and severally liable for any consequences resulting therefrom.

Management and Representation

Management is vested in a board of directors composed of one or more directors (in the case of corporations subject to permanent government supervision there must be at least three) who are appointed by the stockholders' meeting or the syndics, as applicable.

There are no nationality requirements, nor it is required that directors also be shareholders. However, the absolute majority of directors must reside in Argentina.

The Board must appoint a president, who has the legal representation of the corporation.

Appointment of one or more vice-presidents is optional.

Absolute majority of the entire Board constitutes sufficient quorum and actions are taken as provided for in the by-laws.

Their terms of office are limited to 3 years, but they may be re-elected.

The board must meet at least once every three months, except for publicly held companies and certain others that must meet monthly.

Directors' and managers' liability

All directors and managers of an SA are subject to a standard of loyalty and diligence. Non-compliance with these standards results in unlimited joint and several liabilities for damages arising therefrom.

Private supervision

It is normally vested in one or more syndics (statutory auditor) appointed by the stockholders' meeting, which must also appoint a similar number of alternate syndics.

The use of syndics is optional for corporations that are not subject to permanent government supervision. In these corporations the shareholders may act as syndics.

The function of syndic may be exercised by an individual holding a degree as a lawyer or public accountant.

The law also contemplates the option of another control body, the Surveillance Committee. Its purpose is ample and must be defined in the statutes, but could include:

- electing the directors,
- substituting the syndics (statutory auditors) in which case they must name auditors,
- supervise the directors and requesting and controlling all the information they consider necessary,
- calling for stockholders' meetings when considered necessary,
- other supervisory and reporting duties.

This alternative controlling body is not favored by investors and has been used very few times.

Controlling, Controlled and Related Companies

Annual financial statements must show separately relations with:

- controlling corporations (those who hold sufficient participation to entitle them to the voting rights necessary for taking decisions, either directly or through another controlled corporation);
- controlled corporations (those controlled on the above basis); and,
- related corporations (in which the controlling corporation holds more than 10% of the capital of the other).

Controlling corporations are required to file consolidated annual financial statements as supplementary information.

Corporate books

SAs must keep the following corporate books:

- Share Registry book,
- Attendance Record book for shareholders' meetings,
- Board's meetings minutes book,
- Shareholders' meetings minutes book, and
- a Supervisory Committee minutes book (if applicable).

In addition, accounting books must be kept.

Limited Liability Partnership ("Sociedad de Responsabilidad Limitada S.R.L.")

Even though these companies have many similarities in many respects to corporations, the differences between them could be very important in many cases.

Some of the differences are:

- A company must add the term "sociedad de responsabilidad limitada" or S.R.L. to its name (instead of "sociedad anónima")
- The number of quota holders may not exceed 50
- A corporation may not be a quota holder
- They are always privately held
- *Any change in quota holders (by transfer of quotas, death of a quota holder, etc.) requires an amendment to the incorporation deed*
- Greater flexibility is permitted in the deed (it could be a private document, not necessary a notarial document – escritura –)
- Increase of capital is only possible with an amendment to the incorporation deed (in the SA it is not necessary if it is within fivefold).
- All quotas must be of equal voting right (in the SA it is allowed for different rights by type of shares)

Capital

Subscription rules are the same as for corporations, except that there is no minimum (even though the same principle of correspondence between capital and object applies).

The partnership deed may allow the issuance of additional capital quotas, only with the consent of partners representing more than half the partnership capital, followed by publication and registration formalities.

Quotas must be of equal value and equal voting right, but partners may hold more than one quota. Law does not restrict transmission but it may be restricted under the partnership agreement.

Partners' Meetings

The rules set for corporate stockholders' meetings must be applied if the partnership contract does not contain specific rules for meetings.

Notices convening the meetings must be sent to the partners at their addresses.

Management and Representation

Management of the SRL is in the hands of one or more managers, acting individually or jointly as set forth in the articles of incorporation.

As with the directors of the corporation, a manager is not subject to any nationality requirement.

In case the managers act jointly, or in case there is only one manager, the absolute majority of all managers appointed by the partners must reside in Argentina.

Managers need not be partners.

Managers have the same rights and duties as the directors of corporations, but their terms of office are not subject to the 3-year limitation.

Partners and Managers Liability

In general, and with a few exceptions, similar rules apply to SRLs and SAs, however, where there is more than one manager liability will depend upon the provisions of the by-laws.

Corporate books

SRLs must keep the following corporate books:

- Attendance Record book for quotaholders' meetings,
- Board's meetings minutes book, and
- Stockholders' meetings minutes book

In addition, accounting books must be kept.

Joint Ventures

Two types of contractual joint ventures are recognized by law:

- temporary partnerships ("agrupaciones de colaboración"), and
- temporary union of companies ("uniones transitorias de empresas - U.T.E.").

Temporary partnerships embody joint organizations for renewable periods of up to a maximum of ten years, to provide or develop certain stages of the business activity of their partners or to improve and develop their mutual activities.

Temporary unions of companies are allowed to develop or execute a specific task, service or supply, and/or any extension thereof, both locally and abroad. Their duration is therefore limited to that particular task or service. In this contract, the bankruptcy of the members or the disability or death of the individual entrepreneurs does not in itself lead to the extinguishing of the U.T.E. contract.

Both types of joint ventures must have the following characteristics:

- They are not separate legal entities in their own right
- Agreements are entered through private or public deeds
- Participants may be resident businessmen, locally constituted entities, or nonresident companies that have established a separate branch or other type of presence in Argentina.
- Agreements must be registered with the Public Register of Commerce and must include their objectives, term of duration, name and other particular information on their partners' responsibilities, financial contributions and other legal implications.

Joint ventures may also exist under private agreements not registered with the Public Register of Commerce, when they do not fit exactly in the two types mentioned above. These joint ventures enjoy similar rights and obligations and have the same tax requirements as those described above.

Note: This report was prepared based in several “Doing business in Argentina” reports issued by Deloitte, PWC, and several other accounting and legal firms. The information was summarized and adapted according to our needs and it is intended to be used only as internal information. No reproduction of any kind is authorized.