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An update on recent legislative developments

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Uruguayan business legislation is updating steadily. These updates do not contradict the basic legal principles upon which Uruguay's legal regime is built; the legislative refinements are the result of efforts to incorporate international trends in legal practice.

Among those areas undergoing important change which should be mentioned because of their interest to the international business community are banking, money laundering, taxation, investment promotion and bankruptcy.

Banking

On the banking side, the Uruguayan regulatory authority (Central Bank of Uruguay) has issued several regulations aligning the Uruguayan financial regulatory system with Basel II principles. To that end, regulations have been passed on corporate governance (with impact on balanced responsibility and control among directors, managers and auditors), risk management on a consolidated basis (including credit, country, exchange rate, interest rate, liquidity, compliance, operational, strategic and reputation risk) and the recording, processing (particularly from abroad) and transparency of information.

Though still pending final approval, a new regulation is under examination on services to be rendered in relation to foreign securities, addressing management of investments, general advice, particular advice, referral of clients to foreign financial entities and the purchase/sale of foreign securities, introducing the concept of the sophisticated investor.

Money laundering

Uruguay has been taking steps regarding money laundering. The legislation recently

passed follows Financial Action Task Force recommendations, principally on matters such as know-your-customer rules (identification of the sources of funds and the final beneficiary) and the imposition of specific conditions when involving politically-exposed people, correspondents and intermediaries. In addition, a new Law is being examined (apparently to come into effect before year end) which, among other things, adds other relevant transactions to be disclosed to the Central Bank of Uruguay for money-laundering control purposes, including those related to realty purchase and construction.

Taxation

The Uruguayan tax system has been restated, and a new regime became effective on July 1, 2007. This new regime incorporates significant changes (most notably, after more than 30 years, bringing back personal income tax) and is also important to lenders. Under the new regime, lending in general is favoured (through the elimination of taxes), but the gap between local and foreign has been widened in favour of local lending. Thus, while interest payments on foreign lending (currently subject to a 12% withholding tax) may now eventually be deducted in full for income tax purposes, consequently equalling its treatment to deduction of interest on local lending, under the new Law, payments from foreign lending are no longer deductible for net worth tax purposes (at the rate of 1.5% on net worth). This results in a burden on foreign lending when compared to local lending, which continues to be fully deductible for net worth tax purposes.

Investment promotion

It is also worth mentioning the reframing of investment promotion which took place in 2007. In an effort to attract more investment into Uruguay (which is still below average despite a significant increase in recent years), the government issued a new investment promotion regulation (Decree 455/007), further-

ing promotions already being offered under Act 16,906.

Fundamentally, the new regulation incorporates commercial and services activities as candidates for promotion benefits and establishes a system of categorisation of projects by virtue of their being small, medium (\$300,000 to \$5.5 million), large (\$5.5 million to \$550 million) or very large (more than \$550 million), granting benefits according to the category and scoring of each project. Scoring will result in each case from the contemplation of variables including creation of jobs, decentralisation (expansion throughout the country), export increase, value added increase, use of clean technology, R&D increase and impact on the economy.

The most significant benefit exoneration comes in relation to income tax (currently at the rate of 25% on net income), from up to 60% of investments for small projects, to up to 100% for large and very large projects, in an exoneration period of up to five years for small projects, to a maximum of 25 years for very large projects. In addition, the new regime extends the exoneration period for net worth tax (at the rate of 1.5%) purposes for assets incorporated into construction projects.

Bankruptcy

Finally, in the corporate world, while still at Congress level and likely to be enacted this year after many years of lagging behind, the Uruguayan bankruptcy system will be completely restated in line with modern insolvency principles. The new Law will finally put to rest the puzzle of numerous insolvency regimes all calling for different requisites and unify liquidation into a single process that will create greater legal certainty.

The driving idea of the new Law is the rescue of viable business units (abandoning the mandatory liquidation principle) through the restructuring of failing businesses; in cases of no agreement between bankrupts and creditors, viable business units will be sold at auction. To attain a viable purpose, the bank-

ruptcy procedure will be unified, simplified and shortened. Added to this, bankrupts and creditors will be encouraged to commence proceedings early, a wider range of possible negotiation solutions is available.

Financial and corporate

Recommended firms

Tier 1

Ferrere Abogados
Guyer & Regules
Hughes & Hughes

Tier 2

Jiménez de Aréchaga Viana & Brause
Posadas Posadas & Vecino

Tier 3

Estudio Bergstein
Olivera & Delpizzo
Sanguinetti Foderé Bragard Abogados

Uruguay saw an explosion of foreign investment in 2007. As ever, much of this investment is devoted to agribusiness, which has become the engine of growth for the Uruguayan economy.

Commodities prices continue to rise around the world. As a result, there is interest in both agribusiness companies and in land. Traditional industries are seeing continued investment. Meat, wool, forestry, and agriculture are all receiving an influx of capital, due to the rise in international prices and domestic demand for these products. Companies are buying hundreds of thousands of hectares of agrarian land. New Zealand companies are purchasing land in order to operate dairy businesses; British beef suppliers are buying thousands of hectares to build a slaughterhouse; Finnish investors are interested in purchasing land in order to construct a pulp mill.

Uruguayan land has only become more attractive as a result of the policies of some of its neighbouring countries. The problems in Argentina's agribusiness sector, resulting from the government imposing higher taxes on farmers, make investment in Uruguay appear more and more appealing.

There is also increased interest in tourism. Hotels, shops and casinos are being bought, sold and developed by regional players, as well as the usual European investors.

Another sign of optimism is the rise in consumer credit. Credit is being expanded after years of trying to restore confidence since the economic crisis of 2002. Corporations and retailers have benefited from this, and the microfinance sector has grown swiftly, with banks eager to grant small business loans and mortgages.

The disparity between rich and poor is less pronounced in Uruguay than in many Latin American countries. Still, the leftist government that is in power in Uruguay is determined to eradicate even this modest disparity. In order to promote more equitable income distribution, the government imposed a personal income tax in July 2007 - something Uruguayans have not been subject to since the sixties.

Some citizens have expressed concerns about the government's spending habits. They have led to social improvements, but some question whether the amount of money and resources devoted to these programmes will not be sustainable in the long term.

Ferrere Abogados

Ferrere Abogados is one of the largest firms in Uruguay and also has one of the largest reputations. It is noted for its uncompromising approach, which seems to lead to satisfied clients. Says one: "Ferrere has a very professional and dedicated team that produces good results." The firm offers the full range of financial and corporate services, but receives special praise from clients for its knowledge of the Uruguayan capital markets.

Ferrere Abogados was involved in the largest banking transaction in Uruguayan history in April 2008. The firm represented the Spanish banking group BBVA as it headed a consortium which provided a Spanish eucalyptus pulping company, Ence, with a \$1.9 billion loan to fund a new cellulose processing plant on the Uruguay River.

The firm represented a large number of international financial institutions in 2007 and 2008 in relation to acquisition finance. In November 2007, the firm advised Credit Suisse on the structuring and financing of the takeover of Uruguayan paper company Fanapel by Argentine forestry group Tapebicuá for \$150 million.

Ferrere Abogados provided services to international institutions that saw opportunity in the emerging microcredit sector in Uruguay. In July 2007, the firm advised Bank of America when it entered into an agreement with Ceditel to provide a \$10 million credit facility for consumer loans.

Leading lawyers

Andres Cerisola
Martín Cerruti
Daniel Ferrere
Alejandro Hernández Maestroni
María Laura Ramón

Guyer & Regules

A client comments: "Guyer and Regules were very responsive, and among the best local counsel that we had among the several Latin American countries in which we received representation. They were well-versed not only in Uruguayan law and practice but also in the way that multinational deals are done."

Rivals mention that the firm's traditional nature may have led to a generation gap between some of the partners, but the firm has been experiencing steady growth over the past few years and remains a potent force in the Uruguayan legal market.

Guyer & Regules is involved in the growing agribusiness sector, and has been advising foreign companies with an interest in investing in this market. In November 2007, Nicolás Herrera and Nicolás Piaggio led the team that represented Brazilian rice producer Camil Alimentos in the purchase of Saman, a family-owned Uruguayan rice producer.

On the project finance side, the firm acted for the Eurnekian Group in its \$35 million purchase of Consorcio de Aeropuertos Internacionales, the private concessionaire of the Punta del Este International Airport. The Eurnekian Group already operates the Montevideo International Airport and several other airports in Argentina and other South American countries.

The firm represented financial group ING in its purchase, from Grupo Santander, of one of its leading pension fund managers, Afinidad. This was one portion of ING's larger \$1.3 billion purchase of all Santander's Latin American pension fund businesses.

Leading lawyers

Nicolás Herrera
Nicolás Piaggio

Hughes & Hughes

Unlike the other firms in the top tier, Hughes & Hughes resembles a boutique firm, with a smaller client base. The firm is primarily involved in corporate matters, according to competitors. At least one client sees the advantages inherent in the firm's small size: "They are not one of the biggest firms in Uruguay, but in my opinion this is a benefit because of the close contact with the client that this size allows. Their best asset is the relationship that they cultivate with the client; they work with clients very closely and they treat a company's interests as if they were their own."

The firm has advised Botnia South America with respect to all financial and commercial matters relating to the pulp mill project that the company has been developing. Most recently, in April 2008, the firm advised

Botnia on a \$35 million revolving credit agreement with Forestal Oriental to finance the purchase of pulp wood to be supplied to the mill.

The firm's team, led by Marcela Hughes and Andrés Durán Hareau, advised the European Investment Bank on the group's largest financing in Uruguay to date: a \$41.6 million loan granted to Terminal Cuenca del Plata and Nelsury for the extension of the quay at the private terminal of the Port of Montevideo.

Additionally, Hughes & Hughes has been active in recent deals in the fast-growing tourism and hotel industry. The firm represented Harrah's International Holding Company with respect to its purchase of shares from minority shareholders of Baluma Holdings.

Leading lawyers

Conrado Hughes

Marcela Hughes