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Uruguay

XIV. Uruguay

A. Foreign investments

i. Authorisations versus limitations or prohibitions

a. General absence of restrictions

Most investors consider Uruguay a safe place because the country has done much to create a climate of trade openness, passing legislation to promote foreign investment, thereby establishing attractive benefits for investors. The main areas of investment have been the manufacturing industry, construction, wholesale and retail trade, agriculture and service.

Uruguay is a model of political and social stability, recognised for its solid macroeconomics. This is evidenced by a compound annual growth rate of 4.2 per cent in real terms of its GDP in a period going from 2005 to 2017, as well as by the investment grade it was awarded by all big three credit rating agencies: Standard & Poor's, Fitch Ratings and Moody's Investors Service.

Uruguay has no limitations on the holding or trading of foreign currency or precious metals. Moreover, transactions may be entered into in any currency, and no permits or authorisations are required to bring money into the country or to send funds abroad. Any individual or duly incorporated legal entity may own real estate (with certain exceptions in the case of rural real estate), regardless of nationality, residence or place of incorporation. Practically no areas of the economy are reserved to Uruguayan citizens.

1. Equitable and fair treatment, parity with national investments

Uruguay grants fair and equitable treatment to national and foreign investors under its laws and through the bilateral investment agreements it has entered into. Foreign investors may carry out any type of activity in parity with national investors, receiving equal treatment with respect to taxation.

Under the Colonia Investment Protocol ('Protocolo de Colonia para la Promoción y Protección Recíproca de Inversiones en el Mercosur'), MERCOSUR members are compelled to respect other members' right to promote investment, which translates into an obligation to admit investments of third states into their territory.

Furthermore, Uruguay has negotiated treaties to avoid double taxation with Argentina, Ecuador, Finland, Germany, Hungary, India, the Korean Republic, Liechtenstein, Malta, Mexico, Romania, Portugal, Spain, Switzerland, Singapore and the UK that are currently in force. Moreover, there are bilateral investment agreements with Armenia, Germany, Saudi Arabia, Australia, Belgium, Canada, Chile, China, Korea, El Salvador, Spain, the US, Finland, France, the UK, Hungary, India, Israel, Italy, Malaysia, Mexico, Netherlands, Panama, Paraguay, Poland, Portugal, the Czech Republic, Romania, Sweden, Switzerland, Venezuela and Vietnam.

Although there is no specific regulation governing stability agreements executed between investors and the state, there have been some experiences of agreements executed by the state providing this type of undertaking. Moreover, the Investment Law (as defined below), reassures investors due to the wide array of benefits and rights with which it vests them.

2. The Investment Law

Uruguayan legislation has established a legal framework for promoting investment in various fields and activities, with very successful results. Law No 16,906 (the 'Investment Law') declares that the promotion and protection of investments made in the country by Uruguayan and foreign investors is of national interest. It also guarantees freedom to transfer invested capital, as well as profits in any currency and at any time. This law regulates three important aspects: investment principles, tax matters and the treatment given to companies who act within 'MERCOSUR'.

According to this law, a national interest status may be granted to any activity, specific project or company that meets certain objectives, such as the increase and diversification of exports of processed goods, the establishment of new industries, or the expansion or refurbishment of existing industries, among others. The Investment Law enables the Executive Branch to provide tax advantages to certain activities, which are then qualified as 'promoted activities'.

For the purpose of obtaining said advantages, companies must submit detailed accounting and financial information to the Investment Implementation Committee (Comisión de Aplicación de la Ley de Inversiones ('COMAP')). Once a recommendation from COMAP has been obtained, the Executive Branch issues a resolution declaring the project promoted, where the amounts and deadlines of the granted tax benefits are established.

The main benefits of the law are essentially tax benefits. These consist of the possibility of deducting between 20 per cent and 100 per cent of the total value of the investment from the applicable income tax in a term that can go from three to 15 years. Additionally, this law grants other benefits, such as exonerations of the net worth tax for a particular term and of taxes and duties applied when importing certain equipment and assets destined to be fixed assets of the project when they do not compete the national industry.

3. Free trade zones and free port regime

Law No 15,921 created the free trade zone regime, which has given rise to several exclaves in commercially strategic areas of the country, both public and private. On the other hand, Law No 16,246 created the free port regime. Both have had important consequences for investment in Uruguay.

Operations that occur within the scope of these regimes receive multiple benefits, such as a complete tax exemption, as well as an exemption from all applicable duties on importing and exporting goods and services. Companies operating under these regimes receive an exemption from net worth tax and corporate income tax. Furthermore, goods may transit freely within these areas without the need for authorisation or formal procedures of any type.

A wide array of activities may be performed under the free trade zone regime. These range from the mere deposit of merchandise to the rendering of services, including financial and insurance services, handling, classification and selection of deposited goods, including the establishment of manufacturing industries and professional services.

The free port regime represents one of the mainstays for Uruguay as a logistic platform in the MERCOSUR and as a hub for the distribution of goods in transit. When operating under this regime, goods circulate freely without the need of permits or formal procedures, except for basic customs declarations. During their stay at the port customs area, goods are exempt from all import requirements and import-related taxes and, depending on the custom treaties in force, may not lose the origin requirements.

4. Labour benefits

Companies established in Uruguay benefit from the following labour incentives:

- companies may remain open on Sundays and holidays;
- vacation dates are negotiable with employees;
- the social security and health system is supported by employees, employers and the state, and covers risks arising mainly from old age, disability, disease, industrial accidents, maternity, paternity, unemployment and death;
- foreign employees can be hired for any activity developed within the national territory, with some few exceptions, where certain limitations apply (free trade zones, national fishing and the merchant navy);
- the termination of labour contracts on trial periods (of up to three months) does not generate a severance payment; and
- as a general rule, employers do not have to allege a just cause to dismiss employees; ordinary severance compensation is equivalent to one monthly salary (plus benefits) for every full year of service or fraction thereof, up to a maximum of six monthly salaries.

5. Immigration benefits

Companies established in Uruguay can benefit from the following immigration incentives:

- There are three types of residencies granted by the Uruguayan Migration Office: (1) a six-month provisional identity card for people who will carry out an activity for a short time; (2) two-year temporary legal residency (granted within four months, approximately); and (3) ordinary permanent legal residency (granted within two years, approximately).
- Moreover, there is a special permanent legal residency for people born in countries that are members of MERCOSUR or associated to it; which has a simple application process before the Ministry of Foreign Affairs, who shall decide within 30 working days from the date on which the documents were filed.

6. Operation permits

In relation to the relevant permits that are necessary to operate in Uruguay, they shall depend on the type of industry concerned and its controlling authority. However, general permits that apply to industries or financial entities exist, which are as follows:

i. Environmental authorisation

Pursuant to Law No 16,466 and Decree No 349/005, several environmental permits are required prior to starting certain activities, construction and works expressly listed in such regulations. These include, for example, electricity generating plants of over 10 MW; nuclear power plants; construction of public terminals for loading and unloading of goods and passengers; implementation of complex urban developments of over 10 hectares, among many others.

Those interested in carrying out any of the activities, construction and works are subject to the request of a Prior Environmental Authorisation (Autorización Ambiental Previa (AAP)) and shall communicate the project to the Ministry of Housing and Environment (Ministerio de Vivienda, Ordenamiento, Territorial y Medio Ambiente (MVOTMA)) by submitting certain information depending on the category of the authorisation.

Decree No 349/005 also establishes that parties interested in performing certain activities, construction or works included in Section 20 of Decree No 349/005 shall communicate the location and a description of the area of execution and influence to the environmental authority called Dirección Nacional de Medio Ambiente ('DINAMA'), and, as the case may be, include an assessment of the location or section of the site where the project is to be performed, including an analysis of any alternatives.

Some projects that require an AAP must also obtain an Operating Environmental Authorisation (Autorización Ambiental de Operación (AAO)) in order to start operating. The AAO shall be requested by the interested party and, once there has been full verification of the conditions established in the AAP, the project is filed before the MVOTMA and the Environmental Impact Assessment criteria are met, the MVOTMA grants the AAO.

Those activities that were built, authorised or put into operation without being required to obtain the AAP (because the activity was prior to the entry into force of the decree or, when the activity started, it did not meet the requirement established in the decree for obtaining the AAP), require a Special Environmental Authorisation (Autorización Ambiental Especial (AAE)), included in Section 25 of Decree No 349/005, if they expand the facilities or increase the productive capacity.

Environmental permits can be transferred from one person to another, provided the transferee assumes the same obligations that the transferor had assumed before:

ii. Uruguayan financial system

The Uruguayan financial system allows entities to operate as full branches of foreign banks or, alternatively, as local subsidiaries of foreign companies or banks. Entities that carry out 'financial

intermediation', such as banks, financial houses and offshore banks require a licence granted by the Central Bank of Uruguay and authorisation from the Executive Power.

The Central Bank of Uruguay, in its capacity as supervising entity, overlooks financial entities and is vested with the authority to impose minimum capital requirements, liquidity ratios, reserves, maximum exposures, debt ratios, and so on, all in line with the Basel Convention principles.

ii. Treatment of foreign investment in infrastructure initiatives and PPP projects

A. Objective of PPP contracts

Law 18,786 regulates the PPP regime. PPP contracts may be entered into for the development of infrastructure and provision of services. Those projects may concern: (1) roads (including rural roads), railways, ports and airports; (2) energy projects (without prejudice to the provisions establishing state monopolies); (3) waste treatment and disposal; and (4) social infrastructure, including prisons, health centres, education centres, social housing, sports centres and urban development.

The PPP regime coexists with other regimes applicable between private entities and the state. These other regimes are the default regimes, and PPP contracts may only be concluded when the state determines that any other contractual alternative does not satisfy the public interest pursued.

B. Parties to the PPP contract

The Uruguayan state may contract through any of the three branches of government (executive, legislative and judicial) public entities such as *entes autónomos* and *servicios descentralizados* and state governments (*gobierno departamentales*), among others. The public administration may agree directly with the National Corporation for Development (NCD) for this entity to assume the implementation of the project, and then transfer it to the private sector later. The involvement of the NCD implies a shorter procedure because some stages of the contracting process are avoided. To involve the NCP, prior authorisation of the Executive Branch must be obtained.

C. PPP contracts

A contractor's compensation may be paid either directly by the state or by the users of the infrastructure or service, or a combination of both. The state in turn will be paid a canon or fee either by the contractor, and/or by the users of the service or infrastructure.

The contractor shall provide guarantees for the performance of its obligations.

Even though the state cannot ensure that the project will be profitable, it can guarantee a minimum income. Moreover, the state may promote the development of PPP contracts by granting subsidies, tax exemptions, and so on.

In the area of dispute resolution, it is expressly provided that the parties must resort to arbitration. The arbitrators shall be appointed by agreement between the contracting parties or, failing that, by the procedure laid down in the General Code of Procedure.

Sanctions for non-compliance including withholding of payments may be provided for by the state, which can also request judicial measures to ensure their effectiveness.

d. Procurement procedure: private initiative

Before starting the contracting process, the public administration must produce a document evaluating the feasibility and desirability of the project.

The PPP Law created a procedure called 'competitive dialogue', which involves a discussion about all the aspects of the PPP contract between the state and the applicants that have submitted offers, and which have met the requirements of technical and economic solvency stated therein.

The PPP Law also provides that the initiative for said undertaking can come from private entities.

e. Guarantee in favour of creditors and the concession pledge

Pursuant to the PPP Law, the contractor is authorised to grant pledges on the future cashflows of the project, trusts and all other real or personal guarantees on goods and rights, present and future in benefit of its creditors.

There is also the possibility to pledge the rights arising from the PPP contract (termed 'pledge of the concession'), but this is restricted to guaranteeing the financing of the project, operation or maintenance costs, as well as those resulting from a trust created for that purpose.

iii. Treatment of foreign investment in oil and gas, and mining activities

a. Mining

All mineral deposits located within the Uruguayan territory belong to the Uruguayan state and therefore, all rights over such deposits can only be granted by the Executive Branch. The Uruguayan Mining Code recognises and regulates the granting of easements, prospecting rights, exploration rights and exploitation permits, and expressly states that all persons or entities, whether national or foreign, can be holders of mining rights.

Mining rights are usually granted irrespective of the wish of the owner of the property, who will, nonetheless, have the right to receive compensation for mining activities carried out and damage that may be caused and, eventually, to receive a production canon if the mine becomes productive.

In 2013, a law was passed regulating large-scale mining (LSM), an activity that has been declared of public interest.

Projects that qualify as LSM are now regulated by the Mining Code and by this new LSM Law, which introduces some relevant changes, such as the need to execute an exploitation concession agreement with the Executive Branch (not required for non-LSM, in which the granting of an exploitation permit is enough), and the need for corporation holders of such projects to have their capital stock in registered shares and to identify the ultimate beneficial owner. Special environmental requisites also apply to these projects.

B. Oil and gas

Under the Uruguayan Mining Code, all: (1) fossil substances, oil and gas; and (2) 'other minerals or elements capable of generating energy industrially' are classified as Class I minerals and all mining activities regarding this class are reserved to the state-owned oil company (Administración Nacional de Combustibles, Alcoholes y Portland (ANCAP)) directly or through concessions to third parties.

Uruguay has identified areas for onshore and offshore exploration for oil and gas, and bids have been awarded by ANCAP for exploration to internationally renowned companies who have subsequently signed exploration contracts with ANCAP.

iv. Treatment of foreign investment in real estate (rural and urban properties)

A. Ownership

Real estate property may be owned by one or more individuals, partnerships or corporations, or some combination, whether national or foreign. The only restrictions refer to ownership of agricultural land (ie, destined for agriculture; rural land destined for other purposes, eg, industry, is not subject to limitations) and are set forth in Law Nos 18,092 and 19,283.

Law No 18,092 (as amended and implemented) declared that it is of national interest that the owners of agricultural land be individuals (national or foreign) or corporations with registered shares owned by individuals (national or foreign). However, the Executive Branch may authorise companies that do not comply with the above requirements to own agricultural land: (1) when the nature of their undertaking or the number of their shareholders impedes the investment of capital belonging to individuals; (2) when the shareholders are listed on a stock exchange with a good reputation; (3) when the activity to be carried out qualifies as a productive project.

Law No 19,283, states that *sociedades anonimas* and *sociedades en comanditas por acciones* (ie, Uruguayan corporations) with bearer shares, in principle, are no longer authorised to own rural real estate if their controlling shareholders are: (1) national entities owned by foreign states; or (2) sovereign funds of said states. Exceptionally, the Executive Branch may grant an authorisation to a Uruguayan corporation, the shareholders of which are foreign states or sovereign funds of said States, if said Uruguayan corporation: (1) presents a productive project; and (2) has a minor non-controlling participation of foreign states or sovereign funds.

B. Real estate transactions

As will be explained below, the legal regime governing real estate property rights in Uruguay offers an extremely secure system under which all real estate transactions must be authorised by a notary public ('*escribano*') and filed at the Real Estate Public Registry to be valid and enforceable against third parties. The date of registration indicates the preference of each right and, with fully digitalised registries, title insurance is unheard of in Uruguay.

Financing for the purchase of real estate properties in Uruguay is easily available through banks and financial institutions. Customarily, the lender will participate in the deal through its own legal

advisers and a notary public who will be in charge of carrying out the title due diligence and drafting a mortgage. The owner of a real estate property can grant a mortgage over it by executing a deed before a notary public. Mortgages are also registered with the Real Estate Public Registry and therefore, as of the date of registration, become enforceable against all third parties and prevent any future transactions regarding said property until the cancellation of the mortgage and release of the property is duly registered.

c. Apartment buildings and country clubs

The largest real estate investments in apartments buildings are made in Montevideo and Punta del Este. In Punta del Este in particular, such investments are linked to the tourism industry because most buyers are foreigners and the properties are rented in the summer (December, January and February).

In general, each apartment is recognised by law as an independent real estate property upon the registration of the construction plans and the granting of the pertinent authorisation by the municipal authorities. During the construction phase, it is possible to execute and register promises of sale, granting the purchaser rights in rem.

Apartment buildings are governed by the provisions of an agreement executed by the original owner of the building (*reglamento de copropiedad*) including rules on the administration of the building, and the rights and obligations of the owners of the apartments with respect to the maintenance of the building and their contribution to common expenses, as well as their rights to use the common areas and amenities of the building. Such agreements always establish a mortgage over each of the apartments of the building in favour of the owners of all other apartments as security for the payment of common expenses.

Housing in the form of private country clubs has become increasingly common in Uruguay. Upon the purchase of a plot, the owner acquires full title to that specific plot, being entitled to build a house, dispose of said plot and use the common areas of the country club.

Law No 17,292 regulates property rights of plots in country clubs as well as the contribution of each plot to common expenses, the administration and use of the common areas, the size of the plots and other matters pertaining to the premises to be built by the owner of each plot. Under this law, the independent legal existence of each plot is the result of the granting of the municipal approval of the infrastructure works of the country club, the registration of the country club map and the execution and registration of the *reglamento de copropiedad*.

v. Treatment of foreign investment in agribusiness activities

a. Agribusiness activities in general

Uruguay has a strong agribusiness tradition. As informed by the Ministry of Agriculture, the total agriculture area amounts to 16.4 million hectares and the gross agribusiness product for 2016 amounted to US$4,654m. As for rural land transactions, during 2017, 1,139 purchases were executed, causing 187,022 hectares of land to change hands at an average price of US$3,712 per hectare.

Regarding ownership see paragraph section iv(*A)* above.

Uruguay may well be considered as an emerging forestry country. A 1987 Forestry Law introduced various incentives to the industry such as: (1) complete tax exemption for the forested areas planted in land declared to be of 'Forestry Priority', not only for net worth tax but also municipal land taxes; (2) the fact that the proceeds of the forested areas are not compounded for the payment of income tax and other taxes related to agricultural activities; (3) investors may receive partial reimbursement of the expenses incurred; (4) eligibility for special soft credit lines provided by the Uruguayan state bank (Banco de la República Oriental del Uruguay (BROU)); and (5) tax and customs duty exemptions for the importation of supplies and capital assets destined for the production and industrialisation of Uruguayan wood.

vi. Treatment of foreign investment in public services

In Uruguay, a public service is governed by Public Law and, in principle, carried out directly by the state. The only way private parties can carry out these activities is through a concession.

The concession of a public service is an act by which the state temporarily allows a private party to perform a public service and grants this private party certain legal powers. A concession shall always be done under governmental control and supervision, and is necessarily granted for a limited period of time.

The concessionaire is granted the right to exploit the public service involved, along with any and all acts needed to those effects, bearing all costs and risks involved. The retribution received for carrying out the public service is not borne by the state but by those who make use of and benefit from the service.

No discrimination is made as to who may be eligible for concessions of public services. However, Uruguayan law does provide that the state is compelled to grant concessions through public bids.

The state, taking all offers into account, will choose the most convenient offer. This decision shall be made exclusively according to its own judgment, although this judgment must have some sort of justification. Aspects such as pricing, timing volume or financing options, as well as reputation and track record carry weight in this decision.

B. Public services

i. Concept under Uruguayan laws

Public services in Uruguay are defined as activities performed to satisfy imperative collective needs that are provided to individuals under a public law regime (ie, power, water and gas). It is up to the national legislation to determine which activities are deemed public services.

Public services must be provided:

- on a continuous and uninterrupted basis, given the importance of the needs they satisfy;
- on a regular basis, under reasonable conditions of proper functionality;
- on a non-discriminatory basis; and
- under equal conditions.

The relationship between the provider of the public service and the user is statutory rather than contractual because the conditions of the service are defined by statute or regulations and not by an agreement between parties.

ii. Ways to render public services

A. Directly

Directly means by a government entity, using its own employees, resources and technical means. For such purposes, the Uruguayan Constitution establishes state-owned agencies called autonomous entities (*entes autónomos*) and decentralised services (*servicios descentralizados*), which have functional and financial autonomy, with their own legal personality distinct from that of the state, over which the latter exercises powers of control.

Supervision and control of the public service administration is achieved through the following mechanisms:

- application of the Tax and Financial Administration Code (Texto Ordenado de Contabilidad y Administración Financiera del Estado (TOCAF)) in contracts with private parties;
- the possibility to challenge the administrative acts of the service provider by means of administrative appeals before that same issuing entity (in the case of decentralised services, there is a special appeal for reasons of lawfulness that is decided by the Executive Branch);
- possibility of challenging said administrative acts before the Contentious Administrative Court, which can annul or confirm an administrative act;
- application of rules of ethics to public service employees;
- application of the specialty principle, whereby the entities in question cannot do business other than that which has been specifically assigned to them by law or dispose of resources for purposes other than their normal activities;
- entity directors are appointed by the Executive Branch at the Council of Ministers with approval by the Senate;
- control of compliance with prohibitions and incompatibilities;
- control by the Executive Branch, which can challenge acts issued by the entities and suspend acts that have been challenged for reasons of advisability or lawfulness, order rectifications, corrective measures or removals, communicating them to the Senate, and replace and dismiss their directors, with Senate approval;
- parliamentary control by means of:
  - requests for written reports;
  - summons to appear for questioning; and
  - creation of an investigation commissions to review their activities;

- control by the Government Accounting Office (Tribunal de Cuentas) concerning:
  - an opinion on the budget of the entity;
  - preventive assessment of expenses and payments to certify their legality; and
  - a report on renderings of account and financial management;
- control by the judiciary for indemnification of damages to the users of public services
- citizens' control by means of the regular publication of financial statements clearly reflecting the entities' financial situation; and
- control by the application of Law No 18,381 granting access to public information (*habeas data*).

B. Indirectly, through public service concessionaires

Public service concessions temporarily delegate the performance of a public service, under the supervision and control of the state, but at the risk and peril of the concessionaire.

Pursuant to the provisions of a 2004 constitutional amendment, public services of sewerage and drinking water supply must be provided exclusively and directly by government entities, and hence, in no case may they be subject to a concession.

When the concessionaire is entrusted with performance of a public service, it is vested with certain legal powers under public law, such as the power to expropriate or to create administrative easements.

In turn, the concession of public services of monopolised activities requires authorisation by a national law.

The public entity has broad powers of direction and control with respect to the concessionaire, overseeing technical, commercial and financial aspects of the operation. These powers are exercised via diverse instruments, such as authorisations, approvals, inspections, investigations and the review of books.

Moreover, the public entity can unilaterally amend clauses related to the organisation and functioning of the service when there is a change in the factual situation existing at the time of granting the concession. If this situation implies greater costs for the service, then the concessionaire must be compensated. However, clauses referring to the economic aspects of the operation cannot be changed except to make than adequate for administrative acts, unforeseen restrictions or unforeseeable circumstances. If the economic equation is affected by an administrative act, then the concessionaire must be fully compensated. If, instead, the change derives from facts alien to the parties, which temporarily and abnormally alter compliance with the concession, then the concessionaire shall only be entitled to compensation for losses.

Non-compliance by the concessionaire may subject the concessionaire to penalties (fines, suspension of benefits, lapse, etc). This power to impose penalties is an implied one, that is, it does not require express texts and is regulated by the rules and principles of public law. In the case in which non-compliance gravely affects the normal provision of the service, the public entity may retake the operation and render the services directly.

The entity granting the concession is empowered to approve rates for public services, while ensuring the maintenance of the concessionaire's economic benefit, and must prevent hindrance to the operation by third parties.

Concessions are extinguished due to expiration of the term, lapse declared by the entity in the event of serious non-compliance by the concessionaire, judicial termination at the concessionaire's request due to serious non-compliance by the granting entity, termination due to force majeure making the performance of the service impossible, unilateral decision of the granting entity for reasons of public interest indemnifying the concessionaire in full, and by agreement.

Both the state and the concessionaire must indemnify users for damages caused in the performance of the public services for which they are responsible.

c. Mixed public private companies

The Uruguayan constitution provides for the organisation of mixed public–private companies (*sociedades de economía mixta*).

A law, passed by the votes of three-fifths of the members of each of the houses of Parliament, can authorise private capital to incorporate a new public entity or to contribute to existing ones (autonomous entities and decentralised services).

The contribution of private capital and the private representation on boards of directors or councils may in no case exceed those of the state.

The state may also participate in industrial, agricultural or commercial activities of private companies, as agreed by the involved parties ensuring state participation in management. Such participation must be authorised by a law passed by the absolute majority of all members of each house of Parliament.

The directors of the company are subject to the same rules as directors of autonomous entities and decentralised services.

d. Non-governmental public entities

These entities are public because they are governed by public law, but they and their assets are not part of the state.

Their features are as follows:

- they are created by law;
- they are governed by public law;
- they are assigned purposes that are public or of public interest;
- the board of directors has state participation or representation by interested sectors;
- they are subject to more intensive state control than other entities under public law;
- their employees are not government employees;

- their acts can be challenged, appealing to the entity itself, with the possibility of a subsequent challenge at an appellate court; and
- they enjoy certain privileges and exemptions by virtue of the general interest services entrusted to them.

E. PPP SYSTEM

Uruguayan law also contains a PPP system, which is regulated by Law No 18,786 and Decree No 17/2002. PPP contracts are defined as those agreements in which a public entity retains a private party, for a certain time period, for the design, construction and the operation of a certain infrastructure or part of the services related to the infrastructure, in addition to financing.

Through the PPP system, the Uruguayan Government has retained or has launched competitive procedures to retain private parties to build, operate and finance roads, schools, railways and even a jail.

C. Real estate

i. General considerations

As explained above, all transactions in real estate involve a notary public. The role of the notary public is not only limited to drawing up and authorising agreements, it also carries out title due diligence, analysing the antecedent title deeds for the last 30 years, and further acts on behalf of the state as a controlling agent, confirming that the seller is up to date with the payment of certain taxes, pension fund contributions related to construction on the premises, that all necessary permits and authorisations have been obtained, and so on.

In general terms, a real estate transaction involves the execution of the following documentation:

- preliminary agreement (*boleto de reserva*);
- promise to purchase agreement (*compromiso de compraventa*); and
- sale and purchase agreement (*compraventa*).

The purchase procedure normally starts with the execution of a preliminary agreement, by which the parties agree to the basic terms and conditions of the transaction (object, price, terms, penalties, etc) and the term within which the parties should execute the sale and purchase agreement (or the promise to purchase agreement, depending on how the transaction is structured).

This preliminary agreement is not registered with the Real Estate Public Registry and in case of breach, the parties are entitled to claim penalties and damages.

When the transaction cannot be structured as a cash payment transaction (due to the need for payment in instalments or delayed delivery of possession, etc) it is usual to execute a promise to purchase agreement. This agreement is registered with the Real Estate Public Registry and, in case of breach by the seller, the applicable law provides the buyer with the possibility to claim specific

performance. Additionally, any lien (ie, mortgage, attachment, etc) created post registration does not affect the purchaser. The agreement should provide for the execution of a sale and purchase agreement once the conditions are met.

The promise to purchase must be executed either as a public deed by a notary public or as a private document with signatures certified by a notary public.

Finally, the procedure ends with the execution of a public deed by a notary public containing the sale and purchase agreement. Title over the property is transferred once this deed is executed.

This document is registered with the Real Estate Public Registry and is effective against third parties upon registration.

With respect to form of payment in real estate transactions, Law No 19,210 and its regulatory decrees expressly regulate how payments must be implemented. In this sense, as of 1 April 2018, cash may not be used to make payments in real estate property transactions whose amount is greater than 40,000 indexed units. The law states that such payments must be made electronically, by common cheques or deferred crossed cheques, or by crossed bill of exchange letters issued by a financial intermediary institution on the name of the buyer. This limitation shall not apply in expropriation events.

In addition, promise to purchase agreements or sale and purchase agreements should detail the specific form of payment used for the transaction, including, among other information, the identification number of the form of payment, amount of the payment, name of the financial intermediary institution from where the payment is made, and name of the issuer and receiver of the form of payment when such a payment is made by persons other than those performing the transaction.

The Real Estate Public Registry will not register promise to purchase agreements or sale and purchase agreements that do not contain the details of the form of payment and the aforementioned specifications, or if such documents provide a different form of payment than those established by the law.

ii. Rural properties: limitations for private parties

For limitations on ownership of agricultural land please refer to section iv(A) above.

iii. Urban properties: limitations for private parties

The Uruguayan legal framework does not limit the acquisition of urban property. In this sense, any person, whether individual or corporate, foreign or national, can hold title to urban real property.

iv. Expropriation events

The Uruguayan Constitution establishes that expropriation of private property can be carried out when there is a need or usefulness to proceed for such an undertaking. Expropriation is done through the prior payment of compensation to the owner.

D. Development of ample/integrated capital markets and joint activities between Latin American countries

i. Merger of stock exchanges: attempts versus realities

Uruguay currently has only two stock exchanges, Bolsa de Valores de Montevideo (BVM) and Bolsa Electrónica de Valores ('BEVSA'), which are both under the control of the Central Bank. There are several general agreements among both, and they are now coordinating the co-registration of sovereign debt.

The main difference among the stock exchanges is that BEVSA only operates electronically: the market and bids are entered into a system by operators by matching or auction procedures.

Legislation and regulation on stock exchanges and securities does not specifically contemplate the merger of stock exchanges. However, the number of stock exchanges is not limited.

ii. MILA market: current results and expectations

The MILA market is an integrated stock exchange market. At the present moment it is composed of Chile, Colombia, Mexico and Peru.

Currently, Uruguay does not form part of this stock exchange market integration as MILA focuses on the equity market, a market not developed in Uruguay. Moreover, BVM is member of the Federación Interamericana de Bolsas ('FIAP') and the Americas' Central Securities Depositories Association (ACSDA).

iii. Pacific Alliances: governmental action and proposed treatment and agreements

The Pacific Alliance is a highly praised trade bloc that promotes economic liberty, implemented by Chile, Colombia, Mexico and Peru.

Although Uruguay is currently an observer of the Pacific Alliance, it has revealed its intention to become a full member. This has not been implemented yet as, additionally, Uruguay is a member of MERCOSUR, and its bylaws bind the country to negotiate in the bloc and not individually, which is an issue that has caused several arguments between mostly Uruguay and Argentina.

Notwithstanding the foregoing, Uruguay's relationship with the member countries of the Pacific Alliance is optimal, and bilateral treaties are in force with each of them.

iv. IPOs of multilatina companies in Latin American capital markets

Uruguay's private equity market is quite small; although there are almost 31 national Uruguayan companies subject to public offer in the BVM or BEVSA, listed companies are generally issuers of bonds. Notwithstanding the foregoing, there are no multilatinas based in Uruguay that have been subject to IPOs so far.

E. Offshore vehicle providers in Latin American countries

i. General concept: legal framework and scope of activities

Uruguay has a great tradition of being an interesting jurisdiction to establish offshore vehicles that give important benefits to foreign investors, without being considered as a tax haven. During many years, Uruguay offered a very interesting vehicle, called *sociedad anónima financiera de inversión* (SAFI), which enabled companies established abroad and operating outside Uruguay to structure their businesses through this vehicle, only paying an annual tax of less than one per cent of their net worth. This was a very commonly used vehicle by many foreign investors, but after the Uruguayan tax reform in 2007, SAFI were not admitted.

However, similar benefits are granted using domestic corporations as Uruguay's only tax income of national origin. All these will be analysed in the following. Additionally Uruguay has a very important tax free zone system, where companies organised in the special way of a tax free zone corporation also benefit from important tax benefits.

Finally, Uruguay has many valuable characteristics for investors that still make it a very attractive jurisdiction. The country has a longstanding tradition of political and economic stability that is always very much valued by foreign investors. Additionally, no exchange control exists in Uruguay: exchange market operations are free and entirely determined by supply and demand. Uruguay has a very solid banking system, where the principle of banking secrecy is still in force.

ii. Applicable legal regimes in Costa Rica, Panama and Uruguay

As mentioned above, although Uruguay changed its Tax System in 2007, where SAFIs were not admitted any more, the tax system is still attractive as a jurisdiction to create offshore vehicles. Uruguay's new tax is based on the territorial source principle. This means that only activities developed, services provided and goods situated in Uruguay will have Uruguayan taxes levied, so any income obtained outside Uruguay by a domestic entity is not taxed. To be considered a tax payer in Uruguay, the investor must have its residence in the country. The only exception to this rule is the case in which the Uruguayan company established outside Uruguay renders services to a Uruguayan tax payer. In this case, the income would be taxed. For all these reasons, Uruguayan Corporations have been used as foreign vehicles, as they enable investors to perform many activities outside Uruguay without being taxed, such as having bank accounts, investing in real estate or securities, rendering services or having commercial activities.

a. Uruguayan companies

Business companies in Uruguay are governed by Law No 16,060 of 1 November 1989, without prejudice to other regulatory and ancillary provisions.

In general, business companies developing activities in Uruguay are organised as corporations or branches of foreign companies established abroad. Other smaller companies are established in the form of LLCs. Finally, there are sole proprietorships established for different purposes, both for tax and legal reasons (eg, agricultural and farming undertakings).

1. Corporations

i. Incorporation

Corporations may be incorporated in a single act by a group of founders or through the public offering of stock. There are no restrictions on the nationality of the shareholders. Corporations may be publicly or closely held.

ii. Capital stock

Capital stock may be represented by bearer and registered shares. Shareholders are not liable for the company's debts beyond the amount of capital contributed by each shareholder. However, Law No 18,930 determines that all the owners of bearer shares must register at the Central Bank as owners of those shares. Pursuant to Law No 19,848, owners of registered shares must comply with said registry. This law also incorporates the duty to register the ultimate beneficial owners (UBO) of companies and trusts. Regarding this law, a UBO is the person who directly or indirectly possesses at least 15 per cent of the total shares of a company, or has control over the company, whether it directly or indirectly. Indirect control means a chain of companies, where the final beneficiary is at the end of the chain.

Corporations are required to have fixed authorised capital. The authorised capital of regular corporations will always be denominated in Uruguayan pesos and will be at least US$35,000. Twenty-five per cent of the authorised capital should be paid in cash or other assets. Investment stock companies and offshore banks may denominate their capital in foreign currency.

iii. Restrictions

There are no restrictions on citizenship nor domicile of shareholders and directors imposed on Uruguayan corporations.

iv. Shareholder meetings

Shareholder meetings are the major authority of the company.

Meetings should be held at the corporate principal place of business and called in advance through a resolution of the board of directors. Shareholders representing at least 20 per cent of the paid-in capital will also be authorised to call a meeting. Meetings may not be held outside Uruguay. Notice of meetings should be published in the Official Gazette and another newspaper. These formalities may be disregarded provided all shareholders are present.

Meetings may be regular or special. Regular meetings should be held at least once a year, within 180 days of the end of each fiscal year or within 120 days in the case of a publicly held corporation, to approve the board of directors' report, annual financial statements, proposal for the distribution of dividends, and appointment of directors and statutory auditors.

Special meetings may be held at any time under a special quorum in the first and second call, and are free to resolve any matters put to the vote.

The corporation should start winding-up proceedings if the company's losses from former periods reduce its capital to less than 25 per cent of its net equity, unless a special meeting of shareholders resolves a reduction of the capital stock or refund of capital through new contributions.

v. Board of directors

The board of directors manages the company under the control of shareholders.

No restrictions exist on nationality or residence of directors. The board of directors of publicly held corporations should be comprised of more than one director and should hold a meeting at least once a month. The board of directors of closely-held corporations may be comprised of one or more directors.

Directors are jointly and severally liable to the company, the company's shareholders and creditors for any violation of acts, executive orders or bylaws knowingly incurred. Directors are personally liable to tax authorities for unpaid taxes under certain circumstances.

The board of directors may resolve any matters included in the corporate purpose subject to the restrictions imposed by the law and the corporate bylaws. In certain cases, the board of directors may approve interim dividends when distributable profits are available. The meeting of shareholders should later ratify these dividends.

2. LLCs

LLCs are generally adopted by small and medium-sized companies, for instance, those established by relatives or friends. These companies are ruled by articles of organisation and an operating agreement subscribed by two to 50 members, either individuals or legal entities, including corporations. No restrictions exist on nationality or residence of members. The articles of organisation and the operating agreement should be filed with the National Registry of Commerce and published in the Official Gazette and another newspaper. After publication, the company will be legally established.

LLCs are managed by managers appointed in the articles or at a meeting of members. In this type of company, members' liability is limited to the contributed capital. However, members are liable for the company's debts to its employees for salaries; this does not include redundancy payments. Moreover, the managing members are liable for the payment of the company's income tax, if any, and for the company's tax debts in the case in which the managing members have acted negligently.

The minimum authorised capital of LLCs is fixed annually, but is of approximately US$645, as of 2018. The capital of these companies should not exceed an amount equivalent to the minimum authorised capital required to establish a corporation, and should be represented by units.

LLCs are not authorised to issue negotiable instruments. The assignment of units to third parties requires the approval of a special majority of the remaining members or a unanimous vote, depending on the number of members. In certain cases, the assignment of units may be authorised judicially.

The meeting of members of the LLC is the main authority of the company and is held once a year to approve the financial statements and performance of managers. LLCs with more than 20 members are managed as corporations, and therefore, should have a manager or a board of directors. If the

number of members is under 20, then these companies may be managed by one or more members, or by a manager appointed by members.

3. Tax free zone companies

Uruguay's tax free zone system is also a commonly used vehicle for offshore investment. Tax free zones are public or private, efficiently fenced and isolated areas within the national territory, authorised by the Executive Branch for the development of the activities explained below under tax exemptions and other benefits specified in the law.

In 2017, Uruguay's tax free zone system was subject to some substantial changes by the amendments of Law No 19,566. With this piece of legislation, Uruguay intended to comply with the requirements of the OECD.

i. Activities included

Any industrial, business or service activity may be developed. The activities listed in the laws by way of example are:

- marketing of goods (except those set forth in section 47: 'weapons, gunpowder, ammunitions and other warfare material, as well as material declared as opposing the Executive's interests'), deposit, storage, packaging, selection, classification, fractioning, assembly, disassembly, and handling or mixing of goods or raw materials of foreign or Uruguayan origin. Pursuant to section 36, goods of foreign origin entering the Uruguayan territory should be immediately carried to the respective tax free zones;
- installation and operation of manufacturing plants;
- provision of all types of services not restricted by Uruguayan law, including services provided both to non-tax free zone Uruguayan territory, other countries, and other tax free zones; however, pursuant to Law No 19,566 of 2017, for the case of services provided from tax free zones to the rest of the national territory, the beneficiary of said service must be a subject taxed by the business activities income tax (Impuesto a las Rentas de las Actividades Económicas (IRAE)); and
- other activities considered by the Executive Branch as benefiting the national economy or the economic and social integration of states.

ii. Exemptions and benefits

Practically full tax relief is granted: tax free zone users shall be exempt from all national taxes currently in force or to be imposed in the future, including those taxes the exemption of which requires a specific provision in connection with the activities to be developed therein. Pursuant to Law No 19,566 from 2017, the exemption is only for activities inside the tax free zone, provided they are developed in compliance with regulation given by the law regarding tax free zones and the authorisations needed to operate in them.

Tax free zone users charged with the net worth tax will not include the property allocated to tax free zone activities for tax assessment purposes.

VAT exemption also covers:

- movement of goods and provision of services within free trade zones, and;
- entry of goods from abroad into tax free zones.

Exemptions do not include social security contributions and pecuniary contributions established in favour of non-governmental social security entities subject to public law. If the foreign personnel working in a tax free zone state in writing that they waive the benefits of the social security system applicable in Uruguay, no obligation exists to make the corresponding contributions.

Pursuant to Law No 19,566, for goods under the protection of the intellectual property regulation, their profits will be taxed at 30 per cent of the costs needed to produce said goods.

The law also benefits users through the rates charged by the National Port Administration and public agencies providing inputs or services.

iii. Goods within tax free zones

Goods, services, commodities and raw materials of any origin entering tax free zones, are exempt from any customs duty applied to imports.

Current export regulations apply to goods entering tax free zones from the national territory. On the other hand, when goods enter the national territory from tax free zones, import regulations should be complied with.

Retail is not allowed within tax free zones. However, Law No 19,566 established an exception that allows the retail sale of products to cover the needs of personnel working inside tax free zones. This law also allows the marketing of goods and services between users of tax free zones.

iv. Activities

- Industrial, business or service activities developed within tax free zones should be specified in user agreements;
- users established in tax free zones will not be entitled to develop industrial, business and service activities in the national territory, nor should they provide services from tax free zones that will be delivered in the national territory; and
- users authorised to develop tax free zone financial intermediation activities will be authorised to develop all the activities included in their line of business, provided the recipients of these activities are third countries or foreign trade zone users.

v. Tax free zone corporations

The only specific requirement for tax free zone corporations is that the purpose of the company must authorise the company to be a tax free zone user.

This means companies must be exclusively intended for the purpose of the activities legally allowed to be developed inside tax free zones. These companies may not develop other commercial or industrial activities outside the tax free zone, with the exception of:

- the collection of debt, provided it is done by the intermediation of a third party; and
- exhibition of services in places specially stated for that purpose by the authorities. This is exclusive for users of tax free zones disadvantaged by their location.

In order to develop other activities accessory to the main activity developed within the tax free zone, companies must first obtain authorisation from authorities. Regarding this matter, the law considers public relations, billing and collection of debt as accessory activities.

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