

LATIN LAWYER REFERENCE CAPITAL MARKETS 2019

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# Uruguay

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## 1 Which laws, regulations and administrative rulings govern the offering and trading of securities and how are they proposed, adopted and amended?

The offering and trading of securities is governed by three sets of regulations: the Capital Markets Act No. 18.627 of 2 December 2009, and its Regulatory Decree No. 322/011 of 16 September 2011; the Central Bank of Uruguay's Charter Act No. 16.696 of 30 March 1995 (as amended by Acts No. 18.401, 18.643 and 18.670); and the Consolidated Rules for Capital Markets passed by the Central Bank of Uruguay (CBU).

The general regulation is contained in the Capital Markets Act and in the CBU's Charter, which are both formal laws passed by the Congress. Although it is the Executive Power or the representatives at the Congress who have the formal initiative for the enactment or amendment of these kind of regulations, the inception of the bills can be usually found in the CBU, the stock exchanges, bank associations or the Commission for the Promotion of Capital Markets, a public office created by the Capital Markets Act to advise the Executive Power in the development of capital markets in Uruguay.

The more specific aspects and requirements for the offering and trading of securities are regulated by the CBU through the Consolidated Rules for Capital Markets, which collect the rules approved by the CBU in its circulars. The CBU may also approve communications, which are more specific resolutions for all or some entities subject to the control of the CBU and which usually contain criteria for the interpretation and compliance of the Consolidated Rules. All the circulars and communications may be amended from time to time by a resolution of the board of directors of the CBU or a decision of the Superintendency of Financial Services, the department within the CBU entrusted with the control and regulation of the financial sector, including banks, insurance companies and the capital market.

It is also worth mentioning that stock exchanges have their own internal regulation and guidelines governing the operations and agents operating within their markets, including procedures, requirements and penalties applicable to them. These regulations and guidelines are passed by the competent authorities of each stock exchange and require the approval by the CBU before coming into force. There are currently three stock exchanges in Uruguay: the Montevideo Stock Exchange, the Electronic Stock Exchange of Uruguay (BEVSA) and Rofex Uruguay Stock Exchange and Futures (UFEX).

## 2 What is the rationale behind this legislation?

The purpose of the regulation of capital markets is to watch over transparency, competitiveness, the correct operation of the market, the mitigation of systemic risk and the protection of investors through adequate information.

The public offering of securities requires the previous registration of the issuer and the securities within the CBU. This information is open to the public. Issuers are required to present truthful, sufficient and timely information about themselves and the listed securities, and must disclose any material fact that may affect the purchase or sale of such securities. Stock exchanges and rating agencies must also comply with minimum information requirements and disclosure of material facts.

The Consolidated Rules of Capital Markets of the CBU contain several administrative and pecuniary sanctions for those who fail to comply with information requirements about material facts and for those who breach the rules of ethics and commercial loyalty or who seek to manipulate or deceive the market.

The internal rules and guidelines applied by stock exchanges seek to protect the transparency of the market, and to avoid conflict of interests and to prioritise the interest of clients over the own interest and to prevent to benefit some clients over others. According to the Capital Markets Act No. 18.627, the relationship between investors and brokers and stock exchanges is defined as consumer relations protected by the Consumers Protection Act No. 17.250 of 11 August 2000.

## 3 Which regulatory authorities oversee capital markets and what is the scope of their jurisdiction?

The Superintendency of Financial Services is the department within the CBU entrusted with the control and regulation of the capital markets. The Superintendency has jurisdiction over the public offer and trade of securities within Uruguayan territory.

## 4 How is financial fraud and price manipulation in capital markets regulated?

The regulation prohibits and sanctions the following conducts: the use of privileged information for personal benefit or the benefit of third parties; the manipulation of the market; and failure to comply with ethical and commercial loyalty standards and code of conducts applicable to the controlled entities. Stock exchanges are required to articulate a code of commercial and ethical practices – and sanctions applicable – to be followed by all brokers and other agents operating in the exchanges, with the aim of preventing the manipulation and alteration of the market.

Brokers are especially banned from participating in acts or operations which are fake or deceptive have the purpose or the effect of affecting the free price of securities in capital markets; manipulating the liquidity of a security; faking the offer

or demand of securities; manipulating or artificially fixing prices, offers or demands; or obstructing the free participation of other agents. Failure to comply with these rules can entail the severest administrative sanctions by the CBU, and even civil and criminal actions against those responsible for the infringement.

## 5 What sanctions and remedies can the regulatory authorities impose?

According to the Capital Markets Act, the sanctions that the CBU may apply will depend on the weight of the infringement and can consist on the following: observation; fines which can be, in the case of banks, as high as 50 per cent of the basic guarantee required to banks (approximately US\$6,735,500) and, in the case of entities that do not qualify as banks, as high as 10 per cent of the basic guarantee required to banks (approximately US\$1,350,000); suspension or cancellation of the quoting of the securities, or the authorisation to make a public offer of securities, or the ability to operate in the capital market. The regulation also contains special sanctions for conducts such as manipulation of the market and failure to comply with ethical and commercial loyalty standards, which can reach US\$52,000 at current rates.

The CBU may fix the amount of the fines in relation to the benefit obtained in the transgression of the rules.

In case of use of privileged information or disclosure of false information by agents operating in the capital markets, those responsible may be subject to civil and criminal actions.

## 6 What are the private remedies an investor may pursue?

Investors may seek recovery of damages by filing civil actions against the offenders and are able to resort to the remedies and injunctions available in a civil procedure. Investors may also present a claim against the offender for the violation of consumers' rights.

In case of conflicts involving securities issued by financial trusts, the differences must necessarily be solved through arbitration. The arbitration proceeding must be regulated in the terms and conditions for the creation of the financial trust. Under Uruguayan law, to start arbitration the parties must grant a special arbitration agreement in addition to the arbitral clause. If one of the parties is not willing to grant the arbitration agreement, the other party can judicially force its celebration to proceed with the arbitration.

Under Uruguayan legislation there is no specialised arbitration forum or other type of specific venue regarding investors' conflicts.

## 7 Give details of the frequency and nature of enforcement actions or private actions. Describe whistle-blower protection and incentives under the regulations.

Private civil actions based on infringements to the capital market's regulation have not been common in Uruguay. The situation over the past 10 years has been that infringements do not usually get to a state of judicial claim or remedy, but are strongly sanctioned by the CBU at an administrative level.

The regulation requires the issuers, stock exchanges, brokers, investment advisers and investment funds' management companies to develop mechanisms and procedures that enable people to expose cases of use of privileged information or manipulation of the market. These mechanisms and procedures must ensure confidentiality and independence from the chain of command within the organisation, while providing adequate protection to the whistle-blower against any negative consequence. Besides this requirement, there are no general incentives to whistle-blowers.

## 8 What is the legal definition of a 'security' and which types of securities are commonly traded?

The Uruguayan Law has a broad concept of security. According to section 13 of the Capital Markets Act, a security is any kind of good or right incorporated in a document, including shares, debentures, futures, options, certificates of participation and, in general, any instrument containing a credit or investment right.

Nevertheless, in December 2016, the BCU decided to incorporate into the Consolidated Rules of Capital Markets a new definition of securities. Section 3.1 of those Consolidated Rules defines securities as those "transferable" assets or instruments, issued in written or registered form, which grant a credit or investment right to its holder. Thereafter, there is a list with examples of such instruments, including shares, notes, debentures, banking deposit certificates, futures, options, warrants, among others. These regulations do not provide or specify when an instrument is "transferable" so it will depend on the interpretation that the CBU gives to this term in the future.

The most common securities publicly traded in the Uruguayan stock exchanges are public bonds, private debentures and certificates of participation issued by financial trusts. The public offer and trade of stock (equity) is practically non-existent in Uruguay. In 2017, stock exchanges commenced to work with dollar and pesos Index future contracts.

Given the current legal, there are some cryptocurrencies, such as the “bitcoin”, that may qualify as a security due to its operating mode. However, the CBU has not yet taken any position in relation to this matter.

## 9 How are securities offered and sold to the public?

Only the public offer of securities is subject to the Capital Markets Act and complementary regulation. According to the rules contained in the Capital Markets Act and in Circulars No. 2255 and No. 2257 of the CBU passed in 2016, there is a public offer any time there is a communication to purchase, sell or exchange securities that fulfils at least one of the following requirements:

- (a) It is addressed to the public in general or certain segments or specific groups of it, which are undetermined at the time of the offering;
- (b) It is carried out with the participation or through a stock exchange.
- (c) It is made public by any means. This requirement will be fulfilled once the information is disseminated by means such as newspapers, magazines, radio, television, mail, meetings, computer systems or other means enabled by the technology, that allow the content of the offer to be known to those individuals referred to in paragraph (a) above. It is included into this requirement the specific recruitment of advertising in any of the means mentioned before, through which the offer is allowed to be known.
- (d) The invitation for the purchase of securities made to the clients or group of clients of an institution, in a general manner, even when there is no advertising of it.

Additionally the new regulation stipulates that there is public offer when “local issuances” fulfil the following requirements:

- (e) The public offer of securities issued by financial trust funds (fideicomisos financieros) established by unilateral act, according to section 25 of Law No. 17.703.
- (f) The issuance of new stock by a listed company.
- (g) When the structure of the issuance, whether regarding the securities’ denomination or their purchase conditions, allows the security to be placed among more than 25 investors.
- (h) The financial trust funds whose titles do not expressly prohibit the sale of the participations in such securities.

In addition, the issuance and the issuer must be registered before the Securities’ Registry that operates in the scope of the Financial Services Superintendency of the CBU.

Regarding the private offer, the Circular No. 2257 stipulates that any offer and trade of securities which is not comprised in the concept of public offer is considered a private offer. Privately offered securities are not subject to the regulation of capital markets, must be offered directly to the potential buyer and may not be publicised or quoted at a stock exchange. The issuer of private securities must inform the purchasers that the securities are not registered with the CBU.

Whenever financial intermediary participates in a private offering of securities, it must inform the CBU about the characteristics of the operation by making available to the CBU all evidence of the private nature of that offer according to applicable rules.

Any public offer, negotiation and trading of securities requires the prior registration of the issuer and of the security with the Capital Markets’ Registry of the CBU. Before such registration is obtained, any kind of publicity or transaction of the securities is forbidden. In order to obtain the registration of the issuer and the securities with the CBU, the issuer must submit to the CBU the following information:

- completed form regarding information of the issuer and the issuance;
- corporate information of the issuer;
- terms and conditions of the issuance;
- guarantees or security agreements;
- risk rating; and
- agreements with representative entities, payment agents, custody agents, registering entity, and any other agent participating in the issuance.

All this information must be consolidated and presented as a prospectus for the issuance.

The process for the registration of the issuer and of the securities in the CBU should take 30 days according to Decree No. 322/011. Once the registration is ready, the issuer is free to make the public offer in the authorised stock exchanges.

After the issuance is completed, the issuer must still comply with the requirements of information with the CBU, as established by the regulation, and with the stock exchanges where the securities are listed, according to the internal rules of each stock exchange.

## 10 What are the disclosure requirements for securities issuers for both public and private offerings?

Private offerings are not subject to the capital markets' regulation and the disclosure of information is not subject to any kind of general requirement, but will depend on what the issuer and the purchasers agree.

In the case of public offerings, issuers must disclose any and all information that is deemed essential about themselves and about the securities, so that the potential investors have the necessary elements to judge whether to proceed with the investment or not.

The misrepresentation or omission of essential information makes the issuer liable, and may also entail the responsibility of the issuer's directors involved in such conduct, which is considered a breach of their duty of loyalty. The ultimate beneficial owner and those exercising the control of the issuer may also be subject to the same responsibility, if they were somehow involved in the conduct.

## 11 Are there exemptions from securities registration?

The securities that are exempted from registration are those which are privately offered and those issued by the government, the CBU and the municipal governments or international multilateral financial institutions.

## 12 Do your accounting standards differ in significant ways from other jurisdictions' generally accepted accounting principles?

The accounting standards used by all entities controlled by the CBU to prepare their financial reports are the International Financial Reporting Standards approved by the International Accounting Standards Board (IASB). Those rules are applicable by Decree No. 124/011, which is mandatory for financial periods beginning on or after 1 January 2012. For the remaining entities, the accounting standards to be used when preparing their financial reports are the versions of IFRS approved by the IASB as of October 2014. The latter applies to Decrees Nos. 291/014, 372/015 and 408/016.

## 13 To the extent that the International Accounting Standards Committee's International Financial Reporting Standards have not been fully implemented, is full convergence planned? What is the expected timetable?

The IFRS are fully applicable to financial statements filed to the CBU. For those companies which are not subject to the control of the CBU, there is an ongoing process to convergence between national regulations and IFRS.

## 14 Does your jurisdiction offer policy and tax incentives to invest in the capital markets?

Uruguay offers some tax incentives to invest in capital markets:

- The interests obtained from Public Bonds and the income obtained from their transfer is exempted from Income Tax on Individuals (IRPF) and Income Tax on Non-Residents (IRNR).
- The dividends paid for the participation in the equity of public companies is exempted from IRPF and IRNR.
- The interests obtained from debentures or bonds that have a maturity period over three years, and that are traded in a stock exchange, are levied by IRPF or IRNR at a preferential rate of 3 per cent.
- The payments obtained from certificates of participation or interests from bonds issued by financial trust funds, which are offered and traded in a stock exchange, are levied by IRPF and IRNR at a preferential rate of 3 per cent, provided those securities have a duration or maturity date over three years.
- The sale of those certificates of participation or bonds issued by financial trust funds is exempted from any kind of income tax.
- The holders of equity in public companies do not have to compute same for the purpose of determining the taxable amount Regarding the Wealth Tax (IPAT).

On 5 January 2017, the Executive Power enacted Law No. 19.479, which regulates the tax treatment of derivative financial instruments (DFI). The fiscal treatment is provided according to the residence of the beneficiary of the DFI results. Even though

there is no tax incentive in this case, it is positive that the law now provides clear rules regarding the tax policies of the DFI operations.

In this respect, the Executive Power approved Decree No. 115/017 in May 2017, which introduces the necessary amendments to the regulatory provisions of taxes affected by the new regulation of the DFI. Among the most relevant changes are (i) the definition of DFI; (ii) the tax treatment of income derived from DFI, when most of the income is exempted, and; (iii) the exoneration of “Agricultural” Income Tax on Economic Activities, given certain requirements.

## **15 Please describe the applicable tax withholding regime, the customary exceptions and the commonly used standard tax-planning devices.**

IRNR must be withheld by the local entities that pay interests, dividends or royalties to non-residents who are subject to that tax. It must be noted that Uruguay has signed treaties with many countries to avoid double taxation and limit the withholding rates imposed by the Uruguayan tax system.

## **16 Where and how are securities traded?**

Securities are primarily traded in the two stock exchanges authorised by the CBU: the Montevideo Stock Exchange and BEVSA. In the Montevideo Stock Exchange securities are traded both physically and electronically, while in BEVSA operation is only electronic. In both cases the transactions may be accomplished through different methods depending on the nature of the security (ie, currency, bonds, stock).

There is another authorised stock exchange, Rofex Uruguay Bolsa de Valores y Futuros (UFEX), although it has limited activity at the moment, its aim has been to start with future operations on dollar index and livestock index.

There is no formal OTC network developed in Uruguay, notwithstanding private transactions over securities outside stock exchanges.

## **17 Where and how do securities clear? Can securities denominated in a foreign currency clear?**

On June 2016, the CBU approved Circular No. 2.258, which contains the regulations concerning the Central Securities’ Depository (CSD), an entity that operates under the scope of the CBU, which purpose is to provide custody, liquidation and securities clearing services to all kinds of financial instruments, from both the public and private sector. On the first stage of performance, the aim of the CSD is to provide the registration, liquidation, clearing and custody services for securities publicly offered in stock exchanges.

The CSD operates under the following rules: custody and administration of physical or registered securities under the scheme of annotation in account registry; comparison or prior checking of the counterparties’ information for the settlement of the transactions agreed between them in the corresponding securities and funds accounts; the securities of the same issuance, issued by the same entity, with identical characteristics, and registered in the account of the same participant, shall be identified by one code and will sum for registration in the CSD; the operation’s liquidation will be performed by the method of delivery against payment; among others.

Notwithstanding the foregoing, there is no legal obligation to use the clearing system of the CBU, so the parties in the transaction can choose to registry the securities in the Stock Exchanges or the CBU. In Uruguay all securities that are publicly traded must be registered and, therefore, the issuer must designate a registering entity, which can be the stock exchange, a financial intermediation entity (banks), brokers or even the issuer itself. The clearing of securities may only be accomplished outside the stock exchange, by the parties involved. Sometimes the CBU acts as custody of the securities for some of the operators such as banks, insurance companies or pension funds. In those cases the settlement of securities is done by the CBU in the accounts of those entities.

## **18 Please provide a general description of securities settlement systems in your jurisdiction.**

As expressed in question 17, the Central Securities’ Depository was created under the scope of the CBU. However, there is no obligation to use the BCU’s Central Securities’ Depository for the clearing and settlement of securities, and the parties of a transaction in the capital markets can choose the stock exchanges to provide registration and custody of the securities.

## 19 What are the distinguishing characteristics of your debt and equity capital markets?

The Uruguayan capital market is basically composed of the trading of Public Bonds in the secondary market. In 2018, these transactions represented 95 per cent of the transactions in the stock exchange, for an amount of US\$ 11.473 million. In this respect, although it did not reach the 2017 maximum level of US\$13,615 million, 2018 maintained an important operated volume traded in the secondary securities market.

The rest of the operations on securities issued by the private sector consist mostly on the offer and trading of bonds issued either directly by local companies or through special purpose vehicles (SPVs), the most common of which are the financial trust funds. From 2006 to 2016, the amount of public offers of fixed income bonds increased (see chart). After the record reached in 2016 concerning the issuance of securities, the total amount decreased by 48.1 per cent in 2017. However, in 2018 the volume of public issues of private companies in Uruguayan capital market amounted US\$1,061.4 million, of which 96.3 per cent was traded in BEVSA, distributed US\$996.8 million in financial trusts funds and US\$25.66 million in bonds. The great majority of securities traded are plain vanilla bonds, most of them structured through the securitisations of assets, credits or other flows of funds in financial trust funds.

Fixed income securities issued per year by private companies or SPVs.

Year	No. of issuances	Amount in US\$
2004	6	36,394,941
2005	6	10,404,069
2006	6	30,800,000
2007	10	402,739,866
2008	5	43,199,369
2009	11	209,354,130
2010	12	135,115,202
2011	14	222,867,153
2012	12	282,048,736
2013	9	318,358,223
2014	20	315,146,384
2015	14	600,136,234
2016	12	856,257,258
2017	11	448,327,878
2018	10	1,061,400,000

Source: BEVSA and BVM

Given the reduced volume of securities listed, the secondary market presents very few transactions. The unsatisfied demand of financial products and the fact that most of the investment is held by institutional investors (most of them pension funds), determine that once the securities are acquired, the investor usually keeps its position instead of seeking liquidity to turn to other – scarce – investment options.

As for the equity market, in 2018 there has been a decrease in comparison to 2016. There is currently only one listed corporations that quotes its shares in the local capital market, with virtually no transactions in the secondary market. Most Uruguayan companies are family-owned businesses or owned by a pool of investors with a close common interest, with a financial culture of seeking financing by increasing their debt, instead of sharing the participation in the capital.

International groups operating in Uruguay usually obtain their financing for local branches from within the group, instead of participating in the local capital market.

The particular characteristics explained above place the Uruguayan market very far from other international markets, especially with regard to equity transactions.

## 20 Where and how are derivatives traded?

The Electronic Stock Exchange (BEVSA) offers the opportunity to trade on forwards over currency for those authorised to operate with this kind of instruments (ie, commercial banks).

It was not until October 2014, that the CBU officially authorised Rofex Uruguay Bolsa de Valores y Futuros (UFEX) as the first futures exchange in Uruguay and to this date there is no other entity authorised for this matter.

## 21 Can you explain development of structured finance instruments in your country?

The most common structured finance instruments developed in Uruguay are the financial trust funds, which issue bonds or certificates of participation, with the securitisation of future credits and flows of funds. Nowadays the biggest and most usual securitisations include credits for the render of health services, credits deriving from financing to consumers, and flow of funds coming from the collection of national or municipal taxes, contributions or tariffs for the use of public services.

In addition, the financial trust funds are being used for project finance in the construction sector, the purchase and sale of eolic energy and in the forest plantations

## 22 How are institutional investors defined and regulated?

There law and regulation applicable to capital markets do not contain a definition of institutional investors. However, according to the practice admitted by the CBU, the entities included in the concept of institutional investors are the financial intermediation entities (ie, banks), insurance companies, investment funds' management companies, pension funds' management companies, and parastatal pension funds.

These entities are under the control of the CBU according to the powers granted over the operators of the capital market and the rules contained in the laws that regulate each of those entities.

## 23 Can foreign broker dealers offer and sell securities in the jurisdiction? To which investors and under what circumstances?

Foreign broker dealers may offer and sell securities in Uruguay provided they do so privately. In order to place a public offer the broker must previously register itself and the securities with the CBU (see question 9).

## 24 What is the definition of 'insider trading', and who enforces the insider trading law? Outline the major developments in insider trading law giving details of any recent cases.

Although the definition or concept of insider trading is not thoroughly regulated, it is prohibited the use of privileged information for personal benefits or for the benefit of third parties. The failure to comply with these rules can entail severe administrative sanctions by the CBU (in case the offender is within the scope of entities subject to its control) and even civil and criminal actions against those responsible for the infringement (see question 5).

There has not been any relevant case of insider trading in Uruguay in recent years.

## 25 What are the roles of the authorities when a foreign issuer makes a public offering? Who has jurisdiction over the public offering?

The CBU has the same powers of control over public offerings no matter if it is a local or a foreign issuer. As explained in question 23, foreign issuers are subject to the same control and duty of registration whenever their securities are publicly offered or traded. In case a foreign issuer fails to comply with the registration and additional requirements established by the CBU, the CBU may ban the offer of those securities and place a penalty over the issuer.

## 26 Is there a formal understanding with other jurisdictions to share information and provide reciprocal assistance in enforcement matters? If so, which jurisdictions?

The CBU is a member of IOSCO (International Organization of Securities Commissions) and COSRA (Council of Securities Regulators of the Americas).

As an ordinary member of IOSCO, the CBU participates in the most important international forum for securities regulators to cooperate in the development and oversight of regulatory standards for the protection of investors and the market, and in the exchange of information, enforcement against misconduct and supervision of controlled entities. IOSCO has currently 109 ordinary members from all over the world.

COSRA is international organisation created a forum for mutual cooperation and communication to develop and foster the growth of sound securities markets among its 31 members from the Americas and the Caribbean. The principles of COSRA include the cooperation among the securities regulators for effective market oversight and cross-border surveillance.

During recent years, the CBU it has entered into cooperation agreements on financial matters (exchange of information) with Central Banks of other jurisdictions, for example, with Argentina.

## 27 Describe the framework for corporate governance.

Under the Capital Markets Act, the stock exchanges and the issuers of securities that are publicly offered must comply with corporate governance rules established by the law. On February 2013, the CBU passed a more detailed regulation which modifies the Consolidated Rules for Capital Markets and develops the general guidelines contained in the Capital Markets Act. These new rules apply to issuers of publicly offered securities with a net worth over approximately US\$1,500,000 at current rates, and investment funds' management companies.

The issuers of publicly offered securities are required to have a board of directors with a majority of independent non-executive directors and an audit committee formed by non-executive officers with financial and accounting background, as well as internal and external auditors.

Notwithstanding the general fiduciary duties required to any director of a company, the members of the board of directors of a company which publicly offers securities are subject to specific standards of loyalty which include the obligation to prioritise the interest of the company and to refrain from obtaining personal benefits from the company other than the compensation. Those standards also include the prohibition to disclose false information or hide relevant information which must be disclosed; get loans or use assets or services from the company for personal benefits or for the benefit of related parties; take advantage of a corporate opportunity; use the position of director to obtain any undue benefit for himself or for a related party; and prevent or obstruct the investigations to determine the responsibility of directors or employees of the company.

In order for a member of the board of directors to enter into a contract with the company that is within the scope of usual business, the previous approval of the board is required, together with the opinion of the audit committee. If the contract refers to an activity that is not the usual business of the company, then it requires the previous approval of a shareholders' meeting.

The directors' compensation needs to be approved by the shareholders' meeting. Both the company and the directors must inform the Superintendency of Financial Services of the CBU, as well as the corresponding stock exchange, about the participation that the directors have in the stock of the company. The same obligation applies to any individual or legal entity holding that directly or indirectly holds over 10 per cent of the stock of a public company.

The board of directors must include in the Annual Report information related to the Rules of Corporate Governance applied by the company, the policies and information regarding directors' compensation and any other relevant information that may affect the transparency of the offering of securities.

## 28 Which governing bodies (board of directors, audit committee etc) are required for public companies? What are their main functions and duties?

Public companies are required to have a board of directors, an audit committee and an internal auditing body. According to the Consolidated Rules for Capital Markets of the CBU, the board of directors require a majority of independent directors who comply with minimum technical and ethical standards, at least some of them with financial and accounting expertise.

The audit committee is dependent on the board of directors and must be formed by a majority of non-executive members. The main duties of the audit committee will be to control the compliance of corporate governance rules, to suggest the appointment of members for the internal auditing body and of the external auditor, and to work close to them in the suggestions, observations and advice that they provide.

The internal auditing body may be formed by an individual internal auditor or by an internal auditing commission, which are appointed by the shareholders' meeting. The main duties of the internal auditing body are to control the governance of the company by the directors and the financial statements of the company, and to render the advice and support to the shareholders' meeting in the cases the law requires so.

In a recent amendment to the Consolidated Rules for Capital Markets, it was stipulated that those public offering issuers of securities in a simplified regime are exempted from the application of the corporate governance rules related to the requirement of the audit committee, and the limited review report.

## 29 Are there any laws governing capital markets that are unique to your jurisdiction?

Since the year 2000 Uruguay has followed a clear tendency towards adopting international regulatory standards and the solutions implemented by countries where the capital markets are more developed.

## 30 How do authorities and issuers resolve matters that are not expressly provided for in the securities laws and regulations?

Those matters are primarily solved applying the rules contained in contractual terms and conditions of the issuance. Issuers usually resort to arbitration as a mechanism to solve any kind of dispute. The arbitrators or any other authority called upon

to resolve a matter not expressly provided for in the laws and regulations, should apply the contractual rules governing the issuance and, if the matter is not regulated, then they should apply the general principles for the construction of the rule of law, and look for a solution in analogous laws, general principles and in the opinion of the jurisprudence and scholars.

### **31 Which types of companies may make public offerings in your jurisdiction?**

Any company is entitled to make a public offering. In practice, companies usually use special purpose vehicles and securitise future flows of credits or funds in order to enhance the risk rate. There are only nine corporations that publicly trade their shares.

### **32 Which economic activities or segments are the most active in the capital markets in your jurisdiction?**

The economic segments that have been most active in the capital market are:

- health;
- forestry;
- wind power;
- real estate;
- consumer credit;
- meat processing; and
- state-owned companies in the energy and oil sector.

### **33 Describe the main stock exchanges and OTC networks.**

There are three authorised stock exchanges: the Montevideo Stock Exchange, BEVSA and UFEX, which has limited activity at the moment. In 2017, the offers of securities in the primary market were of approximately US\$15.492 million, of which 96 per cent was traded in BEVSA and 4 per cent was issued on the Montevideo Stock Exchange, while the operations in the secondary market were approximately US\$13.615 million, of which 95 per cent were made on BEVSA and 5 per cent on the Montevideo Stock Exchange.

### **34 Describe recent initiatives undertaken by the government to improve the regulation and efficiency of its capital markets and, if applicable, to incentivise or facilitate companies' access to the capital markets.**

There have been some relevant initiatives from the government in 2018.

In January 2018, the CBU approved Circular No. 2.295 by which it introduces two new articles to the Consolidated Rules for Capital Markets, in relation to the non-simultaneous provision of services by those entities entitled to issue reports on matters of Money Laundering and Terrorist Financing Control.

In addition, in November 2018, the CBU issued Circular No. 2.308 to regulate article 93 of Law No. 18.627 Capital Markets Act, concerning the specialised investors that are admitted to participating and operating in the Stock Exchanges, previously approved by the CBU. Such Circular introduces into the Consolidated Rules for Capital Markets the definition and requirements to authorise the specialised investors. Under the new regulation specialised investors are the pension funds, investments funds, financial trustees, insurance entities and others defined therein, which fulfils certain requirements concerning their balance with respect to the financial assets, the annual number of transactions in the public offering of securities, and the annual amount traded in the public offering of securities. The Circular also amends other provisions related to the operation, requirements and information to be provided by Stock Exchanges. Among other matters it refers to their internal regulations, their role as supervisor of operations and of operators, the information to be provided to the CBU about operators, and keeping mandatory registries.

At the end of the year, and within the scope of Law No. 19.574 Integral Law Against Money Laundering enacted in December 2017, the CBU passed Circular No. 2.312 in order to adjust the provisions of the Consolidated Rules for Capital Market to the aforementioned Law. The changes refer to the internal procedures and requirements that the entities regulated and supervised by the CBU are required to follow, as well as those that their clients must fulfil, in order to prevent money laundering and terrorism financing.

To conclude, in November 2017, a bill was presented to the Uruguayan Parliament, concerning the promotion of entrepreneurship and crowdfunding matters. The reasons behind this initiative is to encourage and stimulate the creation of new companies so to promote a greater economic development as well as to regulate a current and growing phenomenon that the new technologies are allowing to develop. In addition, this project represents an advance for the Uruguayan development in the

digital economy. The bill is currently under analysis and study of the Special Committee for Innovation, Science and Technology of the Chamber of Deputies.

**35 Describe the main obstacles that a company may confront in your jurisdiction when it is trying to become public. Describe any reform that you feel should be a national priority to improve capital raising by companies.**

Practice shows that the most important obstacles for companies to become public are the time it takes complete the procedure, the information requirements for public companies, but most of all the absence of a culture of resorting to the public offering of shares. So far, there is little space for public companies in a market like Uruguay, where companies are usually owned by families or a group of investors with a close common interest, which are not used or willing to lose control over the decision-making process. If state-owned companies that provide public services became listed companies, that would help to develop and deepen the market.



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OLIVERA Abogados is a law firm based in Uruguay providing comprehensive legal advice and assistance to Uruguayan and foreign companies. Its outstanding team of attorneys, specialising in the different areas of practice, ensures a responsible and efficient service, based on a full understanding of the problems faced by its clients and a clear view of the best ways of tackling them. Its activity on behalf of Uruguay-based companies has expanded to the region, as a result of professional relationships of the firm with other prestigious law firms in the main international trade and financial centres. OLIVERA Abogados is a member of TerraLex, the prestigious network of independent law firms.

The firm was founded in 1993 by Dr Ricardo Olivera Garcia, professor of commercial and banking law, Dean of the Law School of the University of Montevideo, international arbitrator, author of some of the most relevant commercial and financial national regulations passed in the past 20 years, consultant and adviser for the government and national and international companies, and one of the most prominent lawyers in Uruguay.

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