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City of Buenos Aires' Commercial Registrar to disregard foreign companies' registration with other commercial registrars in Argentina; new registration requirements imposed on foreign companies.

For further information, please contact:

Laura Huertas Buraglia
+54 (11) 4590-8622
laura.huertas@mcolex.com

María Jimena Martínez Costa
+54 (11) 4590-8745
maria.jimena.martinez@mcolex.com

Further expanding its supervisory powers in corporate matters, City of Buenos Aires Commercial Registrar *Inspección General de Justicia* (IGJ) has issued new rules by which it disregards registrations with commercial registers in other Argentine jurisdictions obtained by foreign companies whose principal holdings in Argentina are equity stakes in companies domiciled in the City of Buenos Aires. In addition, the new rules modify the regulations applicable to foreign companies registered as "investment vehicles", emphasizing that such type of registration is exceptional in nature, imposing new requirements that are difficult to satisfy, and favoring interpretations aimed at disregarding such foreign companies' existence as separate legal entities. Finally, the new rules require both local and foreign companies to justify ultimate beneficial ownership declarations stating that there are no individuals who qualify as ultimate beneficial owners.

On May 17, 2021, IGJ's General Resolution No. 8/2021 was published in Argentina's Official Gazette. This resolution modifies the rules applicable to the registration of companies incorporated or organized abroad with the City of Buenos Aires' Commercial Registrar and the maintenance of such registration.

In addition, the new resolution requires that whenever a company (foreign or domestic) that is registered or is seeking registration with the City of Buenos Aires' Commercial Registrar is required to identify its ultimate beneficial owners pursuant to IGJ's applicable regulations, documentary proof must be provided in support of any statement that there are no individuals who qualify as ultimate beneficial owners.

The main aspects of the new resolution are summarized below:

A. Foreign Companies

In accordance with Argentina's Companies Law, foreign companies seeking to conduct business on a regular basis in Argentina or to acquire or hold equity interests in Argentine companies must (i) register with the Registrar of Commerce, (ii) designate a local representative, and (iii) establish a domicile in Argentina. The Registrar of Commerce for the City of Buenos Aires is managed by IGJ.

In addition, Argentina's Companies Law provides that companies that are incorporated or organized abroad but that have their headquarters in Argentina or whose main corporate purpose is to be carried out in Argentina will be deemed Argentine companies and subject to Argentine law.

In the past, the IGJ has extensively regulated the prerequisites to be satisfied by foreign companies seeking registration with the City of Buenos Aires' Commercial Registrar—aiming to ascertain whether such foreign companies conducted any substantive activities and had their place of effective management abroad—and has actively pursued compliance, prompting numerous foreign companies that did not meet these prerequisites to be incorporated as Argentine companies. The new rules make foreign company registration requirements even more burdensome and show IGJ's renewed determination to actively enforce foreign substance requirements on foreign companies registered or seeking registration with the City of Buenos Aires' Commercial Registrar.

1. Investment vehicles

For several years, IGJ has allowed foreign companies that are not able to satisfy foreign substance requirements to obtain registration as "vehicles" of foreign parent entities meeting such requirements. By doing so, the IGJ recognized a practice widely used by foreign investors, who tend to channel international investment through special-purpose vehicles.

Although registration of foreign companies as "vehicles" will continue to be allowed, the new rules state IGJ's view that special-purpose vehicles are often used with fraudulent intent, and that such type of registration will be exceptional in nature and granted restrictively. In addition, the new rules significantly increase the prerequisites that foreign companies will need to meet to obtain or maintain their registration as "vehicles". In this sense, the following requirements and limitations were added and will apply with respect to new and existing foreign company "vehicle" registrations alike:

- Any foreign company seeking to register as a "vehicle" must assert its vehicle status on occasion of its initial registration.
- Only one "vehicle" company per foreign company group may be registered. This new rule restricts the possibility of diversifying the risks of different investments or ventures (for which foreign groups may have different local or foreign partners) through the use of separate special purpose vehicles and may create problems for economic groups having different lines of business and channeling their investments in each line through separate vehicles. Moreover, this new rule may affect the corporate structure of many Argentine subsidiaries of foreign companies that have two "vehicles" of the same foreign company as shareholders.
- If a foreign company is registered in Argentina either to conduct business in the country (Argentina's Companies Law article 118 registration) or to acquire or hold equity interests in domestic companies (Argentina's Companies Law article 123 registration), no foreign companies controlled directly or indirectly by such registered foreign company may be registered as "vehicles."
- Foreign company "vehicles" whose chain of control is composed of entities having a single shareholder or member will not be admitted.
- When seeking registration of a "vehicle", a certificate of good standing for the parent entity issued by a competent authority of the parent entity's jurisdiction of incorporation or organization will need to be filed with IGJ. Such certificate may not be older than six months of the date of its filing.
- Upon registration of a "vehicle", the name of the parent entity or group will need to be added after the vehicle's name.

2. “Vehicle” registration and potential disregard of its existence as a separate legal entity

In the recitals of its new resolution, the IGJ expands on its view that “vehicle” entities are to be presumed fraudulent, that an entity’s existence as a separate legal entity is “weakened” when it acts as a vehicle for another company, and that the very acknowledgement of “vehicle” status constitutes grounds to support the case for piercing the corporate veil of the vehicle entity and hold the company for which it serves as vehicle—and even other entities of the group to which it may be part—liable for the vehicle’s obligations. These notions represent a significant departure from a legal system that is predicated on the principle that companies exist as legal persons separate and distinct from their owners, and that a company’s legal existence may only be set aside upon evidence of actual fraud. In this context, asserting “vehicle” status for registration purposes could provide arguments for claims seeking to hold the vehicle’s owners liable for the vehicle’s obligations, particularly if the vehicle is or becomes insolvent—however, any such claims would need to be brought in and settled by a court of law (not the IGJ.)

3. Registration to acquire or hold equity interests in domestic companies: Investment Plan

IGJ’s General Resolution No. 8/2021 includes a new requirement for the initial registration of any foreign entity seeking to acquire or hold equity interests in domestic companies: the filing of the foreign entity’s investment plan in Argentina. Such investment plan must expressly indicate the domestic company or companies that the foreign company intends to incorporate or acquire an equity stake in, identify any other partners or shareholders in such domestic company or companies, and state the amount of the equity stake(s) to be acquired or held by the foreign entity.

4. Sole shareholder/member foreign companies may not own a Sole Shareholder Corporation (*Sociedad Anónima Unipersonal*) in Argentina

Under its new resolution, the IGJ will not allow the incorporation of sole shareholder corporations (*sociedades anónimas unipersonales*) by a foreign company having only one shareholder or member. This restriction seems contrary to article 118 of Argentina’s Companies Law, which states that a foreign company’s legal capacity is governed by the law of the jurisdiction of its incorporation or organization.

5. Equity stakes in companies domiciled in the City of Buenos Aires as principal holdings in Argentina

Faced with IGJ’s cumbersome requirements for foreign company registration with the City of Buenos Aires’ Commercial Registrar, many foreign companies sought, as an alternative, their registration in other Argentine jurisdictions having more flexible requirements. IGJ’s General Resolution No. 8/2021 now disregards registrations with commercial registrars in other Argentine jurisdictions obtained by foreign companies whose principal holdings in Argentina are equity stakes in companies domiciled in the City of Buenos Aires and requires such foreign companies to register with the City of Buenos Aires’ Commercial Registrar.

Consequently, foreign companies that are currently registered in other Argentine jurisdictions but hold equity stakes exclusively in companies domiciled in the City of Buenos Aires would need to register with IGJ, satisfying all IGJ’s foreign company registration requirements. However, a foreign company registered in a jurisdiction other than the City of Buenos Aires and holding equity stakes both in companies domiciled in the City of Buenos Aires and companies domiciled in other Argentine jurisdictions should assess whether its equity stakes in the former constitute its principal holdings in Argentina—if that were the case, such foreign company would need to register with IGJ; otherwise, it would be advisable for such foreign company to gather information to demonstrate IGJ (if and when requested to do so) that such foreign company’s

principal holdings in Argentina are equity stakes in companies domiciled in other Argentine jurisdictions. In the case of foreign companies seeking registration to incorporate a new company in Argentina, careful consideration should be given to the jurisdiction of incorporation.

6. Evidence of substantive activities abroad: elimination of the “well-known group” regime

In previous years, the IGJ allowed foreign companies that were part of a well-known international group to evidence their compliance with foreign substance requirements—both upon initial registration and in connection with subsequent annual information submissions for the maintenance of their registration—through the filing of an accounting certification based on such group's consolidated financial statements that shows that the group conducts activities and owns significant assets abroad. This alternative is no longer available under IGJ's new resolution, so foreign companies that formerly evidenced compliance pursuant to the above, will now be required to do so in accordance with the general rules, which require the submission of significantly more detailed information.

7. Abbreviated annual information regime

IGJ requires foreign companies to submit, on an annual basis, proof that they continue to meet the requirements necessary for registration with the City of Buenos Aires' Commercial Registrar, but—up until now—generally allowed foreign companies to satisfy this requirement through a simplified submission where, broadly speaking, foreign companies would declare and confirm that there had been no material changes to the compliance information on file with IGJ. Prior to IGJ's General Resolution No. 8/2021, compliance information on file with IGJ would become stale and foreign companies would be required to submit up-to-date compliance information after three fiscal years. Under the new rules, compliance information will go stale after only one fiscal year, and the abbreviated annual information regime will be available only to foreign entities that are current with their annual filings and that have made all their filings in a timely manner.

8. Foreign companies that may not be registered

IGJ's General Resolution No. 8/2021 expressly states that a foreign company may not be registered with the City of Buenos Aires' Commercial Registrar if:

- (i) it does not have legal capacity and authority to conduct business in its own jurisdiction of incorporation or organization; or
- (ii) is registered or incorporated in a country, jurisdiction, territory, or associated state, or under a special tax regime, considered as non-cooperative for tax transparency purposes or as non-cooperative in the fight against money laundering and the financing of terrorism, or considered as a tax haven. IGJ's resolution does not provide for a list or other objective criteria to determine which countries, jurisdictions, territories, or associated states, or special tax regimes, fall into this registration restriction, and instead states that IGJ may make such determination upon "reasonable basis."

B. Beneficial Owner

IGJ requires both domestic and foreign companies to file an annual statement identifying their ultimate beneficial owners, defined as *“individuals who hold at least twenty percent (20%) of the economic or voting rights of a legal entity or that otherwise exercise ultimate control, direct or indirect, over a legal entity or other legal structure”*. Up until IGJ's General Resolution No. 8/2021, the IGJ accepted statements that no such ultimate beneficial owners exist, without requiring any justification.

With the new resolution, any domestic or foreign company declaring that it has no ultimate beneficial owners must provide evidence that:

- a. all its or its ultimate corporate parent's shares or other equity interests are publicly traded; or
- b. that ownership in its or its ultimate corporate parent's shares or other equity interests is so widely dispersed that no individual holds the minimum holding percentage contemplated in IGJ's rule.

C. Entry into force

IGJ's General Resolution No. 8/2021 came into force on May 17, 2021 and applies with respect to new and ongoing registration proceedings alike. As a result, we expect that that many of these proceedings will be subject to objections due to failure to satisfy the new requirements under General Resolution No. 8/2021.