

Uruguay

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Corporate and tax legislation – an overview

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Although Uruguayan law regulates several types of business organizations, the most common forms of business entities are corporations (*sociedades anónimas*) and limited liability partnerships (*sociedades de responsabilidad limitada*). While the corporation is usually considered a suitable vehicle for all kinds of business, the limited liability partnership is normally adopted by small and medium-sized businesses.

Both for corporations and limited liability partnerships, either individuals or legal entities can be shareholders or quotaholders, and there are no nationality or domicile requirements in this respect, no matter the type of business entity chosen.

Corporations require a minimum face capital of about \$35,000, of which 25% must be paid in at the time of incorporation. Such capital can be represented by registered (nominative) or bearer shares, all of them of equal value and expressed in Uruguayan pesos (except in the case of offshore companies, where the capital can be expressed in foreign currency). Transfers of shares are free and not subject to any approval, communication or other requirements. Shareholders' liability is limited to the capital shareholders have paid into the corporation.

Limited liability partnerships require a face capital of at least \$680 and no more than \$35,000. Such capital is divided into equal quotas expressed in Uruguayan pesos, with a minimum value of about \$760 each. Additionally, quotas cannot be represented by negotiable certificates, and their transfer to third parties requires the consent of the majority of the quotaholders. This involves an amendment to the articles of association. Partners' liability is limited to the capital subscribed by each partner.

Offshore corporations (*sociedades anónimas financieras de inversión*) are also common, especially because of the advantageous special regime to which they are subject. Their main corporate purpose is to perform financial investment activities abroad. Offshore corporations are only subject to an annual tax of 0.3% on their net worth.

Free trade zone companies are those companies whose scope is limited to the performance of industrial or commercial activities, and/or the provision of services, within free trade zones. Free trade zone companies benefit from broad tax exemptions.

Foreign companies can also set up a local branch in Uruguay.

They are required to register their bylaws, along with the corporate decision approving the branch registration, with Uruguay's Registry of Commerce.

General tax regime

Value-added tax (VAT)

Sales of movable assets in the domestic market, the rendering of services in the Uruguayan territory, and the import of goods, are subject to VAT at the rate of 23%. A reduced rate of 14% VAT applies to certain goods considered as basic for the satisfaction of primary needs.

Exports are not subject to VAT. Exporters are entitled to a tax credit for the VAT billed to them – if effectively related to any stage of the export process – for the goods exported.

Income tax

At the rate of 30%, income tax is only assessed on business entities' income (there is no personal income tax) sourced in Uruguay. Such taxable income is determined on the basis of net profits obtained throughout the fiscal year.

Remittance of dividends abroad is taxed, provided that: (i) the foreign shareholder is taxed in the foreign country for the dividends collected in Uruguay; (ii) the foreign country recognizes a tax credit for the tax paid in Uruguay; and (iii) the foreign shareholder has a positive tax income to offset the tax paid in Uruguay.

Net equity tax

Net equity tax is assessed on companies' net worth in Uruguay at the rate of 1.5%. Assets abroad are not subject to this tax. Only a few liabilities can be deducted, including debts with local financial institutions subject to the tax on bank assets (*impuesto a los activos bancarios*) and debts with suppliers (other than loans, guarantees and outstanding balances for imports, commercial paper issued by public subscription and quoted at the stock exchange).

Corporations control tax (Icosa)

Icosa is assessed on the following basis: (i) as of the time of a corporation's incorporation, at the rate of 1.5% calculated over the minimum face capital admitted (around \$30,000); and (ii) as of the end of each fiscal year, at the rate of 0.75% over the same tax base. For corporations maintaining assets in Uruguay, the sums paid for Icosa are creditable to annual net equity tax, to which they are also subject.

Additional sales tax (Cofis)

Cofis is assessed on the import and domestic circulation of industrialized goods, when the import or sale of such goods is effected in favour of public or private companies or in favour of VAT or specific internal taxpayers. The applicable rate is 3% of the price.

The Uruguayan Congress is considering a tax reform bill, scheduled to enter into effect on January 1 2007. The bill, if passed, shall introduce personal income tax in Uruguay.

Corporate and commercial

Recommended firms

Tier 1

Ferrere Abogados
Guyer & Regules
Hughes & Hughes
Jiménez de Aréchaga Viana e Brause

Tier 2

Estudio Bergstein
Olivera & Delpiazzo
Posadas Posadas & Vecino
Sanguinetti Fodere Bragard Abogados

Ferrere Abogados

Ferrere Abogados is the largest firm in Uruguay by some distance, with more than 60 lawyers providing the full range of legal advice. Also, the firm is the only Uruguayan law firm with offices outside the country – as well as the ten partners and 50 associates in the head office in Montevideo, a further two partners and four associates work in the firm's Asuncion, Paraguay office and another two partners and 12 associates operate from a third office in La Paz, Bolivia.

The firm is strong across the board, but the real focus of the firm's practice is in the finance area, and particularly structured finance. Indeed, Ferrere has participated in four of the five securitization transactions ever implemented in Uruguay.

Alejandro Hernández Maestroni – who one peer called “fantastic” – heads up the firm's three-partner, seven-associate finance practice, which welcomed Analia Morosi as an associate from PricewaterhouseCoopers in September 2005. Continuing its fantastic deal flow in this area, to date the firm has won all bids for advisory roles on asset securitization transactions in Uruguay. In January 2006, for example, the firm was mandated to structure the securitization of Dairy Fund II, a \$40 million trust fund which aims to replace the first dairy fund launched in the year 2002. The original \$26 million fund was the first asset securitization transaction in the country, and also received Ferrere's expertise.

In March 2006 the Uruguayan state-owned Mortgage Bank and Credit Uruguay turned to the firm for advice on setting up the first-ever securitization of mortgage assets in Uruguay. Once closed, the securitization will be in respect of around \$25 million. And most recently, Ferrere won the mandate from the Ministries of Economy and Finance and Livestock, Agriculture and Fisheries to arrange a new securitization for the rice sector. This securitization will relate to a fund set up in 2003 which, at \$35

million, constitutes the largest asset securitization in the country to date.

Among the other highlights of the past 12 months, the firm advised on the establishment of the \$22.5 million Montevideo mass transportation fund, the first securitization placed locally in indexed units.

Ferrere's track record in this area is unparalleled; indeed, out of a total of \$110 million-worth of securitized assets in Uruguay since 2000, the firm has advised on \$108 million-worth of those. It comes as little surprise, therefore, that the firm has been selected by the Latin American Banking Federation (Felaban) to lecture on the application of trust funds in Uruguay at the forthcoming *Congreso Latinoamericano de Fideicomiso* Convention.

Leading lawyers

Daniel Ferrere
Alejandro Hernández Maestroni

Key contact partners

Andres Cerisola
Martin Cerruti
Laura Ramon

Guyer & Regules

Along with top-tier rivals Ferrere, “outstanding outfit” Guyer & Regules have historically been at the forefront of legal developments in Uruguay – and continue to be so. Among their landmark instructions, the firm advised on the country's first syndicated loan, the first (and only) syndicated lease facility, the first investment fund management structure (which was done before there was a law regulating those vehicles), and the first (and only) issue of preferred shares through ADR structures.

From among the team, Nicolas Herrera stands out as being “among the best lawyers in Uruguay”, and on the evidence of the past year's deal mandates, he is certainly continuing to steer the ship in the right direction.

Guyer & Regules is often found advising lenders on banking transactions. For example, over the past year the firm has acted for Citibank in relation to an \$80 million syndicated loan granted to Uruguayan electricity company UTE, represented Southern Financial Partners when it provided a \$10 million secured loan to Sindicato Médico del Uruguay, advised Deutsche Investitions und Entwicklungsgesellschaft on a \$4 million long-term loan granted to Frigorífico Tacuarembó to expand and revamp its meat processing business, and guided IIC, a World Bank agency, through its \$5 million secured loan to Conaprole.

Capital markets work in Uruguay is few and far between, but Guyer & Regules is well-placed to advise on the deals that do make it to market. Last year the firm served as counsel to UBS as underwriter of the Republic of Uruguay's issue of \$200 million sovereign bonds. And in another issue of sovereign bonds, issued in two tranches, the firm also represented the underwriters, acting for Citigroup and Merrill Lynch in the first \$300 million tranche and for Citigroup and Morgan Stanley in the second, which was worth \$200 million. The firm also found itself involved in the worldwide restructuring of the collapsed dairy company Parmalat, representing Citibank, BankBoston and Banco Bilbao Vizcaya Argentaria in relation to the sale of their credits against Parmalat's Uruguayan arm.

Guyer & Regules is also strong on the corporate work, and remains a top choice for domestic and international corporates seeking advice on corporate and M&A matters in Uruguay. Among the highlights, the firm has conducted detailed due diligence exercises on Shell Uruguay in relation to its sale of

gas stations and Uruguayan operations to Repsol, and on Gaseba Uruguay (a natural gas distributor) in relation to a share purchase agreement relating to Petrobras' purchase of 51% of Gaseba Uruguay's shares from Gaz de France that was ongoing at the time of writing. Guyer & Regules' client was the buyer in both cases.

Elsewhere, the firm provided advice to BankBoston and Bank of America on the consequences in Uruguay of the merger of the two banks, represented Brazilian low-cost airline Gol Airlines in setting up its Uruguayan operations and obtaining its flying routes, and in Uruguay's first-ever venture capital deal acted for Prospéritas, the first venture capital fund focused on Uruguay, on its purchase of shares in medical software company Medica.

In the realm of project finance, meanwhile, the firm acted for Banco Bilbao Vizcaya Argentaria Uruguay in setting up the first ever trust to finance public works in Uruguay, which will be used to fund (through a complex shadow toll mechanism) the construction of a road in Montevideo.

The firm's fantastic reputation among peers and clients is augmented by its membership of international law firm networks Lex Mundi, Club de Abogados, Multilaw and the World Services Group.

Leading lawyers

Nicolas Herrera
Alvaro Tarabal

Key contact partners

Nicolas Herrera
Nicolas Piaggio
Alvaro Tarabal

Hughes & Hughes

Marcela Hughes heads Hughes & Hughes' corporate and commercial practice, which contains six partners and 15 associates following recruitment of three new associates during 2005. Indeed, corporate advice is the firm's strongest suit, and it is here that once again the firm has been most visible on many of Uruguay's top deals.

Shell has been one of Hughes & Hughes' long-standing clients, using the firm as Uruguayan counsel for more than 80 years. When Shell decided to discontinue operations in Uruguay, it entered into an agreement with Petrobras to sell its Uruguayan subsidiaries, and in this regard Marcela Hughes has been leading a team of more than 10 lawyers. The team's input to date has included preparing the data room and several legal reports, and advising on the contractual negotiations of the deal.

Among the year's other highlights, in July 2005 Hughes led a team that advised Lenovo in relation to its acquisition of IBM's PC division, and in December 2005 she and Andrés Durán Hareau acted for Pinturas Inca, a subsidiary of the ICI Group, on the sale of its holding in Pielcolor Uruguay to the Stahl Group.

Corporate expertise is by no means the only string to Hughes & Hughes' bow, however, and over the past year the firm has also won its fair share of finance instructions. Most notably, the firm has been busy assisting Finnish company Metsa Botnia in relation to the construction of a pulp mill in Fray Bentos, Uruguay. At \$1.2 billion, this is the most important private investment ever made in Uruguay. The team, comprising Haroldo Espalter, Hughes and Andrés Durán Hareau, have provided advice on a wide range of transactions relating to the project, including negotiating and drafting various construction and financing agreements, providing ongoing corpo-

rate advice relating to the capitalization of the local subsidiaries, and working on the merger of Fosa (one of Metsa Botnia's subsidiaries) and Tile Forestal to ensure efficient operation of the plant and wood procurement.

Other finance work, meanwhile, has included advising the Finnish Fund for Industrial Cooperation and the Industrialization Fund for Developing Countries in relation to an \$11 million syndicated loan granted to Ontur International so it can develop new facilities in its port in Nueva Palmira, and acting for the lenders (alongside Allen & Overy) in relation to the Uruguayan elements of the financing of the new airport in Quito, Ecuador.

Leading lawyers

Conrado Hughes
Marcela Hughes

Key contact partner

Marcela Hughes

Jiménez de Aréchaga Viana e Brause

The Uruguayan market is small, and this means that the firms operating in the market are generally stable. Although the market is growing since the 2002 financial crisis, it is doing so fairly slowly. One firm that has managed to noticeably increase its visibility, however, is Jiménez de Aréchaga Viana e Brause, and wins promotion to the top tier this year after winning instructions on a number of top deals. Client feedback was also nothing but positive, one commenting that "Jiménez de Aréchaga is an excellent firm ... we have no complaints whatsoever" and another noting that the firm provides "a very good level of work" and is "very ethical".

The firm's client base covers a wide range of financial institutions, including the biggest international banks as well as Uruguay's two largest pension funds and many other domestic and regional financing companies. Two partners and four associates handle finance matters, and the team has been busy over the past year. The firm's highest-profile mandate saw a team act for Tile Forestal, the commercial branch of Botnia (one of Uruguay's largest pulp mills in relation to its purchase of forestry land, and arrangements to supply wood, in Uruguay).

At the time of writing the firm was acting for the structuring team (comprising Uruguayan and Argentine financial advisors), as well as Consorcio del Este (the issuer), in relation to the refinancing of Consorcio del Este's financial liabilities. The refinancing will be achieved by a bond issue, secured by a guarantee of toll-road concession payments Consorcio will receive as concessionaire of the Montevideo-Punta del Este highway, one of the most important highways in Uruguay. Also ongoing at press time, Jiménez de Aréchaga was acting for Creditel on the \$20 million securitization of consumer loans of Socur through the creation of a financial trust.

In the corporate area, meanwhile, the firm has also seen an increased workload. M&A activities are spearheaded by Alberto Brause and Fernando Jiménez de Aréchaga, and the department contains three partners and eight associates. In June 2005 the team acted for The Datamyne, a Delaware company owned by Nassau Point Partners IV, in relation to Datamyne's purchase of Comax, a Uruguayan software company, from Pablo Milburn. And more recently, in March 2006, the firm advised Premeland on its public offer (in conjunction with Tile) for the shares issued by Uruwood.

Although Jiménez de Aréchaga Viana e Brause does not have any international offices, its overseas reach is assured through its referral relationship with UK firm Hammonds.

Leading lawyers

Fernando Jiménez de Aréchaga
Hector Viana

Key contact partners

Fernando Jiménez de Aréchaga
Alberto Brause
Hector Viana

Olivera & Delpiazzo

Olivera & Delpiazzo has coped admirably with the departure of a number of its junior partners in 2004 to form rival practice Sanguinetti Fodere Bragard Abogados, and has continued to win a good amount of work in the corporate and finance arenas. As well as its domestic reputation, the firm is a member of TerraLex, a worldwide association of over 180 independent law firms in 94 countries, giving it access to a healthy referral network.

Ricardo Olivera García heads up the banking and finance department, which contains one other partner and five associates. Numbers have grown over the past year, following the recruitment of two associates – Marcelo Sheppard Gelsi from Ferrere Abogados in May 2005, and Elías Mantero, who moved over from Sanguinetti Fodere Bragard in March 2006.

In May 2005 the firm advised the Electronic Stock Exchange of Uruguay (Bevsa) in relation to Baluma's amendments to the terms and conditions of its \$50 million bond issue. Most recently, in June 2006, the firm served as counsel to the Uruguayan state and Nuevo Banco Comercial (Uruguay's largest bank) in structuring and negotiating the bank's 100% stock purchase for around \$176 million. At the time of writing, leading lawyer Carlos Delpiazzo was entrusted with the crucial task of drafting the new Central Bank of Uruguay Act, which regulates the Central Bank's structure, competence and activities. Also on an ongoing basis, the firm serves as permanent counsel to Bevsa. In addition to the advice mentioned above, the firm regularly provides legal advice on the registration of issuers and publicly offered securities and the control over issuers' compliance with Bevsa's terms and conditions.

Two partners and 11 associates handle Olivera & Delpiazzo's corporate work. In December 2005 the firm advised the Uruguayan Medical Union's Assistance Center (Casmu), the largest medical institution in Uruguay, in relation to the provision of a \$10 million loan by a foreign investor, secured by a trust fund to which Casmu transferred its rights over its clients' monthly fees, to be collected by an external agent. And in March 2006 Delpiazzo took the helm again, this time to advise Gaz de France in relation to the transfer of 100% of the stock of Gaseba to Petrobras.

Olivera & Delpiazzo is a regular adviser to many of the big players in Uruguay's information technology and telecommunications sector, including the Quanam Group, the Genexus Group and the Uruguayan Chamber of Information Technology. This specialism extends to international clients too; for example, the firm regularly advises Nokia on various issues of foreign trade and Uruguayan contract law.

Leading lawyer

Ricardo Olivera

Key contact partner

Ricardo Olivera

Sanguinetti Fodere Bragard Abogados

Client satisfaction with young firm Sanguinetti Fodere Bragard Abogados remains high this year, proving that in a relatively short period of time the firm has already made its mark on the Uruguayan legal market. One client commented that "Sanguinetti Fodere is our choice in Uruguay, and has proved to be of great technical capacity," while another picked out the talents of one of the name partners, Alberto Fodere, describing him as "well-known for his excellent work in the country."

Numbers at the firm have increased by four at the junior level – two associates left over the past year, but six junior lawyers were recruited. A total of three partners and 12 associates now handle corporate and commercial matters at the firm, as well as one resident of-counsel and one non-resident of-counsel. The first of these of-counsel – Elías Bluth – deserves special mention, as before joining the firm he served as general counsel of IBM Latin America, chief-of-staff of the Uruguayan presidency, and deputy-minister of defence; he is also a permanent member of the International Arbitration Tribunal of Salto Grande (a major power facility jointly owned by Argentina and Uruguay).

In June 2005 Sanguinetti Fodere advised Comax in a venture capital deal involving the sale of a business model and a software services company to venture capital company Nassau Point Investors in exchange for cash and the shares of The Datamyne, a Delaware company, through a stock purchase agreement. Two months later, the firm served as legal counsel to the Central Bank of Uruguay in litigation relating to banks going through the liquidation process, which involved the protection of the assets from unwarranted claims.

In September 2005 the firm acted for Uruwood, a Uruguayan company engaged in the forestry sector, in relation to the tender offer on its shares made by Premeland, and most recently, in March 2006, it guided Umissa, a Uruguayan company dedicated to the building of prefabricated homes, through the negotiation and execution of agreements regarding the export from Uruguay of prefabricated residential houses to Venezuela's government, and the structuring of the corresponding performance bond.

Leading lawyer

Alberto Fodere

Key contact partners

Jean Jacques Bragard
Alberto Fodere
Eduardo Sanguinetti