



Buenos Aires



Beijing



New York

IMPORTANT NEWS FOR FOREIGN COMPANIES ACTING AS SHAREHOLDERS OF BUENOS AIRES BASED COMPANIES, OR HAVING A BRANCH REGISTERED IN THE CITY OF BUENOS AIRES.

On January 21, 2020, the media has informed that Mr. Ricardo Nissen, a former Chief of the Buenos Aires Office of Corporations (*Inspección General de Justicia* or “IGJ”) will be appointed once again to head that Government Agency.

Therefore, in light of past practice, it becomes highly convenient for all foreign companies acting or wishing to act as shareholders to Buenos Aires based companies (and thus needing to comply with an IGJ Registration under Section 123 of the Argentine Companies Law, and ancillary IGJ regulations), as well as for all foreign companies having, or wishing to set-up, a Buenos Aires based Branch (and hence needing to comply with an IGJ Registration under Section 118 of the Argentine Companies Law, and ancillary IGJ regulations), to be aware that an amendment of the applicable regulations is very likely to be issued shortly, and to anticipate themselves to that modification, to be able to comply, and to prevent decisions colliding with, or infringing, the new regulations.

Those upcoming regulations are expected to be similar to certain regulations that have been put in force by Mr. Nissen in the past (and later repealed by a recent IGJ administration), and they comprise mainly the following:

- **Registration Requisites:** The registration at the IGJ of foreign companies acting or wishing to act as shareholders to Buenos Aires based companies (and thus needing to comply with an IGJ Registration under Section 123 of the Argentine Companies Law and ancillary IGJ regulations), as well as of foreign companies having, or wishing to set-up, a Buenos Aires based Branch (and hence needing to comply with an IGJ Registration under Section 118 of the Argentine Companies Law and ancillary IGJ regulations), shall be subject, among other requisites, to providing evidence to the IGJ that the applicant foreign company conducts its main activity abroad Argentina. To such purpose, accounting certificates evidencing foreign non-current assets, deeds of real estate property, evidence that the foreign company is listed at a foreign stock exchange, and similar evidence should be admissible.
- **Yearly Compliance.** Then, upon registration, those foreign companies shall have to comply yearly in submitting to the IGJ evidence similar to the one described in the above paragraph. Such compliance may be more complex, because once the Argentine company starts conducting business, the foreign activity of its foreign shareholders, or foreign headquarters, as applicable, shall need to have substance when compared to the Argentine activity. By way of example, the amount of foreign non-current assets shall have to be significant when compared to the Argentine business.
- **Treatment of SPVs.** It is very likely that, subject to certain specific requisites, foreign companies being sheer SPVs shall be entitled to comply through their direct or indirect controlling companies.
- **Treatment of Offshore Companies.** It is highly likely that foreign companies from offshore jurisdictions shall be subject to much more stringent requisites, that may for practical purposes result in a ban for those companies (except when constituting sheer SPVs).

Treatment of illegal forum shopping. Registration at an Argentine Registry of Commerce of a territorial jurisdiction other than that of the IGJ may be challenged by the IGJ as an illegal maneuver to avoid the IGJ regulations, if not based upon justified grounds (such as for instance also acting as shareholder to Argentine companies of that other Argentine

jurisdiction). In any case, it is likely that most Argentine jurisdictions shall put in place amended regulations aligned with those of the IGJ.

For further information you can contact Carlos E. Alfaro at cealfaro@alfarolaw.com

Buenos Aires Carlos E. Alfaro cealfaro@alfarolaw.com

New York Liliana Arauz larauz@alfarolaw.com

China Desk Soledad Matteozzi smatteozzi@alfarolaw.com