
Uruguay

Minority Shareholder Rights

IBA Corporate and M&A Law Committee 2022

Contact

Nicolás Piaggio
Guyer & Regules, Montevideo
npiaggio@guyer.com.uy

Alejandro Miller
Guyer & Regules, Montevideo
amiller@guyer.com.uy

Contents

Page

SOURCES OF PROTECTION AND ENFORCEMENT	1
PROTECTION AGAINST DILUTION	2
RIGHTS TO APPOINT DIRECTORS	3
PROTECTION AGAINST TAKEOVER BIDS FOR THE COMPANY	4
ACTIONS AND SEEKING REMEDIES ON BEHALF OF THE COMPANY	5
RIGHTS TO PARTICIPATE IN DECISION-MAKING	6
RIGHTS WHEN A COMPANY IS EXPERIENCING FINANCIAL DIFFICULTIES	7
RIGHTS ENFORCEABLE AGAINST OTHER SHAREHOLDERS	8
SUMMARY OF RIGHTS	9

SOURCES OF PROTECTION AND ENFORCEMENT

Please provide an overview of the sources of protection for minority shareholders in your jurisdiction. Who enforces these rights?

The laws of Uruguay give certain rights and protections to minority shareholders. Many of these rights and protections are found in the Uruguayan Companies Act (Law 16.060 or the UCA), which is the primary source of law for companies in Uruguay, particularly for closed companies. Open companies are also regulated by Law 18.627 (the LMV), which has a chapter on corporate governance. Simplified stock companies (SAS) are regulated by Law for the Promotion of Entrepreneurship (Law 19.820 or the LFE).

The UCA contains several provisions regarding minority shareholders' rights and protections which are regarded as mandatory and thus may not be amended, altered, restricted, suspended or otherwise by parties or any majority ruling, and thus may only be amended by law (section 319, UCA). The UCA does not provide for any squeeze-out procedure, as such. On the other hand, the squeeze-out procedure is contemplated in the LFE, but to operate it must be expressly agreed in the SAS bylaws.

In general, these rights may be enforced directly by the shareholders affected. However, in certain cases it may be necessary to appeal to the competent courts or to the National Internal Audit Office (Auditoria Interna de la Nación), the government agency that regulates companies. The National Internal Audit Office is entitled to appeal to the competent judge:

- the suspension of the resolutions of the organs of the corporation contrary to the law, bylaws or regulations;
- the intervention of its administration in cases of serious violation of the law, the corporate contract, or of the articles of incorporation; and
- the dissolution and liquidation of the company when it is proven that a cause of a cause for dissolution is proven and the company has not promoted it.

PROTECTION AGAINST DILUTION

Are there any mechanisms in your jurisdiction to protect against dilution of shareholdings? For example, are existing shareholders granted any rights on the issue of new shares in a company?

Shareholders under the UCA are vested with a right of 'preference', meaning the right to ensure that their shareholdings are maintained relative to other shareholders in the same company when capital is increased by means of new money paid in.

According to section 326 of the UCA, each shareholder has a right of 'pre-emption' when new shares are allotted by means of capital contributions by shareholders or third parties. This right does not apply when capital is increased in a nominal way, thus by capitalising reserves of the company or re-evaluating assets. This 'preference right' means a priority right to subscribe and contribute with capital for new shares, pro rata to a shareholder's existing shareholding, when the company's paid-in capital is increased with new contributions – thus giving each shareholder the opportunity to maintain their respective shareholding in the company. Furthermore, if any shareholder does not contribute to the capital increase (decided by the majority) other shareholders may take up the right to contribute.

The aforementioned right may be limited or suspended in certain particular cases, listed under section 330 of the UCA. These cases call for the company's interest to prevail over the shareholders' interests. The UCA requires the decision to be adopted at a shareholders' meeting, that the shares (to be issued, subscribed and paid in by contributions not in money) are issued for payment of pre-existing obligations owed to the company (prior creditors, for example), or that a contribution in cash is absolutely needed to develop the company's business or to pay its debts.

This allows a reasonable balance to be struck between the company's interests and those of its shareholders. If the requirements of these exceptions are not met, any shareholder may file a claim before the court requesting the shareholders' decision to be declared null and void.

In the case of an SAS, the LFE does not provide for preference or preemptive rights for the shareholders. The protection granted by said rights in the LFE is very limited because all terms of their exercise can be suspended or modified.

If the company does not assure this right, the shareholders may initiate a judicial action either

- requesting that the shareholders' decision be declared null and void;
- requesting that the company be forced to cancel the issuance of the shares in violation of the preference right;
- if the latter is not feasible, then requesting the court to require the company and the board to pay for the losses caused – such indemnification must not be less than three times the price paid for the shares issued in violation of this preference right (Section 329, UCA).

The latter is not a penalty, but an indemnification for the damages suffered by the shareholder whose rights were not assured.

RIGHTS TO APPOINT DIRECTORS

Do minority shareholders have any special rights to appoint directors to safeguard their interests? Are other protections available to minority shareholders in this context (such as general duties of directors)?

Not in principle. According to the UCA, shareholders voting at an ordinary shareholders' meeting appoint the board of directors. This appointment, as a general rule, is made based on a simple majority basis. There are exceptions to this rule:

- if the bylaws of the company stipulate that the company may have ordinary and preferred shares, and grant such shares with the right to appoint a certain number of board members – thus granting minority shareholders such a right (section 323, UCA);
- if there are series of shares, the bylaws may provide that each series of shares shall elect one or more directors, regulating their election; or
- if a specific provision to this effect is provided for in a shareholders' agreement (section 330, UCA) between minority and majority shareholders.

Directors are subject to the following duties:

- a duty to comply with all laws and regulations including bylaws;
- a duty of care; and
- a duty of loyalty.

This requires directors to ensure that they do not act in such a way that favours any majority and any other interests, other than the interests of the company.

If a director acts wrongfully, the company may sue them; if the company does not, any shareholder that has voted in favour of filing the claim may sue the director. However, this right cannot be exercised if shareholders voting at a shareholders' meeting have approved the director's performance (not a general waiver) with a majority of 95 per cent of the shareholders' capital.

PROTECTION AGAINST TAKEOVER BIDS FOR THE COMPANY

Do minority shareholders have any protection in your jurisdiction where the company is the subject of a takeover bid?

The Uruguyan legal framework does not provide for specific provisions regarding takeover bids (OPAs). Such provisions are customarily provided for in shareholders' agreements or in bylaws, by means of inserting tag-along and/or drag-along clauses, or a first refusal clause.

ACTIONS AND SEEKING REMEDIES ON BEHALF OF THE COMPANY

Are shareholders in your jurisdiction able to bring actions and seek remedies on behalf of the company? For example, is there any mechanism for a judicial or other official representative to oversee or intervene in the management of the company?

Shareholders are entitled to file an action on behalf of the company seeking the directors' and/or administrators' responsibility, provided that:

- the company has not decided to initiate such action or, after deciding such action, the claim has not been filed within ninety days of the decision (section 394, UCA); and
- such shareholder has voted in favor of such claim or has not voted the exemption of the liability of the board (see above).

In addition, any shareholder may file a claim (not on behalf of the company but pursuing their own interests) against the board without any prior requirements.

Shareholders are also entitled to request an interim injunction from the judiciary whenever the company's management acts in a way that seriously endangers the company or neglects their essential rights. Judicial intervention will depend on the particular situation in question, and may range from the appointment of a simple external observer to the appointment of a substitute director who will temporarily displace the former director/s (section 184, UCA).

Moreover, shareholders representing at least 10 per cent of the paid-in capital have the right to request the National Audit Office (Auditoria Interna de la Nacion) perform oversight and control functions within the company (section 410, UCA).

Shareholders also have the power to request the court to declare any shareholders' meeting or board meeting null and void, and to request a court order to preemptively suspend a challenged resolution (section 368, UCA and scholarly interpretations).

RIGHTS TO PARTICIPATE IN DECISION-MAKING

To what extent do minority shareholders have rights to participate in the decision-making of companies in your jurisdiction?

In general, participation is very limited. The UCA does not allow 'golden shares' with double or triple votes or a cumulative voting system, which otherwise could enable minorities to participate in the board.

Participation can be achieved through shareholders' meetings and other rights granted to shareholders. Moreover, participation will depend on what you define as 'minority shareholders' and on the shareholding structure of the relevant company. The UCA requires certain higher quorums and majorities (other than a simple majority) in certain cases, including:

- mergers;
- transferring the domicile of the company abroad;
- increasing capital;
- transforming the company into a limited partnership; and
- winding up.

In all these cases, resolutions must be adopted by shareholders representing at least 51 per cent of the paid-in capital. Other special majority cases may be included in a company's bylaws (section 365, UCA).

The situation is slightly different in an SAS. It is established in section 17 of the LFE that the bylaws may contemplate the possibility of having shares with different voting rights. If nothing is stated about the voting rights, it is understood that each share has the right to one vote.

Right to call for meetings

The UCA establishes that shareholders representing at least 20 per cent of the paid-in capital (a company's bylaws may provide for a lower percentage) may request that the board of directors call a shareholders' meeting. If the meeting is not called by the board of directors, any director, the members of the fiscal internal commission, and the Internal Audit Office may call the meeting instead.

For an SAS, the general provision is that the meetings are called by the legal representative of the company. It could be included in the bylaws that any shareholder may call the meeting, or that shareholders representing a minimum percentage of shares may call the meeting, contrary to the UCA stipulations.

Right to be informed

As a principle of law, shareholders have the right to request information from a company. Under the UCA, shareholders who represent at least 10 per cent of the paid-in capital of a company may request that a court demands the company to allow them to review of the company's books. Such a right may only be exercised when there has been a violation of the law, the company's bylaws or where there are grounds to suspect that the board of directors has committed serious irregularities, provided that all remedies under the law or the bylaws have been exhausted.

The LFE does not regulate the right to request information in an SAS; therefore, in the absence of a provision on the subject in the bylaws, the UCA regime will be applicable.

RIGHTS WHEN A COMPANY IS EXPERIENCING FINANCIAL DIFFICULTIES

Do minority shareholders have any particular rights or protections when a company is experiencing financial difficulties? For example, are they able to demand that the company be wound up?

Minority shareholders do not have any particular rights or protections when a company is experiencing financial difficulties. They may request that the board calls a shareholders meeting to discuss the issue.

RIGHTS ENFORCEABLE AGAINST OTHER SHAREHOLDERS

Do minority shareholders have any rights or protections which are enforceable against other shareholders; for example, where the majority of shareholders act in contravention of the company's articles of association?

Where shareholders act in contravention of a company's bylaws through shareholders meetings' resolutions, such resolutions may be challenged through an impugnation procedure (Section 365, UCA).

The shareholders meetings' resolutions that may be challenged as null and void are those that violate the law, the company's bylaws, the regulations, and those that are against the company's interests or any of the shareholders' rights.

The shareholders who may challenge such resolutions are those who voted against, voted in blank or refrained from voting over those items that are challenged, and those whose decisions (even if they voted in the affirmative) were null. Shareholders may also challenge a resolution that violates a public policy provision.

SUMMARY OF RIGHTS

Below is a table providing a brief summary of the rights of minority shareholders in Uruguay, organised according to the percentage threshold at which the various protections become available.

Shareholding (per cent)	Description	Reference
20	Under the UCA, shareholders representing at least 20 per cent (the company's bylaws can stipulate a lower percentage) of the paid-in capital, may request that the board of directors call for a shareholders' meeting. They must indicate the agenda of the meeting to be called.	Section 344, UCA
	For an SAS, board meetings are called by the legal representative of the company. The bylaws may establish different mechanisms for calling shareholders' meetings.	Section 25, LPE
	Right to request a shareholders' meeting for the purpose of appointing a member of the control commission (corporate comptroller).	Section 397, UCA
10	Shareholders who represent at least 10 per cent of the paid-in capital of the company may request the court to demand a company to allow them to review of the company's books. This right may only be exercised when there has been a violation of the law, the company's bylaws or when there are grounded suspicions that the board of directors have committed serious irregularities, provided that all remedies under the law or the bylaws have been exhausted.	Section 339, UCA
5	Shareholders representing at least 5 per cent of the paid-in capital may request information from the internal control commission (if it exists) on matters within his competence. For an SAS, this may vary if other provisions are established in the bylaws.	Section 402, UCA
	Shareholders representing 5 per cent of the paid-in capital may vote against absolving liability of the board of directors or administrators, and file an action against such directors or administrator.	Section 392, UCA
One share	There are different provisions that establish the way in which dividends must be allocated or distributed: <ul style="list-style-type: none"> The company must allocate 5 per cent of the dividends to a mandatory reserve fund until the fund has reached 20 per cent of the paid-in capital. The company must distribute 20 per cent of the dividends, except when shareholders representing 75 per cent of the paid-in capital resolve not to distribute 	Sections 1, 319 and 320, UCA

	<p>dividends because it is not convenient for the company, and provided the internal corporate comptrollers inform accordingly.</p> <ul style="list-style-type: none"> • The board of directors of a company may not be paid more than 25 per cent of the total dividends of the company as remuneration. • Dividends may not be distributed if there were losses in previous fiscal years and when it is necessary to complete the mandatory reserve fund. • Dividends must be paid in cash and within 90 days of the date the resolution to distribute them was adopted. <p>The LFE does not regulate the shareholder's right to dividends in the SAS. However, several possibilities are allowed through the possibility of creating classes and series of shares with rights as provided in the bylaws. If nothing is regulated in the SAS bylaws, the provisions of the UCA would be applicable in principle.</p>	
	<p>The right to oblige a company to purchase shares (redemption of shares) is intended to mitigate the consequences of majority abuse. This right may be used by minority dissident shareholders when resolutions of utmost significance to the company are taken against their will. In these cases, the minority shareholders who were absent at a shareholders' meeting in which the resolution was adopted, or those who voted against the said resolution, are entitled to be reimbursed for the value of their shares.</p> <p>This right is granted in certain situations, including when a shareholders' meeting resolves a merger, split-off, transformation, extension of a company's term, dissolution, change of the corporate purpose, capital increase (except when fully-paid shares are issued), and a majority of shareholders resolve to continue the company's activities. The law permits a company's bylaws to provide that a capital increase would not enable the exercise of these redemption rights.</p> <p>In addition to what is established in the UCA, an SAS may establish in its bylaws the causes that grant to the shareholders the right to oblige the company to purchase its shares. If this is the case, the same liquidation process established in the UCA must be followed.</p>	<p>Section 110 et seq, UCA</p> <p>Section 41, LPE</p>
	<p>All shareholders are entitled to freely sell their shares to third parties. However, the law allows restrictions to be included in a company's bylaws to restrict share transfers, but only regarding the transfer of nominative and book entry shares.</p> <p>Law 18.930 also provides that all companies with bearer shares must inform the Central Bank of Uruguay who their bearer share owners are. Companies therefore inform the Central Bank about any transfer of bearer shares to third parties.</p>	<p>Section 305, UCA</p>

<p>Shareholders have the right to vote, except when they are holders of preferred shares with no voting rights. Nonetheless, there are certain exceptions that enable such shareholders to vote. Bylaws can also stipulate a minimum number of shares needed in order to vote, which can never exceed 10 shares. The UCA provides that, in such cases, shareholders can join others and name a common representative to act on their behalf.</p> <p>The UCA also introduced important changes with respect to voting rights. Bylaws may express the voting rights corresponding to series class of shares. The UCA expressly provides for the possibility of plural or multiple voting shares.</p>	<p>Sections 322 et seq, UCA; Section 17, LPE</p>
<p>Shareholders have the right to request certain information from the company. Shareholders have the right to obtain the list of members of the board of directors and the corporate comptrollers (if applicable), board of directors' resolutions with suggestions for the shareholders' meeting, shareholders meetings' minutes, the balance sheet, and the list of shareholders attending the meetings.</p>	<p>Section 321, UCA</p>
<p>Shareholders' meetings' resolutions may be challenged if they violate the law, the company's by-laws, the regulations, or if they are against the social interest of the company or shareholders' rights.</p> <p>The shareholders who may challenge such resolutions are those who voted against it, voted in blank or refrained from voting over the items that are challenged, and those whose decision was null even if they voted affirmative. Shareholders may also challenge a resolution that violated a public policy provision.</p>	<p>Section 365, UCA</p>
<p>Shareholders have a preferential right to buy new subscribed or issued shares according to the class of share/s they own, and also a right to buy shares that other shareholders do not want to buy (<i>derecho de acrecer</i>). The UCA does not grant a preferential right to buy new subscribed or issued shares. It is understood that this right may be totally or partially suppressed.</p>	<p>Section 326, UCA</p>
<p>The right to recess is the right to require that the company acquires your shares. This applies when shareholders resolve by majority certain issues that are considered to be of utmost significance to the company, and that affect the personal interests of each shareholder.</p> <p>In these cases, shareholders who voted against the decision, or who did not vote, or were absent at the meeting, have the right to require the company to purchase their shares at book value. This right is granted in certain circumstances, including when a shareholders' meeting resolves a merger, split-off, transformation, extension of the company's term, dissolution, or a change of the company's corporate purpose.</p>	<p>Section 363, UCA</p>