



## 1. Country Profile

*Official Name:* República Argentina

*Capital:* Ciudad Autónoma de Buenos Aires

*Official Language:* Spanish

*Estimated population:* 43.8 million ( 2016)

*Surface Area:* 3,8 million km<sup>2</sup>

*Currency:* Peso (ARS,\$)

*Gross Domestic Product (GDP) per capita:* USD 13,497 (2016 est.)

*Political Division:* 23 autonomous provinces and the Autonomous City of Buenos Aires

*Political System:* Republican, Representative and Federal

### **Major cities**

Ciudad Autónoma de Buenos Aires, La Plata, Mar del Plata, Córdoba, Mendoza, Rosario, San Miguel de Tucumán, San Carlos de Bariloche.

### **City of Buenos Aires**

It is the capital city of Argentina. It has an autonomous government, with its own legislation body and jurisdiction, and its Governor is elected directly by the citizens of the City of Buenos Aires.

### **Climate and natural resources**

Argentina boasts a wide range of climates and landscapes, as well as significant biodiversity.

These landscapes present ice fields contrast with arid zones; mountains with valleys or plateaus; fluvial streams and lakes with large oceans, broad grassy plains with woods and forests.

The varied features of its many climates—tropical, cold, temperate, arid—are present in a huge diversity of scenarios and terrains.

The country has access to the South Atlantic Ocean and to the South Pacific Ocean through the Strait of Magellan. It borders Uruguay, Brazil and the Atlantic Ocean to the east; Chile to the south and west; and it shares its northern frontier with Bolivia and Paraguay.



## General Information

### **Doing Business in Argentina**

#### **Background: Geography, Demography and Political System**

By Marval, O Farrell & Mairal

#### *Geography and Demography*

The Republic of Argentina is comprised of 23 provinces and the Federal Capital: the Autonomous City of Buenos Aires. Located at the extreme south-east of the South American continent, Argentina is the eighth largest country in the world and the second largest in Latin America, covering some 3.8 million square kilometers (1.5 million square miles). Argentina has an estimated population of approximately 43 million people, of which 13 million live in the city of Buenos Aires and the greater Buenos Aires area. The overall population density is about 11 persons per square kilometer.

#### *The Constitutional and Political System*

Argentina is organized as a federal republic with a democratic political system. The Argentine Constitution, adopted in 1853, provides in its present form for a tripartite system of government consisting of an executive branch headed by the President, a legislative branch and a judiciary.

The executive branch has been the dominant branch at the federal level. The President is elected by direct vote and may serve a maximum of two consecutive, four-year terms.

The Argentine Congress comprises two houses the Senate and the Chamber of Deputies, which constitute the legislative branch. Congress has exclusive power to enact laws concerning federal legislation, including international and inter-provincial trade, immigration and citizenship, patents and trademarks. The Constitution entitles Congress to enact the codes concerning civil, commercial, criminal, mining, labour and social security matters, which are applicable throughout the country.

The judicial system is divided into federal and provincial courts, and each system has lower courts, courts of appeal and supreme courts. The supreme judicial power of Argentina is vested in the Supreme Court of Justice.

Each province enacts its own Constitution, elects its own governor and legislators, and appoints its own judges to the provincial courts.



## Information for the Foreign Investor

### Argentine Foreign Investment Regime

Foreign investments in Argentina are regulated by a framework of international treaties and Argentine laws that establish the norms for choice of law and jurisdiction, legal treatment of foreign investors, monetary policy and foreign exchange.

In general, foreign investors wishing to invest in Argentina, either by starting up new businesses or by acquiring existing businesses or companies, do not require prior government approval except for regulated areas or for general applicable regimes such as antitrust regulations. However, if a foreign company's investment consists of holding equity of an Argentine company, the foreign company must register with the Public Registry of Commerce of the jurisdiction where the Argentine company is incorporated and comply with certain periodic reporting requirements.

Foreign investments are governed by the Argentine Foreign Investments Law No. 21,382 enacted in 1976, which has subsequently been the subject of considerable amendment, with a view to liberalizing the regime applicable to them.

The law states, as a general principle, that foreigners investing in economic activities in Argentina enjoy the same status and have the same rights that the Constitution affords local investors. Both are entitled to select any legal organization permitted by law, and to have free access to domestic and international financing.

One of the only foreign investment sectors still restricted in Argentina is broadcasting, but the Investment Protection Treaty with the United States has been constructed as repealing restrictions for U.S. investors. Furthermore, Law No. 25,750 enacted in 2003 eases that restriction by allowing up to 30% foreign ownership of Argentine broadcasting companies (however, because of lack of precedent, uncertainly remains as to its actual application). In addition, foreigners who wish to purchase land located in frontier and other security areas, or who have a controlling participation in a company owning such land, must obtain prior government approval, which is usually obtained.

Lastly, Law No. 26,737 enacted in December 2011 imposes limits on the ownership or possession of rural land by foreign individuals or legal entities. For example, no more than 15% of the total amount of "rural lands" in Argentine territory may be owned or possessed by foreign individuals or legal entities. This percentage is also applicable to the territory of the province or municipality where the relevant lands are located. Under no circumstance may foreign individuals or legal entities of a same nationality hold or possess more than 30% of the above-



stated 15%. Also, ownership by the same foreign owner may not exceed one thousand hectares (1,000 Ha) of the “core area,” or the “equivalent surface” to be determined by the enforcement agency according to the location of the land.

### Foreign Exchange Controls

Since the reinstatement of foreign exchange controls in December 2001, as a general rule, all transfers of foreign currency to and from Argentina must be made through an Argentine licensed financial entity or foreign exchange house (collectively, for this purpose, the “FX Market”) and are subject to numerous restrictions and requirements set forth in the applicable foreign exchange regulations. The description below of the impact of those regulations in certain transactions is just a summary intended to highlight the issues involved and by no means exhausts all rules that may be relevant to specific circumstances. The terms “Argentine resident” and “non-Argentine resident” used below refer to both individuals and companies (in the case of companies, as a general rule residency is determined by place of incorporation).

While technically the Central Bank may grant, upon request, a special exemption from some of the restrictions described below, in practice it rarely does.

The rate of exchange in the FX Market is determined by market forces, but the Central Bank has the power to intervene by buying and selling foreign currency for its own account, a practice in which it engages on a regular basis.

On October 31, 2011, the Tax Authority, through General Resolution No. 3210, implemented the Foreign Currency Transactions Consultation (FCTC) computer system. When selling foreign currency, any entity authorized to carry out foreign currency transactions must verify the transaction’s validity and register it through the FCTC system. The Tax Authority will immediately decide whether the transaction is valid or shows inconsistencies, on the basis of the potential buyer’s fiscal, economic and financial situation.

Besides, since July 2012, the ability of Argentine residents to purchase foreign currency through the FX Market for investment purposes (“*atesoramiento*”) has been restricted.

### Foreign Financings of Argentine Residents

As a general rule, Argentine residents must transfer to Argentina and sell for Pesos in the FX Market the foreign currency proceeds of foreign financings granted by non-Argentine residents.

Unless they qualify for an exemption, foreign financings of Argentine residents are subject to a 365-day mandatory deposit in U.S. Dollars with a local financial entity equal to 30% of the



financing proceeds settled in the FX Market (the “Mandatory Deposit”). The Mandatory Deposit does not accrue interest and cannot be used as collateral. The qualifying exemptions include, among others, loans granted by multilateral credit agencies and official credit institutions approved by the Central Bank, international trade financings, initial public offerings of debt securities listed on self-regulated markets and certain loans granted to finance investments in non-financial assets. Regardless of the method used for repayment (i.e., whether repayment requires the purchase of foreign currency in the FX Market or not), principal can only be repaid one year after the proceeds have been sold in the FX Market (the “Mandatory Waiting Period”), unless the transaction qualifies for an exemption on account of the type of financing (exemptions apply to international trade financings and listed debt securities offered publicly after June 2005).

### Foreign Investments in Argentina

In general, foreign investments can be classified as “portfolio” or “direct” investments. Direct investments are participations in a local company of at least 10% of its ordinary shares or voting rights. Portfolio investments include, among others, participations in local companies below that cap, as well as holdings of Argentine currency, deposits in local banks, and debt securities of Argentine issuers.

Funds transferred to Argentina by non-Argentine residents for portfolio investments are subject to the Mandatory Deposit and the Mandatory Waiting Period (with a few exceptions, such as the initial subscription of debt securities and shares of local companies which are publicly offered and listed on self-regulated markets). Repatriation of such portfolio investments is limited to an aggregate amount of US\$ 500,000 per calendar month.

Funds transferred to Argentina by non-Argentine residents for direct investments and the purchase of Argentine real estate are subject to the Mandatory Waiting Period, but are exempted from the Mandatory Deposit if certain conditions are met. Provided that the Mandatory Waiting Period has elapsed, there are no legal restrictions on the repatriation of the proceeds from the sale, liquidation or capital reduction of a direct investment, provided that the Mandatory Waiting Period has elapsed and that the direct investment funds were transferred into Argentina (the second requirement is only applicable for direct investments made after October 28, 2011).

Technically, Argentine companies may freely purchase foreign currency and transfer it abroad to pay profits and dividends to non-Argentine shareholders, provided that the dividends correspond to closed financial statements certified by external auditors. However, informal or de facto restrictions can not be ruled out.



### Foreign Trade

Argentine residents are required to bring to Argentina and sell for Pesos in the FX Market the foreign currency proceeds from the export of goods and services by the applicable regulatory deadline (which in the case of goods depends on the type of product). The proceeds from the exports of goods which are then applied to the repayment of qualifying export related financings are exempted from this obligation for repatriation, provided that the proceeds of such financings were originally transferred to Argentina and sold for Pesos in the FX Market.

Regarding the foreign currency proceeds from the exports made by oil, gas and mining companies, Decree No. 1722/2011 established the obligation to transfer into Argentina and liquidate in the FX Market the total amounts of such proceeds.

### Derivatives

As a general rule, Argentine residents cannot enter into, and buy foreign currency with Pesos in the FX Market to make payments abroad under, derivative transactions with non-Argentine residents without prior Central Bank approval, unless the transaction qualifies for one of the few regulatory exemptions. Those exemptions include derivatives that are governed by Argentine law and provide for settlement exclusively in Pesos in Argentina, and derivatives that serve to hedge certain features of actual external debt or international trade transactions of the Argentine resident.

### Investment Protection and Promotion

In 1989, Argentina implemented the 1958 treaty entered into with the United States regarding the Overseas Private Investment Corporation ("OPIC"), which is an agency of the U.S. government that provides insurance to U.S. investments in developing countries. In 1990, Argentina became a member of the Multilateral Investment Guaranty Agency ("MIGA"), sponsored by the World Bank, which provides insurance coverage for foreign investments made by persons or legal entities established in member countries.

These agencies insure investments against political risks such as the availability and right to transfer foreign currency, expropriations or similar measures, breach of contract by the government of the host country, war and civil unrest, among other risks. Both agencies require prior approval regarding the legality of the investment and insurance coverage by the government of the host country.

In addition, in recent years Argentina has signed treaties for the promotion and protection of foreign investments with a number of countries, including the United States, Germany,



Switzerland, Italy, the United Kingdom, Belgium, Canada, France, Chile, Spain, Sweden, Austria, Holland, Denmark, Australia, New Zealand, China, Russia and Mexico.

### Membership of Regional Economic Trade Groups and International Organizations

Argentina's relationship with the rest of Latin America is based upon co-operation in trade and investment issues, most notably with the creation of the Mercosur Common Market ("Mercosur"), comprising Argentina, Brazil, Uruguay and Venezuela. Bolivia is also in the process of becoming a member. Mercosur calls for a gradual elimination of all tariff barriers between its members and a common external tariff with respect to the rest of the world.

On a global scale, Argentina is a charter member of the United Nations, a founding member of the Organisation of American States and a member of the World Trade Organization.

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## **Foreign/ International Aspects**

### **The Foreign Trade Regime**

By Marval, O Farrell & Mairal

#### Mercosur

On 26 March 1991, Brazil, Argentina, Paraguay and Uruguay signed a treaty (the Mercosur Treaty) creating a single market between the four countries with a common external tariff. Full membership for Venezuela became effective on July 31, 2012. Mercosur represents a total population of approximately 276 million individuals, living in an area covering more than 12.8 million square kilometers.

The objectives of the Mercosur Treaty are:

- (i) the free transit of production goods, services, persons and capital between member states by eliminating customs duties and lifting non-tariff restrictions on the transit of goods, along with other measures with similar effects;
- (ii) the fixing of a common external tariff ("*Tarifa Externa Común*" or "TEC") and the adoption of a common trade policy with regard to non-member states;
- (iii) the coordination of macroeconomic and sectorial policies of member states relating to foreign trade, agriculture, industry, taxes, the monetary system, monetary exchange rates, capital investments, customs, services, transport and communications and any other issues which may be agreed upon, in order to ensure free competition among member states.



To date, Mercosur has achieved a free trade zone with respect to most products. There are products, however, that are considered "sensitive" and consequently excluded, which are still subject to tariffs, which are being reduced each year (such as sugar, automobiles and capital assets). Every year new products are included under the TEC.

#### Additional Mercosur Agreements

Bolivia became an accessing member on December 7, 2012, Chile, Colombia, Ecuador and Peru are associate members of the Mercosur.

#### Customs Regulations

Argentina and the other Mercosur member countries have adopted the International Classification of Goods and are members to the World Trade Organisation ("WTO"). The WTO regulations on customs valuation, labelling, and fair trade practices (antidumping, safeguard measures, and countervailing duties, amongst others) are therefore applicable to Argentina.

Pursuant to Argentine customs regulations, most goods imported into Argentina are subject to the prior payment of customs duties.

In order to clear Customs, almost all imports of goods required obtaining approval of a Prior Sworn Import Statement that must be filed with the Tax Revenue Agency. Additionally, automatic and non-automatic import licenses may be required for importing certain goods. Specific goods, such as food, chemicals and medicines, may require additional authorizations by regulatory agencies in order to be imported.

In general, no import duty is payable in the case of goods originating from a Mercosur member state.

Import of services required obtaining approval of a Prior Sworn Services Statement that must be filed with the Tax Revenue Agency.

In March 2002, the Argentine Government imposed duties on the exportation of goods. Resolution No. 11/2002 issued by the Ministry of Economy, as amended, levies export duties on the exportation of goods.

Specific foreign exchanges rules apply to payments related to imports and exports of goods and services.

#### GATT / WTO



Argentina, by enacting Law No. 24,425, approved on 7 December 1994 the Final Minutes (“the Minutes”) which incorporated the items agreed in the Uruguay Round of Multilateral Trade Negotiations, and the Marrakech Agreement, both of which were held under the auspices of the WTO.

Law No. 24,425 introduced into the Argentine legal system the Agreements on Antidumping, Countervailing duties, and Safeguard Measures, in accordance with Sections VI and XIX of the GATT Agreement 1994.

### *Antidumping Legislation*

Dumping occurs when a product is introduced into the Argentine market at a price (“the export price”) lower than its “comparable price”. For these purposes a “comparable price” is the price at which the product is sold in the course of normal business transactions in the exporting country’s domestic market. The comparison between the “export price” and the “comparable price” must be made at the same stage in the distribution process, normally at the post-factory level.

The Anti-dumping procedure is regulated by Decree No. 1393/2008. Procedures involving products produced in countries which do not have a market economy are further regulated by Decree No. 1219/2006.

Argentina’s anti-dumping investigation procedure follows a double-agency system: i) the Dirección de Competencia Desleal (“DCD”) is the agency with jurisdiction to determine whether there is dumping; and ii) the Comisión Nacional de Comercio Exterior (“CNCE” or “Commission”) is the agency with jurisdiction to determine whether there is injury (or threat of injury) to the domestic industry and whether there is a causal relationship between dumping and the injury to the domestic industry. The CNCE also has jurisdiction on the definition of the investigated and like products and the representativeness of the domestic industry.

In order to impose anti-dumping duties, it is necessary to prove the existence of dumping, injury (or threat of injury) to the domestic industry and the causal relationship between both. Anti-dumping duties may only be applied when dumping causes, or threatens to cause, material injury to a domestic industry, or material delay to the establishment of such an industry. When such requisites are met, the Ministry of Economy and Finance decides whether to impose Anti-dumping duties or not. The decision of not imposing Anti-dumping duties, even when the legal requisites are met, may be grounded on international policy considerations.



### Safeguard Measures

Safeguard measures represent a tool that can be used in certain specific circumstances by a WTO member country as a means to provide the national industry with a "*protection period*" to enable it to attain greater competitiveness in international markets through a readjustment process. Since safeguard measures are not measures directed at counteracting unfair trade practices from a specific country, they are applied to all imports of a particular product, regardless of country of origin.

The Safeguard procedure is regulated by Decree No. 1059/1996. Procedures involving products from countries which do not have a market economy are further regulated by Decree No. 1859/2004.

The DCD and the CNCE are also responsible for the Safeguard procedures. In order to impose safeguard measures, it is necessary to prove the existence of a causal relationship between the increases of imports of the product under investigation and the injury or threat of injury to the domestic production of such product.

Since safeguard measures are not directed at a specific country, the application of such measures under the safeguard procedure is conditional upon compliance with certain requirements.

### **International Treaties**

According to Article 75, § 22 of the Constitution, international treaties, upon approval by Congress and ratification by the Government, take precedence over federal and provincial laws.

Argentina is a party to many international treaties including several treaties approved by the Hague Conference on Private International Law, the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the New York Convention) and the United Nations Convention on Contracts for the International Sales of Goods of 1980.

### **Choice of Law and Jurisdiction**

#### Choice of Law

Argentine law generally permits parties to a contract to select the laws that will govern their agreements as long as some connection to the system of law that is chosen exists. Further, the choice of foreign law will only be valid to the extent that it does not contravene Argentine



international public policy (*orden público or order public*). Typical public policy laws include criminal, tax, labour and bankruptcy laws as well as inheritance and family rules..

Rights associated with real estate (such as *in rem* rights), the ability to acquire real estate and the formal requirements with regard to legal acts connected with real estate are all governed exclusively by local laws. The Argentine Congress has enacted Law No. 26,737 that rules on the property of real estate of foreign persons (please see page 2 last paragraph).\_\_The same principles apply with respect to movable property permanently located in Argentina.

### Choice of Jurisdiction

Argentine Courts have jurisdiction whenever (i) the defendant is domiciled in Argentina, (ii) the place for performance of any of the obligations is located in Argentina, or (iii) Argentine courts have been chosen as the applicable forum (subject to certain restrictions). Argentine courts are vested with exclusive jurisdiction to hear all insolvency proceedings relating to debtors domiciled in Argentina. With respect to debtors domiciled abroad, local courts have jurisdiction only to the extent that the debtor has assets in Argentina, in which case an insolvency proceeding will only cover such assets.

Argentine courts acknowledge that parties to a contract may choose a jurisdiction other than Argentina for the settlement of any disputes arising under a contract provided that there is a connection with such jurisdiction and the dispute relates to pecuniary rights.

Lastly, the Argentine Constitution guarantees non-Argentine citizens the same rights as Argentine citizens, including unlimited access to Argentine courts for the resolution of legal disputes, subject, however, to non-residents having to post a bond, if required with some exceptions arising from international treaties or if such requirement has been waived by an agreement between the parties of a dispute.

### **Enforcement of Foreign Judgements**

If an international treaty for the enforcement of foreign judgements or arbitral awards exists between a foreign country and Argentina, the rules of such treaty will prevail. In the absence of such a treaty, the National Code of Civil and Commercial Procedure (the "CPCC") will be applicable<sup>1</sup> if the defendant is domicile in the City of Buenos Aires or if the matter at issue will be debated before a federal court. Provincial procedure rules will be applicable where the matter at issue is to be debated before a provincial court. Unless otherwise stated herein, this analysis

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<sup>1</sup> Until the issues raised by the new Charter for the Autonomous City of Buenos Aires have been resolved.



of the recognition of foreign judgments concerns federal procedure rules (i.e the CPCC) which are, in principle, applicable when a foreigner is involved.

### Requirements

Subject to certain requirements, which are set out in Article 517 of the CPCC, Argentine courts will enforce foreign judgements resolving disputes and determining the rights and obligations of the parties to an agreement. The requirements which a foreign judgement must meet in order to be recognized in Argentina without further discussion of its merits are as follows:

- (i) the judgement must have been issued by a court considered competent by the Argentine conflict of laws principles regarding jurisdiction, have been final in the jurisdiction where it was rendered and resulted from a personal action or an *in rem* action concerning movable assets; if the judgement resulted from an *in rem* action, personal property in dispute must have been transferred to Argentina during or after the prosecution of the foreign action;
- (ii) the defendant against whom enforcement of the judgement is sought must have been duly served with a summons and, in accordance with due process of law, given an opportunity to defend itself against the foreign action;
- (iii) the judgement must have been valid in the jurisdiction where it was rendered and its authenticity established in accordance with the requirements of Argentine law;
- (iv) the judgement must not violate any principles of public policy of Argentine law;
- (v) the judgement must not be in conflict with a prior or simultaneous judgement of an Argentine court; and
- (vi) reciprocity is not required for an Argentine court to recognise a foreign judgement.

Argentine courts do not automatically acknowledge the foreign court's original jurisdiction over the matter. As indicated in (i) above, the competency of the jurisdiction of the foreign court that rendered the judgement is analysed according to Argentine rules regarding jurisdiction.

### Procedures Relating to Enforcement

To enforce a foreign judgment in Argentina, a notarized copy of the decision must be filed with the Argentine court and the petitioner must file a statement evidencing that each of the conditions required by law has been fulfilled. In addition, all documents (which must be originals



or notarized copies) submitted to the court must be authenticated by the Argentine consulate with jurisdiction over the country where the documents were issued. If the relevant country has ratified the 1961 The Hague Convention on the Abolition of Legalization of Documents, the authentication by the Argentine consulate may be substituted by the Apostille provided for in the aforementioned Convention. All documents in a language other than Spanish must be translated into Spanish by a translator registered in Argentina to be admitted by a local court. The amounts expressed in foreign judgments need not be converted to local currency. A court tax shall have to be paid by the party seeking enforcement and costs and expenses will be charged to the party that is defeated in this proceeding.

#### Immunity

Certain assets are unavailable to satisfy judgments obtained or determined to be enforceable in Argentina.

#### Arbitration

Foreign arbitral awards are recognized in Argentina but are subject to the same requirements applicable to the recognition of foreign judgments. If these requirements are met, an Argentine court will accept arbitral awards (either at law or in equity) rendered outside Argentina. Argentina also became a party in 1988 to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (The New York Convention) and is bound by its provisions.

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