

Argentina Moves Towards Flexibilization of the Companies Act

Important initiatives for the simplification of the Act applicable to local companies are being considered towards the end of this year. To that end, in November, the regulations applicable to "*Sociedades Anónimas Unipersonales*" ("SAU" by its Spanish acronym) were modified, eliminating the requirement to appoint at least three directors and a surveillance committee. The reform responds to repeated criticisms against SAU regulations, with excessive requirements making it an expensive and underutilized company-type. As a result of the recent reform, it is possible to set up SAUs with a sole director and an individual Statutory Auditor (still required). We believe that the requirement to have statutory auditor results in making the SAUs still unattractive to medium and small and medium-sized enterprises.

Additionally, within the framework of the Entrepreneurs Bill, which has so far been approved by the Senate in November, a new kind of company called "*Sociedades por Acciones Simplificadas*" ("SAS" by its Spanish acronym) would be created. SAS are a combination between "*Sociedades Anónimas*" ("Corporations")^[i] and the "*Sociedades de Responsabilidad Limitada*" ("SRLs")^[ii]. The inclusion of this new kind of company will be useful, not only for new entrepreneurs, but also for existing companies, which can be transformed into SAS.

Below is a brief summary of the key aspects of SAS:

- Shorter deadlines and procedures for incorporation, registration with the Public Registry of Commerce and for obtaining the tax identification number (CUIT); which is an advantage over other companies, such as Corporations and SRLs.
- SAS must have a minimum capital equivalent to twice the monthly minimum wage (currently minimum capital is ARS 16,120), which is significantly lower than the minimum capital of ARS 100,000 applicable to Corporations and SAUs. However, only 25% of the relevant capital must be paid upon incorporation, unlike SAUs for which payment of 100% of the capital must be paid upon incorporation or approval of a capital increase.
- Contributions in kind may be made at a value unanimously agreed on by the partners, indicating the information that supports such valuation. In the case of insolvency or bankruptcy, creditors can challenge the valuation. The SAS regulation on contributions in kind adheres to the scheme available for SRLs in which prior approval of the valuation by the Public Registry of Commerce is not required, in contrast to Corporations and SAUs for which such approval is required.
- Share transfers for SAS, as in the case of Corporations or SAUs, are much simpler than in the case of SRLs, requiring simple notification to the company and registration in the Shares Registry Book.
- It is expressly admitted for the bylaws to: (i) require prior authorization of Shareholders' Meeting for share transfers; or (ii) prohibit share transfer for up to 10 years (renewable by unanimity). The validity of these restrictions would not be left to the interpretation of the officials of the Public Registry of Commerce, as for Corporations and SRLs.
- Shareholders Meeting decisions shall be valid without the need for a summons, provided stockholders representing the entire capital stock are present or represented at the relevant meeting and the agenda is unanimously approved. In the case of the Corporations and SAUs, all decisions are required to be unanimously approved.
- Board and Shareholders' Meetings by virtual means are expressly allowed without requiring physical presence of a number of directors that constitute quorum - a requirement that the Public Registry of Commerce of the City of Buenos Aires has demanded from Corporations, SAUs and SRLs.
- Shareholders' Meetings by written vote are expressly admitted, by means of a similar scheme as the one stipulated for the SRLs (not available for Corporations or SAUs). For single-member SAS, it is provided that decisions shall be approved by the sole partner and should be recorded in the corporate books, similarly to SAUs.
- At least one of the board members must reside in Argentina, granting greater flexibility in relation to the requirement applicable to the Corporations, SAUs and SRLs, pursuant to which the majority of its administrators must reside in Argentina.
- Liability may be extended to persons who, without being managers or representatives, "actually intervene in management, administration or direction", of the company even in relation to acts in which they have not intervened. Accordingly, liability is recognized for a category of "*de facto*" administrators, not expressly recognized in other kind of companies.
- The following companies may not be incorporated as SAS: (i) such companies subject to permanent state surveillance (except when this results exclusively from having a capital equal to or greater than

ARS \$ 10 million), (ii) companies controlled by another which is subject to permanent state surveillance or (iii) companies in which any company subject to permanent state surveillance holds more than 30% of its outstanding capital. These companies, however, may be incorporated as SAUs.

- [i] Mainly as regards the representation of capital in shares.
 - [ii] In terms of government, management and representation.
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