

Uruguay

Chamber of commerce:

Cámara de Industrias de Uruguay
Av Italia 6101
Montevideo 11500
Uruguay
Tel: +59 82 604 0464
Fax: +59 82 604 0501
Email: ciu@ciu.com.uy
Web: www.ciu.com.uy

Professional body:

Colegio de Abogados del Uruguay
Av 18 de Julio 1006, piso 4
Montevideo
Uruguay
Tel: +59 82 900 2065
Fax: +59 82 902 3778
Email: colabog@adinet.com.uy
Web: www.colegiodeabogados.org

Financial regulation and access to credit

Ady Beitler
Ferrere
Montevideo

It is generally recognised that one of Uruguay's main challenges to development is its chronic deficit in access to credit. The gravity of the problem was better perceived by the general public during the last five years of unprecedented economic growth. As a response to this demand, Uruguay approved two pieces of legislation intended to promote better access to financial markets: the reform of the Central Bank and a new bankruptcy law.

The Central Bank and Financial Activities Reform Act

At a time when the global financial crisis was only hinting at affecting the country, on October 24 2008, Uruguay approved the Central Bank and Financial Activities Reform Act 18.401 (CBFA), which amended the structure of the Central Bank and introduced deep changes to the regulation of financial activities.

The CBFA introduced two critical changes to the structure of the Central Bank. The first one is the concentration into one single administrative division of all the agencies in charge of supervising financial activities. Thus, where in the past there used to be separate divisions for the supervision and regulation of banks, non-banking financial institutions, insurance companies, pension and investment funds and securities markets, now there is only one administrative agency, the Superintendency of Financial Services.

The purpose of this reform is to promote the Central Bank's efficiency in its supervisory and regulatory activities. As there are often economic groups undertaking more than one supervised activity, a single regulatory agency allows for a more efficient flow of informa-

tion, and therefore a cheaper system of supervision for both the Central Bank and the supervised entities.

Another important change was the spin-off of the Central Bank's agency formerly in charge of assisting banks undergoing financial difficulties and administering the deposit insurance scheme. This change intends to isolate decisions on assistance to entities in need from the realm of politics and the Central Bank's monetary policies.

In line with the new trend of expanding regulation outside the banking sector, the CBFA widened the scope of entities subject to the Central Bank's control, including currency remittance agencies, custodians and bill payment receivers.

But most importantly, following the recent international trend towards regulation, the CBFA adopted a substantive criterion under which all business entities providing any of the following services will be subject to the Central Bank's authority: (i) brokerage or advisory services to local clients of foreign entities; (ii) management, accounting or data processing services to foreign entities undertaking financial activities abroad; and (iii) auditing, risk-rating and data-processing services to Uruguayan financial companies.

New bankruptcy law

The other key reform in Uruguayan legislation came about through Act 18,387 of October 23 2008, known as the Bankruptcy and Business Reorganisation Act (BBRA). This law intends to promote access to credit by improving creditors' alternatives for action against a defaulting debtor, and by providing for more expeditious collection proceedings.

In this respect, the most salient features of the BBRA – in comparison with the prior regime – are the following.

- Under the BBRA, both commercial and non-commercial debtors are subject to the same proceedings, and are faced with the same alternatives for the purpose of reorganising their companies. These alter-

natives are: (i) entering into agreements with a special majority of creditors; (ii) selling separate business units (either core or non-core units) to creditors, workers or third parties; or (iii) liquidating the company's production units. In the past there were different procedures for business and non-business entities, and different solutions depending on the state of insolvency of the company. The new uniform proceeding is expected to make processes more efficient, as it will permit creditors to predict with better accuracy the risks and costs involved in collecting from defaulting debtors.

- Another way in which the BBRA intends to lower the costs of access to credit is by facilitating the creditors' opportunity to demand the debtor's reorganisation before a judge. This was done in two ways. The first one was softening the requirements for considering a debtor insolvent, and therefore the standing to face reorganisation proceedings. The second one was giving creditors and debtors alike an incentive to file claims for reorganisation before bankruptcy judges. In the case of creditors, the incentive consists of considering a portion of its credit as privileged, thereby collecting it before the rest of the commercial creditors. For debtors, the law says that if they open their own reorganisation proceedings once they realise they are insolvent and they do it before the creditors file the claim, the company will be allowed to remain under the management of its current authorities, and its managers and directors will benefit from a more benevolent regime of personal liability.
- The BBRA introduced speedier proceedings, with statutes of limitation that may not be modified by the parties. Furthermore, appeals do not have the ability to halt the main proceedings, thereby eliminating the chances of dis-

honest debtors appealing for purely dilatory purposes.

- The BBRA significantly reduces the number of privileged creditors that may collect before regular creditors. This is a key reform, as in the past the order of collection depended on the political power of the group in question. The BBRA left only three types of privileged credits: (i) credits secured by liens and mortgages; (ii) labour and tax credits; and (iii) the credit held by the creditor who first requests the opening of proceedings.

These reforms have a great potential to improve the regulation of financial markets and promote better access to credit. But because of their recent approval, these reforms are yet to be proved in practice. It is hoped, nonetheless, that they will prove useful and bolster the Uruguayan financial markets.

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 & Delpiazzo Sanguinetti Foderé Bragard Abogados

Last February's tax reform law underscores the country's reputation for having one of the most equal distributions of wealth in the world. Attorneys there accredit this fact to the nation's successful social programs and relative macroeconomic stability. But two of Uruguay's most important sectors of the economy – agriculture and offshore services – have recently taken a beating from a regional drought and the economic downturn, respectively.

Last April, the Uruguayan government committed to the OECD tax transparency standards, although many of Uruguay's lawyers quietly support maintaining bank secrecy policies for the vital role they play in the nation's economy. "It is important to keep that secrecy in place for foreign investment in Uruguay," notes one commentator. Additionally, Uruguay has resisted calls by the Argentinean government to reveal investment details of Argentinean companies doing business in Uruguay. Due to the importance of

Argentina's private investors to Uruguay's economy, financial lawyers believe the government will sign tax information exchange agreements with countries in North America and Europe, but will remain reticent with regard to its neighbours.

With important ports on the Atlantic Ocean, Uruguay is an active centre for commerce and serves as an important connection between South America's interior and the sea. Last July, Bolivian President Evo Morales met with President Tabaré Vazquez to broker a deal regarding Bolivia's access to Paraguay's ports. As part of the deal, Bolivia will start supplying Uruguay with natural gas.

Additionally, Uruguay's liberal tax and tariff policies make it a choice launching point for exports over its neighbour to the south, where farmers endure crippling internal taxes on agricultural trade. Last year, Argentinean soy farm management company El Tejar halted its investments in its home country, opting to expand operations in Uruguay and Brazil.

Uruguay alternately benefits and suffers from its membership in the Mercosur trade block. With senior Mercosur members Brazil and Argentina leading calls to raise common external tariffs, Uruguay and Bolivia increasingly find themselves the lone dissenters among their peers in the South American regional trade group. As the minimum required four member countries was expected to vote to increase tariffs at a December 2009 presidential summit, Uruguay will likely exercise its right to opt out of the increase and keep its rates unchanged.

Ferrere Abogados

While most law firms in Uruguay cannot support individualised practice groups, Ferrere, as the largest firm in the country, is organised into specialised teams that include dedicated environmental law, chemical, and pharmaceuticals departments. Rivals note Daniel Ferrere as a talented rainmaker among banks and institutional lenders, and clients comment that the managing partner's demeanour puts them at ease regarding the firm's abilities. "He's a bit imperious," one client relates, "but gives you confidence that he knows what he is doing and that it is a competent firm."

Ferrere prides itself on representing the local matters of international banks without an established presence in Uruguay. A list of these important clients includes Bank of America, which sold its Uruguayan operations to Banco Itaú in 2006 but continues to finance companies in the country. In 2008, the firm acted as counsel to Bank of America's credit facility to Uruguayan consumer finance provider Pronto. Daniel Ferrere led the firm's representation for the \$10 million loan, which

was secured by a trust fund of more than 20,000 consumer loans.

The partners of Ferrere have been on the forefront of Uruguay's energy sector transactions, taking advantage of the government's increased support of power development projects. In December 2008, the firm helped French developer Saceem as part of a consortium with Uruguay's Teyma in its winning \$90 million bid to build eight generators. The negotiations were conducted in record time by a team of Ferrere lawyers comprised of partners Laura Ramón and Martín Cerruti.

Leading lawyers

Martín Cerruti
Daniel M Ferrere
María Laura Ramón
Diego Rodríguez

Guyer & Regules

Competitors affirm Guyer & Regules' strong relations with the foreign banking community, citing its impressive list of clients that includes Citibank, Rabobank and HSBC. Since May 2008, the firm has increased the number of its associates by a third to accommodate its growing caseload. Rivals note the presence of Nicolás Piaggio in both bank and corporate transactions, and praise his ability to successfully seal deals. "We have a good relationship so we are able to negotiate good terms," one peer comments.

Clients laud the firm's quality legal work but contend the firm's fee structure is sometimes prohibitive in the shallow marketplace. "They have excellent work but it was a little more expensive than some of their equals," one client says. Still, the firm's solid reputation nets a good share of Uruguay's international players.

Guyer & Regules has recently shown acuity in cross-border financing in the agribusiness sector. In a transaction typical of the firm's recent experience, lawyers at Guyer & Regules advised Standard bank and FMO in a \$150 million loan to Argentinean soy farm manager El Tejar to fund land acquisition and existing operations in Uruguay, among other countries. Similarly, the firm represented Rabobank in a loan to Camil Alimentos, Brazil's largest rice processor. The \$20 million facility was secured by Uruguayan national rice exporter Saman.

As the go-to firm in Uruguay for foreign banks it is only natural that in 2008 Guyer & Regules represented Citigroup Overseas Investment's sale of its controlling stake in Unión Capital – one of four pension funds in the country – to Brazil's Banco Itaú.

Leading lawyers

Nicolás Herrera
Nicolás Piaggio

Hughes & Hughes

While competitors affirm the reputation of Hughes & Hughes among Uruguay's corporate clients, rivals contend they do not see them much in the country's largest M&A transactions. "They have good clients," one peer observes, "but they are more often involved in the day-to-day business of companies." Marcela Hughes is singled out among Uruguay's attorneys as having developed a strong presence in the Uruguayan business realm. "She possesses the ability to develop longstanding relations with Uruguay's most important players," observes one commentator.

One important local client for Hughes & Hughes is local pulp mill operator Botnia, which operates Uruguay's largest paper mill. In September 2008, the firm helped Botnia affiliate and main supplier Forestal Oriental, a eucalyptus plantation manager, to receive the required authorisations from the central bank for a \$100 million bond program – the largest ever approved in Uruguay's market. The first 10-year offer successfully launched on September 22, receiving offers of \$55 million largely from institutional investors.

True to form, Hughes & Hughes has been successful negotiating favourable contracts with the Uruguayan government on behalf of local and foreign companies. Toward the end of 2008, the firm helped Aker BioMarine establish its presence in Uruguay with the creation of a special-purpose subsidiary and rental agreements for dock space and warehouses with the port authority of Montevideo. The Norwegian dietary supplement manufacturer operates an Antarctic krill harvesting fleet, and is taking advantage of Uruguay's favourable trade policies.

Leading lawyers

Andrés Durán Hareau
Marcela Hughes

Jiménez de Aréchaga Viana & Brause

With 62 years in service to the financial community of Uruguay, Jiménez de Aréchaga Viana & Brause has a reputation in corporate matters built on the firm's founding partner, Eduardo Jiménez de Aréchaga, a highly-respected legal scholar in Uruguay. Competitors hold that the firm began and maintains itself as a practice of independent lawyers operating under one firm. The autonomous structure offers an efficient deliv-

ery of services and hands-on attention for its clients. "Even when we had a short schedule they were able to deliver on time," one client relates.

While the firm is most known among peer attorneys for its experience in corporate matters, competitors point to Jiménez's relationship with Spanish bank Santander as an important part of the firm's work. In 2008, the firm advised Santander in relation to its acquisition of ABN Amro's Uruguayan assets. The merger – a settlement of ABN Amro's global takeover by a consortium comprised of Santander, Royal Bank of Scotland and Barclays – was handled by Jiménez attorneys representing both parties locally.

In a more typical transaction, Jiménez counselled New Zealand Farming Systems in a bond offer on Uruguay's market that raised \$30 million for the large-scale dairy farm operator. The placement, postponed from October 2008 until last March, allows the company to invest in more lands for farm development.

Leading lawyers

Virginia Brause
Matías Campomar
Fernando Jiménez de Aréchaga

Other ranked firms

The youngest player among Uruguay's top-ranked firms, **Sanguinetti Foderé & Bragard** is considered by rivals as a continuation of Olivera & Delpiazzo, taking most of the parent firm's financial muscle when it spun off of in 2004. Competitors credit the firm's success to Eduardo Sanguinetti, a respected young attorney in the legal community. "He's a very good negotiator," one peer observes, adding: "He's really the one that has led the firm up this path."

An important client for the firm has been Spanish pulp producer Ence, and some attorneys feel the company's reduction of operations in Uruguay will have a significant impact on the firm. Still, Sanguinetti has found itself on the lender's side of the table in recent transactions. For example, in 2008 the firm advised Bank of Nova Scotia in a \$180 million credit facility to finance a fleet renewal of Pluna Airlines, Uruguay's largest air carrier.

Leading lawyers: Eduardo Sanguinetti