

ARGENTINA

Legal Guide

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ATTORNEYS AT LAW

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INTRODUCTION

This guide, in its fourth edition, updated January 2008, is aimed at providing a summarized scope of the most important regulations for those foreigners interested in doing business in Argentina..

The present guide allows for a quick search of the most relevant issues concerning agreements, partnerships, taxes, labor law and business in general to those who must face or do business in Argentina. In addition, further issues of interest have been considered not only for businessmen but also for those individuals who are frequently interested in real estate investment in Argentina.

I.- GENERAL SCOPE OF TRANSACTIONS IN ARGENTINA (BUSINESS TRANSACTIONS)

1.-BUSINESS TRANSACTIONS

Foreign companies neither created nor registered in the Country are able to perform in Argentina whatever acts as included in their corporate purpose, without requiring any authorization or registration provided they are isolated acts. Furthermore, they can appear in court, whether as plaintiffs or defendants, to protect their own interest. Their capacity to act, in fact, is governed by the laws effective in the country where the incorporation has taken place.

2.- PRELIMINARY CONSIDERATIONS

Those foreign companies willing to conduct business transactions with Argentine companies and/or entrepreneurs are advised, before entering into an agreement, to gather information on their commercial performance. For that purpose some useful data banks are available, in particular the one provided by the Central Bank which records those individuals who have been protested as well as deprived of any legal ability to operate within the banking system or to whom their bank accounts were closed in the past.

To be able to use these data banks you must know the corresponding Argentine tax code (CUIT: clave única de identificación tributaria) of the individual's account you are looking for information (in Argentina, a regulation on "privacy" has not been established yet). Since this CUIT does not always appears on the Argentine company letterhead, it is wise to get this information at the very beginning of the transaction.

3.- ISSUES CONCERNING AGREEMENTS

The following is a summary of the most relevant issues concerning agreements usually entered into by foreign businessmen in Argentina. It must be emphasized that, regarding agreements, Argentine laws are based on the principle of operative autonomy ("the agreement legally binds the contracting parties").

This autonomy can follow two broad directions: the "tailor making" of contractual obligations (i.e. material autonomy), or otherwise the choice of the legislation that will be applied to the agreement ("legal autonomy").

The parties, however, are entitled to make no choice at all in which event the very same legal system will establish the law to be applied when international agreements, and hence laws of different countries, are involved.

There are, however, some restrictions to the parties' principle of autonomy, given by the need to defend interests of a general character, such as consumer's rights or market freedom. Consequently, every single covenant must be, one by one, compared to those regulations the system considers that must be included in an agreement (i.e. mandatory regulations).

3.1 International Sales Agreements

As far as international sales are concerned, whether the parties have decided not to regulate their transaction in detail (e.g. with the explicit purchaser's acceptance of the general terms and conditions established by the seller in the agreement), or else, not to choose the law applicable to the agreement, possible disputes between the parties shall be settled pursuant to the provisions set forth by two important international conventions provided that the country to which the foreign investor belongs to, has adhered to them.

In first place, the rules established by the Vienna Convention, dated Apr. 11,1980, must be applied. They refer, in detail, to the most essential features of the agreement, among others the rights and obligations of the contracting parties and the place and manner of delivery of the goods and corresponding warranties.

If the facts and circumstances are not provided for by the Vienna Convention the regulations provided for by the The Hague Convention, dated Oct 30,1985, must be considered. The latter, unlike the Vienna Convention, does not set forth precise regulations but allows to determine the applicable law in case of controversy. For example, the general rule, when exports from Italy are involved, establishes that the applicable law is that of the country in which the seller has its own place of business (therefore the Italian one), unless the Italian exporter has not committed himself to perform the agreement in Argentina, in which event the law of this latter country shall be applied (The Hague Conv. Section 8).

The solution coincides with what is provided for by the Argentine Civil Code in its Section 1209 which establishes that when there is no choice, those agreements celebrated in a foreign country but performed in Argentina must be ruled by the Argentine law, even when one or both contracting parties are foreigners.

Therefore, it is of the utmost importance to pay attention to the general terms and conditions of sale and delivery, checking accurately the standard rules established for the sales invoice (the clauses EXW-; FOB; CIF, etc. of the INCOTERMS as shown in the literature provided for by the International Chamber of Commerce in Paris) to be certain of their delivery.

3.2 Agency Contracts

Determining which law shall be applicable to an agency agreement is extremely important.

According to Argentine law, there is no specific regulation concerning an agency relationship, therefore it is governed by the provisions set forth in similar contracts as well as in case law. Without aiming at discussing this issue deeply, the following features must be emphasized:

- It shall be lawful to agree that the agent shall receive a commission over the goods only if the purchaser has paid for the price agreed upon ; it is further lawful to oblige the agent to send back the unsold goods.

- Should no provision whatsoever be established in the contract, there is no specific provision establishing the payment of a compensation for the termination of the business relationship. According to case law, said compensation must be paid only for exclusive agency contracts in which an expiration date has been determined, when the termination is not due to fair cause or justified reason and the same occurs before the contract's expiration date. There are some judgments by which principals have been obliged to pay agents a compensation for one-sided cancellation of open-ended contracts, even for many years.
- Special attention must be paid to the legal character of the agent, since the above mentioned rules shall be applied provided the agent is a legal entity or else, an autonomous enterprise; in the event of natural persons instead, there is a risk that the contract may be deemed as a "Traveling Salesman Contract" ("Viajante de Comercio") governed by Law Number 14.546; the law, in fact, establishes that the commission must be paid also in the event of unsuccessful transactions and, should the business relationship be terminated the "traveling salesman" is entitled to receive a compensation similar to the one paid to employees.

3.3 Distribution Contracts

The distribution contract (by which the distributor himself purchases the goods to resell them later) is not ruled by the Argentine law. The parties, therefore, are entitled to agree upon the rules they deem suitable or convenient.

Special attention must be paid to the restrictive clauses regarding competition, among which we can mention the obligation of the distributor not to sell the goods to third parties who, in turn, can sell them once again to other countries, (in particular to those of the Southern Common Market: Brazil, Uruguay and Paraguay) as those clauses may infringe antitrust regulations (Law Number 25.156 dated 1999). See item 5.5. in this chapter.

3.4 Technical Assistance and Transfer of Technology Contracts

In Argentina, contracts on technical assistance and transfer of technology furnished by foreigners are subject neither to any specific requirements nor to any previous authorization by the local authorities.

Law Number 22.426 passed on March 12, 1981, regulated by Decree N° 580 dated March 25, 1981 is applicable. According to these regulations, technology involves the concepts of patents, models and industrial designs as well as any kind of know-how related to the manufacture of a product or the rendering of a service.

It must be emphasized that Argentina provides for a preferential treatment to the transfer of technology which in certain cases may imply the non-payment of import duties.

3.5 Jurisdiction

Argentine Law allows contracting parties to an international agreement to choose the jurisdiction in order to settle a dispute. Either an foreign or an Argentine court can be chosen and in certain occasions one pertaining to a third country.

Wherever the contract does not determine any jurisdiction whatsoever it is important to point out that jurisdiction applicable to contracts, according to the Argentine legislation, is

attributed to the judge of the country in which the obligation claimed in court has been or must have been fulfilled.

3.6 Arbitration Provision

Arbitral awards rendered in a foreign country and in Argentina shall be effective in both countries provided that the corresponding foreign country and Argentina have ratified the international convention on acknowledgment and execution of foreign arbitral awards (New York June10/1958).

4.- PAYMENT: MEANS AND SECURITY.

4.1 Letter of Credit

The payment effected by means of a letter of credit, even if it is safer for the foreign entrepreneur and particularly if they are letters accepted by first rate foreign banks, is difficult to propose to the Argentine purchaser who very often, particularly if he owns a small or medium sized company, finds it difficult to obtain financing in the local market. It is thus wise to resort to other manners of payment.

4.2 Post-dated Checks

In Argentina there is a kind of post-dated check referred to as “cheque de pago diferido”, which may bear a due date up to 360 days as from the date on which it was drawn. This new kind of check was introduced by Law Number 24.760 of Jan13/97 which amended Law Number 24.452 on check regulations.

These checks, even though on a standard current account, are easily recognizable for the printed legend that reads “*cheque de pago diferido*” are completely transferable.

The law assures the honoring of the post-dated check through its registration with the negotiating bank, which in this manner commits itself to honor the check at maturity. Registration, however, is not mandatory and the check shall be valid and in full effect even if the registration has not been carried out. As this kind of guarantee implies the account holder to get some financing, usually quite expensive, this post-dated check with a guaranteed honoring is not widely used.

4.3 “FACTURA DE CREDITO”

This new negotiable instrument was added to the Argentine legislation by Law Number 24.760 in 1997.

The invoice sent to purchaser by the seller together with the delivery note – “remito” – must be accepted by purchaser upon delivery of the goods and sent back to seller. The purchaser is entitled not to receive the invoice wherever the goods evidence defect or damage, or when the terms and conditions of delivery have not been fulfilled. The accepted invoice becomes a “factura de crédito” or negotiable instrument, as far as effects are concerned, similar to a check or promissory note. It must be pointed out that for the Argentine law the regular invoice cannot be enforced and it is only an evidence of a credit payable through regular recourse.

The “factura de crédito” is still not frequently used by businessmen.

4.4 Pledge (“prenda”)

It is an agreement (based on a model approved by Argentine authorities) through which the seller of personal property, even when residing abroad, upon the transfer of property and ownership of same to purchaser, constitutes a pledge thereon to secure the payment of sales price and financing interest.

The most interesting contracts of pledge for the foreign businessmen are those referred to as “chattel mortgages” (“prenda fija”) the subject matter of which is clearly identified even when it has not been legally registered (e.g. machinery). The security is effective in third parties’ disputes as from the registration date of the model-agreement in the registry corresponding to the place the property is meant to remain.

The debtor is not entitled to take the property to a place different from the one specified in the agreement without the prior authorization of creditor. The infringement to this provision allows for the immediate seizure of the property.

The deed of pledge constitutes an enforceable instrument which in the event of default allows for the sale of the property and the use of the amount received to pay for the owed capital, together with any other interest or legal expenses, through a very simple proceeding. The pledge (“la prenda”) turns the creditor into a “preferred creditor” entitled to a preference over the property affected by the pledge, should the debtor become bankrupt.

5.- OTHER REGULATIONS

5.1 Inspection prior to shipment

To facilitate the import of products to Argentina, exporters must submit their own goods to inspection before their shipment, in order to get a certificate according to Argentine law (Law-Decree N° 477/97 and Resolutions N° 1066 and 1177 of 1997 issued by the Ministry of Economy). To this purpose the Argentine Government has authorized many international certifying agencies to issue said certificates.

5.2 Consumers’ protection

It is governed by Law Number 24.240 of Oct15/93, as amended by Law Number 24.999 of July 1st. 1998, with which manufacturers, distributors or sellers of consumer-oriented goods and personal property and of services must comply. Those who purchase products to be used in manufacturing processes or else, to sell them to third parties, shall not be considered “consumers”.

The issue related to warranties must be emphasized. The law obliges the above mentioned individuals to warrant the products sold for at least three (3) months even when defects are evident upon entering into the agreement. The warranty concerns the sameness between the product offered to be sold and the one effectively delivered, as well as its operation. In the event of its repair warrantor shall bear carrying and insurance expenses incurred in, and derived from the transportation and returning of the product to the consumer. Those bound by the warranty shall be jointly and severally liable for it. Any covenant contrary to this provision shall stand null and void.

The law further sets forth to deliver the goods with a Certificate of Warranty attached thereto, written in Spanish language, to be easily understood, stating at least: name of manufacturer, of importer and/or distributor and of seller; the identification of the product together with its technical specifications, operation, installation and maintenance instructions; term and

maturity date of warranty (not less than three (3) months) together with the address of the place where repairs may be carried out.

5.3 Liability for defective products

The law protecting consumers also refers to defective products. Accordingly, manufacturers, importers, distributors and sellers must inform consumers in detail about the essential features of the products and shall be jointly and severally liable for possible damages brought about by the defective products. In the event of potentially dangerous products, the above mentioned individuals must furnish an operation manual written in Spanish language. Consequently, if the products come from abroad, importer shall be bound to fulfill these requirements and provide a true and accurate translation of the original operation manual.

5.4 Labeling and origin specification

To this respect Law Number 22.802, on fair trade (“lealtad comercial”) must be applied. It refers to general provisions regarding the labeling and information to consumers. Generally, those finished products imported or otherwise sold in Argentina must show in their label, in Spanish, besides the name, the manufacturing country as well as the quality and quantity of ingredients. Manufacturers together with importers shall be liable for any differences appearing on labels.

As regards the specification of the country of origin, Law Number 25.380 of Jan 9/2001 has recently been passed for agricultural products, except for wine and liquor. The foreign manufacturer, may register the name with Argentine competent authorities. Protection is anyhow secured even in the event of no registration at all, since it is forbidden to use names of origin for products not coming from their respective geographical areas. It is further forbidden to use names that may lead to confusion: this is something new since when there was no explicit legislation related to this matter, it was customary to call these products “kind ...” (“tipo”): e.g. prosciutto kind.....

5.5 Antitrust regulations

In September 1999 Law Number 25.156 came into effect. It refers to defense against unfair competition, (“defensa de la competencia”), in which antitrust provisions seem to be even more restrictive than those in effect, at least, in the European Union.

In fact, the regulation is against willful conducts, agreements and /or practices tending to limit, restrict, falsify or otherwise damage free competition or the access to markets or within the scope of trust abuse wherever same may damage the general economic interest.

The following activities shall be null and void: to pre-fix, directly or indirectly, agree upon or determine the sales price of goods and/or services. It is also forbidden to agree upon restrictive terms concerning production, distribution or purchase of goods and services as well as the ones related to horizontal sharing of markets, areas, customers and sources of supply. It is further forbidden to purchase goods or services conditional on the purchase of other goods or services, to determine the sale or the purchase of goods or services conditional on terms implying not to use, purchase or supply goods or services from third parties, or else, terms implying to establish discriminatory conditions considered unreasonable by customary trade practices for the purchase or sale of goods and services, as well as not to accept orders of purchase or sale of goods and services at standard market terms and conditions.

Those who infringe these regulations are severely penalized apart from having to immediately put an end to those unfair competition practices.

5.6 Trademarks

It is advisable to register your own trademark in Argentina, particularly before the beginning of distribution operations of your own products there. Law Number 22.362 of 1980 deals with this issue.

Protection is granted for ten years, term that can be renewed for successive ten-year periods. Should the trademark be not used, there is, however, an expiration term. In fact, trademark expiration may be requested wherever it has not been used for a running period of five years.

5.7 Patents

As for patents, the law concerned is number 24.572 of 1996. Patents are protected for a period of 20 years. In general, any kind of invention applicable to productive processes may be patented, with a few exceptions. Among the latter the following must be mentioned: software, scientific findings and theories, mathematical methods and methods concerning the development of intellectual activity as well as literary and artistic works.

The patent is granted provided there are no objections to it, objections which may be put forward within 18 months after being published. Wherever the patent is not used within 4 years after its request or else, within 2 years after being published, third parties are entitled to ask for an obligatory license.

In furtherance, the law protects models and industrial designs. Models may be registered for a period of 5 years, renewable for other 5. Models that have already been registered abroad may be registered in Argentina provided that a period longer than six months after their registration abroad has not elapsed.

5.8 Software protection

A regulation dated Nov 11/1998 modified the legislation on copyright, granting specific protection to software. The regulation protects programs for programmers, data gathering and any other computer science material.

Protection concerns to both civil and criminal matters, thus solving the existing problem before the passing of this regulation. In fact, the Argentine Supreme Court of Justice although granting software civil protection on account of regarding it as an intellectual creation protected by copyright, did not consider any protection against criminal acts provided for by the legislation on copyright, since the improper use of software was not punishable by that legislation.

6.- ISSUES RELATED TO CREDIT RECOVERY

Foreign businessmen are entitled to sue local debtors before Argentine courts without any restriction whatsoever, even if they do not have any branches or agents in the country and without furnishing any security, (except in the event of a request for an injunction).

The following is a summary of the essential legal mechanisms necessary to recover uncollected credits.

6.1 ENFORCEMENT PROCEEDINGS

The most important negotiable instruments entitled to summary proceedings (“juicio ejecutivo”) in the event of default are mortgages, checks (either standard or post-dated), promissory notes, bills of exchange and the “factura de crédito” accepted by purchaser. The certificate of registration of the deed of pledge as above mentioned allows for an action to enforce the pledge referred to as “juicio de ejecución prendaria”.

These kinds of lawsuits, are governed by different local procedural codes, (Argentina is a federal country and hence every single state –“provincia” – has its own procedural code). The law severely restricts defendants from objecting to any court payment order: the debtor may prevent the pledged property from being sold only if he is able to demonstrate the regular payment of the debt or else, that the enforceable instrument is false or not the standard one or when he can demonstrate that it has expired or that there are current concurrent proceedings.

6.2 Bankruptcy procedure

Bankruptcy procedure in Argentina (proceedings prior to the declaration of bankruptcy – “concurso preventivo”- and bankruptcy –“quiebra”) is governed by Law Number 24.522 and subsequent amendments.

The law determines three kinds of creditors: preferred creditors, ordinary creditors and labor creditors. The law also provides for the creation of a “creditors’ committee”. The debtor is entitled to propose to every kind of creditors different agreements aimed at reorganizing himself or otherwise, the constitution of a new enterprise with the ordinary creditors and these are granted an exclusive term (90 days plus other possible 30 if authorized by the judge) in order to obtain the required authorizations.

Should the debtor fail to propose any proceedings prior to the declaration of bankruptcy or be unable to get the acceptance from his creditors, prior to the declaration of bankruptcy, individuals willing to purchase the company must be looked for (“cramdown”), transaction in which foreign companies and the same debtor may take part.

The debtor is declared “bankrupt” when the selling of the company has proved to be impossible.

II.- GENERAL SCOPE OF TRANSACTIONS IN ARGENTINA (CREATION OF PARTNERSHIPS)

1.- FOREIGN INVESTMENTS

1.1 Introduction

The Foreign Investment Act (Number 21.382) passed on August 28, 1976 as subsequently amended and regulated by the consolidating act of 1993, Decree 1853 dated September 8, 1993 is applicable to this issue. The law in force assures the same treatment to both national and foreign capital. Investors are entitled to take part in any and all Argentine business activities as if they were local investors. Foreign investment is not required to be previously authorized or registered, except the purchase of land by foreigners in areas adjacent to the country's border. Foreign investors may acquire the 100% of the capital belonging to already existing local companies or otherwise, constitute new partnerships without any restrictions as to capital share, and are entitled to transfer abroad their profits and dividends and in the event of liquidation also the capital, without any authorization or red tape formalities being required, and at any time. The transfer of profits and dividends abroad is not subject to any tax requirements.

1.2 Formalities concerning the registration of a company with the General Inspection Board of Legal Entities ("IGJ"). Section 123 of The Companies Act.

Foreign companies willing to create a company in Argentina or else, purchase shares or stock of local corporations must be registered with the corresponding control board, the General Inspection Board of Legal Entities, referred to as IGJ - i.e. "Inspección General de Justicia" – pursuant to Section 123 of the Argentine Companies Act.

It is a quite easy proceeding, even though in the last few years there have been some restrictive interpretations by the IGJ – particularly from the one in Buenos Aires: it must be remembered that Argentina is remarkably federal – interpretations that establish certain registration requirements to be fulfilled and consequently the possibility of investment in Argentina, among which, besides incorporation documents (By-Laws and local Chamber of Commerce Certificate) the following can be pointed out:

- report issued by the administration body putting forward the reasons to participate in an Argentine company;
- appointment of a local agent, bearing corresponding powers of attorney, acting as a link between foreign company and local authority;

certified copy of the last balance sheet and documentation evidencing the financial condition of the company. This requirement often becomes the most difficult one since Argentine authorities deeply examine the real operative condition of the foreign company and its financial capacity. It is thus necessary to furnish documents and certificates evidencing that its assets are made up of property other than inventories, e.g. fixed assets, with their corresponding appraisal, or else, intangible assets, economically appraisable, such as patents or trademarks, or otherwise shares in other

- corporations, likewise operative. Regarding investments in Argentina, Argentine authorities try to prevent dummy or shell corporations from being incorporated – quite usual in the past – either the case of companies that have been recently constituted or without a true record behind them;
- a statement issued by the company legal representative, bearing his certified signature, issued not more than 30 days before the date of submission of the document in Argentina, showing the list of stockholders and their share in the foreign company capital.

The requirements set forth in Section 123 of the Companies Act are not necessary for natural persons who are entitled to freely invest in Argentina and to personally take part in the creation of companies or to purchase shares or stocks without fulfilling any registration requirements.

1.3 The Argentine Tax Code

To be able to make transactions in Argentina, the foreigner, whether a person or a corporation, must request and obtain the Argentine tax number for foreigners (“CDI”). To that purpose it is required to appoint an agent in Argentina with full power and authority to represent the non-residing appointor with the Argentine authorities.

2.- BRANCHES

In order to develop a regular business, or else, to start an enterprise or open a branch, the foreign company shall prove its own existence pursuant to the regulations in force in the constituting country, establish a domicile in Argentina and appoint an agent who shall assume the same obligations as those held by the managers of the Corporation. (Argentine Corporation Act (“Ley de Sociedades Anónimas” – see par. III.4).

Branches are not considered legal entities, they must keep their business accounting separately from that of their home office, being mandatory the submission of annual balance reports. Branches are controlled by the local authority pursuant to the provisions of the Argentine law.

3.- AFFILIATES

Should the foreign company be willing to constitute a partnership in Argentina or else acquire shares in an existing one, it must prove its own existence according to the provisions set forth in the constituting country, (i.e. submitting its By-Laws and relative documentation) as well as register the documents corresponding to legal representatives with competent authorities. See what has been mentioned before on requirements, in Section 123 of the Argentine Corporation Act.

4.- CORPORATIONS

4.1 Introduction

Argentine corporations are constituted through an act witnessed by a notary, by at least two partners. The corporate capital is represented by shares and as from 1995 these must be nominative. Liability is limited to the amount of paid in capital. Every single common share

4.2 Capital

The minimum capital requested amounts to Pesos 12,000, the 25% of which must be paid in upon incorporation. The remaining amount must be paid within two years, upon managers' request.

The authorizing control board, the General Inspection Board of Legal Entities ("Inspección General de Justicia") through its Resolution N° 9/2004 established that corporate purpose must be reasonably related to corporate capital, accordingly, the minimum amount required of Pesos 12,000 shall be in accordance with corporate purpose.

4.3 Management and Representation

The management of the corporation shall a Board of Directors ("Directorio") made up of one or more directors, who are not required to be partners. The majority of the Directors must reside in Argentina.

Corporate legal representation shall rely on the Chairman of the Board of Directors. By-Laws may grant this representation to one or more directors.

Directors are required to provide a guarantee on behalf of the corporation for a minimum amount of Pesos 10,000, amount which must be in effect up to three years after the expiration of their office term.

By-Laws must clearly state directors' obligation to provide such guarantee.

4.4 Comptrollers //Auditing Proceedings

Non-listed corporations, provided they are not subject to any regular supervision authority control due to the nature of the developed activity (banking or insurance) or due to their amount of capital (higher than Pesos 2,100,000), are entitled not to appoint comptrollers.("sindicatura").

5.- LIMITED LIABILITY COMPANIES

5.1 Introduction

The Limited Liability Company ("SRL") represents one of the most advisable kinds of companies particularly for small and medium-sized enterprises. Incorporation formalities, terms and expenses are far lower than the ones required for corporations ("S.A.").

The number of partners shall be neither lower than 2 nor higher than 50. Capital is divided into shares and partners' liability is limited to the paid in capital.

5.2 Capital

Capital shall be paid up in Argentine currency and be wholly suscribed. 25% of same is paid in upon the company constitution and the remaining amount within a two-year term.

Shares feature the same face value and bear the same voting rights. These shares shall not be represented by marketable securities. The transfer of shares is completely free; By-laws may restrict this transfer but never forbid it. Partners enjoy preemptive rights to acquire the shares trasferred by other partners. The increase or decrease of capital implies the amendment of the articles of incorporation.

5.3 Partners' Meetings

Meetings' mechanisms are not as strict as those relative to corporations ("S.A."). If there are no specific provisions in the by-laws, meetings held by the majority of partners shall remain valid (even by mail or otherwise) and must be communicated to managers.

Concerning meetings related to the amendments of by-laws and the appointment or replacement of managers, the positive vote of the partners representing at least $\frac{3}{4}$ of the capital is required, unless otherwise provided for by the by-laws.

Those partners who cast a negative vote are entitled to resign and to reimburse their shares.

5.4 Management and representation

Partners shall appoint one or more managers ("gerentes"). Managers don't need to be partners and bear the same rights and obligations as those pertaining to corporations. Their term of office is established upon their appointment.

Managers are bound to provide a guarantee on behalf of the partnership for a minimum amount of Pesos 2,000. This guarantee shall be higher than Pesos 2,000 if the partnership capital amounts to more than Pesos 12,000.

5.5 Supervision

Limited Liability Companies may have a supervisory committee. This is applicable to partnerships featuring a capital higher than Pesos 2 million. If appointed, the rules established for corporations ("S.A.") must be applied.

6.- JOINT VENTURES

The 1983 amendment of the Companies Act, has introduced in Argentina the agreements on business cooperation, allowing for different manners of cooperation among businesses provided they feature a non partnership character: Association in Cooperation ("Asociación en Colaboración") and Joint Venture Associations ("UTE").

These associations feature no partnership character whatsoever; they are in fact, contractual organization manners of an associating nature in which Argentine and foreign persons whether natural or corporate may take part in, the purpose of which is determined by the coordination of business activity of a natural person or a legal entity, i.e. "plurilateral organization agreements". These associations, however, must comply with certain requirements of corporations: name, place of business, assets (working capital) and management.

In fact, no provision prevents other kind of contractual joint ventures from being used, since the concept that the agreement "legally binds the contracting parties" is applicable. (Section 1197 of the Argentine Civil Code).

7.- LABOR LAW IN ARGENTINA

Argentine legislation, traditionally rigid as regards labor law, has undergone a deep amendment process. The trend, originally flexible has received some blows which have turned it into a more rigid system particularly as regards severance payment (it has become more expensive) and the ruling on employee's payment as a consequence of labor accidents.

The applicable law is the one referred to as “Ley de Contrato de Trabajo”, Labor Contract Act (on labor agreements) made up of other provisions and regulations. They further exist those referred to as Collective Bargaining Contracts (“Convenio Colectivo de Trabajo”). These are applicable to industrial and commercial sectors, not to farmers to which a specific ruling is applied.

7.1 Open-end Contracts

They are typical employment contracts. Whether their expiration date has not been determined they shall be considered as open-ended contracts. There shall be a trial period of three months. Together with agreed upon salary, an annual bonus is paid, divided into two parts: first half payable in June and the other half in December.

Dismissal without fair cause is possible provided the employee is given a severance payment based on seniority, usually a month’s payment per working year or period longer than three months.

7.2 Fixed-term Contracts

The life of these agreements cannot exceed 5 years. It is mandatory to include the reasons for adopting this kind of contractual alternative. Employees can be dismissed, even where there is no fair cause, prior to its expiration. The employer must furnish the employee with a compensation for damages arising out of the dismissal.

7.3 Part-time jobs

They are ruled by Law Number 24.465 in its Section 2. Services rendered shall not exceed the 2/3 of the usual daily, weekly and/or monthly working hours. Salaries shall be based on the hours effectively worked according to Collective Labor Agreement parameters. It is forbidden to work overtime. Pension or insurance contribution amounts result from a percentage of the received salary.

7.4 Trainee contracts

They are ruled by Law Number 25.013 which repealed Law 24.465 on training. Trainees may be between 15 and 28 years old. Trainee working hours shall not exceed 40 weekly hours. There is a limitation to the number of employees hired in this manner: they must represent only the 10% of the whole labor force. Enterprises bearing fewer than 10 employees may hire only one trainee.

7.5 Managers’ salaries

Besides from salaries, non-resident managers are usually granted additional “benefits” among which the payment of pre-paid medical care system (“medicina prepa”) and the furnishing of company vehicles can be mentioned.

According to recent surveys, the average annual remuneration for managers of foreign companies in Argentina ranges from USD 32,500 to USD 195,000. The average is USD 54,000 per year. Anyhow, when the employer bears – as frequently requested – the payment of income taxes and social security contributions, amounts considerably increase. For example, a remuneration of USD 54,000 per year amounts to USD 89,000 per year when the employer bears the payment of income tax.

7.6 Termination of employer/employee relationship

Nothing shall be owed to employee (except for matured salary, proportion of annual bonus and of non-enjoyed holidays) in the event of termination of the employer/employee relationship for just cause and/or justified reason.

III.- TAXATION ISSUES

1.- BUSINESS TRANSACTIONS

1.1 Exports to Argentina between non-related individuals

When freight and insurance net price is higher than wholesale price amount in force in the country of origin, except when otherwise evidenced, the price difference shall be considered taxable profit in Argentina. This is set forth by Section 8 of the income tax law as amended by Law Number 25.239 of Dec 30, 1999. The law further points out the different methods to be used to determine the original price when this is not mentioned.

1.2 Exports from Argentina between related individuals

Business transactions between related corporations or individuals residing in Argentina and non-residing individuals are subject to a more strict control by Argentine tax authorities as to the price stated, in order to prevent pricing transfer tactics from being used. Basically, twice a year, Argentine taxpayers must submit a tax return in which the transactions made with related foreign individuals must be mentioned so as to compare prices and to subject possible differences to taxation.

The same rules are applicable to transactions carried out by residing individuals and those residing in “tax havens”.

Regulations on transfer pricing instead, are not applicable to what has been paid due to trademark or patent use.

1.3 Royalties on technical assistance, industrial assignment of rights and on other services rendered abroad.

Royalties paid in Argentina to non-resident individuals on account of technical assistance as well as of other services, the payment of which must be borne by the local resident, are subject to a withholding tax in Argentina, the rate of which is shown in the chart below:

	<i>Rate</i>	<i>Remarks</i>
Royalties on transfer of technology impossible to find in Argentina	21%	
Royalties on assignment of rights and or licences and/or patents	28%	
Royalties on copyright, subject to certain conditions	12.25%	
Interest collected for furnishing financing, except for cars	15.05%	
Interest collected on loans granted to local companies	15.05%	If lender resides in a “tax haven”, rate amounts to 35%
Salaries and fees	24.50%	
Charges for personal property rental	14%	
Charges for real estate rental	21%	
Real estate sale	17.50	
Another income otherwise specified	31.50%	

1.4 Import duties

Argentina is a member of the World Trade Organization (WTO) as well as of the Latin American Integration Association (“Asociación Latinoamericana de Integración- ALADI”) and of the South American Common Market (“MERCOSUR”).

For example purposes, and concerning imports from Italy, import duties range from 0 to 35% depending on the imported goods, levied on C&F values. The average is around 10 – 15% to which a statistics rate (“tasa de estadística”) is added, currently around 0,5%. Upon nationalization of the goods importer must pay a down payment on income tax ranging from 3% to 11% depending on the kind of the imported goods, except for fixed assets. To this, a 1% downpayment on “gross income” (“ingresos brutos”) must be added.

1.5 Exports refund

Exporters of goods manufactured in Argentina are granted a whole or partial refund of the taxes levied on the different manufacturing stages. Refund rates range from 0% to 6%. Exporters may further request the reimbursement of the Value Added Tax (“IVA”) invoiced to them by seller of the products and added to the goods to be exported.

1.6 Drawback

In Argentina imports of unfinished products or raw material are accepted for their transformation, mixing, conditioning, repair or for whatever any other activity leading to add added value to the goods to be exported or else to their packaging. In these events, exporter is entitled to a partial or whole refund of import duties.

1.7 Temporary imports

Temporary imports of partially or wholly manufactured goods are also allowed provided they are intended to be transformed into new exports products. In these cases a duty-free import is allowed provided the products resulting from the transformation of the imported goods are exported within a one-year term for standardized production and within two years in the case of other kind of goods.

2.- PERMANENT ORGANIZATIONS (Taxation for residents)

In Argentina, for tax purposes, “resident” means individuals residing in the country, partnerships and/or corporations incorporated in the country, branches of foreign companies and whatever other kind of permanent organization of a foreign company operating in Argentina.

For individuals residing in Argentina the current principle in effect as from tax reform in 1992 (Law number 24.073) is the one referred to as global income. Accordingly, they are subject to the payment of income tax wherever the income has been generated (whether in Argentina or

abroad). Taxes already paid abroad, however, can be exempted from payment in Argentina. Those branches of foreign companies and foreign enterprises regularly conducting their businesses in Argentina are considered, for tax purposes, as individuals different from their parent company and are taxed according to their own accounting in Argentina.

2.1 Income tax. Legal entities

Corporations (“sociedades anónimas = S.A.”), Limited Liability Companies (“SRL”), limited partnerships and partnerships limited by shares as well as those considered as investment partnerships, where the branches of the foreign company are included, must submit an annual tax return and pay for it accordingly.

Current rate in effect, as from Jan 1,1999 amounts to 35%. Former rates were 30% up to 1996, and of 33% up to 1998. It is not further taxed the distribution of dividends by corporations or of profits by limited liability companies. In the same manner, there is no tax levied on profit remittance to parent company from affiliates of other permanent companies of foreign companies.

Private partnerships are required to submit their own tax return specifying the distribution among partners who must, on their annual tax returns, state the income obtained from the partnership, which is taxed on a progressive rate basis up to a maximum of 35%.

Tax returns are annually submitted by the taxpayer in corresponding forms, together with an accounting certificate issued by a professional. The tax, instead, is paid for in ten installments along the solar year. The remaining balance is paid within 5 months after the end of the fiscal year.

3.- TAXES FOR NON RESIDENTS

Individuals not residing in Argentina and partnerships constituted abroad having no permanent organization in Argentina are considered, for tax purposes, as “beneficiaries from abroad” (“beneficiarios del exterior”) and as for the profits obtained in Argentina, they are subject to withholding which varies according to profit source as shown in the chart in subp. III 1.3.

4.- VALUE ADDED TAX (“IVA”)

It is calculated on the amount shown in the invoice issued by residing individuals as well as on the C&F amount of imported goods provided there is no legal exemption, among which the sale of essential items is involved. The tax rate is usually 21% but in certain cases the rate is reduced to 10,50%.

4.1 VAT applied to the import of services

Law Number 25.063 from December 1998, set forth that in the event of services supplied abroad by non resident individuals, but somehow used in Argentina, taxes must be borne by the Argentine resident individual who has acquired and used the service in Argentina. However, although the tax is only applicable when the acquirer is an individual registered to pay for VAT charges, many individuals remain outside this group, for example those who are considered as “final consumers”.

5.- TAXES LEVIED ON PARTNERSHIPS

Taxes are levied on any and all partnerships constituted in Argentina. Tax is paid upon incorporation. Corporations are further required to pay a fixed annual tax, the amount of which ranges from Pesos 100 to Pesos 800 according to partnership capital.

In October 2003 the regulation concerning the payment of an annual registration tax was declared to be against the Constitution. So far, the State has no clear idea of same, and many partnerships so as not to hinder proceedings before competent authorities, keep on paying the tax.

6.- TAXES LEVIED ON PARTNERSHIP SHARE

In 2003, Law Number 25.585 which amended Law Number 23.966 (tax on individual assets), introduced the tax levied on partnership capital share.

The tax is applicable to any person, whether natural or corporate, sharing the capital of partnerships constituted in Argentina. The rate ranges from 0.5% to 0.75% and the tax base is represented by the partnership net worth.

Partnerships must pay for this tax on behalf and for the account of their partners.

7.- TAXES LEVIED ON BANK CREDITS

This tax is levied on any bank deposit or withdrawal as well as on any other debit and credit operation in non-banking channels. For the first instance the rate is 0.6%. In the event of non-banking operations it amounts to 1.2%, with just a few exceptions. This has been a highly controversial measure for its distorting and penalizing effect on formal business activity.

8.- PROVINCIAL TAXES

Since Argentina is organized on a federal system, there are taxes levied by the provinces and those by the Capital City of Buenos Aires. Among these the Turnover Tax and the Stamp Tax can be pointed out.

8.1 Turnover Tax (“Impuesto a los Ingresos Brutos”)

The Turnover Tax is applicable to gross income from industrial, business and service activity, except for exports operations.

Rates vary from province to province. In the city of Buenos Aires it amounts to 3%, with different rates according to the activity concerned: 1% for commodity-producing sectors, and of 1.5% for the manufacturing and transformation of goods, whereas in the Province of Buenos Aires the rate is 2.5%.

8.2 Stamp Tax

Stamp tax, concerning these premises, which was being applied to agreements and deeds of an economic nature at a 1% rate, was abolished in the City of Buenos Aires as from February 1st, 1993 for practically any and all agreements. Currently it is applicable to acts relative to the assignment of rights on real estate (rates ranging from 0.75% to 2.5% of transaction amount).

In the provinces, instead, the tax is levied on acts and agreements (including those entered into by mail), mortgages, etc. Rates and the nature of the acts subject to taxation vary from province to province. In the Province of Buenos Aires, for example, the rate is 1% for

agreements, acknowledgment of debt, bills of exchange whereas those acts concerning the assignment of real estate are subject, instead, to a 4% rate.

9.- TAXES LEVIED ON INDIVIDUAL ASSETS

Non residing individuals as well as residents are subject to a tax on individual assets over property, non-operating property, or of any other nature– e.g. bank investments – owned by them in Argentina.

Rates are calculated on the value of the property and are progressive as shown below (regulation in force as from Jan 1, 1997):

From Pesos 1 to 305,000	No tax (“tax exempted”)
From Pesos 305,001 to 750,000	0.5%
From Pesos 750,001 to 2,000,000	0.75%
From Pesos 2,000,001 to 5,000,000	1%
More than Pesos 5,000,001	1.25%

So far, the non taxable limit is not applicable to non resident individuals who must pay for the tax irrespective of how much the property is worth.

General rate for non residents is 1.25%. So as not to be charged with penalties and fines and in order to avoid any beaurocratic problems upon the selling of the real estate, it is advisable to contact a local professional on commercial matters and annually submit the corresponding tax return, pay the corresponding tax and carefully keep related documents.

IV. PURCHASE OF REAL ESTATE IN ARGENTINA.

1. Issues to be considered from a practical standpoint

In the last few years, due to foreign exchange differences between the euro and the US Dollar, (the whole real estate market in Argentina is based on the US Dollar) there has been a remarkable increase of real estate purchasing transactions by foreigners in the country.

There are, however, some critical issues that must not be disregarded from a legal and managerial stand points. The following are the most relevant issues concerning this matter.

Besides issues related to the choice of the real estate, reasonable prices (it is advisable to contact real estate agents and ask for at least three different appraisals to be compared to seller's proposal) operations of legal nature (it is advisable to contact professionals and grant corresponding powers of attorney) and only taking into account the purchasing stage, the most difficult issue is the one concerning the transfer of the amount of money required for the purchase.

In fact, according to incoming currency restrictions, and to avoid speculative investments, money transfers from abroad, are subject to a 30% temporary cash reserve ("encaje"). This means that the Central Bank obliges Argentine banks, to which amounts of money are transferred from abroad, to withhold, for the term of one year, 30% of same under the commitment to refund it, without any interest and in pesos, at term expiration. This restriction, however, is not in force over those real estate purchase operations not considered "speculative", over capital investment (supply of paid- in capital or capital increase) coming from abroad and assigned to local companies.

Concerning real estate purchases the following conditions should be fulfilled:

- The deed of sale must be executed in such a way so as to secure the real transfer of the money for the payment of the agreed upon price. This very often constitutes a real problem, particularly as far as cost is concerned due to the conversion of foreign exchange into pesos and the common request made by sellers to be authorized to receive foreign currency as well as pesos.
- There must be absolute identity between the holder of the foreign account from which the transfer is originated and the purchaser. In brief, the amounts of money assigned to the purchase shall be sent from the account held by the individual willing to carry out the purchase;
- The economic/financial condition of purchaser must be proved (by submitting tax returns) and, through a letter issued by the foreign bank, it must be certified that the amount of money assigned to purchase does no result from any illegal activity.