

Mendoza **A** INVEST

*Investment Promotion Agency  
Government of Mendoza*



# ESTABLISHING A BUSINESS

MENDOZA  
JANUARY 2014

## **ESTABLISHING A BUSINESS**

At the moment of setting up a business in Mendoza, investors have the following options: to establish a branch office of a foreign company, purchase an ownership interest in an existing company or create a new company.

The main characteristics, requirements and implications of the different legal forms of business organizations in Argentina are described below.

### **BRANCH OFFICE OR REPRESENTATION OF A FOREIGN COMPANY**

A branch or representative office is created when a foreign company opens a branch in Argentina, which does not imply the creation of a new legal entity. Although the branch of a foreign company is governed, as far as its existence and business form are concerned, by the laws of its home country, upon settling in Argentina, the branch must be filed with the local Registry of Business Organizations. In Mendoza, such registry is kept by the Office of Legal Entities (*Dirección de Personas Jurídicas - DPJ*) of the Province of Mendoza.

A branch may perform all the activities of its Head Office (HO) abroad on behalf of that HO and through the person appointed as representative. The branch is financially liable to the extent of the HO's total capital, not only of the capital assigned by the HO to its branch in Argentina. For this reason, the branch office must hold separate bank accounts and periodically submit financial statements to the Registry of Business Organizations.

The branch must be managed by a legal representative with full administrative and judicial (summons of process)

power-of-attorney -- which may be limited according to circumstances. Administration powers should be sufficiently broad as to ensure efficient business operations with financial institutions and other local suppliers.

Branch offices are subject to the control of the Registry of Business Organizations of their jurisdiction and must comply with the same requirements as corporations.

### **Registration Requirements for Branch Offices**

In order to legally establish a foreign branch office in Mendoza, the following documentation is required:

1. A pre-qualification report issued by a notary public or a lawyer, as the case may be, whose signature must be certified by the respective professional licensing association. The pre-qualification report must include the following:

- a) Quorum and majorities: the professional signing the report must state whether the applicable quorum and majority rules were observed in respect with the shareholders' or members' meeting and the management body that called said meeting.
- b) Registered office: the signing professional must indicate the location of the company's registered office and expressly state whether the entity's management indeed takes place at the location indicated.
- c) Good standing: the professional issuing the report must state whether the company has been dissolved as a matter of law by expiration of term or completion of work according to corporate books, by dissolution

agreement or statement of occurrence of any of the grounds for dissolution, or if the corporate minute books contain any records of shareholders' or partners' meetings in which the company's dissolution is considered.

- d) Chain of entries: the issuing professional must issue a statement on the chain of entries of every act subject to registration, when applicable.

Also, a pre-qualification report issued by an accountant will be required when capital contributions are made in forms other than cash.

2. The following documents from the Head Office:

- a) The partnership agreement or articles of incorporation, by-laws and amendments.
- b) Certificate of good standing proving that the company is duly registered (in its home country) and authorized to do business, and it is not under liquidation or any legal process implying restrictions on its assets or business activities. If the legal system of the HO's country of registration does not contemplate the issuance of said certificate, a report signed by lawyer or notary public from the home country can be submitted.
- c) The resolution by the firm's governing body deciding to create a branch in the Argentine Republic. The resolution must contain the following information:
  - Date of fiscal year end.

- The exact location of the registered office in Argentina (the representative may be expressly empowered to fix it).
- The capital assigned, if any.
- The appointment of the representative, who must be an individual (relevant information about the powers assigned to the representative may be included).

### 3. Additional documentation proving the following:

- a) That the company is not restricted, in its place of registration, from performing any of its business activities, or its core activity or activities.
- b) That the company holds, outside the Argentine Republic:
  - One or more presently operating agencies, branches or representations, and/or
  - Non-current fixed assets or exploitation rights over third party assets of such nature, and/or
  - Interests in other companies that do not offer shares to the public, and/or
  - Investment operations in stock markets contemplated among the regular activities of the corporate purpose.
- c) A list of the partners or shareholders at the moment of deciding to apply for registration (indicating for each of them at least name and surname or corporate name; address or registered office; I.D./passport number or registration, authorization or incorporation data, number of shares and votes and percentage of the capital stock).

### 4. Original or certified copy of the publication in the Official Bulletin, in the case of corporations, limited liability companies or business association structures not foreseen by Argentine laws, of a notice containing:

- a) About the branch office: registered address; capital assigned, if any; and date of fiscal year end.
- b) About the branch representative: personal data; legal domicile; term of representation, if fixed; and, in case more than one representative is appointed, the capacity in which each of them will act.
- c) About the Head Office: the data required in section 10 of Act No. 19550 with regard to the partnership agreement or articles of incorporation, as applicable, and amendments.

### 5. A written statement signed by the appointed representative (notarized or personally ratified prior to registration or certified by the corresponding professional association if the representative is a lawyer or an accountant) in which he/she must:

- a) Accept his/her appointment and report his/her personal data.
- b) Fix the registered office in Argentina, if empowered to do so.
- c) Fix the legal domicile within the corresponding jurisdiction.

### 6. Receipt of payment of the registration fee.

## **CREATION OF A NEW COMPANY OR PURCHASE OF OWNERSHIP INTERESTS IN AN EXISTING ONE**

The Argentine Republic's Business Organizations Act (*Ley de Sociedades Comerciales*) provides for a considerable variety of business association structures. The two types most used by investors in Argentina are: The Corporation or SA (*Sociedad Anónima* as regulated under Argentine law) and the Limited Liability Company or SRL (*Sociedad de Responsabilidad Limitada* as regulated under Argentine law). Unlike the foreign branch office, these two types of business associations are liable only to the extent of the capital contributed to establish the company or participate in it .

Unlike local companies, foreign companies creating a new company or acquiring an ownership interest in an existing one must provide evidence to the corresponding Registry of Business Organizations that they are legally constituted in their country of origin. They must also file, with the said Registry, their partnership agreement or articles of incorporation, their amendments and any documentation authorizing the company to do business and documents relating to their legal representatives.

## **CORPORATIONS or SAs**

The corporate property belongs to the shareholders, who limit their liability to the capital they contributed. At least two shareholders are required to establish an SA. Shares may or may not be offered to the public in the local stock exchange.

SAs' day-to-day operations are regulated by the corporate by-laws and managed by a board of directors made up of one or more members, who may be shareholders or not. The majority of the directors must reside in Argentina. There are no restrictions in regard to the place of residence or nationality of the shareholders. In case a shareholder is a foreign commercial entity, it must first register with the Registry of Business Organizations, at the DPJ (Office of Legal Entities) of the province of Mendoza.

Directors bear unlimited joint and several liability to the company, the shareholders and third parties for poor job performance, infringement of the law or the corporate by-laws and/or regulations, and for any other type of damage arising from fraud, abuse of authority or gross negligence.

SAs must be filed by means of a notarial instrument. In the Province of Mendoza, they must be registered with the DPJ. As from October 2012, a minimum capital of AR\$100,000 is required for the registration of SAs (according to Executive Order No. 1331/2012, an amendment of section 186 of Act No.19550).

In Mendoza -- and, in general, in Argentina -- SAs are subject to external and internal audits. External audits are carried out by the Public Registry of Commerce of the jurisdiction. Certain activities are supervised by other regulatory bodies. For instance, publicly traded corporations are supervised by the National Securities Commission (CNV in Spanish); financial entities, by the Central Bank of Argentina (BCRA in Spanish); and

insurance companies, by the Argentine Insurance Superintendence (SSN in Spanish).

Internal audits are usually performed by one or more comptrollers who are appointed by the shareholders' meeting. SAs which are not under the permanent control of a governmental body are not required to appoint corporate comptrollers. The legislation also foresees the figure of the Supervisory Council, an entity with broad objectives which are set forth by the companies' own corporate by-laws.

### LIMITED LIABILITY COMPANIES or SRLs

SRLs share a number of characteristics with SAs, but the following differences should be pointed out:

- An SRL must have at least two members and no more than 50;
- an SA cannot be a member;
- SRLs may not be listed on the stock exchange;
- a change of members requires a modification in the articles of organization;
- the steps required to create an SRL are simpler; and
- the by-laws are more flexible.

As in the case of SAs, the liability of the members is limited to the number of membership units they have acquired. Members may acquire more than one unit. The transfer of units is not restricted by law, but it may be restricted by the corporate by-laws.

An SRL is managed and represented by one or more managers, who may be members or not. Managers are severally or jointly and severally liable, depending on the regulations set forth in the articles of organization with regard to management operation.

SRLs may be established by means of public deed or private instrument filed with the Public Registry of Commerce of the corresponding jurisdiction. No minimum capital contribution is required, but the same must bear relation to the company's purpose.

### Requirements for Registering a Company in Mendoza

In Argentina, partnerships and corporations are filed with the Public Registry of Commerce of the corresponding jurisdiction. In the Province of Mendoza, the DPJ is in charge of the organization and activities of the Public Registry of Commerce.

### Act No. 5069 of the Province of Mendoza

This provincial act led to the creation of the DPJ (Mendoza Office of Legal Entities). The role of this Office is to supervise the creation, filing, operation, dissolution and liquidation, within the jurisdiction of the province, of joint-stock companies, civil associations and foundations that are created within the province of Mendoza or that, if created in another jurisdiction, perform their main business activity in Mendoza or have established branches, agencies, or any type of permanent office in the province.

In order to register a company with the DPJ, applicants may opt for a fast track registration process, by means of which registration is completed on the same day the application and the required documentation are submitted, on payment of an administrative fee. The regular registration process takes approximately thirty days.

### **Investing as branch, agency or representative office of a foreign company in which you have an ownership interest**

If this is the case, the registration process will be subject to section 118 of Act No. 19550 (restated text 1984) and sections 1 and 2 of Regulation No. 1023/04 of the DPJ, and it is necessary to apply for registration of the branch, agency, or representative office with the DPJ. For the registration of a foreign company's branch, agency or representative office, the following documentation is required:

- a) Copy of the partnership agreement or articles of incorporation and by-laws, in their original language.
- b) Copy of the resolution whereby it was decided to open a branch office in Argentina, based in the province of Mendoza, in its original language. It must include justification of the investment and appointment of a legal representative.
- c) Certificate of good standing, in its original language, issued by competent authority, proving that the company is duly registered and currently in existence.
- d) A sworn statement by the company's representatives or members of the managing or governing body stating that they are not subject to any of the prohibitions and incompatibilities under section 264 of Act No. 19550.

- e) The documentation listed must be apostilled in the country of origin (for countries that are signatory to the Hague Convention) or certified by the Argentine Ministry of Foreign Relations, International Trade and Worship, and, if applicable, translated into Spanish by sworn translator.
- f) Publication of the registration in the Mendoza Official Bulletin.
- g) Proof of payment of the corresponding registration fee.

### **Investing by creating a company in Mendoza**

If this is the case, the registration process will be subject to section 123 of Act No. 19550 (restated text 1984) and sections 3 and 4 of Regulation No. 1023/04 of the DPJ. For the registration of a new company, the following documentation is required:

- a) Copy of the partnership agreement or articles of incorporation and by-laws, in their original language.
- b) Copy of the resolution whereby the creation of the company was decided under section 123 of Act No. 19550, and of the legal representative's appointment, in their original language. If applicable, copy of the power-of-attorney executed and filed in favor of the legal representative.
- c) Establishment of legal domicile of the company and its legal representatives within the jurisdiction of the province of Mendoza.
- d) Certificate of good standing, in its original language, issued by competent authority, proving that the company is duly registered and currently in existence.
- e) The documentation listed must be apostilled in the country of origin (for countries that are signatory to the Hague Convention) or certified by the Argentine Ministry of

Foreign Relations, International Trade and Worship, and, if applicable, translated into Spanish by sworn translator.

f) Publication of the registration in the Mendoza Official Bulletin.

g) Proof of payment of the corresponding registration fee.

With regard to directors, section 3 of Regulation 1696/2004 sets forth that the absolute majority of the members of the board of directors, including temporary members, must reside in Argentina. Foreign-born directors must submit a certificate of residence issued by competent authority proving they reside in Argentina.

## **A FURTHER OPTION**

A valid alternative for the prompt establishment of a business in the province of Mendoza is the acquisition of a company which has already been created and registered. There are law and accounting firms which are engaged in creating and registering companies (usually SAs) to subsequently sell them, with all the paperwork and formalities completed, to investors interested in settling a business. The transfer of shares is carried out upon payment of a price.

## **FOREIGN COMPANIES WITH OWNERSHIP INTERESTS IN AN ARGENTINE COMPANY**

A foreign company that desires to acquire ownership interests in a new or existing local company, prior to completing the registration requirements listed above, must register the company organized abroad with the DPJ. This will involve the following:

- Prove that the company has been organized in conformity with the legislation of its home country and filed with the appropriate Registry of Business Organizations.
- Register at the corresponding Registry of Business Organizations the original partnership agreement or articles of incorporation, their amendments and any documentation authorizing the company to do business, as well as documents relating to their legal representatives. If a corporation, these documents must also be filed with the Registry of Corporations.
- Submit the resolution whereby it was decided either to register the foreign company for the purpose of organizing a company in Mendoza or to acquire an ownership interest in a local company, which must include the date of fiscal year end, registered address in Argentina and the representative's appointment.
- Inform whether the company is subject to any legal prohibition or restriction to conduct, in its home country, all of its business activities or its main activity/ies. This is demonstrated with the partnership agreement or articles of incorporation and their subsequent amendments, if any.
- Prove that the company meets with at least one of the following conditions outside the Argentine Republic, on the date of application for registration:
  - a) Existence of one or more permanent branches, agencies or representative offices, which will be demonstrated by submitting the corresponding certificates of good standing issued by the competent administrative or judicial authority in the respective locations.

- b) Ownership interests in other companies consisting of non-current assets as defined by the generally accepted accounting principles.
- c) Ownership of fixed assets in its country of origin, the existence and value of which must be evidenced on the basis of the generally accepted accounting principles.

The last two conditions must be demonstrated by submitting financial statements of the company and/or a certification signed by officers of the company (whose powers of representation must also be proven), as obtained from accounting records in the relevant corporate books.

The corresponding documentation must be submitted for the individualization of the partners or shareholders at the moment of deciding to apply for registration.

## **REQUIREMENTS FOR DOCUMENTATION ISSUED ABROAD**

Documents issued abroad must be submitted according to the requirements in their country of issuance, certified or endorsed by the Argentine Consulate with jurisdiction over the company's place of origin, and/or authenticated with the Hague Apostille, if applicable. The documents must be translated into Spanish by a certified public translator registered in Argentina, whose signature must be authenticated by the respective professional association, and the version in the original language must be attached to the translation.

Association of Sworn Translators of the Province of Mendoza: <http://traductoresmza.blogspot.com.ar/>

Notarization: Documents issued abroad may be certified by an Argentine public notary, and then filed with their corresponding translation.

If a foreign company wishes to participate indirectly as a shareholder in a local company by means of an investment vehicle, in addition to complying with all of the requirements listed before, it must include information relating to that vehicle's parent company.

### **For further information:**

DIRECCIÓN DE PERSONAS JURÍDICAS (OFFICE OF LEGAL ENTITIES)

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