

Joint ventures in Argentina: overview

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DOMESTIC COMPANY JOINT VENTURES (JVS) Regulation

1. Are JVs expressly regulated?

The concept of joint ventures (JVs) is based more on economics than the law in Argentina, and therefore, JVs are not expressly regulated. A JV can be:

- Of a corporate nature (for example, a company set up by two or more parties).
- Of a contractual nature (for example, associative contracts of any kind, such as distribution, supply, agency or franchising).
- A combination of the above.

Generally, where a venture is undertaken and the risks are shared by the parties, a JV can arise regardless the type of vehicle chosen by the parties.

However, the legal system does regulate many of the vehicles that venturers can choose for their prospective business.

Contractual JVs

Contractually, a JV can arise in different contracts which are in some cases regulated and in others, subject to the free will of the parties within the legal framework of Argentine legal system. For example, some forms of franchising, concession, distribution or agency agreements are examples of contractual JVs that are regularly used and are very common. In Argentina these types of contracts were not expressly regulated until the enactment of the replacement of the Civil Code with a unified Civil and Commercial Code, which entered into force on 1 August 2015 (Civil and Commercial Code).

The Civil and Commercial Code also regulates two types of contractual JVs that were expressly regulated in the Law No. 19,550 (Business Companies Law, as amended, restated and currently renamed General Companies Law, GCL):

- *Agrupaciones de Colaboración* (AdC).
- *Union Transitoria de Empresas* (UTE).

Additionally, a third type of contractual JV was introduced in 2005 (Law No. 26,005), which is the *Consortios de Cooperación* (CdC) (mainly used for export purposes), an unincorporated JV similar to the UTE.

All these types of contractual JVs are now included in the Civil and Commercial Code under Chapter No. 16 (Associative Contracts) (see *Question 2*). However, the range of contractual JVs in Argentina is not limited to the three types of contractual JVs discussed above.

Corporate JVs

The GCL and some complementary laws (SAS, as referred to in *Question 3*) regulate and govern expressly the functioning, creation or acquisition of an existing entity in cases where venturers choose these forms of JV.

Types

2. Which types of JV are allowed?

Generally, parties can enter into any kind of agreements with each other without limitation, including contracts of an associative kind. The only limits on the parties' free will are:

- Compliance with mandatory provisions (*leyes de orden publico*) (public order legislation).
- Observance of the principles of good faith, morality and good customs.
- The prohibition of the abuse of law, among other general principles of law.

Contractual joint ventures (JVs)

Generally, the free will of the parties governs their contractual relationship (see *Question 1*). Hence, parties are free to organise the content of their contracts. Therefore, the possible spectrum of contractual JVs is very broad.

The Civil and Commercial Code expressly regulates some specific types of contractual JVs (see *Question 1*):

- ***Negocio en Participación (NeP)***. The purpose of a NeP is to carry out business transactions in the name of the agent with contributions made by the participants.
- ***Agrupaciones de Colaboración (AdCs)***. These must not pursue profit. The aim of these JVs is to facilitate or develop specific phases of the entrepreneur's members' activities or to perfect or increase the outcome of these activities.
- ***Union Transitoria de Empresas (UTES)***. These have been defined as a vehicle to enable the engagement of entrepreneurs to develop or execute specific work, service or supply, within or outside the country Argentina. Their essence is to be transitory contracts where the parties are not considered partners, de facto companies or partnerships. UTES are particularly used in the mining industry and generally required by local governments in bids for public works.
- ***Consortios de Cooperación (CdCs)***. The purpose of a CdCs is to enable the parties to set up a common organisation to facilitate, develop, increase or execute transactions related with the economic activities of their members (whether specified or not at the moment of their creation) with the purpose of improving or increasing their outcomes. This type of JV is regarded as similar to UTES.

All four types of contractual JVs lack legal personality (so are not considered a business entity) and, therefore, do not have a legal existence separate from their members. Except for the NeP, registration with the Public Registry of Commerce is mandatory in order to do business.

Corporate JVs

The GCL sets out several corporate types that venturers can use as their JV vehicle to formalise their relationship.

3. Are corporate JVs subject to the corporate law?

Where the venturer's choice is to create a new entity or to acquire an existing one, the provisions of the General Companies Law (GCL) and the recently enacted Entrepreneurship Capital Support Law (ECLS) (No. 27,349, *Ley de Apoyo al Capital Emprendedor*) apply.

Commercial activities in Argentina are usually carried out through a *Sociedad Anónima* (SA) or a *Sociedad de Responsabilidad Limitada* (SRL) because generally they limit the liability of their shareholders in SAs (or quotaholders in SRLs) to their contributions in the entities. Currently, and by virtue of the ECLS, commercial activities in Argentina can also be carried out through a *Sociedad por Acciones Simplificada* (SAS). Careful and sound advice is needed on the exceptions to the limitations on shareholders' liability.

These corporate vehicles are regulated by the GCL, which applies nationwide. However, each Province (as well as the Autonomous City of Buenos Aires) has its own Public Registry of Commerce (Registry) where companies must register and each Registry sets out its rules that companies must comply with depending on the jurisdiction of incorporation. Most companies with international parties register in the Autonomous City of Buenos Aires.

In the City of Buenos Aires, the Registry is the *Inspección General de Justicia* (IGJ), whose regulations must be complied with by the companies incorporated in this jurisdiction. The most comprehensive and important one is the General Resolution No. 7/2015 IGJ (Regulation 7/15). While in general terms the registries of the Provinces tend to follow IGJ regulations, there may be slight differences between them, so the local regulation should also be taken into account.

The structure and rules of the SA and the SRL are quite similar, although the latter has slightly lower operational costs, and publicity on any change of quota holding. While the minimum stock capital required for an SA is ARS100,000 and for a SAS is twice the minimum wage (*salario mínimo vital y móvil*) (currently ARS17,720), for a SRL there is no minimum requirement.

Formation and registration

4. Is the use of foreign language in a JV's founding documents (both corporate and contractual) restricted?

Generally, the use of foreign language is not restricted. However, where the venturer's choice is to create a new entity that must register with a Public Registry of Commerce (Registry), the following must be in Spanish:

- The articles of incorporation of the entity.
- The remaining documentation requested by the pertinent Registry to incorporate the entity.

Where the documents are written in a foreign language, they must be translated into Spanish by a public translator.

The same requirements apply for the three contractual types of joint ventures (JVs) whose registration with the Registry is required by law.

If any other type of JV agreement is filed with a State Agency then public translation is needed.

It is sometimes advisable to produce documents in both Spanish and English from the outset to avoid eventual misinterpretations by the parties.

5. Are public officers (for example, public notaries) involved in a JV's formation procedure?

Certification of the signatures of the parties in the private document by a public notary is required in contractual joint ventures where registration with the Public Registry of Commerce (Registry) is required by law.

Also, it is common practice to certify the signatures and authority of the individuals signing the relevant contract by a public notary.

Where the parties' choice is to create a *Sociedad Anónima* (SA), a public deed executed before a public notary must contain the statutes of incorporation of the SA.

Where parties create a *Sociedad por Acciones Simplificada*, they must execute either a public deed or a private document (in this later case with their signatures certified by a notary or by the judiciary or by the bank or by a competent authority of the respective Registry).

For a *Sociedad de Responsabilidad Limitada* (SRL) even though a public deed is not required, Regulation 7/15 (and similar regulations in jurisdictions other than the Autonomous City of Buenos Aires) requires certified signatures by public notary of the parties in the pertinent private documents as a prerequisite to enable their registration with the Registry.

6. Are JVs registered with any local registries? Are public sector bodies' authorisations required for a JV's establishment?

Local registries

Except where registration with the local Public Registry of Commerce (Registry) is required (such as incorporation of a new entity or the acquisition of quotas of an existing *Sociedad de Responsabilidad Limitada* (SRL) or creation of a contractual joint venture (JV) that requires registration) in principle and subject to the matters explained below, no other registration of the JV is required.

The ECLS requires the *Sociedad por Acciones Simplificada* (SAS) to be registered in 24 hours from the business day after the date all the pertinent documents are filed with the Registry, provided that its bye-laws follows the template approved by the pertinent Registry.

With a *Sociedad Anónima* (SA), since the transfer of the shares is registered in the relevant company's books (Shareholders' Registry Book), registration with the relevant Registry is not required.

However, as in most jurisdictions, the performance of regulated activities such as media, banking or insurance requires filing with the relevant regulatory agencies.

Local companies and JV parties must also register with the Federal Tax Authority Agency (AFIP) and comply with several informative regimes giving details of, for example:

- Their shareholders (or quotaholders).
- The occurrence of any transfer of its shares (or quotas).

Public sector bodies

The National Anti-trust Commission (CNDC) is the governmental entity in charge of the investigations of anti-competitive practices and merger reviews and may have to be involved in cases where a JV reaches the criteria set out in the Law No. 25,156 as amended (Anti-trust Law).

Although the Anti-trust Law does not prohibit economic concentrations as such, it does prohibit acts restricting or distorting competition that may harm the "general economic interest" (a term interpreted as closely related to that of "consumer welfare"), as well as abuses of a dominant position.

In any event, JVs (be they contractual or corporate) can trigger red flags from a competition viewpoint and, therefore, can potentially be caught by the Anti-trust Law.

Generally, transactions (mergers and acquisitions) that produce a transfer of control (or a substantial influence on) of a business or assets meeting the criteria indicated in the Anti-trust Law are subject to the CNDC control.

Transactions (acquirer and target companies or merging parties, but not sellers) involving turnovers in excess of ARS200 million must be notified to the CNDC, unless a special exemption applies.

Exemptions from merger control that are relevant for JVs are:

- Acquisition of a single enterprise by a foreign investor that has not owned shares or assets in Argentina.
- Situations where the amount of the transaction and the value of the assets located in Argentina being acquired, transferred, or controlled do not exceed ARS20 million, unless recent transactions in the same market exceed certain thresholds.

7. What other formal requirements must be complied with to validly constitute a JV?

Where the joint venture (JV) could be caught by Law No. 25,156 as amended (Anti-trust Law), or does not fall within one of the exceptions set out under this, it will have to be notified to the National Anti-trust Commission (CNDC). The notification must be carried out in advance, or within one week starting from the date of closing of the relevant transaction, in order to enable the CNDC to perform a review on the transaction.

Failure to comply with this notification requirement implies that the transaction will not be effective among the parties to the agreement nor to third parties. It may also trigger the imposition of fines by the CNDC as set out in the Anti-trust Law.

Regarding *Agrupaciones de Colaboración* (AdCs), *Unión Transitoria de Empresas* (UTES) and *Consortios de Cooperación* (CdCs), the respective Public Registry of Commerce has to forward certain documents (for example, the contract under which the JV was created) to the CNDC after registering the contractual JVs.

Permitted markets

8. Can the JV instrument be used in every market? Are there any restrictions to be considered and carefully assessed before investing?

Generally, joint ventures (JVs) can be used in every market, since a restriction in this regard is against the constitutional right of "carrying out any licit industry" (*Article 14, Magna Carta (Constitución Nacional)*).

However, the performance of regulated activities such as media, banking or insurance requires filing with the relevant regulatory agencies that should be carefully assessed before investing.

Also, in some cases the law requires that certain activities must be carried out using a given corporate vehicle (for example, a *Sociedad Anónima* (SA) (among other corporate vehicles such as *Cooperativas* or branches) for the banking industry), hence, JVs in these industries must adopt the prescribed forms.

Furthermore, a *Sociedad por Acciones Simplificada* (SAS) is not permitted to exploit concessions or public services or carry out capitalisation or savings transactions or in any way require money or securities from the public promising benefits or future benefits.

Purpose

9. Can a JV be established with any purpose?

Contractual joint ventures (JVs)

Since the free will of the parties governs their contractual relationship they can enter into any kind of agreements for whatever purpose they wish and are only limited by the mandatory provisions and the observance of the principles of good faith, morality and good customs, among other general principles of law.

The Civil and Commercial Code establishes that *Agrupaciones de Colaboración* (AdC) and *Unión Transitoria de Empresas* (UTES) must determine their purpose in their constitutive contracts. Further, *Unión Transitoria de Empresas* (UTES) must provide a concrete specification of the activities and the means to conduct them.

Corporate JVs

The GCL establishes that the entities must designate their "corporate purpose", which must be precise and specific (*Article 11.3, GCL*).

Within the jurisdiction of the City of Buenos Aires, Regulation 7/15 sets out certain rules related to the corporate purpose of the entities subject to IGJ supervision.

For example, it sets out that it must have a sole corporate purpose and that its references are made in a precise and determined manner through a concrete and specific description of the activities that are to be performed for its effective execution.

Share capital and participation

10. What possible forms of participation are there in a JV's share capital? How can a JV member contribute and

are there statutory limits on the possibility to make contributions in kind?

Forms of participation

With *Sociedades de Responsabilidad Limitada* (SRL) the form of participation is by a subscription of quotas that have the same value and have to be in ARS10, or multiples of this.

For *Sociedades Anónimas* (SAs), the form of participation is by a subscription of shares that can be ordinary or preferred. Ordinary shares generally carry one vote per share (they can carry up to five votes per share). Preferred shares generally do not carry voting rights except for the cases expressly provided by Article 244(4) of the General Companies Law (GCL), for example:

- Anticipated dissolution of the company.
- Material change in the corporate purpose.
- Transfer of the domicile abroad.

For *Sociedades por Acciones Simplificadas* (SAS), the form of participation is by a subscription of shares that can be ordinary or preferred.

Participation in a company can also be made through an irrevocable capital contribution. Subject to certain requirements, this is a quicker way to make a capital contribution where the investor contributes something to the company (generally cash) without this contribution being accepted by a shareholders' meeting at that time. While shareholders decide whether to capitalise this contribution, the investor is not considered a shareholder of the company.

In unincorporated JVs, the free will of the parties is to govern the forms of participation as well as the contributions of their members, which can be made either in cash or in kind.

Contributions

Both SA and SRL contributions can be made in cash or in kind. However, contributions in cash are the most common form of contribution given that the mechanisms to value contributions in kind are more burdensome and, therefore, usually delay the registration process with the Public Registry of Commerce.

To carry out a contribution in cash, an amount not less than 25% of the relevant subscription of shares (or quotas) must be paid to the company together with the subscription and the remaining amount within two years.

Contributions in kind must be paid in full at the moment of subscription of the relevant shares, and are only obligations to contribute something that is valuable in money (for example, goods or assets). They cannot be "obligations to perform something" (*Obligaciones de Hacer*). However, the fact that the articles of incorporation can stipulate obligations to perform something by the shareholders, these contributions do not result in the issue of any shares.

With *Union Transitoria de Empresas* (UTES), the contributions are also defined as "participation" interest allowing parties to freely stipulate the terms and conditions of their investment (Article 378.8, GCL; Article 1464(h), Civil and Commercial Code).

11. Can a corporate JV's share capital be indicated by making reference to a foreign currency?

The share capital of an Argentine corporate entity is always denominated in Argentine legal currency (Argentine peso).

However, capital contributions can be made in foreign currency, but for the purposes of their accountability and registration with the Public Registry of Commerce (Registry), the amounts in foreign currency must be converted into Argentine peso at the official exchange rate (published by the *Banco de la Nación Argentina*) on the date that the capital contribution in cash is made.

Duration and limits on membership

12. Are there statutory limits on a JV's duration?

Contractual joint ventures (JVs)

In principle, the duration of a contractual JV is ruled by the free will of the parties.

They can either designate a duration term or not. If a duration term is not designated then it is characterised as a contract with an indefinite duration term with the implication that the characterisation may imply in the case of termination (for example, an obligation to give prior notice of a defined length of time to legally terminate the agreement).

The Civil and Commercial Code establishes specific regulations of this matter for several contracts, for example:

Setting the minimum duration terms for distribution and concession agreements at two or four years depending on whether there is a provision of the main premises from the principal or not.

Setting the minimum duration term for franchising agreements at four years, except in some specific cases.

However, many legal authors believe that the above provisions are not mandatory and could be left aside by mutual agreement of the parties. Due to the novelty of the new provisions of the Civil and Commercial Code (see *Question 1*) there is still no case law in this matter.

For *Union Transitoria de Empresas* (UTES), the Civil and Commercial Code states that the term must be equal to:

- The duration of the work to be carried out.
- The service to be rendered.
- The supply to be performed.

These must always refer to the purpose of the relevant JV, which means that these agreements can last for decades.

For *Agrupaciones de Colaboración* (AdCs), the Civil and Commercial Code establishes that the duration of the contract cannot exceed a period of ten years. If the contract contains a longer term, it will be reduced to that period. However, the contract can be extended by consensus of the participants.

For *Consortios de Cooperación* (CdCs) the Civil and Commercial Code only states that the contract must have a specified duration term, without fixing any maximum one.

Under the Civil and Commercial Code, *Negocios en Participación* (NePs) are not subject to a limitation period.

Corporate JVs

The General Companies Law (GCL) sets out that the articles of incorporation of legal entities must indicate a specified duration term. It is common practice to stipulate in the articles of incorporation a 99-year term.

13. Are there statutory limits on the number of members participating in a JV?

Contractual JVs, *Sociedades Anónimas* (SAs) and *Sociedades por Acciones Simplificadas* (SAS) are not limited on the number of participating members they can have. *Sociedades de Responsabilidad Limitada* (SRLs) cannot exceed 50 members.

Public sector bodies

14. Can a public sector body enter into a JV agreement? Subject to what conditions? In particular, do public private partnerships (PPP) laws and regulations apply?

In principle, all relationships between the public and the private sector are regulated by public laws, which are mandatory (public order legislation).

The public tender proceeding is the rule for contracting with the private sector, and direct contracting is the exception subject to specific conditions, as set out in *Decree No. 1023/2001*, for example:

- Urgency.
- Emergency.
- Sole vendor.
- Secrecy of the transaction under grounds of national safety or national defence.

Law No. 27,328, passed by the National Congress in November 2016, and its regulatory Decree No. 118/17 issued in February 2017, regulate Public-Private Partnership Contracts (PPP Legal Framework). Under the PPP Legal Framework, agencies and entities of the National Public Administration (including companies with governmental participation) can enter into PPP contracts as the contractor party, and public or private entities as the contracted party, with the purpose of developing projects in fields such as infrastructure, housing, public services, applied research and technological innovation.

The PPP Legal Framework allows PPP Contracts to have a flexible design to adapt to the structure or to the specific requirements required by each project and its financing, according to the best international practices applicable to the subject.

When these projects are structured, the National Public Administration must comply with requirements such as:

- Specifying the objectives that are of public interest and that will be pursued with the project.
- Assessing the economic and social implications of the project.
- Promoting social inclusion.
- Promoting job creation.
- Facilitating the development of the capital market.
- Promoting the development of projects that contribute to preserve the environment and the economic and social sustainability of the areas where they will be implemented.

PPP Contracts must provide, among others, the:

- Term (which must not exceed 35 years, including extensions).

- Distribution of contributions and risks among the parties.
- Reasons to terminate the contract.
- Enforcement control mechanisms and the penalties to be imposed.
- Payment conditions, its guarantees and the price revision mechanism to keep the financial-economic equation.
- Applicable dispute resolution mechanisms, including provision for arbitration or dispute boards, which provide quick resolution of the disputes that may arise during the development of the project, avoiding the normal delays of a judicial process.

The selection of the contracted party must be made by public tender (national or international), and it shall be awarded to the most convenient offer. This regime also contemplates the possibility of carrying out preliminary procedures with potential interested bidders to define the project

Non-competition and anti-trust clauses

15. Are there statutory constraints on the use of non-competition or anti-trust clauses in a JV agreement?

During period of effectiveness

Generally, and subject to the considerations explained below regarding the rulings of the National Anti-trust Commission (CNDC) on this point, there are no statutory constraints on the use of non-competition or anti-trust clauses.

Following termination

Given that one of the purposes of the Anti-trust Law is to prohibit acts restricting or distorting competition that may harm the general economic interest, non-competition or anti-trust clauses have been carefully scrutinised by the CNDC.

Generally, the CNDC has considered that non-competition or anti-trust clauses are typical clauses that may, in certain cases, restrict competition. That is why in many cases brought for CNDC analysis, the authorisation of the relevant transactions have been subordinated to the prior amendment of the relevant non-compete clause, mainly by reducing the term during which the parties cannot compete within the Argentine territory.

Despite the fact that this should be analysed on a case-by-case basis, generally, the CNDC has decided that a two-year term is a reasonable term from the competition viewpoint, and also accepted a maximum of five-year term where, besides the transfer of the business, there is an actual transfer of know-how.

On the other hand, it has also been construed that, in principle, in cases where there is an extended relationship (as in most of joint ventures cases) the non-compete clause term should be reduced or even eliminated to avoid harming competition.

De facto company/partnership

16. Must the contractual JV satisfy any conditions to avoid falling within the definition of de facto company/partnership?

The law recognises de facto companies or partnerships. Indeed, many joint ventures (JVs) are created and perform their activities for many years as a de facto company. The Federal Tax Authority Agency (AFIP) also recognises their existence by providing them a Tax ID.

However, the new Civil and Commercial Code (see *Question 1*) introduced modifications to the companies law (GCL). Among other modifications, the Civil and Commercial Code modified section IV of the GCL and regardless the fact that nowadays it does not expressly mention *de facto* companies, it has unified and regulated a specific regime for all companies that avoid their incorporation using a specific company type (such as SA, SRL). Accordingly, *de facto* companies now fall into this category of companies known as "Chapter IV companies". One effect of this amendment to the companies law is that members of such companies will not be considered jointly and severally liable but and individually in equal proportion for the company's debt, unless otherwise stipulated in their bye-laws. In addition, a different liability regime (such as limitation of liability to the corporate capital) may be opposed to any third party that gets to know or was aware of the content of the bye-laws which limited their liability.

The Civil and Commercial Code also regulates the *Unión Transitoria de Empresas* (UTE) as an associative contract with limited liability for its members. However, to that end, UTEs must be duly registered before the relevant Public Registry of Commerce.

In any event, many JVs decide not to register as a UTE so as not to be limited to the applicable form and regulations. This is because its members can effectively demonstrate that there is no *de facto* company in place, either:

- By having a correct accountability and administration.
- Because of the diligent manner that they handle their responsibilities and assume their liabilities by setting up clear terms and conditions as well as guarantee mechanisms.

This transparency may avoid unserious claims against them. This is the reason why certain members of contractual JVs can avoid, in some cases, registering as an UTE considering that whether the financial risks or claims could be easily addressed. In this regard, it is worth noting that the Association of Public Accountants issued important accountable principles applicable to contractual JVs different from UTEs (*Regulation RT 14*).

Limiting member liability

17. Can a JV agreement provide that a JV member can participate without incurring any risk, loss or reward?

Contractual

The free will of the parties governs their contractual relationships, and, therefore, the parties can rule on this. However, in doing this, the parties must observe the principles of good faith and avoid any act that can be characterised as an abuse of law, or contrary to morality or good customs, which is prohibited by the law.

For *Negocios en Participación* (*NeP*) the Civil and Commercial Code establishes that third parties acquire rights and assume obligations only with the agent. While the agent's liability is unlimited, the liability of the principal is limited to its contribution to the transaction. If there is more than one agent, they are jointly liable.

For *Agrupaciones de Colaboración* (*AdC*), the Civil and Commercial Code states that members are jointly and severally liable for the obligations that their legal representative assumes. In this case liability is unlimited.

For *Unión Transitoria de Empresas* (*UTE*) the Civil and Commercial Code establishes that joint liability for the operations performed and the obligations assumed before third

parties is not presumed, unless otherwise stipulated in the contract.

For *Consortios de Cooperación* (*CdC*) the Civil and Commercial Code establishes that the contract can determine the proportion of liability of each member for the obligations assumed on behalf of the consortium, and if nothing is stipulated, they are jointly and severally liable.

However, parties can eventually agree to indemnify a member of the JV. Although this stipulation is not enforceable against third parties, it does allow the indemnified party to demand a refund or damages from its co-members.

Corporate

These stipulations are considered null and void. Indeed, any stipulation that sets out that one or more partners receive all the benefits, or should be excluded by them or should be free to contribute to pay for the losses are null and void (*Article 13, General Companies Law*).

Anti-trust

18. Do any anti-trust rules, guidelines or policies apply to a JV agreement?

See *Question 6, Public sector bodies*.

Governance and limits on directors

19. Can the parties to a JV freely regulate the JV or are they subject to certain restrictions?

Contractual joint ventures (JVs)

Generally, the free will of the parties rules their relationships.

With contractual JVs expressly regulated, generally the parties can regulate them and the law applies for lack of stipulation, for example, regarding the decision-making process (under the Civil and Commercial Code, the majority governs *Agrupaciones de Colaboración* (*AdC*) and *Consortios de Cooperación* (*CdCs*), and consensus governs *Unión Transitoria de Empresas* (*UTES*)). In all cases, due to the contractual nature of the association, any amendment to the contract must be carried out by consensus.

Corporate JVs

Corporate JVs must observe the mandatory provisions set out by the General Companies Law (GCL) on, for example, corporate governance and the decision making process, for example:

- Competences of the shareholders meetings.
- Quorum and majorities to vote on certain matters.
- Directors' duties.
- Representation of the company.

Generally, governance corresponds to the shareholders' meeting while the day-to-day administration corresponds to the board of directors. The chairman of the board of directors is the legal representative of the company.

In the case of *Sociedad por Acciones Simplificada* (*SAS*), their structure and functioning of their corporate body can be determined by its members in their by-laws. Mandatory provisions established in the Entrepreneurship Capital Support Law (*ECLS*) and the GCL must be observed (*Article 49, ECLS*).

20. Are there limits or restrictions on the eligibility of an individual as a member of the board of directors/statutory auditor?

Except for individuals convicted of serious intentional crimes, there is no limit or restriction on the eligibility of an individual as a member of the board of directors. However, the majority of directors of a *Sociedad Anónima* (SA) must be Argentine residents.

The Entrepreneurship Capital Support Law (ECLS) requires at least one of the directors of a *Sociedad por Acciones Simplificada* (SAS) to be Argentine resident.

With statutory auditors, the General Companies Law (GCL) sets out that they must:

- Be Argentine residents.
- Have a lawyer or public accountant degree.
- Be registered with the pertinent professional association.

Also, it sets out that they cannot be:

- Directors, officers and employees of the same company or other controlled or controlling company of the relevant entity.
- The following in relation to the directors and general managers:
 - spouses;
 - relatives with straight consanguinity;
 - collateral up to the fourth degree inclusive and related within the second grade.

Termination

21. What legal regime applies to a JV's termination? Can a JV be terminated for just cause on request of one party?

Contractual joint ventures (JVs)

These stipulations are governed by the free will of the parties. Therefore, the parties can stipulate the events that can trigger termination of the agreement. Generally, as with any contractual relationship, a contractual JV can be validly terminated for just cause.

However, as the law does not support the abuse of law it cannot support the abuse of a party to terminate an agreement forcing a just cause (for example, by arguing a just cause that does not actually exist, or enforcing a stipulated just cause that has no real ground or importance to determine the termination of the agreement).

Contract law (regulated by the Civil and Commercial Code) also sets out the possibility for the defaulting party to cure any event triggering termination within a specific period of time, therefore, enabling the party to comply with its duties under the contract and, in so doing, avoiding the termination of the agreement.

Corporate JVs

The General Companies Law (GCL) sets out the legal regime applicable to either the *Sociedades de Responsabilidad Limitada* (SRL) or *Sociedad Anónima* (SA) to be wound-up and liquidated.

The Entrepreneurship Capital Support Law (ECLS) and Resolution No. 6/2017 issued by the *Inspección General de Justicia* (IGJ) establish the regime applicable to the *Sociedad por Acciones Simplificada* (SAS) to be wound up and liquidated, applying the provisions of the GCL.

22. Is the termination of a JV agreement subject to any public sector body's approval?

There is no public sector body's approval that must be obtained to duly terminate a contractual joint venture (JV).

However, the termination of the contractual JVs (which requires registration) must be duly registered with the Public Registry of Commerce, such is the case of the *Union Transitoria de Empresas* (UTEs).

Choice of law and jurisdiction

23. Are there constraints on the choice of the law and the jurisdiction applicable to a JV?

Contractual joint ventures (JVs)

In principle, the parties can choose the law and the jurisdiction of their choice to apply to their contractual JV.

Under the National Civil and Commercial Procedural Code (*Article 1*) and the Civil and Commercial Code (*Article 2605*), any dispute can be referred to a foreign court and under a foreign law, to the extent that the disputes have an international and monetary nature, except in cases where Argentine judges have exclusive jurisdiction or in which the choice of foreign courts is prohibited by law.

However, the law is extremely restrictive regarding the choice of jurisdiction and applicable law since it requires the existence of connecting factors.

For example, with a domestic JV with local venturers (that are not the subsidiary of a multinational) performing local work, an international jurisdiction can be declared invalid and, therefore, unenforceable giving jurisdiction to the local courts. Also, choosing a jurisdiction completely oblivious to the matter or that lacks connecting factors to the relevant dispute can give rise to challenges to the foreign court's jurisdiction on the grounds of *forum non conveniens* (forum shopping).

Corporate JVs

Any dispute of a strict corporate nature (for example, a challenge of a shareholders' meeting resolution or directors' liability), must be submitted to the courts where the corporate entity is incorporated.

JVS WITH FOREIGN MEMBERS

Validity and authorisation

24. What are the rules relating to validity and authorisation of JVs with foreign parties?

Validity

Subject to the corporate registration comments discussed below for foreign companies, foreign investors (whether individuals or legal entities) are generally subject to the same regulations as local investors, whether to incorporate or purchase a company or to enter into a contractual joint venture (JV) (*Article 20, Constitution*).

Limits

See *Question 25* on certain limitations on the grounds of nationality.

Authorisation

Foreign companies wishing to participate in local companies (or to incorporate a new one) must register with the relevant Public Registry of Commerce (Registry) (*Article 123, General Companies Law*).

Although this is not an authorisation, failing to comply with the registration can trigger that resolutions taken in shareholders' meetings with the vote of the non-registered shareholder could be considered invalid from an administrative viewpoint, and, therefore, not recordable before the relevant Registry (for example, the registration of an increase of capital), as well as fines from the relevant Registry. This is why it is important to handle these registrations of foreign companies with due care and allow sufficient time.

To register, the foreign company must file with the Registry:

- A copy of their articles of incorporation and bye-laws.
- Proof that they validly exist according to the laws of the country where they were incorporated.
- The corporate resolution appointing legal representatives and fixing a local domicile in Argentina.

The representatives must inform the Registry if they are subject to business prohibitions or restrictions in their place of incorporation. The company must also demonstrate that, outside of Argentina, it either:

- Has one or more agencies, branches, or permanent representations.
- Holds a participation in companies that qualifies as non-current assets.
- Owns fixed assets in their country of incorporation.

Where a foreign company was incorporated for the sole purpose of acting as a vehicle for investing in other companies, compliance with the above requisites by its controlling entity suffices.

Pursuant to Resolution No. 6/2017 issued by the IGJ, registration of foreign companies that wish to participate in a *Sociedad por Acciones Simplificada* (SAS) is mandatory (*Articles 118 and 123, General Companies Law*).

With a contractual JV, where the foreign entity carries out activities in Argentina on a regular basis (rather than isolated acts) they must incorporate a subsidiary or establish a branch or a permanent representation office.

Effect of foreign membership

25. Are any of the rules relating to domestic company JVs (see *Question 1 to 23*) different for JVs with members incorporated under, or governed by, the laws of a foreign country?

Foreign investors are generally subject to the same regulations as local investors.

Freedom to set up a business by foreign investors in Argentina is the prevailing principle.

However, there may be some restricted or sensitive areas where national security or public interest issues are involved, and,

therefore, certain restrictions on the grounds of nationality of the parties are permitted, for example:

- Law No. 25,750 limits certain foreign investors' participation in media companies.
- Law No. 26,737 (Protection on Rural Land Ownership) imposes limits on the ownership or possession of rural land by foreign individuals or legal entities.
- Decree Law No. 15,385 (National Regime on Security of the Borders) set out that certain portions of land near the borders of Argentina must belong to Argentine native citizens.

Foreign exchange controls

Since late 2015, the Argentine Central Bank (BCRA) started to deregulate the Foreign Exchange Control Regime and now allows the Argentine peso to float freely, thus easing the inflow and outflow of money.

In addition, on 1 July 2017 the Central Bank abrogated all prior foreign exchange control regulations and deregulated access to the Foreign Exchange Market by eliminating all the requirements for the transfer of funds to and from Argentina, such as the obligation to instrument foreign exchange transaction through foreign exchange tickets and to comply with several requirements. In this sense, the simplification of foreign exchange transactions reduced the amount of information customers must provide to financial and foreign exchange institutions when carrying out such transactions. Restrictions for foreign exchange transactions were also eliminated. Consequently, transfers made from abroad in foreign currency must now be credited directly into the beneficiaries' local accounts. In case the local account is denominated in a currency other than that in which the transfer was made, the amount credited must be calculated taking into account the exchange applicable on the date on which the transaction is made.

BCRA Informative regime

Regarding foreign direct investments, a BCRA information regime must be complied with. Where the investment (considering the accounting net worth value of the shareholding) does not exceed US\$500,000 it is optional.

Registration of specific contracts

Some types of contracts commonly used in international JVs like the Transfer of Technology agreement (for example, license agreements) under Law No. 22,426, must register with a national registry (*Instituto Nacional de la Propiedad Industrial*), in order to obtain several tax benefits, for example, in income tax:

- Reductions of the relevant withholding tax.
- Deductions in the tax of the amounts paid for the transfer of the technology.

Economic or financial incentives

26. Are there economic or financial incentives for foreign direct investments in a JV?

There are no specific economic or financial incentives for foreign direct investments in a joint venture (JV).

However, there are a number of regimes created to promote direct investments and economic development applicable to both domestic and foreign investors.

These regimes are mainly based on tax incentives or tax reductions (for example, reduction in value-added tax (VAT)).

The following are some of the investment incentives currently in force:

- Investments in capital goods and infrastructure (*Law No. 26360*) introduces incentives for national production of capital goods, IT, telecommunications and agricultural machinery.
- Software industry promotion:
 - Law No. 26692 on the promotion of the software industry;
 - Law No. 25856 on the consideration of software production as industrial activity.
- Promotion of state-of-the-art biotechnology development and production (*Law No. 26270*).
- Biofuels promotion (*Law No. 26093 on regulation and promotion for the sustainable production and use of biofuels*).
- Mining industry promotion:
 - Law No. 24196 on Mining Activity;
 - Laws No. 25429 and 25161, as amended;

- "Mining Code" (*Law No. 1919; Decree No. 456/1997; Law No. 25225*).

- Forestry (*Law No. 25080 on Investments for Planted Forests, as extended and amended by Law No. 26432*).
- Promotion of the exploration and exploitation of hydrocarbons (*Law No. 26154 on hydrocarbons*).
- Promotion of the use of renewable sources of energy (*Law No. 26190. Regulated by Decree No. 562/2009*).

There are also incentives at a provincial or municipal level (including the City of Buenos Aires) for projects and developments of a public interest.

Minimum investments/contributions

27. Are there mandatory minimum equity investments or contributions in kind thresholds for a foreign JV member?

Apart from the ones stated in *Question 3* which also apply to foreign and domestic joint ventures' members, there are no general provisions in relation to this.

THE REGULATORY AUTHORITIES

Public Registry of Commerce of the City of Buenos Aires (Inspección General de Justicia) (IGJ)

Main activities. This is the Public Registry of Commerce of the City of Buenos Aires.

W www.jus.gob.ar/igj

National Anti-trust Commission (Comisión Nacional de Defensa de la Competencia) (CNDC)

Main activities. Government entity in charge of the investigations of anti-competitive practices and merger review.

W www.cndc.gov.ar

Federal Tax Authority Agency (Administración Federal de Ingresos Públicos) (AFIP)

Main activities. AFIP is the Federal Administration of Public Revenue and is in charge of the enforcement, collection and control of the national taxes.

W www.afip.gob.ar/home/index.html

Practical Law Contributor profiles



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Languages. Spanish (native); English (fluent); French (fluent)

Professional associations/memberships

- International Bar Association and as such he served as officer and chair of the Closely Held and Growing Business Enterprises Committee (2003- 2009), and as president of the IBA Professional Ethics Committee.
- On behalf of the Buenos Aires Bar Association (*Colegio Público de Abogados de la Capital Federal*), currently serves as IBA Council Member.
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Areas of practice. Corporate law, startups, M&A, regulatory and compliance (AML and CTF), broad litigation experience.

Non-professional qualifications. Comprehensive seminar on Foreign Exchange regulations, Asociación de Bancos de la Argentina (ABA), Ciudad Autónoma de Buenos Aires, Argentina; Corporate Taxes, CEDEF Law and Finance, Ciudad Autónoma de Buenos Aires, Argentina; Tax and Finance, CEDEF Law and Finance, Ciudad Autónoma de Buenos Aires, Argentina; Complex aspects of M&A transactions, CEDEF Law and Finance, Ciudad Autónoma de Buenos Aires, Argentina; Continuous training program, CEDEF Law and Finance, Ciudad Autónoma de Buenos Aires, Argentina; Course on Commercial Practice, Universidad de Buenos Aires, Ciudad Autónoma de Buenos Aires, Argentina; Course on Trust Law, Universidad de Buenos Aires, Ciudad Autónoma de Buenos Aires, Argentina

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Professional associations/memberships. Member of the Buenos Aires Bar Association (*Colegio Público de Abogados de la Capital Federal*); San Isidro Bar; Italian Chamber of Commerce of the City of Buenos Aires.

Publications

- "Liability of Internet Service Providers (Broad Sense). Notice and Take Down, Argentine Version". Published on the newsletter of the Latin America and Caribbean Committee, ABA Section of International Law, July 2015.
- *Confirman la legalidad de la operación de Contado con Liqui* (Legality of the Blue Chip Swap transaction confirmed). 16 March 2015, published on Abogados-inhouse.com.
- *Blanqueo de Capitales, Prevención de Lavado de Activos y Financiamiento del Terrorismo* (Tax Amnesty, Anti-money Laundering and Counter Terrorism Financing Law). 17 June 2013, Publishing House: *La Ley, Ciudad Autónoma de Buenos Aires, Argentina*.
- *Recurso directo contra resoluciones sancionatorias de la Unidad de Información Financiera. Comentario a Fallo* (Direct appeal against resolutions issued by the Financial Information Unit imposing fines. Comments to judgement). 1 November 2013, Publishing House: *La Ley, Ciudad Autónoma de Buenos Aires, Argentina*.