Culture Amp Global Mobility Project

Project Overview:

We confirm that Culture Amp has instructed us that the company currently has offices in Australia, the US and the UK but it is looking to implement more flexibility for your employees. As such, you have ask us to outline the corporate, tax, immigration and employment issues, options, considerations and risks for short-term remote work arrangements versus longer-term remote work or employee transfer situations in respect to the following countries:

- Canada
- France
- Italy
- Spain
- Israel
- Brazil
- Argentina
- Singapore
- Indonesia
- Australia
- US
- UK
- New Zealand
- Germany

Argentina

1. Does a foreign employer need to set up a company in Argentina to employ people and/or have remote workers?

Yes, foreign employers need to set up a company to employ people and/or have remote workers.

In this sense, the Company will only be able to hire employees in Argentina if it has local presence in the country (branch or subsidiary) and it is registered as an employer before the Tax and Social Security Authorities (*Administración Federal de Ingresos Públicos* "AFIP" and *Administración Nacional de la Seguridad Social* "ANSES"). The employer, in this case, will be the local entity.

To get this registration, the Company must comply with the following requirements: (i) incorporate a domestic company or register a local branch and register it before the Registry of Commerce; (ii) be registered as an employer before the AFIP by filing a form. Such procedure must be done by the legal representative. Once this step is completed, the Company will be able to obtain a tax code to run a business before the AFIP, and with such code it will be able to register itself as an employer.

When an employee is registered, the Company has the duty to pay certain taxes, such as mandatory life insurance, the work-related injuries and professional illnesses insurance's fee, pension, health-insurance and union trade contributions.

The social security contributions are composed of employees' withholdings (which are amounts withheld from their salaries) and contributions made by employers.

All registered employees over the age of 18 years old are covered by a national retirement pension scheme formed by employee's withholdings equal to 17% of their gross salary with a cap of ARS 198,435.52 (approximately USD 2,4961), and employer fixed contributions. The percentage of the employer's contribution depends on the type of activity: 26.4% for commerce and 24% for any other activity, with no cap.

The withholdings and contributions are the following:

	Employees' withholdings	**Employer's contributions (commerce)**	**Employer's contributions (other activity)**
Pension system	11%	12.35%	10.77%
Family allowance system	-	5.4%	4.7%
Unemployment fund	-	1.08%	0.94%
Health medical services for retired people ("*Programa de Atención Medical Integra*l" or "PAMI")	3%	1.57%	1.59%
Health care insurance	3%, and an additional 1,5% per beneficiary covered under the employee's health coverage plan (the employee's primary family group)	6%	6%
Work-related injuries and professional illnesses insurance	To be quoted by the Labor Risk Insurer ("ART")	To be quoted by the Labor Risk Insurer ("ART")	To be quoted by the Labor Risk Insurer ("ART")
Mandatory life Insurance	-	Approximately, ARS 19.03 (approximately USD 0.23)	Approximately, ARS 19.03 (approximately USD 0.23)

[1] Current Exchange rate USD 1 = ARS 79.50

*Extra CBA insurance may apply

As an alternative, please bear in mind that independent contractor agreements are usually executed by foreign companies without local presence in Argentina, or in case of existence of a legal entity, when they need a person to open and organize the business in the country.

However, when entering into this agreement it is important that the Company is aware that the independent contractor hired may construct an employment relationship, in case of conflict, if evidenced that:

- He/She performs tasks regularly and on an exclusive basis;
- He/She complies with a regular time schedule and under the Company instructions;
- He/She renders services in a facility and with elements supplied by the Company;
- The compensation he/she receives in exchange of his services is his main source of income;
- He/She has Company's corporate cards and e-mail address.
- He/She issues invoices on a correlative basis.

In this sense, the independent contractor may request the correct registration to the Company under penalty of considering himself/herself constructively dismissed and request the payment of the corresponding severance compensation plus applicable fines for incorrect registration of his/her labor relationship. Please note that these fines are very high together with social security and tax contingences. (Please see points: 12.5 for severance compensation and 6 for fines)

Therefore, as a prior step to evaluate whether the implementation of such structure is convenient or not or while establishing the legal presence in the country, if the Company needs the services of a contractor, it may hire him/her through a local temporary employment agency ("TEA"), for a maximum period of 6 months in 1 year term. Please see below point 7 for further details.

2. How long can an employee work remotely in Argentina before it will trigger:

Companies are allowed to have employees only if they are registered as employers. However, as mentioned before in point 1, the alternative is to hire independent contractors.

A. Immigration issues/risk

There are no immigration issues if the employee working for an overseas company is Argentinean – native or naturalized-.

The National Constitution guarantees foreign individuals the same rights as Argentine nationals. However, if foreigners will work in Argentina, they must have a specific work permission. The process varies according to whether the applicant is from a member of the *Mercado Común del Sur* ('Mercosur'), composed by Brazil, Paraguay, Uruguay, Venezuela and Bolivia, or associated states, Chile, Colombia, Ecuador, Peru, Guayana and Surinam or from a non-Mercosur country. Moreover, foreigners are required to present a valid passport to enter to Argentina, except for citizens of

neighbouring countries (Uruguay, Brazil, Paraguay, Bolivia and Chile), who may provide a valid national ID card instead.

In this sense, in order to provide services and work in Argentina, foreign employees must have a permanent or temporary residence. However, please bear in mind that currently, due to the outbreak of COVID-19, according to Decree No. 755/2020, Argentine borders will remain closed until October 11, 2020, inclusive, date on date on which it might be expected a renewal of the closure or a flexible regulation. Nevertheless, foreign employees are not allowed to work in Argentina if they do not have a temporary or permanent residence/permit.

In addition, Resolution No. 1644/2020, issued by the National Migration Office (*Dirección Nacional de Migraciones* – "DNM") and published in the Official Gazette on March 12, 2020, established that the issuance of visas and temporary, transitory and special residences in Argentina is suspended.

B. Employment issues/risk

Please see answer 1 above, in case of hiring independent contractors.

C. Corporate, payroll, sales and other tax issues/risk

Please see answer 1, above.

From a tax and social security standpoint, there is no term after which working remotely would trigger any risks.

D. Reporting obligations – employment, immigration, corporate or tax

Remote work situation must be noticed to the labor risk insurance company in order to obtain the corresponding coverage.

3. Overview of employment entitlements and benefits in Argentina

The National Constitution grants the right to work and protects work in all its forms and guarantees to employees the following rights: limited workday, fair compensation, minimum wage (currently, ARS 16,875 - approximately USD 211), decent and equitable labor conditions, equal compensation for equal tasks, paid annual vacations, participation in the company's profits, protection against termination without cause, stability of public employment, and free and democratic trade union organization.

It also establishes that the state will grant social security benefits, which must be complete and irrevocable, especially mandatory social insurance.

As for trade union rights, the Constitution guarantees the right to: i) enter into Collective Bargaining Agreements (CBAs); ii) initiate conciliation or arbitration procedures; and iii) to go on strike and the stability of any union representative's job position.

In addition, the National Constitution establishes the prohibition to discriminate employees' right to privacy and freedom of expression.

Following National Constitution guidelines, Argentine employment regulations are employee friendly and establish minimum rights that may not be waived by agreement of parties.

As for the legal culture related to employment, the following main principles must be considered: i) in case of doubt, the criterion most favorable to the employee must prevail; ii) application of the most favorable provision; iii) application of the most beneficial condition to the employee; iv) "labor public order provisions", which establish minimum rights and rules governing labor relationships, cannot be waived by agreement of the parties; v) employer's incorrect registration of employment is punished with severe fines; vi) employers must provide the working tools necessary for employees to perform the tasks related to their jobs, and vii) the territorial principle applies, this mean that Argentine labor regulations will apply to all services rendered in Argentina, disregarding any other jurisdiction that the parties may have agreed on.

As for benefits, Argentine law states that employers must contribute to the Social Security Administration for: i) mandatory retirement and pension; ii) health care insurance; iii) family allowances system; iv) health medical services for retired people (PAMI); v) Labor Risk Insurance; and vi) unemployment fund –please see point 1 above-.

In addition, employees must be paid for vacation time, as well as a supplementary annual salary in two periods during the year.

Employees must be provided with health coverage for themselves and their primary family group during the labor relationship plus three months after the employment relationship ends. The contribution to the health coverage, through the Social Security Administration, is calculated as follows: 6% of the employee's salary: paid by the employer; 3% of the employee's salary: paid by the employee; and an additional 1½% per beneficiary covered under the employee's health coverage plan (the employee's primary family group): paid by the employee. It is a right of the employee to choose the health coverage to which he/she wants to contribute during the employment contract.

4. Short-term and longer-term immigration options for remote workers in Argentina

As mentioned in answer 2 A), Argentine borders will remain closed until October 11, 2020, inclusive, and the issuance of visas and temporary, transitory and special residences in Argentina is suspended.

The key types of Argentine work permission are as follows:

a) Transitory permit as a seasonal migrant worker: for those entering the country in order to provide seasonal services for up to six months.

b) Temporary residence permit as a migrant worker: for those entering Argentina to carry out a paid permitted activity in an employment relationship for no longer than three extendable years on a multiple entry basis. Within this category, there are three key sub-categories as follows:

   i. Investor: for those providing their own goods or services in order to execute activities of interest for Argentina. A term of no more than three extendable years of residence, with multiple entries and exits may be granted;

ii. Scientific and Specialized Personnel: for those who are dedicated to scientific, investigative, technical or assessment activities hired by public or private entities in order to execute works related to their specialization. This kind of temporary residence may be granted for a period of no more than one year

iii. Athletes and artists: for those hired because of their specialisation by legal persons or companies with a presence in Argentina. A term of no longer than three extendable years of residence can be granted, with multiple entries and exits.

Non-Mercosur applicants must be sponsored by a local employer which must be registered with the Foreign Petitioners National Registration Office (*Registro Nacional Único de Requirentes Extranjeros* – Re.N.U.R.E.-). If an employer based outside the country wants to transfer a foreign employee to work in Argentina, it must first establish an Argentine branch or subsidiary. There is no minimum service requirement for a foreign employee seeking a transfer to an Argentine branch of its overseas employer.

Mercosur applicants may apply for permission to work independently and do not require a local employer to act as sponsor.

There are no resident labor market test requirements to demonstrate that a role cannot be filled with a resident worker before a residence permit can be issued providing the relevant qualifying criteria outlined above are met.

For operational purposes, and according to current legislation, the requirements and forms to obtain temporary or permanent residence differ depending on whether the applicant is a Mercosur national or a non-Mercosur national.

All foreign nationals with temporary or permanent residence are required to obtain a National Identity Document.

Once a foreign national's temporary residence permit has expired, he or she may be granted a permanent residence permit if he or she can demonstrate three years' lawful continuous residence in Argentina.

Applicants are not required to undergo medical screening to obtain permission to work, but all new employees in Argentina are required to undertake a pre-employment medical examination in order for the employer to understand the applicant's ability to carry out his role and accurately determine any pre-existing disabilities for labor insurance purposes.

5. Insurance obligations and other recommendations for companies with remote workers in Argentina

As previously mentioned, please bear in mind that, in order to hire remote workers, the Company must be registered as an employer. Otherwise, it is not allowed to have any kind of employees, and the Company will not be able to hire a labor risk insurer either (which is a mandatory requirement).

Once the Company is registered, employers must contribute to the Social Security Administration for its employees' mandatory life insurance, health care insurance, the health medical services for retired people and labor risk insurance (please see answers 1 and 3, above).

As for independent contractors, there is no protection foreseen regarding risks applicable for them, due to the fact that they work at their own risk. There are some insurances available, but since they are not

mandatory for all professions, hiring them –or not– is up to the independent contractors will. As an example, personal accident insurances contemplates death coverage, total and permanent disability, and the medical or pharmaceutical assistance that the insured may require as a result of the accident.

Notwithstanding the foregoing, there are some liberal professions in which insurances are mandatory, such as responsibility insurance for malpractice for health professionals.

6. Options for having employees work remotely in Argentina

As mentioned before in point 1, the alternative for having employees working remotely in Argentina, is to hire an independent contractor. The hiring may be done by the foreign entity or through a local temporary employment agency for a maximum period of 6 months in 1 year term.

Please note that if independent contractors render services in Argentina for purposes of developing the local business, Argentine labor regulations will apply.

In this sense, in case of a conflict, they may consider themselves under a labor relationship with the company that benefits from their service and request the correct registration of their employment relationship. In this sense, the non-registered or wrongful registered employment relationship, by application of the presumption of the existence of an employment contract, along with the "primacy of reality" principle, is severely punished in Argentina. Therefore, in addition to the amount that may eventually correspond in case of the employee considers himself/herself constructively dismissed as a severance compensation and accrued salaries (please see point 12.5), there are extra fines for the employer who did not registered the employment relationship or registered it wrongful.

Fines are paid to the misclassified independent contractor and, basically, they include: (i) double of the items i), ii) and iii) mentioned above of the statutory severance compensation and (ii) one quarter of all compensations paid and not duly registered as salary.

If the Company does not comply in due time with the payment of the mandatory severance package, the individual may claim for interest and fines, in which case the Company must pay an additional compensation equal to the 50% of the severance on account of the seniority, prior notice and pending days of the termination month.

Consider that currently, and until December 2020, double severance is in force and this may be extended for further periods (please see point 12.6 below).

In the event of lack of payment of the corresponding withholdings and contributions, the tax authority (AFIP) may also claim to the Company that it did not comply with the deposit of corresponding social security withholdings and contributions, and claim the amount accrued as capital, plus fines up to 200% of the capital owed and monthly interests of approximate 2%. The statute of limitation for this claim is 10 years.

The Company has the obligation to deliver the individual working certificates within 30 running days from the termination of employment relationship. If the Company fails to comply with this obligation, it will have to pay a fine equal to 3 salaries. Thus, since there is no registration of the labor relationship in Argentina, in case of a conflict, the employee may likely also request this fine.

In addition, if the activity rendered by the individuals is governed by any particular CBA, the corresponding trade union may claim the contributions not made plus interests. The percentage depends on the applicable CBA, but in general is between 2% and 5% of the monthly compensation. The statute of limitation for this claim is 5 years.

Bear in mind that the statute of limitations regarding labor claims is of two years since the credit was originated and ten years for social security obligations.

Also, the fact that the company does not have a local presence in the country it is not an obstacle for the independent contractors to sue it, there is a special diplomatic procedure that applies and it is frequently used in such cases.

7. Legal risks to consider regarding employer of record services in Argentina

The "employer of record" arrangement, as commonly known in other countries such as in the US, does not properly exist in Argentina. Instead, it is possible to hire employees through a local temporary employment agency ("TEA").

This kind of contractual relationship will allow the Company to prove the individual's skills for the position and, at the same time, will grant to the Company enough time to set up its local presence.

In order to hire employees through this manner, the Company shall evidence that the hiring responds to one extraordinary circumstance.

When this kind of hiring responds to extraordinary needs, the individual may not be employed for a period longer than 6 months in 1 year period or 1 year in a period of 3 years.

Under this scheme, the employer will be the TEA, disregarding the fact that the employee may render services for the Company. The Company that uses the employee´s services is entitled to the employer's duties and rights, but it is not part of the legal relationship. However, the Company will be jointly and severally liable with the TEA for all labor obligations.

Bear in mind the importance of the migratory aspects. Indeed, the individual must obtain a temporary or permanent residence to be able to work in Argentina.

In addition, it is important to translate all documents into Spanish and made them be the governing ones in order to avoid misinterpretations in case of a conflict. Labor Courts dismiss any document written in a different language, since it may argue that the foreign language version could not be clearly understood by the employee and the employer has used it with the purpose of taking advantage of such situation.

8. Other employment issues, risks and possible employee claims

The common mistakes, risks and claims in Argentina are the following:

a) Entering into independent contractor, distributor or sales representative or other designated status agreements without considering the protective nature of the Argentine labor regime,

which—generally—causes claims based on incorrect registration of the relationship. Employers have to be careful to avoid subordination notes.

b) Based on the protective nature of labor regulations, all documents executed should be in Spanish, in addition to any other language that the employer/contractor wishes to use. Therefore, in case of applying international agreements or policies in a foreign language without local legal review, the employee may claim that he/she did not understand the terms of the agreement and the document may be not considered valid.

c) Claims based on construction of a labor relationship out from a commercial agreement are common. Therefore, it is recommended to avoid exclusivity, business cards with corporate logo, corporate email address, granting employee benefits, grant of working tools, issuance of correlative invoices for services, compliance with a given working schedule, granting direct orders and reduce frequency of services.

d) Regarding staffing agency employees: main regulation to consider avoiding exposure to labor claims and construction of a labor relationship with Company hiring services from staff agency. Comply with requirements of time, forms, etc. Otherwise, in case of a conflict, there is a risk that the staffing agency employee argues the existence of a labor relationship with the Company.

9. What options are there for Culture Amp to set up a company in Argentina?

The main investment vehicles used by non-resident individuals and foreign companies are described below. Registration must be performed with the Public Registry of Commerce of the jurisdiction applicable to the legal address of the Company. The Public Registry of Commerce of the City of Buenos Aires is the *Inspección General de Justicia* ("IGJ").

1. Branch

- In principle, it is not necessary to allocate capital to the Argentine branch;
- The branch must keep separate accounting records in Argentina and file annual financial statements with the IGJ;
- The branch must appoint a legal representative, who can reside in Argentine or not. Notwithstanding, it is suggested to have at least one legal rep with residency in Argentina for practical purposes in order to deal with day-to-day obligations and paperwork that require sole signature of legal rep;
- The legal rep has same duties and liabilities of directors of Argentine corporations;
- A legal address in Argentina must be registered;
- Corporate documents and resolutions of the parent company must be filed with the IGJ for registration purposes. Such documents must be notarized, legalized by Apostille of the Hague Convention and translated into Spanish for filing purposes;
- Legal reps must provide a guarantee in favor of the branch similar to the one requested to directors or managers of domestic companies;

- Annual filing informing assets and other financial and corporate information from parent company must be submitted.

2. Domestic companies

The most common types are the corporation and the limited liability company. A few years ago, Argentine law added two other options, which have been also successfully used: (i) single-shareholder corporations (SAU) as a variation of the corporation with additional requirements, and (ii) a new type of legal entity called the simplified corporation (SAS), specifically aimed to entrepreneurs. Below please find a brief description of each one:

a) Corporation (*Sociedad Anónima*, or "SA")

- At least two shareholders, which can be legal entities or individuals, are required to set up an SA. They limit their liability to the subscribed capital stock;
- Each corporation is regulated by its by-laws;
- The minimum capital required is ARS 100,000 (approximately USD 1,254 at the exchange rate at the time of writing this report). While the share capital must be fully subscribed at the time of incorporation, only 25% need be paid up on such shares, with the balance to be paid within two years thereafter. Contributions in kind of real estate, equipment or other non-monetary assets must be made in full at the time of subscription;
- Capital is divided into shares that must be in registered form and denominated in Argentine currency;
- SA pays annual fee of IGJ;
- Transfers of shares are generally unrestricted, but restrictions may be included in the by-laws provided that they do not effectively prevent the transfer of shares. Transfer of shares should not be registered with IGJ;
- Administration is in charge of a Board of directors with 1 or more regular members. At least one alternate director is required, unless statutory supervisors are appointed. Mandates last among 1 and 3 fiscal years. Directors, and even the president of the Company, may be foreigners. Even so, the majority of the Board members must be Argentine residents;
- Regular directors must be registered with the AFIP as independent workers ("*autónomos*") and pay applicable social contributions;
- Regular directors must provide a guarantee in favor of the Company in an amount between ARS 10,000 (approximately USD 125) and ARS 50,000 (approximately USD 627), subject to the number of directors and the capital stock;
- Corporations must be incorporated by public deed;
- Corporations are subject to the internal supervision of statutory supervisors or committee appointed by the shareholders, in certain cases required by law or if determined at the by-laws;

- A shareholder meeting must be held at least once a year to consider the annual financial statement and the allocation of the results of the fiscal year. Financials must be filed with the IGJ;

- Accounting and corporate books must be kept.

b) Single-Shareholder Corporations (*Sociedades Anónimas Unipersonales*, or "SAU")

As a SAU is a type of SA, it has the same incorporation requirements and characteristics of an SA, except for the following:

- SAUs cannot be shareholder in another SAU;

- SAUs' share capital must be fully subscribed and paid up upon incorporation. If the capital is increased, the capital contribution must be fully subscribed and paid up simultaneously once approved by the shareholders;

- SAUs are subject to permanent government supervision, as provided in Section 299 of Law 19,550. Thus, SAUs must: (i) appoint at least one regular and one alternate statutory supervisor; and (ii) comply with the filings required of companies subject to permanent government supervision by the IGJ.

- Although costs of maintenance are a bit higher than SA, SAUs may be a convenient alternative for foreign investors to set up a subsidiary in Argentina, given that only one shareholder is required.

c) Simplified Corporations (*Sociedades por Acciones Simplificadas*, or "SAS")**

** Please note that a few weeks ago the Argentine Senate approved the bill to modify requirements to incorporate SAS and to restrict existing benefits, mostly aimed at registered entrepreneurs. Now Deputies must vote for the bill to become enforceable:

SAS are the newest legal type in Argentina aimed to entrepreneurs, who need easy registration and maintenance.

- Registration can be completed easily, as long as the filings are made electronically with a standard form;

- The incorporation or any amendments may be made by public deed, a duly legalized private instrument, or electronically with a digital signature;

- It can be incorporated by 1 or more shareholders. The limited liability is subject to the paid-in capital;

- A SAS cannot incorporate or participate in another SAS. A SAS cannot be controlled by or connected by more than 30% of its corporate capital with a company subject to permanent government supervision, as provided in Section 299 of Law 19,550;

- Corporate capital cannot be less than two times the minimum salary (ARS 33,750 – approximately USD 423- as the date hereof). However, the IGJ may request to adapt the capital to the activities of the SAS;

- Limitations on transfer of shares may be included in the by-laws for a prohibition of the assignment of shares of up to 10 years;

- Registration fees include: (i) publication expenses; (ii) granting of the tax ID CUIT with no need for providing evidence of domicile at the beginning of the filing, and (iii) paid-in capital of 25% of minimum corporate capital;

- SAS companies must have a digital minutes book as well as books for share registry, logs, inventory and the balance sheet. The company's by-laws, its amendments and power of attorneys may be granted through digital notarial protocol;

- Opening of corporate bank accounts is simplified in certain banks;

- It must have at least one regular and one alternate director, in the case of no statutory supervisors. At least one regular director must have residency in Argentina;

- Guarantee of directors is not required, except for the City of Buenos Aires where IGJ recently resolved to request same guarantee to directors of other companies;

- Meetings of the Board of directors to be held electronically and outside the company's premises;

- Financial statements do not need to be filed but must be prepared anyway. However, the IGJ recently resolved that SAS must file its financials in the City of Buenos Aires;

- A SAS's corporate purpose may be multiple and without any connection between the chosen activities. The model corporate purpose includes the following activities: (i) creation, production, exchange, manufacturing, import and export of any kind of assets, material and non-material and natural resources, as well as (ii) the rendering of services directly or indirectly related to: agriculture, livestock and other cattle raising, fishing, vinery; communication, show business, publishing; manufacture of any kind; cultural activities and education; technology and software research and development; tourism, hotel and restaurants; real estate brokerage and constructions; investment, finance and trusts; oil and gas, forestry, mining and energy; health; transportation. However, the IGJ recently resolved that SAS incorporated in the City of Buenos Aires must have a sole and unique determined purpose.

d) Limited Liability Companies (*Sociedad de Responsabilidad Limitada,* or "SRL")

SRLs have common characteristics with corporations, except for the following:

- Partners must be a number between 2 and 50, who may be individuals or corporate entities;

- SAs cannot participate in SRLs;

- Transfer of shares must be registered with IGJ;

- One or more managers must be appointed. The managers represent the company, either individually or jointly, as deemed in the by-laws. Mandates can be for a fix or non-fixed term;
- The appointment of a statutory supervisor or the creation of a supervisory committee is optional for SRLs unless their capital amounts to ARS 50 million (approximately USD 626,959) or more;
- SRL by-laws contain the rules for adopting resolutions. Unless the by-laws state otherwise, resolutions may be passed in writing without the need for holding a meeting;
- If one partner holds the majority vote, the vote of another partner will be necessary for the partners´ meeting to be considered valid;
- SRLs do not pay annual fee to IGJ but a service fee for each filing;
- SRLs do not file financial statements to IGJ on annual basis except for those companies with a capital of ARS 50 million or more. However, all SRLs must prepare the annual financial statements;
- There is no minimum capital. A minimum start-up capital of ARS 20,000 (approximately USD 250), is suggested to cover initial costs;
- Incorporation does not require public deed but a private document;
- Capital is divided into quotas of ARS 10 (approximately USD 0.12) each.

There is no limitation on foreign owned entities. Notwithstanding, please note that:

- Foreign individuals that intend to participate as partners or shareholders must be present at the time of incorporation or must delegate faculties through a power of attorney to execute incorporation documents, vote in future shareholders or partners meetings and obtain the tax ID with Argentine tax authorities;
- Foreign entities that intend to participate as partners or shareholders must previously register themselves with IGJ pursuant to section 123 of Law 19,550. This means that corporate documents and resolutions of the foreign entity must previously be filed with the IGJ. Such documents must be notarized, legalized by Apostille of the Hague Convention and translated into Spanish for filing purposes. The appointment of a legal rep is mandatory. Legal reps must provide a guarantee in favor of the registered foreign entity similar to the one requested to directors or managers of domestic companies. Annual filing informing assets and other financial and corporate information from parent company must be submitted.
- Majority of Argentine residents is required for Board purposes, i.e. all domestic companies must appoint Board members and the majority of them must reside in Argentina.

10. Union, work councils and other employee representative groups in Argentina

By law, workers obtain the representation in the union that relates to the area of their activity or their profession. It is not mandatory to be enrolled with a union.

Regardless union affiliation and representation, the commercial activity of the Company defines the application of a given CBA.

In Argentina there are no work councils. However, there may be union representatives within the Company's premises.

The number of union representatives within the Company depends on the number of employees: i) One union representative for 10 to 50 employees; ii) Two union representatives for 51 to 100 employees; or iii) If having more than 101 employees, one additional union representative for each one 100 employees.

Union representatives are elected through direct and secret vote made by all the employees represented (affiliated or not – framed under the CBA). Union representatives fulfill multiple functions, including representing: i) Employees before the employer; ii) Employees before the union; iii) Employees before the administrative labor authority when it conducts inspections at the workplace; iv) The union before employees; and v) The union before the employer.

To be elected as a union representative, the candidate employee needs to: i) be affiliated to an officially recognized union and be chosen by direct and secret vote of the represented employees; ii) be a union member for at least one year; iii) be minimum 18 years old; and iv) be an employee of the company for the whole year before the election takes place.

The union representative is elected for a term of two years.

It is not necessary to be associated in order to get union representation; workers obtain the representation of the union that relates to the area of the worker's activity or profession and that has been recognized by the Ministry of Labor ("ML") (through a resolution called "*Personería Gremial*"). However, due to the constitutional right of freedom of association there is a case law trend that supports the legality of several unions within the same activity, regardless of the fact that the union has been recognized by the ML.

The same provisions apply for remote workers (since they have the same rights than the employees who physically attend the workplace)

11. Contracts of employment and other required employment documents in Argentina

Since the applicable principle regarding employment contracts is the freedom of formality, parties may freely choose the form of the employment contract, except as provided by law or CBAs in individual cases.

Due to the continuity principle, the rule is that employment relationships are meant to be for an indefinite period of time, and there is no need to execute an employment agreement. The existence of the employment relationship will be determined based on the facts and subordination of the worker so there is no need to have a written agreement for indefinite employment relationship.

For employment agreements other than those for indefinite term, they must be in writing and comply with certain formal requirements, depending on the kind of employment agreement.

Notwithstanding the above, in regard to indefinite-term labor relationships, it is advisable to enter into written employment agreements in order to minimize possible risks of misinterpretations.

The principle is that employment contracts are for an indefinite period of time. This means that employment relationships are intended to continue until the employee complies with requirements to apply for retirement.

Fixed-term employment agreements are an exception and may only be valid if they meet all of the following requirements:

a) The agreement must fix the term in writing.

b) The term cannot exceed five years.

c) Employers must justify, in writing, the objective cause for this type of agreement.

Making continuous use of fixed-term contracts or in breach of legal requirements will automatically convert it into an employment contract for an indefinite period of time.

Employment contracts do not have to specify any termination provisions since they are provided by mandatory local regulation and corresponding applicable CBA. Due to the "public order provisions", termination provisions may not be modified by agreement of the parties unless they agree on better terms that are more beneficial for the employee.

Regarding the language, employment agreements may be in any language. However, it is highly advisable to execute a version in Spanish to avoid misinterpretations in case of a conflict due to the protective nature of Argentine Labor System. Consider that, in case of a conflict, a Court of Law may dismiss a contract written in a different language, since it may argue that the foreign language version could not be clearly understood by the employee.

The NEL provides the following alternatives related to the duration of the employment contract.

a) Indefinite-term Contract:

- Under NEL, indefinite-term contracts are the rule as labor relationships are supposed to last until the employee is entitled to social security benefits.
- The trial period is up to three months.
- Termination during trial period can occur without any compensation or severance payment liability for the employer (except for prior notice of 15 days and the wages due).
- If the employer terminates the employment without any cause and beyond the trial period, severance compensation must be paid or claimed by employee (seniority compensation, compensation in lieu of notice, etc.).

b) Fixed-term Contract:

- This scheme requires as an essential condition, that is, a written contract in which the fixed term has been agreed between the parties.
- An extraordinary requirement is also required by law in order to duly justify a fixed-term contract.

- Making continuous use of such fixed-term contracts or in breach of legal requirements will automatically convert it into an employment contract for an indefinite period of time.
- There is a maximum five-year term, but only if the above-mentioned requirements are duly complied with.
- Advanced written notice of termination is required. The omission in giving such advanced notice cannot be replaced by any compensation and will convert the contract into one for an indefinite period of time. Advanced notice must be given no less than one month and not more than two months prior to the termination. The only exception is a fixed-term contract with a duration of less than one month, in which case no notice is required.
- Regarding the compensation due for terminating a fixed-term contract, if an unfair dismissal occurs before the agreed-upon term is finished, the employee is entitled to the corresponding compensation (severance compensation due for termination without cause), plus a special compensation that is usually determined by calculating the wages due to the agreed date of termination.
- At the end of the fixed term, the mere termination of such period does not entail the employer's liability to pay compensation, unless the contract period is more than one-year. In such case, the employer must pay a severance compensation equivalent to 50% of regular severance compensation.
- A fixed-term contract has no trial period.

c) Contract for Contingent Workers (hired on a temporary basis to perform a specific activity—contingent or temporary contract):

This contract takes place when extraordinary and transitory production demands or requirements are foreseeable, although a specific term for the contract termination may not be foreseen. Furthermore, this regulation provides that this kind of contract will also take place when the relationship begins and ends with the specific execution of a certain task or with the specific service for which the employee was hired.

The main legal characteristics are: i) There is no obligation to give any notice of termination; ii) No severance payments or compensations are owed when the contract finishes; iii) Execution of a written contract; iv) Specific cause of the contract must be clearly described, as the employer must prove the temporary nature of the contract; and vi) No trial period is applicable.

12. Employee terminations and end of assignment options in Argentina

In Argentina, terminations may be voluntary or involuntary:

Voluntary terminations

1. Employee's resignation

Employees may resign from their jobs, taking into account the following requirements:

a) Notification: Resignation is only valid if made by legal notification sent to the employer through the local post office to the employer in a pre-drafted format already put together by the post office and labor authorities, setting the exactly date of termination.

b) Prior notice: The employee may give a prior notice to his/her employer of 15 days, but there is not a sanction imposed in case he/she does not give that notice.

c) Approval: The ML does not approve resignation, since it only approves ratification agreements for terminations without cause. If the resignation involves the payment of termination bonus it is recommended to execute a resignation agreement in addition to the local notification giving account of such payment with a certain wording before a notary or the ML to grant more legal certainty.

2. Mutual terminations

Mutual termination agreements must be executed by both parties (employee and employer). As legal requirements they may be done before a notary or before the ML or Judge.

The agreement must be executed in person by the employee, who cannot allow another person to act on his/her behalf via power of attorney. Also, it is recommended that both parties are legally represented by lawyers to grant legal certainty and minimize exposure for the employer, considering the protective nature of Argentine regulations and case law.

The main aspects of the mutual agreement are: i) they need to be entered on the date that parties agree as termination date; ii) The agreement can be registered with the ML in order to set that the ML has 'supervised' the agreement and, in principle, agrees with its term; iii) The agreement can be challenged in court, although the eventual registration and the legal representation of the parties will reduce the chances of success of any future claim against the employer; iv) They include waivers in their terms by means of which the employee waives his/her right to file future claims against the employer; and v) currently, due to the current prohibition to terminate employees without cause (explained in point 5 below), mutual termination agreements are an alternative to terminate labor relationships and are being used by employers observing the requirements mentioned above.

3. Termination by way of expiry of a fixed or limited term contractual relationship: please see point 11 "b" above.

Involuntary terminations

4. Dismissal with fair cause

Employers may dismiss an employee with fair cause, provided that the employer can prove the grounds for the dismissal. If the employer has evidence to establish grounds for dismissal, it should not pay any compensation to the employee, but it only must pay: i) wages for days worked that month; ii) the proportional mandatory semi-annual bonus ("*sueldo anual complementario*" – SAC); iii) proportional vacations; and iv) proportional SAC calculated upon vacations.

Due to the rule that labor relationships are considered to be for an indefinite period of time, dismissal with cause must be the last recourse after having implemented other disciplinary measures, or the offense should be serious enough that it would make the continuity of the employment relationship impossible. Legislation imposes certain requirements for dismissal with cause: i) Notification of dismissal must be in writing; ii) The cause and reasons alleged as the grounds for termination must be clear, accurate, and detailed; iii) The alleged cause cannot be changed in successive legal notifications or during the judicial process.

In the case that the cause is challenged before the Court of Law and requirements were not met, there is a high chance that the judge can rule that an employer has failed to comply with legal requirements and order it to pay severance compensation as if termination was with no cause. Each judge who is presented a dispute about termination with cause must objectively evaluate: i) the facts giving rise to the dispute to determine whether there was cause for dismissal; and ii) if formal requirements of notification were accomplished.

In these situations, the employer must submit evidence supporting such cause. Nevertheless, the decision on whether the cause was sufficient lies with the judge, who analyzes the facts and evidence under the light of protective labor regulations and principles that govern employment relationships.

When evaluating the existence of just cause, the judge also considers: i) the proportionality of the discipline measure considering the offense committed; ii) the disciplinary background of the employee; and iii) the employee's seniority.

If the employee is a union representative, the employer must conduct a previous summary trial to dismiss him or her, since union representatives have a special protection against dismissals.

5. Dismissal without cause

Due to the COVID-19 outbreak and the protective nature of labor regulations, currently the Government has established the prohibition to dismiss without cause, and to dismiss or suspend employees due to lack or reduction of work or for reasons of force majeure up to the end of November, 2020 inclusive (and it is probable that this term is extended again). However, the referred prohibitions are not applied to employees hired after July 29, 2020.

Under a normal scenario, employers may also dismiss an employee without cause paying the compensation established by law, and taking into account all the preventive measures for the dismissal not to be considered as a discriminatory act.

In this case, the employer must give a prior notice to the dismissed employee, which terms are established by law as follows: i) 15 days' notice when the employee is in trial period (the trial period is up to three months, and termination during trial period can occur without any compensation or severance payment liability for the employer -except for prior notice of 15 days and the wages due-); ii) 1 month notice when the employee has less than five years of seniority; and iii) 2 months' notice when the employee has seniority that exceeds five years. It is common practice not to grant notice and pay severance in lieu of prior notice, which is equal to the period of time of prior notice that would correspond
In the event of dismissal without cause by the employer or constructive dismissal, the employer must pay the employee the accrued salaries and severance compensation, which include:

a) Seniority compensation: This compensation is equivalent to one monthly fee per year of services or fraction greater than three months;

b) Severance in lieu of notice: in case the employer does not give the employee the prior notice;

c) Pending days of the termination month: If the dismissal does not take place in the last day of the month, the employer must pay a compensation equivalent to those pending days to complete the entire month;

d) Severance for proportional vacations: Disregarding the cause of termination, the employee is entitled to a compensation equivalent to the vacation pay in proportion to the days effectively worked;

e) Proportional SAC: The employer must pay the SAC in 2 installments (June 30th and December 18st) equivalent to 50% of the best monthly salary earned in the prior six-month term; and whatever the cause of termination of employment, the employee is entitled to the proportional amount of the SAC;

f) Statutory SAC over severance in lieu of notice: Court decisions have ruled that the employee is also entitled to 1/12 of the amount provided for severance in lieu of notice.

g) Wages due - other benefits: The employer must pay any pending salary and any other benefits, incentives, compensations due to an employee if applicable.

Please bear in mind that since December 12, 2019 Decree No. 34/2019 establishes the obligation to pay double severance compensation in the event of dismissals without fair cause and if the employee considers himself/herself constructively dismissed, up to December 6, 2020 inclusive. However, the double severance compensation is not applicable to the employees hired as from December 14, 2019.

6. Constructive Dismissals

An employee may consider himself or herself as constructively dismissed following an employer's breach of the employment contract obligations which is serious enough to constitute an offence that prevents the continuation of the employment relationship.

The employee must notify the employer of such termination by legal notice and advance warning to repair the alleged offence. Common examples of acts that may give rise to constructive dismissal claims include: i) Lack of payment of monthly compensation; ii) Incorrect or failure to register the employment relationship; iii) Abusive modification of essential labor conditions; iv) Excessive disciplinary measures; v) Sexual harassment; vi) Discriminatory treatment; or vii) Mobbing.

In this case, the employee may claim for the payment of the accrued salaries and severance compensation mentioned in point 5 above.

13. Overview of employee's stock option plans and phantom stock options in Argentina

Multinational companies tend to grant participation in different kinds of stock options plans (“SOP”), to certain employees occupying important positions or to all their employees (“Beneficiaries”), depending on the particular circumstances of their business and compensation schemes.

In the majority of cases, the SOP represents a benefit to the employees because they are granted at a discount exercise price (“Benefit”).

Local labor laws apply to all labor aspects of the SOP since they are granted to employees in Argentina in consideration for their services rendered locally. In the case that Benefits under the SOP have been granted on frequent basis, it will be considered as part of the Beneficiaries’ compensation. Thus, they have a vested right to demand them in the future if Company decides to cancel their grant.

In the case the SOP is granted by the parent company and not registered in the local labor documentation or failure to grant it, which is not the employer of the Beneficiaries; they may file a claim against both, the direct employer and the parent company for joint and several liability arguing that they are part of the same economic group and the existence of an intention to avoid compliance with local labor regulations.

Phantom options are legally treated as a bonus payment.

If the Benefit is deemed a usual gratification/bonus under local labor laws, it is considered to be part of the Beneficiaries’ compensation with social security consequences. Also, it must be reflected in the payment slip and any other labor document corresponding to the period that encompasses the exercise date.

Lack of compliance with the mentioned labor and social security obligations, it may exposed the company to claims based on wrongful labor registration and failure to comply with social security obligations.

14. Relocation requirements

In Argentina, law does not establish relocation requirements, and there are not mandatory obligation for companies regarding this topic.

However, please bear in mind that, if the Company grants relocation to employees, it may be considered as a benefit. Therefore, as mentioned before in point 13, if this benefit is deemed as regular, it will be considered to be part of the beneficiaries’ compensation with social security consequences. This implies that every time the benefit is granted, it will have to be registered in the payment slip and any other labor document, and the appropriate social security contributions and withholdings must be made. In addition, it will be taken into account when calculating the accrued salaries and severance compensation.

Furthermore, if the benefit has been granted repeatedly, employees have a vested right to demand them in the future if the Company decides to cancel their grant.

If relocation benefits have not been registered in the labor and social security documentation of the employer, employees may file a claim demanding the correct registration of their remuneration, together with all the fines that apply to incorrect registration.