



THE WORLD BANK

# Report on the Observance of Standards and Codes (ROSC)

Corporate Governance

38590

## Corporate Governance Country Assessment

Uruguay  
September 2005

# Overview of the Corporate Governance ROSC Program

## WHAT IS CORPORATE GOVERNANCE?

Corporate governance refers to the structures and processes for the direction and control of companies. Corporate governance concerns the relationships among the management, Board of Directors, controlling shareholders, minority shareholders and other stakeholders. Good corporate governance contributes to sustainable economic development by enhancing the performance of companies and increasing their access to outside capital.

The *OECD Principles of Corporate Governance* provide the framework for the work of the World Bank Group in this area, identifying the key practical issues: the rights and equitable treatment of shareholders and other financial stakeholders, the role of non-financial stakeholders, disclosure and transparency, and the responsibilities of the Board of Directors.

## WHY IS CORPORATE GOVERNANCE IMPORTANT?

For emerging market countries, improving corporate governance can serve a number of important public policy objectives. Good corporate governance reduces emerging market vulnerability to financial crises, reinforces property rights, reduces transaction costs and the cost of capital, and leads to capital market development. Weak corporate governance frameworks reduce investor confidence, and can discourage outside investment. Also, as pension funds continue to invest more in equity markets, good corporate governance is crucial for preserving retirement savings. Over the past several years, the importance of corporate governance has been highlighted by an increasing body of academic research.

Studies have shown that good corporate governance practices have led to significant increases in economic value added (EVA) of firms, higher productivity, and lower risk of systemic financial failures for countries.

## THE CORPORATE GOVERNANCE ROSC ASSESSMENTS

Corporate governance has been adopted as one of twelve core best-practice standards by the international financial community. The World Bank is the assessor for the application of the OECD Principles of Corporate Governance. Its assessments are part of the World Bank and International Monetary Fund (IMF) program on Reports on the Observance of Standards and Codes (ROSC).

The goal of the ROSC initiative is to identify weaknesses that may contribute to a country's economic and financial vulnerability. Each Corporate Governance ROSC assessment reviews the legal and regulatory framework, as well as practices and compliance of listed firms, and assesses the framework relative to an internationally accepted benchmark.

- Corporate governance frameworks are benchmarked against the OECD Principles of Corporate Governance.
- Country participation in the assessment process, and the publication of the final report, are voluntary.
- The assessments focus on the corporate governance of companies listed on stock exchanges. At the request of policymakers, the ROSCs can also include special policy focuses on specific sectors (for example, banks, other financial institutions, or state-owned enterprises).
- The assessments are standardized and systematic, and include policy recommendations. In response, many countries have initiated legal, regulatory and institutional corporate governance reforms.
- Assessments can be updated to measure progress over time.

By the end of June 2005, 48 assessments had been completed in 40 countries around the world.

# REPORT ON THE OBSERVANCE OF STANDARDS AND CODES (ROSC)<sup>1</sup>

## Corporate governance country assessment

### URUGUAY

September 2005

#### **Executive Summary**

This report provides an assessment of Uruguay's corporate governance policy framework, enforcement and compliance practices. It highlights recent improvements in corporate governance regulation, makes policy recommendations, and provides investors with a benchmark against which to measure corporate governance in Uruguay.

#### **Achievements and Key Obstacles**

Uruguay's recent advances in financial and economic stability give rise to an adequate basis for capital markets deepening and growth. Reforms in corporate reporting and regulatory improvements in the corporate and securities sector had an initial positive impact on the availability of external finance for companies to fund their growth. However, these initial advances were jeopardized by a series of defaulting securities issuers and the 2002 financial instability episode which led to a perception of high risk and unpredictability of capital markets. A strong set of corporate governance and investor protection measures are now crucial to regain lost ground and assure further capital market development. Recent efforts to revamp the governance and efficiency of the state-owned and financial sectors will also contribute to financial and securities markets development. A young but dynamic private pension fund industry will benefit from a market offering investable securities and portfolio diversification.

#### **Next steps**

The report identifies several key next steps that focus on implementation, including:

- ❑ Improving corporate information, particularly ownership disclosure, related party transactions procedures, and financial reporting;
- ❑ Promoting effective and active boards of directors;
- ❑ Strengthening institutions, including the securities regulator, and the companies registry;
- ❑ Modernizing securities markets by strengthening intermediation and related regulations.

## **Acknowledgement**

This assessment of corporate governance in Uruguay was conducted in September 2005 by Tatiana Nenova of the Corporate Governance Department of the World Bank, as part of the Reports on Observance of Standards and Codes Program. The ROSC was based on a corporate governance template-questionnaire completed by M/s. Pittaluga and Associates. Messrs. /Mmes.: Axel van Trotsenburg, David E. Yuravlivker, Felipe Saez, Juan Gaviria, Stefan Koeberle, Carlos E. Velez, Mario Guadamillas, James E. Hanson, Giovanni Majnoni, Daniel Fernando Oks, Ronaldo Rotter, Gustavo Subiela, Pedro E. Sanchez, Mariluz Cortes, Adolfo Rouillon, Steven Seelig, Angela Marcarino Paris, Roberto Tarallo, Jamil Sopher, Henri Fortin, Svetlana Klimenko, Philip Armstrong, Alex Berg, and David Robinett provided advice and comments.

The assessment reflects technical discussions with Ministerio de Economía y Finanzas, Banco Central de Uruguay / Área Mercado de Valores y Control de AFAP, Bolsa de Valores de Montevideo, Bolsa Electrónica de Valores, Auditoría Interna de la Nación and various other government and regulatory agencies, private companies, banks, pension funds, investment funds, as well as lawyers, auditors, and other experts.

The ROSC assessment for Uruguay was cleared for publication by the Ministerio de Economía y Finanzas and by Teresa C. Barger, Director of the Corporate Governance Department, in January 2007.

# Table of Contents

<b>Market profile</b> .....	1
<b>Key Issues</b> .....	1
<i>Disclosure</i> .....	1
<i>Company oversight and the board</i> .....	2
<i>Institution building and law enforcement</i> .....	2
<i>Developing Capital Markets and Strengthening Investor Protection</i> .....	3
<b>Recommendations</b> .....	5
<b>Principle – by – Principle Review of Corporate Governance</b> .....	8
<i>Section I: Ensuring the Basis for an Effective Corporate Governance Framework</i> .....	8
<i>Section II: The Rights of Shareholders and Key Ownership Functions</i> .....	12
<i>Section III: The Equitable Treatment of Shareholders</i> .....	16
<i>Section IV: The Role of Stakeholders in Corporate Governance</i> .....	18
<i>Section V: Disclosure and Transparency</i> .....	19
<i>Section VI: The Responsibilities of the Board</i> .....	23
<b>Appendix: Governance of SOEs</b> .....	25
<b>References</b> .....	29



## Country assessment: URUGUAY

### Market profile

Uruguay's recent advances in financial and economic stability give rise to an adequate basis for capital markets deepening and growth. A strong set of corporate governance and investor protection measures are now crucial to regain lost ground and assure further capital market development, private sector progress, SOE efficiency improvements, financial sector sophistication, and an increase in the availability of external financing for business growth.

Weak corporate governance has been one of the causes of the poor functioning and instability of capital markets. A significant part of the blame for the 2002 financial crisis has been attributed to banks' insufficient internal controls and corporate and bank transparency, which permitted the occurrence of self-dealing by controlling shareholders. As a result, equity listings are few as investors are cautious, entrepreneurs are reluctant to relinquish corporate control, and stocks are considered undervalued. Bond trading has been weak since the bond defaults in 2002. Trading is focused almost exclusively on government securities. Some of the key corporate governance factors for improvements are: disclosure and transparency, financial intermediation (e.g. a strengthening of broker regulation), the accounting and audit framework, and a general awareness-raising on the advantages and costs of corporate governance and capital markets issues, including among CEOs and boards.

State-owned enterprises constitute a significant portion of the economy; though none are listed (some state-owned banks issue bonds). Private enterprises are three quarters family-owned and one quarter foreign-owned. Domestic institutions and retail investors are not a significant presence in the market, apart from pension funds (banks and insurance companies cannot hold listed equity).

### Key issues

Improving corporate information, strengthening institutions, and training for boards of directors and corporate executives are the key challenges to improving corporate governance and developing capital markets.

### Disclosure

Listed companies have good disclosure standards, and financial firms have especially strong disclosure. Two areas where further strengthening of disclosure is necessary are ownership transparency and related party transaction reporting.

Ownership disclosure is required by law in the case of banks, pension funds, investment funds and insurance companies. Some occasional ownership information for listed companies is available. There is no disclosure of ultimate corporate owners, though anecdotally those are known to the business community.

By law, related party transaction disclosures comply with international reporting standards. In the view of market participants, however, compliance and quality of reporting is insufficient, and related party risk is considered a relevant and common concern for banks when lending, as well as for AFAPs (pension funds).

*Company and financial firms disclosure is good; further improvements in ownership transparency and related party transactions reporting are needed*

*Recent improvement in accounting and audit practices*

International accounting and audit standards have been introduced recently in the country. Compliance is still uneven. Professional examinations for accountants and audit oversight are lacking. A comprehensive analysis of this issue can be found in the World Bank Accounting & Auditing ROSC 2005.

*Enforcement and public availability of disclosure has been advanced by the central bank (BCU)*

Despite BCU's significant enforcement efforts, much still remains to be done, as corporate non-financial disclosure is still perceived as uneven by market participants. In the past couple of years, BCU has forged a significant improvement in the availability of audited financials for issuers and banks, though other financial intermediaries and market operators (e.g. brokers) are lagging behind.

### **Company oversight and the board**

*Boards play a secondary role in governance*

Companies in Uruguay have one-tier boards. There is a clear dominance of the majority or controlling shareholder over the appointment of the board, the management of the company, and all relevant corporate decisions. Shareholder agreements are common, further concentrating ownership and hampering ownership disclosure. This limits outside investor protection, and discourages outside shareholders. Most boards are dominated by executives. Independent directors are rare. In some cases, there is a separation of the Chairman and CEO. There are no qualification requirements for directors, except for fit and proper provisions for financial institutions. Non-executive directors do not actively inform themselves of company matters. Awareness on director duties and liabilities is not common. There is no director training or an institute of directors.

*Too early to judge the usefulness of audit committees for banks*

Audit committees are required by the BCU in the case of banks. The committee's functions do not include oversight of the external auditor, nor any responsibilities over the control of related party transactions. Audit committees are a relatively recent requirement, and are not yet effectively functioning in all banks.

*The effectiveness of statutory auditor boards is mixed*

Issuers have an internal control body, referred to as "sindicato", which has important powers, such as the right to request a re-evaluation of corporate accounts, but is also subject to considerable liability. Other notable duties are to provide information to shareholders, and respond to their complaints. Market participants report varying opinions on the usefulness of *sindicatos*. *Sindicato* reports tend to use convoluted wording that is not easily interpreted, and are not standardized. On the other hand, some positive experiences were cited where *sindicatos* successfully defended shareholder interests. International practice shows that *sindicatos* fall short of achieving the governance and internal control objectives fulfilled by independent audit committees on the board of directors. Outside of companies registered with the BCU, *sindicatos* are rarely used.

### **Institution building and law enforcement**

*The securities markets regulator, AMV, has made important achievements, but is in need of normative and resource strengthening*

The AMV (*Área Mercado de Valores y Control de AFAP*), a division of BCU, acts as the country's securities markets regulator. It has waged a valiant fight with non-compliance, with its most important achievements in the areas of disclosure (issuing automatic suspensions to issuers for late filings), and some improvement of broker reporting (with on-site inspections and insistence on annual accounts).

AMV's enforcement powers and resources are limited for several reasons:

- The law does not explicitly allow AMV to impose fines on issuers.



- The AMV's authority and jurisdiction overlap with those of the self-regulatory stock exchanges. As a result, for example, AMV sanctions on broker / dealers (including refusal of a license) are delayed or inoperable.
- AMV's enforcement capability is also limited by its weak investigative powers, for example its limited access to issuers' books and records.
- AMV does not have the power to resolve shareholder disputes, which may be a cheaper, faster, more specialized resolution mechanism relative to the court.
- AMV suffers from a shortage of resources in terms of staff, training, and budget.

*Self-regulation in the stock exchanges may cause conflicts of interest*

There are two stock exchanges in Uruguay. The self-regulatory nature of the exchanges and their institutional arrangements create obvious conflicts of interest, not least the disincentive of stock exchanges to sanction their own owners / controllers. As a result, the quality of issuers, as well as financial intermediaries, in particular broker / dealers, is perceived as low. Off-exchange trading of listed securities is allowed by law.

*Banking supervision is strong*

The Central Bank (BCU) is an autonomous entity not subordinated to any ministry. Its governing body is selected by the executive power. BCU has made significant progress in its effectiveness since 2002, especially in the area of banking supervision, with the passage of Law 17.613 on Banks, which reformed the procedures for bank restructuring and liquidation, and expanded the role of the BCU in strengthening the regulatory and supervisory framework.

*There is no effective companies supervision body*

There is no company supervisory body, though the Companies Law provides for its existence. The National Registry of Commerce, under the Ministry of Education and Culture, is by law held to maintain a database of company bylaws and basic information. In practice, the body cannot offer many more company details outside of name and address, and does not have the resources to monitor quality of filing or sanction non-compliant companies. There are plans for computerization of the information, and for a wider set of collected data.

Larger open and closed corporations file bylaws and annual accounts with the National Audit Office (AIN), an autonomous body under the executive branch of government. The recent passage of the regulation (in force starting with the 2001 annual reports) makes for an incomplete collection of such documentation – market participants estimate about 40% compliance with filings. AIN has enforcement powers over corporations (e.g. vis-à-vis the bylaws, and the AGM procedures), but its powers vis-à-vis the collection and monitoring of company annual accounts are far from sufficient. In this respect, market participants consider that AIN does not currently perform an effective monitoring and enforcement role.

*Several strategies are available for dispute resolution in the securities and financial area*

Avenues for resolving shareholder disputes are comparable to other countries in the region. Court decisions are unpredictable due to the limited judicial training on complex corporate and financial issues. The use of arbitration court speeds up dispute resolution, but is expensive. The ongoing experiment of a specialized bankruptcy court will provide useful experience in deciding whether the creation of a specialized commercial court is warranted.

### **Developing Capital Markets and Strengthening Investor Protection**

*Most basic shareholder*

Fundamental decisions such as modification of the bylaws, mergers, and changes

<i>rights in place</i>	in capital are approved at extraordinary general shareholder meetings (EGMs). Sales of major corporate assets (short of mergers) are not AGM-approved, as international best practice suggests, but are instead relegated to the board.
<i>AGM regulations are adequate, though further strengthening is possible</i>	The 20% threshold for shareholders in order to call an EGM is high and may cause undue hardship in voicing shareholder opinions. Sending background AGM documents 10 days prior to the AGM may not give enough time to investors to assess the issues and vote in a responsible and informed manner. Faster and keener information provision by companies to shareholders and investors upon request would also help. There is no mechanism such as cumulative voting or proportional representation that allows minority shareholders to have a voice and representation in the governance of the corporation.
<i>Related party transactions approval procedures do not provide sufficient investor protection</i>	In the absence of specialized committees, boards are ill equipped to effectively control conflicts of interest and assure that such deals occur at arms' length. It is possible for even very large deals to never be sanctioned by shareholders. For the purposes of approval of related deals, the definition of a related party is too narrow -- it does not include management or controlling owners. Market participants report little compliance with approval procedures in the boardrooms and AGMs.
<i>The system of clearing and settlement is below world standards</i>	Shares are typically bearer, which can create ownership security and registration problems, especially in the absence of a central depository, and in the context of a cumbersome share registration procedure. There appears to be some reluctance to provide information on investor identity. In the longer term, a modern system for registration, clearance and settlement of securities is a necessary precondition for the functioning of capital markets.
<i>Weak corporate governance regulations on trust funds, investment funds, and brokers</i>	Detailed regulations have been issued on AFAPs, but not on trust funds, investment funds and especially brokers, who remain in need of further and tighter regulations. Certain regulations curtail general conflicts in securities markets, such as the ban on pension funds to manage bank funds directly, as well as the ban on banks and insurance companies to invest in equity. However, there are insufficient conflict of interest provisions for funds, asset managers, analysts, and brokers; e.g. the law does not regulate how banks should carry out brokerage or asset management activities. There is no rule on disclosure of voting policies by institutional investors. Market participants note the negative effect of the lack of broker regulation, supervision and reporting, in terms of the confidence in the market by potential investors. By law, broker transactions are reported on a monthly basis, on paper, to the respective stock exchange only. Such limited observability of broker activity also prevents insider trading control, as well as control over brokers "churning" deals.
<i>Insider trading and tender offers will require future regulation</i>	Some areas of relevance to sophisticated capital markets remain under-regulated, such as insider trading and tender offers. Those will become important in the longer term (plans for regulating the latter issue exists).
<i>Awareness of corporate social responsibility and stakeholder issues can be further promoted</i>	Protections of employees and the environment exist in the general body of law, but further efforts are warranted on raising awareness of corporate social responsibility and stakeholder issues among companies. Creditors enjoy protections under the law; however, judicial proceedings can be protracted which limits their effectiveness.

## Recommendations

The key areas for future development are (1) creation of a strong securities regulator as a basis for a dynamic capital market; (2) continued improvement of the disclosure regime for financial market participants; (3) amendment of the Corporate Law 16.060 to enhance company access to finance and protect shareholders; (4) improvement of the functioning of corporate boards; (5) strengthening the company registration and reporting systems; and (6) re-vamping the securities framework to spur capital markets development.

### *Create a strong securities regulator as a basis for a dynamic capital market*

Internationally, capital market laws tend to endow the regulator with stronger powers than is the case in Uruguay. A dynamic capital market critically depends on the confidence of both investors and issuers that their rights will be protected, rules observed, and the market will function under strong supervision. Internationally, most countries have a separation between the functions of the Central Bank and the securities regulator. While current arrangements seem adequate, this option should be considered by policymakers for Uruguay in the long term. Provided capital market development is a strategic objective for the Uruguayan economy, a strong market regulator is indispensable to the market.

#### *Boost AMV enforcement powers*

Strengthening AMV powers would require the amendment of Ley N°16.749. At a minimum, AMV should be able to fine issuers, investigate and access company documentation, and de-license brokers as a punitive measure.

#### *Improve AMV resources and training*

AMV requires better resources and further staff training, in order to deliver effective enforcement, to stay ahead of the market, and respond to new developments and complex issues. An IOSCO assessment, planned by BCU, should spur and further define this process. These measures will raise AMV's profile, so its efforts could achieve their full potential enforcement effect, and promote market stabilization.

### *Continue improving the disclosure regime for financial market participants*

#### *Improve ownership disclosure*

Ownership disclosure for issuers, financial intermediaries, and possibly also economically important entities, should be available up to the ultimate owner level, including better enforcement of disclosure of shareholder agreements. Improvements in disclosure would require amendments in the BCU Norms.

#### *Improve non-financial reporting, timely availability of disclosures, and ease of access*

- ❑ Mandate the presence of the external auditor at AGMs, and his availability to answer shareholder questions (BCU norms and *Decreto* 253/001).
- ❑ Mandate a discussion of company objectives, and a management discussion in the annual reports of issuers (BCU norms).
- ❑ Assure quality financial reporting of issuers, financial entities, and market operators, which are of particular importance to market confidence. AMV should make available the financial statements of intermediaries and operators on its website. It should monitor the filings of reporting entities for quality or accuracy of the information, and penalize non-compliance (BCU norms).
- ❑ Consider mandating a full audit for financials for economically significant companies, as well as for consolidated statements (*Decreto* 253/001).
- ❑ Allow companies to publish their annual report online as an alternative to publication in the national press (Ley N°16.060 §416).

***Amend Ley de Sociedades Comerciales N°16.060 to enhance listed and non-listed company access to finance and protect shareholders***

*Strengthen related party rules*

Regulation, approvals and disclosure of related party transactions (RPTs) are in need of further scrutiny and enforcement, as RPTs are reported to be a major market concern. Best practice suggests expanding the definition of a related party to controlling owners and executive management, as well as their families. Related loans for listed and non-listed non-financial companies should be banned.

*Regulate approvals of large asset sales*

Large asset sale procedures do not currently meet international standards or provide sufficient shareholder protection. Decisions on such transactions will benefit from more transparency of the evaluation and approval process, as well as AGM approval of larger (e.g. 20%) deals for listed and non-listed firms alike.

*Strengthen shareholder and AGM rights, for listed and unlisted firms*

- Introduce proportional representation rules for election of directors to protect the rights of minority shareholders.
- Lower the threshold of 20% needed to call an AGM (best practice is 5 or 10%).
- Increase the AGM notice period of 10 days (best practice is 30 days).
- Facilitate the procedure for forcing items on the AGM agenda; eliminate the option of relegating the consideration of such items to a separate meeting.
- Mandate the provision of more detailed background AGM information, such as the CVs of newly nominated directors, to improve AGM decision-making.
- Shareholder registration prior to the AGMs, as well as the mandatory presence of shareholders or their representative in person at the AGM, may in the longer term prove an undue barrier to investor participation in governance.

***Improve the functioning of boards***

*Develop board guidelines and training materials*

Capacitation and training for directors and executive management would raise awareness for corporate governance issues and encourage more active boards. Directors find themselves under heavy liability, and familiarity with their duties and responsibilities is of paramount importance. Such efforts are typically channeled through the creation of a self-sustaining Institutes of Directors, and Codes of Corporate Governance, promoted and supported by international aid organizations, NGOs, and universities. Rather than presented as “problem solving”, such efforts are more effectively pitched as “value-drivers”, and coached into an overall framework of raising company profile and prestige, and improving access to external financing and investment opportunities. Such initiatives are especially important to the dynamic development of unlisted firms.

***Strengthen the company registration and reporting system***

*Computerize and publicize company records at RNC*

For all business entities, including non-listed companies: The National Registry of Companies (RNC) should continue with its plans for computerization of company registration records. The registration information should be made easily accessible per best practice. Strengthen RNC’s effective enforcement powers (e.g., the power to de-register companies with dormant /inactive filing status).

*Improve AIN monitoring and enforcement powers*

For issuers and large non-listed companies: Provide AIN with effective enforcement powers over company annual accounts, to monitor the quality of filed financial information and sanction non-compliance with filing requirements. Adequate enforcement and monitoring powers include punitive measures for delinquent filing and on- and off-site inspections. Coordination among the agencies responsible for corporate information collection is crucial to the

successful provision of high quality and easily accessible information. Areas of possible action include unified or linked online databases, and exchange of information among different supervision agencies.

### ***Re-vamp the securities framework to spur capital market development***

The government should carefully outline a capital market development strategy, in consultation with stakeholders (including stock exchanges). Capital markets need a development push in order to restore confidence in the market for investors, and erase painful memories of 2002. Efforts are also needed on awareness-raising on capital markets issues. Dynamic capital markets would spur economic growth, attract domestic and foreign investment, furnish companies with additional access to capital, reward improved corporate governance, and provide AFAPs with diversification options for their portfolios. Such initiatives would have a higher chance of success if they go hand in hand with increased investor protection. Such reforms will also boost institutional investment.

Elements of the strategy could include:

*Update rules on brokers, funds and other key regulatory areas*

□ In the short term, it is of high priority to issue detailed regulations on brokers, including tighter supervision and reporting would boost confidence in the market by potential investors. Remaining conflicts of interest in securities markets need to be addressed, especially those involving funds, asset managers, analysts, and brokers; e.g. the law does not regulate how banks should carry out brokerage or asset management activities. Address other immediate regulatory concerns via securities regulator norms, as follows. Create a solid regulatory framework for investment funds. Strengthen trust fund regulations (e.g. clarify rules on bankruptcy of fideicomisos). Continue work on the regulations on custody and settlement. Forbid off-exchange trading of securities registered on the stock exchanges. In the longer term, institutional investors should be mandated to disclose their voting policies.

*Enhance takeovers and insider trading laws*

□ Enhance tender offer and delisting regulations. Regulate insider trading, including blackout periods, the definition of an insider, disclosure, and sufficient fines. Eliminate current penalties on companies, for the transgression of their insiders, e.g. insider trading penalties include suspension or cancellation of the issuer rights to make public offerings.

*Modernize the stock exchanges*

□ Policymakers should consider the conflicts of interest created by the self-regulatory status of stock exchanges, which may lead to under-penalizing of issuers and market operators as the exchange is reluctant to lose business or antagonize its controlling entities. The cost of such conflicts should be carefully weighed against the disadvantages of placing the exchanges under the regulation of a securities regulator. Cooperation and coordination between the exchanges should be promoted - firms voice a complaint on duplication costs, dual listings and parallel regulations. Technical assistance to the stock exchanges should be considered, to help with training, modernization, and minimizing duplication. An overhaul of depositary, clearing and settlement services and the eventual dematerialization of securities is needed.



## Principle – by – Principle Review of Corporate Governance

This section assesses Uruguay's compliance with each of the OECD Principles of Corporate Governance. Policy recommendations may be offered if a Principle is less than fully observed. **Observed** means that all essential criteria are met without significant deficiencies. **Largely observed** means only minor shortcomings are observed, which do not raise questions about the authorities' ability and intent to achieve full observance in the short term. **Partially observed** means that while the legal and regulatory framework complies with the Principle, practices and enforcement diverge. **Materially not observed** means that, despite progress, shortcomings are sufficient to raise doubts about the authorities' ability to achieve observance. **Not observed** means no substantive progress toward observance has been achieved.

### SECTION I. ENSURING THE BASIS FOR AN EFFECTIVE CORPORATE GOVERNANCE FRAMEWORK

The corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities.

**Principle IA: The corporate governance framework should be developed with a view to its impact on overall economic performance, market integrity and the incentives it creates for market participants and the promotion of transparent and efficient markets.**

**Assessment: Partially observed**

**Capital markets.** There are two stock exchanges in Uruguay – Montevideo's Stock Exchange (BVM) and the Electronic Stock Exchange (BEVSA). Equity market capitalization at the end of 2004 was USD305 million (2% of GDP), and liquidity was low (turnover ratio of 0.2%).<sup>2</sup> Equity transactions accounted for 0.5% of transactions volume. Fourteen companies have registered equity securities at the central bank (BCU), of which 3 are closely held companies whose shares do not trade on exchange. The free float is difficult to compute accurately. 27 companies offer bonds, and 28 banks offer certificates of deposit. There has been one equity offering since 2001, and three new companies listed their bonds on the market. In contrast, there have been 5 delisting in the equity market in the same period, and 23 companies have delisted their bonds.<sup>3</sup> Listed securities benefit from a capital tax exemption (even cash in the bank is taxed partially). There are about 70 active broker /dealers per the Bolsa de Montevideo lists. Of the four rating agencies operating in the country, Fitch and Moody's focus on equity.

Country Name	GDP per capita 2004	Market Cap % GDP 2004	Market Cap (current \$US mill) 2004	Stocks traded, turnover ratio (%), 2004	Listed Comp. 2004
Uruguay	3,950	2.1	305	0.2	11
Argentina	3,720	32.1	46,432	17.8	104
Brazil	3,090	70.3	330,347	34.8	357
Chile	4,910	130.2	117,065	12.1	239

Source: World Bank WDI Indicators online (May 2005), Country stock exchange websites

A relatively active market of fixed income securities existed before 2002, when exchange rate instability and a massive default on payments reduced the value of outstanding bond issues from \$505 million to \$185 million and domestic credit to the private sector from 67% to 30%.<sup>4</sup> Trust funds backed by guarantee (created by the *Ley de Fideicomisos* 2003) are hoped to renew market growth.

Some of the areas in need of attention include investor protection, disclosure and transparency, broker / dealer regulation and monitoring, and company reporting. The lack of investor protection safeguards, underdeveloped or non-existent analyst industry, as well as a lack of investor understanding of the potential risks involved, continue to dissuade public demand for securities investments. There may be a perception of regulatory weakness dissuading market participants as well. Past bond defaults have led investors to shy away from capital markets. One issue is the negative reputation of raising money in capital markets, as the bank lending market is perceived as relatively stricter and more efficient. Nevertheless, capital markets finance could find its niche in view of the lack of long term bank credit, the strict collateral requirements by banks, as well as the need of pension funds for diversification of their portfolios.<sup>5</sup> A significant amount of Uruguayan funds that left the country post-2002 could also be attracted by high yields and market development, as could foreign investments.

Corporate governance practices are not wide-spread in the country, with the possible exceptions of a couple of companies and the practices adopted by multinational banks imposed by the mother company.

**Ownership framework.** Three quarters of private enterprises are family controlled and one quarter foreign-controlled, by rough estimates (ownership information is unavailable). Domestic institutional investors and retail investors are not a significant presence in the market, and estimates put their shares at about 1% and 4% respectively.<sup>6</sup> Pension funds are potentially the single sizeable market participants, but so far they have not invested significantly in listed companies.

Pyramid structures and cross shareholdings are not frequent, and in the case of some financial institutions, cross-shareholdings are forbidden. SOEs (*Entes Autónomos y Servicios Descentralizados*), constitute a non-negligible portion of the economy, though none are listed (some SOE banks issue bonds).

**Institutional Investors.** There are 15 active banks with total assets of \$12 billion, and 15 insurance companies with total assets of \$589 million.<sup>7</sup> Insurance companies, banks, cooperative financial institutions and financial houses cannot hold shares in the equity market. Banks can however invest in corporate bonds, as well as hold securities via other financial vehicles within the bank group. There are currently very few functioning investment funds, mostly invested in foreign securities, and none investing in listed equity (in 2002, investment funds mushroomed, but failed to achieve profitability).<sup>8</sup> Trust funds are organized around some utilities (e.g. UTE), and some financial trust funds (*fideicomisos financieros*) have sprung up as well.<sup>9</sup> There are 4 private pension funds - *Administradoras de Fondos de Ahorro Previsional* (AFAPs), created by Law # 16.713. AFAPs are allowed to invest up to 25% of their portfolio in listed securities, cannot invest in foreign securities, and can hold at most 10% of any given company's shares.<sup>10</sup> AFAPs, whose management companies are owned by banks, are not active institutional investors, and the first AFAP investment in equity occurred only recently. Only about 3% of the pension funds portfolio of about \$2 billion is invested in corporate equity and debt securities.<sup>11</sup>

**Principle IB. The legal and regulatory requirements that affect corporate governance practices in a jurisdiction should be consistent with the rule of law, transparent and enforceable.**

**Assessment: Partially observed**

**Corporate legal framework.** Uruguay is a civil law country. The main statute that governs companies is the Companies Law, *Ley de Sociedades Comerciales* # 16,060 of 1989 (LUSC).<sup>12</sup>

Other laws in reform include the Law on Banking Secrecy, the Bankruptcy Law, a new tender offers regulation (OPAs), the tax regulations, the Competition Law, and the *Ley de Fuero Sindical* (the regulation on firing employees).

**Company types.** Uruguayan law provides for limited liability companies (*sociedades de responsabilidad limitada*), and open and closed corporations (*sociedades anónimas*). Limited liability companies have a maximum capital of \$50,000, with limited transferability of shares. Corporations have a minimum capital of \$50,000. Only open corporations can issue securities to the public. There are 129,074 micro-enterprises with up to 5 employees, and 11,663 small enterprises with up to 20 employees, 2,298 medium enterprises with 20-100 employees, and 427 large firms with more than 100 employees.<sup>13</sup> There are no statistics on the number of companies by type. There are about 25 significant SOEs (see Appendix).<sup>14</sup>

**Securities law framework.** Companies must register with BCU in order to issue securities. Companies registered with BCU are regulated by the Securities Market Act - *Ley de Mercado de Valores* # 16,749 of 1996 (LMV) and BCU Norms.<sup>15</sup>

**Listing rules.** Listed firms are governed by the rules of the two stock exchanges (BVM and BEVSA), which are substantially equivalent to the BCU registration rules, and are BCU-approved.<sup>16</sup> At registration with BCU, companies must file a prospectus, bylaws, a list of members of the Board of Directors, a list of the main shareholders, and the date of closure of the financial year.<sup>17</sup> Continuing disclosure obligations include annual audited statements, Board of Directors and statutory auditor board reports, AGM minutes, annual risk rating update, mid-year financial statements reviewed by an auditor, prospectus update, material facts, information on fulfilment of collateral obligations by the issuer and the securities position.

**Codes.** Corporate governance is in its infancy in Uruguay. There is no institute of corporate governance, or a code. A UNDP project to develop a Code was carried out in 2002, with the cooperation of Eduardo Villegas, a corporate governance code expert from Argentina, but the draft was never implemented by the regulator. Other work on corporate governance is done by, for example, the first venture capital fund in Uruguay, Prosperitas, which is in the process of developing a manual for the use of their client companies, and is cooperating with international organizations on the possibility of initiating an education vehicle for corporate managers and directors.

For banks, plans for further corporate governance requirements include regulations on the external auditor role, the role of the board, as well as a regulation directing banks to disclose their corporate governance policies.<sup>18</sup>

**Principle IC. The division of responsibilities among different authorities in a jurisdiction should be clearly articulated and ensure that the public interest is served.**

**Assessment: Materially not observed**

**Securities regulator.** The AMV (*Área Mercado de Valores y Control de AFAP*), a division of BCU, is the capital markets regulator, as well as the private pension funds supervisor. Its mission statement is to foster the transparency, competitiveness and self-regulation of securities markets and as well as the adequate information and disclosure for investors (LMV §20). The BCU board hires and can remove the AMV senior manager (see BCU governance details below).<sup>19</sup> The AMV makes recommendations for major decisions to the BCU board, including on drafting all relevant regulations, and certain issues are delegated directly to the AMV, such as the approval of newly registered issuers. New regulations have not been publicly consulted before adoption (as opposed to major laws such as the LMV, which were debated in public), but efforts in this respect are ongoing, and the regulations are posted on the BCU website.



The AMV supervises the stock exchanges, broker / dealers, issuers, securities registration institutions, custodians, and risk rating agencies. AMV can impose minimum regulatory standards, and issue rules or particular instructions directed to the stock exchanges. Further, it can issue warnings; suspend or cancel the trading of securities and registration of an issuer; impose fines as well as suspend or cancel the activities of stock exchanges, intermediaries, registration and custody institutions, and risk rating agencies (LMV §25). AMV does not currently have a sufficiently high profile in the financial community such that its enforcement efforts and improvements are fully recognized and effective.

The AMV has imposed fines on the stock exchanges, as well as issued warnings and suspension of trading on issuers, and warnings on brokers. AMV has initiated one criminal case (against a broker / dealer), and no civil cases, in the past 3 years. Appeal is via the general procedure available for state body decisions, at the *Tribunal de lo Contencioso Administrativo*.<sup>20</sup> The challenged decisions (2-3 cases in the past two years) tend to be upheld by the Tribunal. Appeal does not suspend enforcement, and takes 2-4 years. AMV has taken to imposing automatic suspensions (since it cannot impose fines on issuers by law), especially in the case of disclosure failure, and there have been 5 suspensions in the past year. There have been 9 cases of late disclosure by financial intermediaries, where a fine of about \$60/day was imposed. AMV enforcement statistics (excluding automatic sanctions) are published in the Trimestral BCU report on AMV, on the BCU website.

**Banking regulator.** BCU is an autonomous entity not subordinated to any ministry. The executive branch of the government can observe and suspend BCU decisions.<sup>21</sup> BCU's governing body, a three member board, is not appointed for a definite term, but instead selected with each change in government by the party in power with the approval of Parliament. The BCU board can be removed by the President for cause. In addition to the AMV, BCU has two departments supervising banks / financial intermediaries (*SIIF – Superintendencia de Instituciones de Intermediación Financiera*), and private insurance firms (*SSR – Superintendencia de Seguros y Reaseguros*).

BCU has made significant progress in its effectiveness and transparency since 2002, especially in the area of banking supervision, with the passage of law 17.613 on banks, which reformed the procedures for bank restructuring and liquidation, and expanded the role of the BCU (especially SIIF) in strengthening regulation and supervision. BCU has worked on increasing the quality of audit services as well as the compliance with audit and accounting requirements. One of the most effective instruments used in this regard is the BCU rule that banks should require audited financials as one of the conditions of lending. More efforts are needed in this area, to achieve a high level of effective enforcement over the entire banking sector. Eliminating weaknesses in enforcement of lending information requirements equally across banks will avoid borrower arbitrage among banks on the basis of their leniency in complying with information requirements. Continued training and resource upgrades would enable BCU's departments (AMV, SIIF, and SSR) to stay ahead of the market in responding to new developments, especially complex issues outside of the banking sector.

**Stock exchanges.** There are two self-regulating stock exchanges in Uruguay - Montevideo's Stock Exchange (BVM) and the Electronic Stock Exchange (BEVSA). BVM operates as a non-profit civil association, and its members are brokers. It is governed by a 7-member Comisión Directiva, elected bi-annually through staggered elections. BEVSA is a corporation with registered shares, owned by 27 shareholders, representing mainly banks. BEVSA has three markets: the securities market; the interbank lending market; and the currency exchange market. BEVSA is governed by a bi-annually elected 7-member board of directors, elected by the BEVSA shareholders (LMV §13). BEVSA also has a 13-member fiscal commission, and both the board and the commission hold monthly meetings.

The stock exchanges, as self-regulatory entities, can impose warnings, fines, suspension and cancellation of trading.<sup>22</sup> In various cases, the stock exchanges act as *agentes fiduciarios* of debt issues. There are obvious conflicts of interest in this set of arrangements, not least the disincentive of stock exchanges to sanction their own owners / controllers. BEVSA has suspended two issuers and cancelled the trading of one in the past 3 years. BVM has currently 4 issuers on suspension. Most of those are in liquidation or in default. There seem to have been no disciplinary sanctions. BEVSA uses electronic monitoring of trading. Surveillance is manual, and is performed daily at trading close, by a staff of two.<sup>23</sup> In all, BEVSA uses a staff of 3 for market observation, and a further two for controlling issuer requirements. There is no electronic monitoring on BVM, nor any effectively practicing enforcement department. There is also a perceived weakness in respect of off-exchange trading of listed securities. AMV cannot fill in this gap via direct surveillance due to regulatory limitations, instead enforcing stock exchange surveillance via penalties on the exchanges themselves.

Merging the two stock exchanges has not been envisioned. Arguments for cost-saving that could be achieved through a merger are countered by the premise that the exchanges are seen to function in clearly separated markets (BVM more in commercial paper and equity, and BEVSA with a reach to wider capital markets). The two exchanges are cooperating in certain areas, such as capital markets development (e.g. coining plans for a futures market), as well as awareness raising.

**Central depository.** There is no Central Depository. BVM hires a system for custody, compensation and clearing with a bank (currently the contract is held by ABN AMRO Bank, to be taken over in November 2005 by Bank of New York for international securities, BCU for government (dematerialized) paper, and Nuevo Banco Comercial for corporate (physical) securities. BEVSA does not use a deposit system, and the trades are settled and cleared by the participating banks privately. Such arrangements are seen as appropriate, given the excessive cost of a Central Depository, against the very limited needs in practice of the corporate securities market at this stage of development.

**Company Registrar.** There is no company superintendency, though LUSC provides for its existence. The National Registry of Commerce (*Registro Nacional de Comercio – RNC*), under the Ministry of Education and Culture, registers companies as

well as by law is held to maintain a database of their bylaws and basic information (though in practice the bylaws are kept with the notary public). Other company information, such as the list of board of directors and legal representatives, increases of capital, shareholder agreements, and for open corporations – AGM minutes and a list of attending shareholders, is currently not filed with RNC and made public, though a provision to this effect has been very recently legislated and is expected to go into effect soon.<sup>24</sup> RNC offers to the public its records, essentially consisting of the company name and address, for a nominal fee (\$15 for up to 10 company names). There are plans (subject to securing financing) to computerize the 1995-2005 information. RNC has no monitoring or enforcement capacity to assure the quality, validity, timeliness, or availability of the information. There is no estimate of the number of companies in operation, because records are manual and pre-1960 ones – inaccessible. Per RNC estimates 4500 registrations (including sole proprietorships) occur annually on average. RNC is planning to cooperate with AIN to improve enforcement.

**Auditoría Interna de la Nación (AIN).** AIN is, via-a-vis private firms, a control organ of their bylaws and modifications thereto.<sup>25</sup> For economically significant entities, AIN also serves as a register keeping on file a wide variety of information, including data on basic corporate organs, bylaws, changes in the capital stock, transformations, mergers, early dissolutions, and liquidation. The information is not public. Open corporations in addition file the notice of appointment and termination of board of directors and *síndicos*; AGM notice (AIN tends to attend AGMs to assure procedural compliance with the law); AGM minutes and background materials, the stock ledger; (consolidated) financial statements and proof of their publication, and dividend declarations, within 30 days after the AGM. These further filings are also not destined for public viewing, short of obtaining a court order.<sup>26</sup> Companies of economic significance<sup>27</sup> in addition file periodic (audited) financial information, which is accessible to the public for a \$10 fee per company (including historical financials). The recent passage of the regulation (in force starting with the 2001 annual reports) makes for an incomplete collection of reports. AIN has the powers to monitor the legality of the bylaws as well as the subscription of the minimum capital, but has never issued a fine due to its resource constraints incommensurate with an all-round enforcement and inspection effort. The fines by law tend to involve small amounts (around \$40) and cannot exceed \$5,000; and the sole additional punishment is a ban on the distribution corporate dividends.<sup>28</sup> In case of law violations, AIN can file in court for suspension of the corporate bodies, suit against directors, or liquidation. AIN is also assigned some dispute resolution powers as far as the AGM procedure is concerned, which can be invoked by shareholders commanding at least 10% of capital (LUSC §410, 411). AIN's powers to sanction in compliance with Decree 253/001 on filing of annual accounts were never regulated. As a result, AIN has no effective enforcement powers with respect to the timely filing and quality of annual accounts. In the view of market participants, AIN does not currently perform an effective monitoring and enforcement role, and is not usually resorted to by shareholders.

**Overlap of regulatory functions.** There is some duplication of effort and overlap of functions among the main regulatory authorities, namely the exchanges, AMV (BCU), and AIN, with little cooperation and information exchange. The institutions often require the same documentation, which companies file separately, as there is no mechanism of information-sharing among the authorities. The self-regulatory status of the exchanges also causes significant overlap of functions with those of the securities regulator. BCU's functions vis-à-vis banks are also in part duplicated by the stock market institutions, for the banks issuing securities. The lack of clear and articulated division of responsibilities among the different authorities causes weaker enforcement results, as well as higher costs of regulation.

**Principle ID. Supervisory, regulatory and enforcement authorities should have the authority, integrity and resources to fulfill their duties in a professional and objective manner. Moreover, their rulings should be timely, transparent and fully explained.**

**Assessment: Materially not observed**

**Authority, integrity and resources of regulators.** The BCU is funded through budget allocation. Revenues from fees or fines go to the BCU general income, which is in turn allocated among the departments, including AMV. The AMV has 22 staff, and its budget was publicly unavailable. Remuneration to BCU staff, including AMV is relatively high compared to the public sector, but not as high as the private sector. Staff training has recently featured prominently on the BCU agenda.

AMV's powers and resources currently limit effective enforcement, for the following reasons. First, whereas some AMV sanction powers are explicitly granted by the LMV (see IC), the law does not explicitly allow AMV to impose fines. In practice the issue is somewhat mitigated by automatic AMV fines for non-disclosure, authorized by the BCU norms. Another concern is the limitations posed by the self-regulating nature of the stock exchanges on AMV's punitive powers towards stock exchange regulated entities. Specifically, AMV penalties on issuers and market operators (broker / dealers) must wait for a stock exchange sanction (if any), before they could be imposed (LMV §24). By law, AMV may give specific instructions to the stock exchanges to impose penalties within the latter's powers (LMV §22). AMV's control and regulation over AFAPs is much more effective than its authority over broker/dealers, for example, mainly due to the strict and clearly established regulatory framework and supervision role of AMV in the case of AFAPs. AMV exercises daily monitoring of AFAP operations, and has access to all AFAP transactions.

A third concern in terms of AMV normative powers is its investigative ability. AMV does not have direct access to issuers' books and records, save by court order. It would, in practice have no way of enforcing a subpoena of documents or witnesses. Finally, AMV does not have the power to resolve shareholder disputes, which would be a cheaper, faster and more specialized resolution mechanism relative to the court. A fourth factor contributing to the weak enforcement framework

of AMV is the lack of resources. For example, it currently has a staff of 4 inspectors. According to AMV's own estimates, easily three times the staff would be needed to fully cope with the AMV regulatory and enforcement functions.

**Court.** Corporate conflicts are heard by civil courts, and appealed at two levels – the Court of Appeals and the Supreme Court. There is no specialised commercial court. A recently created specialized court for bankruptcy issues remains to be proven effective in practice. Judicial proceedings are relatively slow and expensive for shareholders and are used to obtain leverage in order to reach extrajudicial settlement. Commercial litigation can take between 3 and 4 years, including appeals.<sup>29</sup> In the opinion of market participants, the unpredictability of court decisions, especially in more complex commercial and financial cases is cited as the most damaging characteristic of the litigation process. Efforts on judge training have been in the government plans, and some have been carried out so far by the Association of Judges, in cooperation with some universities, but they do not have a mandatory component, and have been occurring on a sporadic basis. International clients tend to have an arbitration clause in response to these issues; however, arbitration is expensive to most local companies. Commercial arbitration is offered by the *Centro de Conciliación*, which also has ambitions to acquire regional significance. Dispute resolution is fast – within 120 days, but expensive. Arbitration is carried out by three arbitrageurs specialized in complex commercial and financial issues, usually with a considerable education and professional background in business. Since only some foreign companies use arbitration clauses in their contracts, cases are actually rare – in the past three years, there have been around 30 cases, none in the area of capital markets.

Country (region)	Number of court procedures to enforce a contract	Time (days)	Cost (% of debt)
Uruguay	39	620	25.8
Latin America & Caribbean	35.5	461.3	23.3
OECD: High income	19.5	225.7	10.6

Source: World Bank Doing Business Indicators online (2006).

## SECTION II: THE RIGHTS OF SHAREHOLDERS AND KEY OWNERSHIP FUNCTIONS

**The corporate governance framework should protect and facilitate the exercise of shareholders' rights.**

**Principle IIA: The corporate governance framework should protect shareholders' rights. Basic shareholder rights include the right to:**

**Assessment: Partially observed**

(1) Secure methods of ownership registration	<p>Shares can be bearer or registered, but registered shares are rare in listed companies. Shares must be registered for certain industries, and registration is cumbersome.<sup>30</sup> There appears to be a general reluctance to provide information on the identity of the owners behind the share trades. Legal evidence of share ownership for bearer shares is the title certificate, and for registered shares – the endorsement of title and registration in the Stock Ledger. In practice, custodian banks tend to store the physical certificates.</p> <p>There is no Central Depository. First steps in regulating <i>Cajas de Valores</i>, who perform depository, custody, registration, clearing and settlement functions were made in Nov 2005 (BCU Circular 1941). The concept of nominee ownership is not recognized. Banks who hold shares in custody do so in the name of the real owner, since they are banned by law from holding shares in their own name (Law 15.322 §18). The lack of a modern record-keeping system is likely to present a major obstacle to market growth.</p>
(2) Convey or transfer shares	<p>Custody banks are used instead of a central clearance / settlement institution. Prior to the transaction, BMV requires the deposit of the securities and the payment. Securities are deposited in the name of the stock exchange, and the brokers who hold the securities for their clients are netted out manually each day at close in the BVM books. The trades on BEVSA are settled and cleared by the parties privately. The SIOPEL transactional system, used at BEVSA, only allows settling a transaction as long as the counterparty has enough credit to cover the credit risk and price risk. The speed of transaction settlement is uneven.</p> <p>Listed shares are freely transferable.</p>
(3) Obtain relevant and material company information on a timely and regular basis	<p>Relatively detailed information is available on banks and issuers on the BCU website. AIN has some (incomplete) financials for larger companies since 2001. RNC company information is incomplete. Ownership information is generally not available (see VA, VE).</p> <p>By law, shareholders may request from the corporation the list of the board of directors and the <i>síndico</i>; AGM minutes; the list of shareholders who attended the last AGM; and</p>

	the financials, as well as the annual statement of the board of directors and the <i>síndico</i> (LUSC §95, 96, 321). In practice, companies do comply with such requests, as there has been a well established court precedent for information requests by minority shareholders, and court costs are fully borne by the company. There is a perception that minority shareholders use that also as a greenmail tactic. However, in providing information, companies try to delay the process, impose high copy and notarization costs, or provide an unofficial copy of the information.
(4) Participate and vote in general shareholder meetings	Shareholders of ordinary shares can attend and vote at AGMs. The bylaws may require a minimum number of shares, which cannot exceed ten, to vote. Preferred shareholders can attend AGMs, and may have restricted voting rights, but do vote on issues related to the rights of preferred shares (LUSC §323(3)). AGMs are poorly attended.
(5) Elect and remove board members	<b>Process.</b> Ordinary shares are entitled to elect, compensate, and remove board members and members of the <i>síndico</i> (LUSC §342, 337, 381). <b>Cumulative voting/proportional representation.</b> The law leaves the issue to the bylaws. When there are series of shares, or preferred shares, the bylaws may provide that each one of them chooses one or more directors (LUSC §356, 377).
(6) Share in profits of the corporation	The AGM approves the distribution of dividends. <sup>31</sup> The minimum mandatory dividend is 20 percent of net earnings, which can be reduced only with 75 percent vote of the AGM and the agreement of the <i>síndico</i> . No compensation implying a share in profits may be paid until the mandatory minimum dividend is paid. The AGM can increase proposed dividends, assuming the annual profit was positive. In practice, controlling shareholders tend to use salaries (which is private information), not dividends, to compensate themselves for their investment in the company. Dividends are not frequently paid out and are not significant, especially in the past decade of economic downturn.
<b>Principle IIB. Shareholders should have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes such as:</b>	
<b>Assessment: Partially observed</b>	
(1) Amendments to governing company documents	Decisions on bylaws changes are taken at EGMs. EGM quorum is 60%, and decisions require a majority of voting capital, not of votes present. The amendment must be filed with RNC and published in the <i>Diario Oficial</i> or another newspaper, and communicated to AIN. <sup>32</sup> Dissent or absence grants withdrawal rights in closed (but not open) companies.
(2) Authorization of additional shares	<b>Issuing share capital.</b> Authorized capital is changed at an EGM, with absolute majority of all votes (not only those present). There is no time cap for boards to issue capital up to this limit, and no AGM approval for issuing of capital within the limits of authorized capital. <b>Pre-emptive rights.</b> Shareholders have pre-emptive rights, which can be waived, only “in the company interest”, at an EGM, in the case of (1) shares paid in kind, or (2) which are given in payment of pre-existing obligations, or (3) a contribution of money which is absolutely necessary for development of the corporate business or to ensure the financial soundness of the company. <sup>33</sup> Dissenting shareholders have withdrawal rights.
(3) Extraordinary transactions, including sales of major corporate assets	<b>Sales of major corporate assets.</b> Mergers are approved at an EGM with absolute majority of all votes (not only those present), and by the <i>síndico</i> . <sup>34</sup> However, the sale of assets is not subject to shareholder approval, and the decision can be taken by the board without a limitation on the amount of the transaction.
<b>Principle IIC: Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings:</b>	
<b>Assessment: Partially observed</b>	
(1) Sufficient and timely information on date, location, agenda, and issues to be decided at the general meeting	<b>Meeting deadline.</b> The board must call the AGM within 180 days of the end of the financial year. The AGM can be called by the <i>síndico</i> , 20% shareholders, AIN or the court. AGMs must be held in the same city as the company's office (LUSC §340, 344). <b>Meeting notice.</b> The notice must be served not less than 10 business days, and not more than 30 calendar days prior to the AGM. The notice is published for 3 days in the <i>Diario</i>

	<p><i>Official</i> and in a daily newspaper. For closed corporations, the AGM call may be made by certified notice to the shareholders at their domicile, also filed with the company. Notice for second call must be made within 30 days of the first, or the bylaws may authorize the simultaneous issue of both notices, and the second meeting takes place an hour after the first (LUSC §344-8).</p> <p><b>Information available.</b> The notice includes the nature of the meeting (ordinary, extraordinary or special), date, place, time, agenda, and the body calling the meeting. The company must make available to shareholders, at corporate headquarters, 10 days prior to the meeting: financials, annual statement of the board and of the <i>síndico</i>, dividend declaration (LUSC §95, 96). Director's details are not available to shareholders, and in practice, there is no background information offered to shareholders at the AGM, beyond the list of the board members proposed for election. The bylaws may establish a date shortly before the AGM, when shareholders must register in order to be eligible to attend the meeting (LUSC §350). Since shares are bearer, there is no address for unregistered shareholders where they could receive AGM information. AGM attendance is low to non-existent outside of the core controlling group, and there are few companies with minority shareholders, so that controlling owners tend to monopolize the meetings.</p> <p><b>Quorum rules.</b> The quorum is a half plus one of voting capital for the first call; there is no quorum for the second call. Simple majority takes decisions. EGM quorum is 60% on first call, 40% on second call, and no quorum on third call. Fundamental decisions require a majority of capital entitled to vote, not of votes present.<sup>35</sup> Blank votes and abstentions are considered votes against. The law requires shareholders or their representatives to be physically present in order to vote (LUSC §354, 355, 362).</p>
(2) Opportunity to ask the board questions at the general meeting	<p><b>Forcing items onto the agenda.</b> Matters not listed on the agenda are not heard at the AGM, except some matters such as the removal or liability of members of the board or the <i>síndico</i>.<sup>36</sup> The legal interpretation of the right of 20% shareholders to request an EGM carries over to shareholder proposals of items on the agenda; however, the board has 40 days to comply with the request, and can therefore opt to call a separate meeting to discuss the new items, rather than include them in the agenda of the meeting at hand.</p> <p><b>Questions.</b> Common and preferred shareholders may ask questions (LUSC §319, 323). The <i>síndico</i> provides opinions over any draft bylaws amendment, dividend distributions, merger, transformation, spin-off, and changes in capital. 5% shareholdings can ask the <i>síndico</i> for additional information (LUSC §95, 96, 321, 402).</p>
(3) Effective shareholder participation in key governance decisions including board and key executive remuneration policy	<p>The bylaws may establish director remuneration. Otherwise, a total amount of director pay will be approved by the AGM, not to exceed 10% of profits in the case of a sole administrator and 25% in the case of a board. The pay is limited to 5% of profits in years when there is no distribution of dividends, and increases proportionally with the amount of dividends distributed (LUSC §342, 385). In practice, board pay is not allocated as the board members are instead remunerated as executives or otherwise. Management (which frequently sits on the board) pay is determined by the board, and is neither disclosed to nor approved by the AGM.</p>
(4) Ability to vote both in person or in absentia	<p><b>Proxy regulations.</b> Shareholders can appoint a proxy to the AGM, who cannot be an administrator, <i>síndico</i>, executive, or other company employee. Notarization is necessary for the proxy, unless it is just for a single AGM (LUSC §351).</p> <p><b>Postal and electronic voting.</b> Postal or electronic voting is not permitted; the law requires the physical presence of the voting party or their representative at the AGM (LUSC §340).</p>
<p><b>Principle IID: Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed.</b></p>	
<p><b>Assessment: <i>Materially not observed</i></b></p>	
<p><b>Classes of shares.</b> There are two classes of shares: ordinary and preferred, though the latter are not common in practice. Ordinary shares are entitled to one vote by law; multiple votes are not allowed. Preferred shares may be non-voting, except where their rights are concerned and enjoy preference in liquidation, but have no particular dividend protections in the law.<sup>37</sup> Cross-shareholdings and pyramid structures are not common. Golden shares or voting caps do not exist.</p> <p><b>Ownership disclosure by companies.</b> Ownership disclosure by listed companies is not required by law. In the case of certain financial intermediaries (banks, pension funds, investment funds and insurance companies), direct ownership</p>	

information is collected and published by BCU, and must be included in the financial statements.<sup>38</sup> Issuers disclose the number of authorized and issued (paid-in or not) shares; their nominal value if any; their rights; shares held in treasury or by subsidiaries or associated companies; shares reserved for issuance under options or sales agreements, describing the conditions and amounts. Upon registration with BCU, issuers file a list of "main" shareholders (the concept is not defined in the law) if those hold registered shares, and shareholder agreements if those are registered with the company. Bearer shares, which are not entered into any share ledger, are almost always used. Companies file with AIN their stock ledgers annually, if one exists. Shareholders may request from the corporation the list of shareholders who registered for and those who attended the last AGM (LUSC §95, 96, 321). However, there is no periodic obligation to disclose ownership publicly.

**Ownership disclosure by shareholders.** Though it is difficult to obtain a clear formal picture of the ultimate or even direct owners of some listed companies, anecdotally, the controlling parties are known to the business community.

**Disclosure of shareholder agreements.** Shareholder agreements are common. They should be disclosed only if the signatories want the agreement to be effective against the company or third parties. In this case, the agreement is deposited with the company, recorded on the share certificates or in the stock ledger, and also reported to BCU. Shares affected by a shareholders agreement cannot be traded in the stock market.<sup>39</sup>

**Principle IIE: Markets for corporate control should be allowed to function in an efficient and transparent manner.**

**Assessment: Materially not observed**

(1) Transparent and fair rules and procedures governing acquisition of corporate control	<p><b>Basic description of market for corporate control.</b> There are no legal rules on tender offers and mandatory bids, though plans for regulating the issue exist. The local corporate control market is inactive, due to the concentrated ownership and the limited size of the market. The banking sector may be somewhat shielded from certain foreign acquisitions. There are some formal limitations to foreign ownership in certain key sectors.<sup>40</sup> The changes in control that have occurred have taken place off the exchange, thus offering controlling shareholders better conditions than minority investors.<sup>41</sup></p> <p><b>Tender rules/mandatory bid rules.</b> Mergers require an EGM approval by an absolute majority of capital entitled to vote, as well as the preparation of a set of financials for the purposes of the merger and an agreement of the merging companies. An extract of the agreement is published for ten days in the <i>Diario Oficial</i> and in a daily newspaper, to inform creditors of the transformed company (LUSC §125, 126). The final agreement is then filed with RNC. Acquisitions give rise to withdrawal rights, at net worth value (the law does not specify whether this is a book or market value) (LUSC §154).</p> <p>The Competition Law (# 17,243) does not provide any restrictions on changes in control. Parliament is considering a reform to the current competition law, which provides for some merger approval, as well as the creation of a special body, <i>Dirección de Comercio del Ministerio de Economía</i>. Transfer of shares of some companies is subject to prior authorization of the regulating authorities (e.g. banks, insurance firms, and AFAPs).<sup>42</sup></p> <p><b>Delisting/going private procedures.</b> Delisting via a public tender is not regulated. Closing of an open corporation involves an EGM approval by half of the voting capital. The law requires a company to have been open for at least 5 years before it closes. Dissenting shareholders have the right to withdraw (LUSC §249).</p> <p><b>Squeeze out provisions.</b> The law does not allow for sell-out or freeze-out provisions.</p> <p><b>Abuse to buy-backs/treasury shares.</b> Share buy-backs are allowed by law in two cases. First, when the shares constitute assets of a commercial establishment acquired or incorporated by the corporation. Second, in exceptional circumstances, to avoid serious damage. Such circumstances must be justified by the board of directors at the next AGM, demonstrating the urgency of the measure. Acquisition must be made with net earnings or free reserves, without reduction of paid-in capital. In both cases treasury shares need to be re-sold within a year, applying pre-emptive rights, and cancelled (LUSC §314).</p>
--	---

(2) Anti-take-over devices      Anti-takeover devices are not regulated by law, and are not used.

**Principle IIF: The exercise of ownership rights by all shareholders, including institutional investors, should be facilitated.**

**Assessment: Materially not observed**

(1) Disclosure of corporate governance and voting	<b>General obligations to vote/disclosure of voting policy.</b> The issue is not regulated in the case of investment funds and asset managers. For a very limited set of
---	--

policies by institutional investors	<p>circumstances, there are rules in place to require the disclosure of voting policy by AFAPs to BCU.<sup>43</sup> Institutional investors are a very small part of the shareholder base, and do not participate actively in corporate governance, nor have sought board seats so far.</p> <p><b>Blocked shares/record date.</b> The bylaws may specify a record date when shareholders need to register in order to vote at the AGM, but shares are not blocked from trading.</p>
(2) Disclosure of management of material conflicts of interest by institutional investors	<p>There is no provision for disclosure of conflicts of interest. Certain regulations attempt to curtail conflicts. For example, pension funds cannot invest in securities issued by their shareholders, and cannot manage bank funds directly. Banks and insurance companies cannot invest in equity (so that, for example, a bank needs to create an investment fund or a trust fund as a subsidiary in order to carry on investment activities).<sup>44</sup></p>
<p><b>Principle IIG: Shareholders, including institutional shareholders, should be allowed to consult with each other on issues concerning their basic shareholder rights as defined in the Principles, subject to exceptions to prevent abuse.</b></p>	
<p><b>Assessment: Partially observed</b></p>	
<p><b>Rules on shareholder cooperation in board nomination/election.</b> There are no special rules.</p> <p><b>Rules on communication among minority shareholders.</b> There are no special rules. Minority shareholders are rare.</p> <p><b>Proxy solicitation or other formalities required.</b> There have been no regulations or practice.</p> <p><b>Rules on communication among institutional investors.</b> There are no special rules, nor active institutional investors.</p>	
<p style="text-align: center;"><b>SECTION III: THE EQUITABLE TREATMENT OF SHAREHOLDERS</b></p> <p>The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.</p>	
<p><b>Principle IIIA: All shareholders of the same series of a class should be treated equally.</b></p>	
<p><b>Assessment: Partially observed</b></p>	
(1) Equality, fairness, and disclosure of rights within and between share classes	<p><b>Availability of share class information.</b> Per IFRS, issuers should disclose in the annual report the number of authorized and issued shares and their rights. The rights of shares are also found in the bylaws, which must be filed with AIN for corporations, and RNC for other companies (LUSC §7, 10; Law 16.871). RNC does not make the bylaws public.</p> <p><b>Equal rights within classes.</b> LUSC requires equal treatment for shareholders of the same class (LUSC §296, 307, 322, 323). In practice, one example of the violation of that principle is the treatment of minority investors during off-exchange mergers.</p> <p><b>Approval by the negatively impacted classes of changes in the voting rights.</b> Changes in the rights of common or preferred shares require class approval (LUSC §349).</p>
(2) Minority protection from controlling shareholder abuse; minority redress	<p>Shareholders have several redress possibilities which do not provide adequate redress.</p> <p><b>Ability to call meeting.</b> An AGM can be called by the <i>síndico</i>. Shareholders with 20% of capital can request the board or the <i>síndico</i> to call a meeting, which must then be called within 40 calendar days. Failing that, any board member or <i>síndico</i> can call a meeting, as can AIN and the court (LUSC §344).</p> <p><b>Failure to pay dividends.</b> Delays or failure to pay dividends authorized by the AGM puts shareholders in a creditor position, and allows any shareholder to file an ordinary lawsuit to recover owed amounts (<i>Acción ordinaria de cobro de pesos</i>).</p> <p><b>Ability to inspect books.</b> Shareholders can file with court requesting delivery of information shareholders are entitled to receive, with the possibility of imposing monetary penalties on the company for each day of delay. 10% shareholders claiming actions contrary to the law or bylaws can petition the court for non-public corporate information.</p> <p><b>Withdrawal rights.</b> Dissenting shareholders have the right to withdraw following a change in the founding documents of the company, a change in capital, type of business entity, subject of business, merger, change of company domicile, and change of the company period of existence (LUSC §249). Withdrawal rights are at net worth value, though the law does not specify whether it is the book or market value (LUSC §154).</p>

	<p><b>Ability to challenge shareholder resolutions.</b> Shareholders voting against AGM resolutions or abstaining can protest the resolution in court, if it is contrary to the law or bylaws, damaging the interests of the corporation, or violating the rights of shareholders.<sup>45</sup></p> <p><b>Court Redress.</b> Shareholders have a direct suit against the company for damages. The derivative suit requires that shareholders exhaust all internal recourse mechanisms, and have proposed the action to a shareholders meeting (LUSC §391-4). A derivative action can be filed against a director (for false statements, a violation of the law, abuse of their functions, <i>dolus</i> or gross negligence, or violation of the duties of care and loyalty, as well as against a board of directors resolution authorizing a self-dealing transaction), against a <i>síndico</i>, or third parties outside of the corporation (Civil Code §1319). Cases have occurred, and in practice are usually used to gain negotiation power towards a settlement, rather than to seek court resolution of the dispute.</p> <p><b>AIN redress.</b> 10% shareholders may request AIN to be present at the AGM when this is dully justified. For open corporations AIN's presence is mandatory. A 10% shareholder can petition AIN for special oversight, in the case of corporate actions against the law or bylaws (including non-payment or delay of declared dividends). AIN enforcement is only on procedural issues on AGMs. AIN can also refer minority shareholder issues to court.</p> <p><b>Regulator Redress.</b> Redress from the BCU (AMV) has been limited, due to both normative weakness and resource constraints. By law, shareholders can report infractions of the LMV to the BCU (AMV), who can take action or refer to the case to the court (one such criminal case was initiated against a broker / dealer). Stock exchange enforcement is rare and passive, and by law does not occur in response to shareholder demands.</p>
(3) Custodian voting by instruction from beneficial owners.	The law does not regulate the provision of information by custodian banks on shareholders' options in the use of their voting rights. In practice, such arrangements are not common. Blank or abstaining votes are counted as negative votes (LUSC §356). Votes of shareholders not present are not automatically cast in favor of management.
(4) Obstacles to cross border voting should be eliminated.	Cross-border voting is not regulated, and is uncommon in Uruguay. There are no ADRs.
(5) Equitable treatment of all shareholders at AGMs	Preferred shares, which are not common, may be deprived of a right to vote, except as concerns changes in their rights. In practice, insiders tend to use salaries, not dividends, to compensate themselves for their investment in the company, excluding minority investors.
<b>Principle IIIB: Insider trading and abusive self-dealing should be prohibited.</b>	
<b>Assessment: Materially not observed</b>	
<p><b>Basic insider trading rules.</b> Issuers and intermediaries that use confidential or unpublished information, obtained through their position and unavailable to the market, in order to gain advantage in trading securities, are subject to administrative penalties by the BCU (LMV §6, 25; Civil Code §1319). There are no prohibitions directly against insiders in the law.</p> <p><b>Insider trading disclosure.</b> Insider ownership and trading is not subject to disclosure.</p> <p><b>Criminal/civil/administrative penalties.</b> In the case of the issuers, the penalties include suspension or even cancellation of the authorization granted to make public offerings. However, there is no penalty on an individual actually guilty of illegal insider trading. In the case of intermediaries, penalties include fines up to USD 600,000, suspension or cancellation of their activities. There is additional civil liability that may be applicable on wrongful acts injuring another entity. Insider trading is not regulated under criminal law, but could be subject to general criminal offence regulations. The insider trading legislation has been in force for ten years, but has not been actively applied so far.</p>	
<b>Principle IIIC: Members of the board and key executives should be required to disclose to the board whether they, directly, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the corporation.</b>	
<b>Assessment: Partially observed</b>	
<p><b>RPT approval rules/rules for approval of board/AGM.</b> Related party transactions (RPTs) must be reported to the board and the <i>síndico</i>, and are permitted if they are in the usual business of the company and are executed at arm's length (LUSC §84, 388, 402(1)). Transactions that are not at arm's length and fall out of the ordinary course of business must be a-priori AGM-approved, or can be voided. However, the definition of a related party is too narrow and includes only directors, but not management or controlling owners. The related party recluses itself in AGM decisions (LUSC §387). Failing that, and if</p>	



the vote was decisive for reaching the majority required, the violating party is liable for any damages caused (LUSC §325).

RPT disclosures comply with IFRS by law (IAS24), and are therefore quite complete, but are not complied with in practice. There is also no clear definition of the concept of activities that do not relate to the ordinary course of business. In the view of market participants, more is to be desired from public disclosure of RPTs and compliance with RPT approval procedures in the boardrooms. A large part of the blame for the 2002 financial distress episode has been attributed to RPTs, and insufficient disclosure. RPT risk is a very relevant and common concern for banks when lending, as well as for AFAPs.

Related loans are prohibited, and they fall under general RPT rules. Banks may not grant loans or personal guarantees to their management, directors, *síndicos*, advisors or others in similar positions (Law 15,322 §18).

**Conflict of interest rules and use of business opportunities.** Directors inform the board and the *síndico* of any conflicts of interest. Directors may not compete with the company unless authorized by a shareholder meeting (LUSC §83, 84, 387-9). Directors cannot favour the interests of related or controlling companies to the detriment of the company where they serve as directors and must assure arm's length transactions (LUSC §50).

#### SECTION IV: THE ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE

**The corporate governance framework should recognize the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.**

**Principle IVA: The rights of stakeholders that are established by law or through mutual agreements are to be respected.**

**Assessment: Partially observed**

**List of relevant codes for stakeholders.** The participation of stakeholders in corporate governance is not regulated, and there are very few examples of a role for stakeholders in the governance of companies. Some institutions and NGOs focus on these issues, for example DERES Uruguay (a corporate association focusing on social responsibility issues), the Liga de Defensa Comercial (a corporate association with an important role recently in the reform of the bankruptcy law), and ACDE (a corporate association promoting stakeholder rights). Although there are no voluntary codes of practice, there are some legal provisions applicable to companies, protecting stakeholder rights, as well as focusing on corruption, ethics of public officials, money laundering, and control of drugs.<sup>46</sup> Multinational companies usually have their own internal codes of ethics and stakeholder issues. This is especially typical in the banking sector. There is little awareness of corporate social responsibility issues among companies.

Labor law is protective regarding rights of employees. There is a vast body of regulation related to protection of wages, employment hours, overtime compensation, employee break periods and employment termination.<sup>47</sup> Parliament is currently reviewing a draft law about *fuero sindical* (union protection) that establishes the reinstatement of dismissed union representatives in case of anti-union practices. Workers do not participate in the governance of the company. Employees also participate actively in the wage-setting process, via employee representatives at the Wages Councils.<sup>48</sup>

Environment issues are addressed in the Ley de Impacto Ambiental. Creditor rights are addressed in creditor-related legislature, such as parts of the Civil Code, the Ley de Prendas, Ley de Concordato, and the Commercial Code (see IVF).

**Principle IVB: Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights.**

**Assessment: Largely observed**

**Redress mechanisms available to stakeholders.** Employees can turn for redress to court, as there is no labor-specific redress mechanism. Procedural law grants any interested party, prosecutor, institution or association with a social interest the right to file an action in defence of the environment, cultural and historical values.<sup>49</sup> A recent example of environmental awareness is an action filed by a prosecutor against the Secretary of Housing (*Ministerio de Vivienda, Ordenamiento Territorio y Medio Ambiente*), following an authorization for the construction of an environment-unfriendly cellulose factory.

Creditors' consent is required for some major transactions that may affect their interests. For example, in order to reduce the company's capital, merger / spin-off creditors must be paid first or their credits duly secured. Further, creditors have a derivative action against directors in order to restore the company's net worth in case shareholders have failed to file such action. Finally, creditors have at their disposal the debt enforcement and bankruptcy mechanisms (LUSC §128, 294, 395). Recent cases include the notorious bankruptcies of *Banco Comercial S.A* and *Banco de Montevideo S.A.*, where the holders of savings accounts in these banks filed a suit against the banks' shareholders and directors.

**Principle IVC. Performance-enhancing mechanisms for employee participation should be permitted to develop.**

**Assessment: Partially observed**

<p><b>Rules on employee stock ownership plans.</b> ESOPs are not specifically regulated in the law. The LUSC provides that corporations may issue bonds or participations with rights to company earnings, as compensation for services rendered to the company by founders, shareholders or third parties, or for donations, or to foundations established to benefit employees. Further, the LUSC provides for “personnel participation bonds”, which are not transferable and lapse upon termination of the labour relationship, up to 10 percent of the total company earnings. Detailed regulation on these mechanisms is not provided in the law. In practice, employee compensation schemes are not common, save in multinational firms.</p>	
<p><b>Principle IVD: Where stakeholders participate in the corporate governance process, they should have access to relevant, sufficient and reliable information on a timely and regular basis.</b></p>	
<p><b>Assessment: Materially not observed</b></p>	
<p><b>Annual report discloses economic and financial prospects.</b> Not required; may be addressed in the board statement.  <b>Annual report discloses significant facts on employees.</b> Not regulated by law.  <b>Information is timely and regular.</b> Not applicable.</p>	
<p><b>Principle IVE: Stakeholders, including individual employees and their representative bodies, should be able to freely communicate their concerns about illegal or unethical practices to the board and their rights should not be compromised for doing this.</b></p>	
<p><b>Assessment: Not observed</b></p>	
<p><b>Whistleblower rules.</b> There are no mandatory whistleblower rules.</p>	
<p><b>Principle IVF: The corporate governance framework should be complemented by an effective, efficient insolvency framework and by effective enforcement of creditor rights.</b></p>	
<p><b>Assessment: Partially observed</b></p>	
<p><b>Effectiveness of bankruptcy, security/collateral, and debt collection/enforcement codes.</b> Creditors can protect their rights through various liens (such as mortgages, pledges, trusts); however, judicial proceedings can be long which limits their effectiveness. Unsecured loan recovery takes 3 to 4 years; the fastest recovery is of collateralized loans with leased assets – 1 year. The Civil Code and Ley de Prendas regulate collateral debt enforcement. Insolvency procedures (regulated by the Commercial Code) involve a debtor protection period (moratorium) via a <i>Concordato</i> procedure of up to one year.<sup>50</sup> Paid-in capital must be reduced if it falls by 50%. Obligatory winding-up occurs when paid-in capital falls to 25% of its value.</p> <p>Uruguay banks use <u>risk assessment ratings</u> in their lending procedures, per BCU regulations. Risk assessments are not standardized, however, so that different assessors can attribute to the same company a different level of risk. A <u>central system of credit information</u> is also available to banks; however, the system collects data above a certain threshold, thus allowing the scenario where a borrower takes out loans from several sources just below the threshold, passing under the credit system radar. Credit information collected by banks is not standardized, limiting its usefulness. The current Banking Secrecy Law is being reformed to abolish limitations on the ability of banks to share client credit information. In practice, the credit information is made available with a 3-month lag, rendering it of limited usability. Lenders also make use of the existing <u>property and real estate (catastro) registries</u>.<sup>51</sup> Per BCU regulations, banks collect extensive information when making a lending decision, including the <u>borrower’s annual accounts</u> (which must be audited for large borrowers).<sup>52</sup> Existing weaknesses in BCU enforcement of this regulation equally across the banking sector permit borrowers to arbitrage among banks on the basis of their leniency in complying with information requirements.</p>	
<p><b>SECTION V: DISCLOSURE AND TRANSPARENCY</b></p>	
<p><b>The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.</b></p>	
<p><b>Principle VA: Disclosure should include, but not be limited to, material information on:</b></p>	
<p><b>Assessment: Materially not observed</b></p>	
<p>(1) Financial and operating results of the company</p>	<p><b>Annual and quarterly reports.</b> Listed companies must file with BCU Registro de Valores, as well as BEVSA or BVM, an audited annual report, which includes a balance sheet, income statement, cash flows, changes in equity, notes, independent auditors’ report, statements of the board and of the <i>síndico</i>, and if applicable, a consolidated statement with the auditor’s “compilation report” (a statement of the auditor falling short of a full auditor report).<sup>53</sup> The annual statements must be published, in full or abridged form within</p>

	<p>4 months of the end of the financial year, in the <i>Diario Oficial</i> and a newspaper of national circulation, which is costly (about \$800) (LUSC \$416). The annual report does not include a chairman's statement, or a management discussion and analysis. Semi-annually, issuers file with BCU, and BEVSA or BVM, their financials and a limited review auditor report.</p> <p><u>Financial institutions</u> must file annual audited statements, including a cash flow statement, changes in equity, and notes, the audit opinion of the consolidated statements if applicable, but not the consolidated statements themselves, with the Registry of Financial Statements of BCU, and must publish them in the <i>Diario Oficial</i> and a national paper.<sup>54</sup></p> <p><u>Large non-listed corporations</u> (open or closed companies) above a certain size must file their annual financials with notes, cash flow statement, changes in equity, and either a full auditors report, limited review, or a "compilation report" with AIN; publish in the <i>Diario Oficial</i> and a national paper the AGM notice, calls to shareholders to exercise their withdrawal and pre-emptive rights, and calls to creditors in case of a merger or reduction of capital.<sup>55</sup></p> <p><u>SOEs</u> must publish their financials, but not the audit opinion, in the <i>Diario Oficial</i>. Market participants find an improvement in recent years in the quality and reliability of financial reporting of some SOEs, as they made first steps in revising and computerizing internal control procedures. Some SOEs are considered to visibly lag behind in this process.</p> <p>Despite detailed requirements for disclosure, compliance and enforcement is lagging behind. Companies consider disclosure regulation excessive.</p> <p>The stock exchanges do not monitor filings for quality or accuracy of the information, and rarely penalize non-compliance. The securities regulator has a limited ability to penalize issuers: it cannot issue fines, and may need to sanction them with a delay due to the self-regulatory nature of the exchanges, depending on how the LMV is interpreted (see detailed discussion in IC and ID). The BCU (AMV) interprets that automatic fines in response to non-disclosure are legal, and has embedded that in the formal BCU norms. The non compliance with disclosure obligations causes automatic suspension, and 5 suspensions have been imposed in the past year.<sup>56</sup></p> <p>Market participants find the adherence to financial disclosure by companies below the standards of excellence needed to make business decisions, and note associated delays in availability. There is reluctance among large unlisted companies to publicize financial information (though their financials are supposed to be publicly available via AIN). Estimates put compliance with AIN filings between 40% and 60%.<sup>57</sup> In the past couple of years, BCU has significantly improved the availability of audited financials for issuers and banks. For listed companies, annual reports are available on the BCU website, with the board and the <i>síndico</i> reports and AGM minutes. The same website contains financials for banks as well. The financials of market intermediaries (e.g. brokers) are not online, but the website declares whether the financials were filed or not.</p>
(2) Company objectives	A discussion on company objectives is not required in the annual report.
(3) Major share ownership and voting rights	Ownership information is not available, but some capital structure information is (see IID). Financial institutions include their owners and percentage owned in their financials.
(4) Remuneration policy for board and key executives, and information about directors	Information on the aggregate compensation package of directors should be available from AGM minutes (on the BCU website), or from the bylaws, where it could be alternatively specified (not publicly available). <sup>58</sup> The AGM may bypass the issue if the board members opt to receive instead pay as executives (which are not public). Board pay is specified in aggregate (not individually), as a percentage of profit. Financial institutions must disclose the names of directors, <i>síndicos</i> and key executives (BCU Rule 2005/29).
(5) Related party transactions	Pursuant to IAS 24, public firms must disclose RPTs in the notes to the financial statements, and the very large companies do comply with that requirement, but do not provide details aside from the value of the transaction. Market participants consider RPT disclosure uneven in terms of compliance and quality. Financial institutions must provide information regarding the nature and amount of transactions with related parties, as well as the results arising from these. <sup>59</sup>
(6) Foreseeable risk factors	Annual reports do not include a detailed management discussion and analysis. Financial institutions must disclose to BCU the systems adopted for assessing risk management and

	the consequences arising from their application (BCU Rule 2005/029).
(7) Issues of employees and other stakeholders	There are no rules for disclosure of employee and stakeholder issues in the annual report.
(8) Governance structures and policies	There are no requirements for disclosure of governance structures and policies in the annual report.
<b>Principle VB: Information should be prepared and disclosed in accordance with high quality standards of accounting and financial and non-financial disclosure.</b>	
<b>Assessment: Partially observed</b>	
<p><b>Compliance with IFRS.</b> Listed companies must use IAS accounting standards (as adopted by Uruguay on May 19, 2004). Financial institutions follow BCU-issued accounting principles, which have some differences with the IAS. SOEs follow TCR regulations which effectively use international standards in most cases.<sup>60</sup> Detailed information on accounting, financial reporting, and auditing standards can be found in the Accounting &amp; Auditing ROSC conducted by the World Bank in 2005. Smaller companies who outsource their accounting functions are likely to obtain tax-based accounting reports. The delay in adoption of IFRS in practice stems from two sources – (1) non-IFRS inflation adjustment accounting techniques permit considerable tax savings for companies; and (2) bad debts hanging over from 2002 are harder to hide using IFRS.</p> <p><b>Review/enforcement of compliance.</b> BCU is the main enforcer of issuers' and financial firms' compliance with IFRS requirements. It also mandates that banks require borrowers to file IFRS statements. However, it does not have currently adequate resources and training. To address the issue, MEF is working on improving corporate transparency and disclosure to design an accounting and audit quality assurance system, in cooperation with BCU, the <i>Liga de Defensa Comercial</i>, the <i>Cámara Nacional de Comercio y Servicios</i>, and the <i>Colegio de Contadores, Economistas y Administradores</i>.</p>	
<b>Principle VC: An annual audit should be conducted by an independent, competent and qualified, auditor in order to provide an external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the company in all material respects.</b>	
<b>Assessment: Partially observed</b>	
<p><b>Compliance with ISA.</b> ISA and the IFAC code are in force for entities regulated by BCU, but recent modifications to the standards have not been incorporated. There is no independent auditor oversight body and BCU lacks the resources and training to effectively enforce quality audit standards. In practice, each audit firm follows its own audit standard. Listed companies and financial institutions must use ISA, as must SOEs, who are being directed to use a big 4 audit firm, assuring better compliance of the audit with ISA. The <i>Colegio de Contadores</i> has also adopted IFAC in most parts, which is binding on its members (including the largest audit firms).</p> <p><b>Who must be audited.</b> Issuers must have their statements externally audited. Consolidated statements need only an auditors "compilation report", a certification that the financial statements are derived from the financial situation of the company, and are in the required format, but no certification of content. Financial institutions must have their consolidated statements fully audited.<sup>61</sup> Semi-annual statements must have a limited audit review.<sup>62</sup> Large companies must present annual statements that can be either with limited audit review, compilation report or full audit opinion.</p> <p><b>Auditor independence.</b> The definition of auditor independence in use is the ISA norms definition.<sup>63</sup> Issuers and financial firms must use auditors registered in the BCU's Registry of External Auditors.<sup>64</sup> There is no disclosure of audit fees, or other services performed by the auditor. The issue of mandatory rotation of auditors is under discussion.</p> <p><b>Audit committee.</b> Audit committees are not mandatory for listed companies. Since 1999, all banks must establish an audit committee, composed of three members, with a minimum of two directors.<sup>65</sup> The committee are independent of the executive, as they are appointed by the board and report to it at least twice a year. Its functions are to familiarize itself with the financial statements, external auditor report, and the internal audit functions and actions, review the recommendations made by the internal and external auditors, and communicate with the BCU. The committee does not oversee the external auditor, approve the type of services the auditor provides, monitor factors that could endanger the independence of the auditor, nor have any responsibilities over the control of RPTs. Audit committees are a relatively recent requirement, and are not yet effectively functioning in all banks, so an assessment of their merits would be premature at this stage.<sup>66</sup></p> <p><b>Requirements for oversight of audit.</b> The board appoints the auditor; AGM confirmation is not required.</p> <p><b>Audit enforcement competent/qualified.</b> The audit profession is not regulated, and BCU does not have the tools to sanction, though some effort in carried out in this respect by BCU in the case of banks. In the case of issuers, BCU is also increasing scrutiny of documentation, but not yet checking the auditor's work. BCU does not have permanent staff qualified to monitor audit quality; however, in case of a suspicion of infraction they subcontract an ad-hoc committee of leading auditors. BCU can only penalize auditors indirectly by excluding them from its Registry of External Auditors, or use bank lending rules to lower the borrower rating of companies who use disreputable auditors. BCU has issued one suspension and</p>	

one observation on audit firms on the Registry in the past 5 years. The *Colegio de Contadores* imposes rules and warnings on members, but lacks an enforcement mechanism for other auditors. AIN is not engaged in quality control of financials.

Aside from the big 4, 20-odd reputable auditors are included in the BCU's Registry of External Auditors. Banks and SOEs are only audited by the big 4. The remaining auditors on BCU's list service smaller financial intermediaries and operators. Overall, there are about 7000 *contadores públicos* in Uruguay. The competition of auditors for clients may be compromising their independence, in the view of market participants. TCR audits all SOEs duplicating the work of the independent auditor, but with a considerable delay. Market participants opine that TCR has recently increased somewhat its quality of audit.

**Auditor qualifications.** There is no body providing audit licensing for all auditors. The Registry of External Auditors imposes strict requirements: a public accountant degree for at least 5 years, independence, professional experience of at least 3 years in financial companies audit, and adequate quality control and resources in relation to the size and the business of the client (BCU Rule 1.733).

**Statutory auditors or similar company organs.** Companies registered with BCU must appoint a *síndico*, which can be a single controller or a body of several members (LUSC §397). Shareholders with 20% of capital may demand a *síndico* if one does not exist per the bylaws. The *síndico* monitors compliance of management and board with the bylaws and the law, examines the company books and can request the preparation of accounts, verifies annual statements, reports to the AGM, responds to shareholder complaints and provides information upon the request of 5% of the shares, and can call an EGM, or the AGM if the board should fail to do so. Market participants report varying opinions on the usefulness of *síndicos*, ranging from the view that it is a formalistic organ without the necessary training for the control functions that it carries out, to the view that experienced ex-executives in isolated cases have successfully protected minority (family) interests in their role as *síndicos*. *Síndico* reports tend to use convoluted wording that is not easily interpreted, and are not standardized across the profession. A central registry of reputable *síndicos* is lacking, to signal professional quality. There is no established case work on *síndico* liability in court, though by law the fiduciary duties are the same as those of directors. In practice, *síndico* usually reports to the internal auditor. Outside of BCU-registered companies, *síndicos* are rarely used.

**Principle VD: External auditors should be accountable to the shareholders and owe a duty to the company to exercise due professional care in the conduct of the audit.**

**Assessment: Materially not observed**

**Auditor accountability.** There are no provisions by law on who has the authority to appoint or dismiss the external auditors. In practice they are selected and approved by the board (in turn controlled by the majority owner). Auditors do not have to inform on irregularities they encounter, by law. In case of financial institutions, auditors report related loans annually.

**Auditor liability.** By law, auditors are liable for false or misleading statements and for negligence in applying the controls necessary under international standards. In practice, several recent cases leading to bankruptcy where the auditors did not express concerns have not resulted in lawsuits against the auditors, and lead the market to believe that such liability is on the books only. Shareholders cannot request an independent audit at company expense if they doubt the auditor's findings.

**Auditor insurance.** Not required by law and not widely used in practice, outside of multinational audit firms.

**Principle VE: Channels for disseminating information should provide for equal, timely and cost-efficient access to relevant information by users.**

**Assessment: Partially observed**

**Material events.** The listing rules require the continuous disclosure of material facts (within 24 hours), and those are available on the BCU website. Material information is defined as significantly affecting the value of the securities, or the investor decision to trade or to exercise related rights.<sup>67</sup> Trading is not suspended, and announcements are not pre-vetted.

**Published information (papers, web).** Information about the company's incorporation and some items of the bylaws are published in the *Diario Oficial* and another newspaper. Summaries of annual reports of issuers, and banks are published in the *Diario Oficial* and another paper of national circulation. SOEs publish their statements in the *Diario Oficial*. For issuers and banks (but not other financial intermediaries and market operators), the BCU website contains annual statements, AGM minutes, and the reports of the *síndico* and the board of directors. Shareholders do not have access to board minutes or attendance. In practice, very few companies have their annual reports on their own website. Information of public character that is not actually filed with the regulator, or not made public by the latter, is difficult to obtain via the company.

**Principle VF: The corporate governance framework should be complemented by an effective approach that addresses and promotes the provision of analysis or advice by analysts, brokers, rating agencies and others, that is relevant to decisions by investors, free from material conflicts of interest that might compromise the integrity of their analysis or advice.**

**Assessment: Materially not observed**

**Disclosure of conflicts of interest by analysts, brokers, rating agencies, etc.** Conflicts of interest of securities analysts, investment banks, brokers, rating agencies and others are not regulated or disclosed. The law does not regulate how banks should carry on brokerage or asset management activities; however, in practice, due to the limited equity market, such activities have not developed actively. Banks do manage trust funds as well as AFAPs, and some rules vis-à-vis the latter do exist (see IIG). Generally, there are very little investment / asset management and advisory activities, and those areas have been poorly regulated so far. There are two equity rating agencies in the country – Fitch, and Moody's, operating out of Argentina. Market participants note the negative effect of such a lack of regulation, in terms of the confidence in the market by potential investors, especially in the area of broker regulation / supervision and reporting. BCU (AMV), the regulator for broker / dealers, has weaker enforcement powers than needed to assure compliance. It has been actively enforcing audit practices among brokers, inspecting financials as well as the transaction record, but there have been no sanctions so far (note the regulator cannot de-license a broker by law). By law, broker transactions are reported on a monthly basis, on paper, to the respective stock exchange only. Such limited observability of broker activity also prevents insider trading control, as well as control over brokers "churning" deals. In relation to the financial distress period in 2002, court cases are ongoing against trustees for mismanagement of bond issues. Bond issues do not require a trustee by law, however, as the *síndico* automatically assumes that function in the absence of a trustee.<sup>68</sup>

#### SECTION VI: THE RESPONSIBILITIES OF THE BOARD

The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.

**Principle VIA: Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders.**

**Assessment: Partially observed**

**Basic description of board.** Boards are unitary. Usually, the members of the board either perform executive functions in the company or represent the controlling owners. Independent directors are rare. Chairman and CEO functions are separated in certain cases, but are more frequently carried out by the same person.

**Size requirements and typical size.** Boards of open corporations need to have at least 2 members (LUSC §375). There is no maximum term of office (LUSC §380). The average number of board members of the 10 largest firms is 4, but the size varies widely between 1 to 7 members.

**Nomination and election.** Board nominations are typically made by the board, and are approved by the AGM (LUSC §379). Board meetings can be convened by the president at the request of any director. Quorum is 50%+1. Decisions are taken by simple majority. In the event of a tie, the president has two votes (LUSC §386, 376).

**Eligibility requirements.** There are no qualification requirements for directors, and no nationality restrictions (LUSC §378). For financial firms, BCU has fit and proper criteria for directors.<sup>69</sup>

**Adequacy of duties of loyalty and care.** Directors owe a duty of care and the "diligence of a reasonable businessman". Directors are severally liable to the company, the shareholders and third parties for damages, in the case of violations of the law or the bylaws; improper carrying out of duties; abuse of authority, *dolus* or gross negligence; and violation of the duties of loyalty and care. Directors abstaining or voting against are not liable. Directors are not liable for decisions approved also by the AGM or if the AGM absolves them of liability. The Doing Business 2006 data rates director liability at 4 (out of 10, higher values mean more liability) in Uruguay, against a regional average of 3.8 and an OECD (high income) score of 5.1.

**Insurance for directors.** Director awareness about their responsibilities is not common. The law does not require the purchase of liability insurance policies by directors or by firms on behalf of directors, and in practice insurance is not used. In the absence of insurance, independent directors would not willingly assume what is perceived to be excessive liability.

**Business judgment rule/board accountability.** Some business judgment elements are embodied in the concept of the "reasonable businessman", but there is no business judgment rule to alleviate excessive liability concerns.

**Principle VIB: Where board decisions may affect different shareholder groups differently, the board should treat all shareholders fairly.**

**Assessment: Materially not observed**

There is no specific rule for directors to treat shareholders equally – directors are required by law to act in the interest of the company, not the shareholders.

**Principle VIC: The board should apply high ethical standards. It should take into account the interests of stakeholders.**

**Assessment: Materially not observed**

Codes of ethics or social responsibility are not common among companies. However, directors must respect the laws protecting the rights of stakeholders. Multinational companies follow the policies of the mother company. Financial institutions have codes related to anti-money laundering and other illegal activities, but those are not public.	
<b>Principle VID: The board should fulfill certain key functions, including:</b>	
<b>Assessment: Materially not observed</b>	
(1) Board oversight of general corporate strategy and major decisions	<b>Board functionality by law and in practice.</b> The law does not specifically define the duties of the board, except for the power to “control corporate management”. In practice, controlling owners leave little leeway to executive management, and dominate their boards who are composed of executives and friends of the owner. Friendly board members do not actively inform themselves of company matters, and need training on their responsibilities. <b>Director training, IOD.</b> There is no ongoing director training, board guidelines, or an IOD.
(2) Monitoring CG practices	There is no explicit rule in the law on board monitoring of corporate governance practices or evaluating their performance.
(3) Hire/fire/pay of executives	The board appoints and remunerates the CEO, who in turn decides on key executives; however, the board does not actively use remuneration and the threat of removal as corporate governance tools (LUSC §383(3)).
(4) Aligning executive and board pay with LT interests	The AGM approves an overall package of director (but not executive) pay, proposed by the board (LUSC §342).
(5) Transparent board nomination and election process	The AGM hires and may remove directors. Directors are nominated by the board. Since there are rarely minority shareholders, the controlling person selects the board as well as all other company organs, and tends to also keep a close control on the management of the company. There is no detailed information available on newly nominated directors. <sup>70</sup>
(6) Oversight of insider conflicts of interest	Directors must inform about their own conflicts of interest, as well as those of third parties, if they are aware thereof. The board also must refer any RPTs that are not at arm’s length and under normal conditions, to the AGM for approval. In practice, such oversight is not actively carried out (LUSC §83, 84, 387-9). Conflicts of interest of controlling shareholders or key executives are not addressed in the law.
(7) Oversight of financial reporting, audit and control	Key functions include the responsibility over annual financials and the hiring of the external auditor (LUSC §87). The board must approve the financial statements, but neither director nor the CEO is required to sign them in certification.
(8) Overseeing disclosure and communications processes	The law does not expressly assign such functions to the board.
<b>Principle VIE: The board should be able to exercise objective independent judgment on corporate affairs.</b>	
<b>Assessment: Materially not observed</b>	
(1) Director independence	<b>Director independence in law.</b> There is no definition of “independence” in the law. <b>Director independence in practice.</b> There is a clear dominance of controlling owners over corporate decisions. Shareholder agreements are very common, to regulate the process for approving decisions and limit share transferability. This limits the protection of outside investors, as well as decreases the liquidity of shares.
(2) Clear and transparent rules on board committees	<b>Audit committees.</b> Audit committees are not required by law, except in banks (see VC). <b>Other committees.</b> Board committees are not common except in multinationals.
(3) Board commitment to responsibilities	<b>Restrictions on the number of board seats.</b> There are no such restrictions in the law. <b>Board meeting requirements.</b> The board must meet at least once a month (LUSC §386). <b>Public availability of board attendance.</b> Board attendance is not publicly available.
<b>Principle VIF: In order to fulfill their responsibilities, board members should have access to accurate, relevant and timely information.</b>	
<b>Assessment: Partially observed</b>	
Boards as a whole have access by law to all information. Board members do not have access to professional advice by law. By law, some of these rights belong to the <i>síndico</i> (see VC).	

## APPENDIX

### GOVERNANCE OF SOEs

*This Appendix makes some brief remarks on various facets of SOE governance in Uruguay. A more detailed, policy-oriented assessment would be offered by the in-depth analysis of a World Bank SOE governance report.*

#### **The Challenge for Uruguayan SOEs**

Uruguay is currently undergoing a drive to revamp SOE efficiency, which is needed and timely. The wave of liberalization of the SOE environment in the past decade has put heavy additional demands on SOEs. International accounting standards for SOEs were introduced, external auditors are mandatory, some monopoly rights were relaxed, to name but a few changes. Yet, the hands of SOEs remain tied in most of their decisions, preventing them from adequately responding to the new conditions. This poor governance of SOEs negatively impacts their performance and competitiveness.

Specifically, the current arrangements (1) leave SOEs with conflicting business, political, and social objectives, (2) impose conditions propitious for potential excessive political interference, and (3) foster opacity. Solving these three barriers to SOE efficiency is a significant challenge. Difficult as this challenge is, its achievement holds the promise of non-negligible productivity improvements. For example, the reforms in New Zealand in 1986 yielded productivity improvements of up to 6% per year and lowered the cost of goods and services provided by SOEs, for the following decade. Since SOEs typically perform poorly (e.g. South Korea's SOE labor productivity was found to be 66% of that of the private sector), the productivity gains can be significant (for example, an audit of 5 Indonesian companies uncovered that inefficiency practices from 1995-9 had cost them \$1.6 billion).<sup>71</sup>

#### **A Champion for SOE Efficiency**

A local champion(s) could be identified, to serve as a model to make the case for SOE transparency and efficiency, and feed into the further efforts of the government to revamp and revitalize the SOE sector. A detailed strategy and technical assistance work would be needed, to devise a successful action plan for the SOE champion, which will include among other initiatives, an improvement of internal control mechanisms, transparency, internal and external accounting and management processes, decision-making, and board supervision. As outlined below, the strategy would include setting clear operational, profitability and performance benchmarks; as well as untying the SOE's hands on day-to-day business decisions, to enable it to compete and profitably function in the market environment (for example, by making its additional costs incurred in pursuit of social objectives, an explicit, rather than implicit, budget account). Selecting an SOE in need of improving market competitiveness (e.g. because it is subject to competition from the private sector) may bring further benefits in providing the government with an opportunity to clearly delineate its functions as an owner and a regulator.

#### **SOE status**

Uruguay's bulk of SOEs were created in the early 20<sup>th</sup> century as monopolies, and this process continued into the mid-20<sup>th</sup> century.<sup>72</sup> These entities, collectively referred to as *Entes Autónomos y Servicios Descentralizados del Dominio Comercial e Industrial del Estado*,<sup>73</sup> enjoy some autonomy from their respective Ministries / regulators, but nevertheless clear a significant part of their internal decisions with government entities (e.g. with the *Oficina de Planeamiento y Presupuesto* – OPP<sup>74</sup> and the respective Ministries), have their prices imposed from above, and are constrained in some of their business decisions (e.g. must dedicate a part of their advertisement to state-owned media). Their regulators, controllers and the institutions administering state ownership are not well delineated. In sum, SOEs in Uruguay resemble more closely government agencies or departments than independent companies run efficiently, serving both social and productive goals.

#### **Setting clear objectives to SOEs, and untying their hands on day-to-day business decisions**

Several ministries or other government organs with authority over SOEs may result in conflicting objectives for SOEs, without instruction on the rules that the SOE is to apply to trade off those objectives. In this case, SOE management and directors do not have a clear set of performance goals, and are therefore not held as accountable for the SOEs performance, with a corresponding drop in efficiency.

In Uruguay, OPP is responsible, together with the respective Ministry, and in some cases yet some other autonomous control agency, for SOE oversight, such as approving the budget and SOE-proposed long-term investment / financing plans, as well as ongoing investments / contracts / asset sales, etc.<sup>75</sup> All decisions and ongoing SOE business



documentation is filed with OPP and the respective Ministry, as well as frequently with TCR,<sup>76</sup> and certain issues require approvals. Procurement procedures are those used for the central government, but with more flexibility. SOE employees have the same legal status as civil servants, and their hiring and firing is done with ministerial approval, as well as that of the *Oficina Nacional de Servicio Civil*, and in certain cases, TCR.<sup>77</sup> Civil servants can only be fired for negligence or crime, not because of business realities and downsizing. SOEs are constrained further in their operating decisions via, for example, the requirement to purchase insurance from the *Banco de Seguros del Estado*, and to channel at least 20 percent of their advertising and public announcements through public radio and television. Tariffs for SOEs enjoying monopoly status are approved by the government, and there is cross-subsidization between different types of users. Moreover, for revenue-raising purposes, SOEs are charged with taxes not levied on private enterprises—tax on the purchases of foreign exchange—or with tax rates higher than those paid by the private sector—a twice-as-high employer contribution to social security.

SOEs also account monthly for all costs, investments, and revenues to the same entities. Since the control is actually affected with a view to the short term, it leaves aside long-term strategy and investment needs and relegates it to the initial decision point when the long-term investment plan is filed and approved. By the same token, any inefficiency and suboptimal productivity issues remain unattended, as actual figures are compared to budgeted ones, as opposed to reviewing the effective potential of the SOE. The control exercised is of a procedural nature rather than coming from a business perspective, on in other words the questions asked are not “what” and “why” is being decided, but “how”. There are no measures of control over profitability, performance, and efficiency of SOEs. This approach is especially difficult to maintain in a liberalizing environment, where SOEs become increasingly vulnerable to private competition.

In order to tackle this matter, SOEs need a set of clear objectives in terms of operating performance, financial measures, social goals, human resources policy, etc, as well as a transparent mechanism of a trade-off among them, to be used by the SOE board / management in decision-making. Trivial decisions in the usual order of business need not be minutely communicated and reviewed by the state, thus speeding up operating SOE progress. In some countries, separate funding is being earmarked for the non-commercial (e.g. social) objectives, for accountability purposes. This enables the authorities to monitor whether the SOE is viable to begin with, stripping any added-on government objectives that the SOE is being directed to pursue.

#### ***Eliminating potential for political interference and tightening accountability at the board level***

It is important to insulate SOEs from political and bureaucratic pressures, and preserve SOE resources from being channeled to such ends. International experience provides examples such as forcing excess employees onto SOEs during an election year, or extending perks and free services to “friends and relatives” of SOE employees.

The government typically performs several roles vis-à-vis the SOEs – as an owner, regulator, supplier, customer, financier, etc. These roles need to be disentangled, and insulated from one-another. A typical strategy is to create a single government agency where all SOE monitoring (and frequently also ownership) is concentrated. This agency can then appoint the board of directors, as well as exercise control over the SOE’s business. Other authorities, especially regulators, are then to be kept at an arm’s length, much like the regulators and their private regulated entities. SOE suppliers, customers, financiers that are themselves SOEs should do business at market terms, to help gauge the SOEs’ performance and viability. An added level of insulation would result from subjecting SOEs to the same set of laws that private enterprises are subject to – company’s law, labor law, bankruptcy law, etc. Finally, insulation from political interference can be bolstered by vesting the real authority in the board of the SOE – so that the government does not go beyond setting objectives and performance targets, appointing directors, monitoring the SOE and board performance, and stepping in only in extreme circumstances. Effective boards are difficult to achieve, however, even in the private sector, and require training, legally binding imposition of duties and liabilities, and business acumen. The Uruguay government has jump-started this process by favoring technocrats in their selection of SOE boards in March 2005, and would benefit from staying firmly on that course and deepening the process of director education and accountability.

Uruguayan SOE board members are politically appointed.<sup>78</sup> Traditionally, SOE boards have been composed of 5 members, though some founding documents have since been modified to reduce this number to three. Traditionally, 60% of members were appointed by the majority party in Parliament, and 40% by the opposition; however in the current changing political climate (for the first time, a party distinct from the two traditional ruling parties is in power), the 40% minority seats are being unoccupied, so that certain SOEs have as few as two members on their boards. Boards are majority or 100% executive, which has some shortcomings. First, top management is changed with each coming elections, and has a limited opportunity to specialize in the job. Second, the role of the board as a monitor to management is lost with a 100% executive board. Most SOEs do not have board committees, which makes board meetings overburdened and fails to create specialization among directors. Some exceptions exist, like BROU, where a planning, credit approval, and audit committee exist. SOE board arrangements provide insufficient incentives for a well-functioning, informed and active monitoring. Such governance procedures considerably undermine SOE operational and financial efficiency. Finally, board

ineffectiveness prompts the respective Ministries and government authorities to play the role of a monitor, by keeping informed about all board decisions on a non-objection basis, and providing prior clearance to some decisions. This immediately results in lack of independence of the board, as well as its constrained operability and effectiveness, and perhaps even passivity as the role of the board is de facto taken over by the regulator. Another negative consequence, as discussed above, is that the regulator role is melded with the governance role, obscuring SOE objectives and weakening the incentive for effectiveness and accountability.

### ***Making SOEs more transparent and accountable***

Open access to standard corporate information about SOEs (e.g. annual report), as well as a reasonable level of confidence in the accuracy and reliability of that information, is central to the accountability of SOEs, and therefore their productive, financial, and social effectiveness. SOEs should be at least as transparent as listed companies. In addition to disclosure required by BCU on listed firms, SOEs, have the additional focus on social (non-profit oriented) objectives, and should therefore disclose the cost of pursuing those objectives and any subsidies / taxes channeled between the state and the SOE. Naturally, such arrangements would permit to identify the SOEs who are unprofitable (after taking away the costs imposed by pursuit of social goals), and target those for reform to recover their viability. But even more usefully, clear accountability and well-functioning control mechanisms within the SOEs will permit performance measurement, and the easy identification of value-drivers as well as pockets of loss-creating activities. Such disclosure should also extend to SOE objectives (as set by the state as “owner” of the SOE, not as the regulator), including operating, financial and social performance targets. Such a high level of transparency will render SOEs more accountable, and assist the state as well in achieving better monitoring of SOE efficiency.

In Uruguay, SOEs follow TCR regulations which mandate the use of international standards of accounting and audit.<sup>79</sup> The Tribunal annually audits the accounts of all public sector agencies for legality and financial conformity. SOEs are, in a duplication, audited by external independent audit firms as well. SOEs are directed to use one of the big 4 audit firms, assuring better compliance of the audit with ISA. SOEs publish their financials, but not the audit opinion, in the *Diario Oficial*. Annual reports are also filed with the executive branch of government and TCR. Market participants opine that there has been an advance in recent years in the quality and reliability of financial reporting of some SOEs, as first steps are being made in revising and computerizing internal control procedures. Some SOEs are considered to visibly lag behind in this process. SOEs contract external auditors on two- to three-year engagements, with the option to renew, however, the boards do not seem to fully benefit from the relationship with the auditors. For example, directors do not engage in regular contact with the external audit team, instead delegating such communication to the audit department, and are not actively monitoring the accounting, audit, and control processes. Also, SOE boards do not feel in control over audit independence and effectiveness. Internal accounting teams of SOEs are currently engaged in continuing education on international standards, a program managed by the TCR. A major deficiency remains in TCR's inability to sanction SOEs or their auditors – TCR's monitoring activity is limited to pointing out problems they have uncovered with SOE audit. TCR's duplicative audit (with a delay) is also inefficient and should be eliminated.

### ***Overview of major state-owned companies***

The table below overviews the major SOEs in Uruguay according to some major corporate governance characteristics, namely legal status / jurisdiction over SOEs of basic corporate and commercial laws, separation of the owner from the regulator, monopoly powers / competition in the marketplace, audit, and board composition and committees. From the analysis, it can be seen that major gaps remain between good corporate governance practices for SOEs and the realities of the Uruguayan SOE framework.

The table treats a highly complex subject, and is much too concise to convey every intricacy. Much more detailed SOE analysis is needed to effectively assess SOEs in this framework, which is out of the scope of this abridged appendix. To address the issue adequately, a full-fledged World Bank SOE Assessment would be required.

SOE	Status	Owner and regulator are the same?	Monopoly powers	Subject to commercial laws?	Independent audit?	Board composition and committees?
<b><u>Administración Nacional de Combustibles, Alcohol y Portland (ANCAP)</u></b>	Autonomous entity under the <i>Ministerio de Industria, Energía, y Minería</i> <sup>80</sup>	The regulator is URSEA in the Presidencia.	A monopoly since 1931 on fuels (import, export and refining of crudes, export of petroleum products), alcoholic beverages production and import and sales of asphalt and derivatives. Law 17,448 of 2002 ending the monopoly of fuels was repealed by referendum in Dec. 2003.	No	KPMG	5 member board of politically appointed directors. <sup>81</sup> Regulator clears board decisions, limiting board functions as a supervisory organ. Instead, the board acts as a management organ.
<b><u>Usinas y Transmisiones Eléctricas (UTE)</u></b>	Autonomous entity under the <i>Ministerio de Industria, Energía, y Minería</i>	The regulator is URSEA in the Presidencia.	Its monopoly over the sector has been in force since 1911. Law 16,832 did away with the monopoly of UTE in electricity generation. Transmission and distribution remain in its purview due to its extensive network of infrastructure. Actual competition has not yet been established in the sector.	No	PWC	5 member board (2 seats are unoccupied) of politically appointed directors. The regulator, not the board, clears major management decisions.
<b><u>Administración Nacional de Telecomunicaciones (ANTEL)</u></b>	Decentralized service	The regulator is URSEA in the Presidencia.	Monopoly over the telephony sector until 2001 (it retains monopoly over local telephony), but competes in other services (for example, it divides the mobile market with Telefónica Móviles and América Móvil).	No	PWC	Its 3-member board (1 seat is unoccupied) is politically appointed. It regulator clears strategic investment, staffing, financing, pricing, and other management decisions.
<b><u>Banco de la República Oriental del Uruguay (BROU)</u></b>	Autonomous entity under the <i>Ministerio de Economía y Finanzas</i>	The regulator is a Superintendencia in the BCU.	n.a.	No	Deloitte	5 member-board (1 seat is unoccupied); planning, credit approval, and audit committees. As other SOEs, its board is chosen by the executive branch of government and confirmed by Congress.
<b><u>Banco de Seguros (BSE)</u></b>	Autonomous entity under the <i>Ministerio de Economía y Finanzas</i>	The regulator is a Superintendencia in the BCU.	National monopoly in the insurance sector until recently (it still retains a monopoly on the insurance of working accidents and professional diseases and all SOE insurance contracts).	No	KPMG	Its 3-member board is politically appointed. There is no audit committee at the board level.
<b><u>Administración de las Obras Sanitarias del Estado (OSE)</u></b>	Decentralized service under the Ministerio de Vivienda, Ordenamiento Territorial y Medio Ambiente	The regulator is URSEA in the Presidencia.	National monopoly.	No	Currently no independent auditor	3-member board (1 seat is unoccupied). No board committees. Has a corporate inspector general, responsible for oversight of operational and financial processes.

## REFERENCES

- Banco Central del Uruguay, "Trimester Report of the Securities Market", July 2005.
- Banco Central del Uruguay, "Activities Plan of the Superintendency of Financial Intermediation Institutions", 2005.
- Luigi, Guiso (2005), "Trusting the Stock Market", University of Chicago
- Ignacio Munyo, CERES, Uruguay, "The Determinants of Capital Structure: Evidence from An Economy Without Stock Market"
- Luis de la Plaza, Sophie Sirtaine (2005), "A la Uruguaya" An Analysis of the 2002 Uruguayan Banking Crisis.
- Camara De Industrias Del Uruguay, Enfoques Economicos, Enero 2005
- Camara De industrias Del Uruguay, 1ras Jornadas de Debate Industrial, November 2003
- Camara De Industrias Del Uruguay
- Espacio Industrial, Septima Epoca – Ano 7 – N 279 – Julio 2005
- Antel Telecomunicaciones, Administración Nacional De Telecomunicaciones, "Financial Statements", December 31, 2004 and 2003
- Bolsa Electronica De Valores Del Uruguay S.A., Boletín Mensual N 136/05, Setiembre, 2005-10-14
- Fanapel, Memoria Y Estados Contables, Annual Report 2003/2004
- Bolsa De Valores, Panorama Anual, Ano 2004
- Bolsa De Valores, Informe Anual, 2004
- Administración De Las Obras Sanitarias Del Estado, Memoiria Anual, 2001
- Administración Nacional de Combustibles, Alcohol y Pórtland (ANCAP), Informe dirigido al Directorio referente a la auditoria de los Estados Constables correspondientes al ejercicio anual finalizado, 31 diciembre de 2004
- Bolsa Electronica de Valores del Uruguay S.A., Memoria Y Balance Annual 2004, 10 anos, 2004
- Información Complementaria al, Balance General, Diciembre 2004
- Administración de las Obras Sanitarias del Estado, Balance General, 2004
- Administración de Las Obras Sanitarias Del Estado, Presupuesto Por Programa Ejercicio, Oficina de Planeamiento y Desarrollo, 2005
- Administración de Las Obras Sanitarias Del Estado, Presupuesto Por Programa Ejercicio, Oficina de Planeamiento y Desarrollo, 2006
- World Bank, Poverty Reduction and Economic Management Unit, Latin America and the Caribbean Region, "URUGUAY Sources of Growth", June 8, 2005
- World Bank, Poverty Reduction and Economic Management Unit, Latin America and the Caribbean Region, "Uruguay Policy Notes", February 2005
- World Bank, Unidad De Gestión A Cargo De Argentina, Chile, Paraguay Y Uruguay, Región De América Latina y El Caribe, Banco Internacional de Reconstrucción Y Formento, Estrategia de Asistencia al Pais, Para la Republica Oriental del Uruguay para el periodo FY05-FY10, 2005-2010
- World Bank, URUGUAY - Financial Sector Mission Back to Office Report, May 2005

## ENDNOTES

<sup>1</sup> For more information on the activities of World Bank Group's Corporate Governance Department and the ROSC Program, please visit: [http://www.worldbank.org/ifa/rosc\\_cg.html](http://www.worldbank.org/ifa/rosc_cg.html).

<sup>2</sup> Information from BVM trades.

<sup>3</sup> BCU data. The larger part of the delisting was due to multinational acquisitions.

<sup>4</sup> WB Indicators data, 2002 and 2004 figures respectively.

<sup>5</sup> Only 11% of total assets of the average corporation in Uruguay is financed with long-term credit, the balance being composed of 20% bank debt, 20% trade credit, and 40 self-financing). Ignacio Munyo, CERES, Uruguay, "The Determinants of Capital Structure".

<sup>6</sup> Pittaluga & Asociados calculations.

<sup>7</sup> As of June 2004, the SOE banks made up for 61% of banking assets, with the majority of that accounted for by BROU – 42% (De la Plaza and Sirtaine (2005)). There are also 4 cooperative banks, 6 financial houses (*Casas Financieras*), and 6 offshore banks.

<sup>8</sup> The BCU trimestral report April-June 2005, there is one investment fund operating.

<sup>9</sup> Currently, 6 fiduciaries of financial trusts and 8 general fiduciaries have registered with the BCU. Trust funds are investment vehicles whose cash flows are owned by the managing fiduciary, and are linked to a particular flow of funds (e.g. revenues) of the issuer.

<sup>10</sup> The public pension system – BPS, is "pay as you go". Cajas Paraestatales, organized along occupational lines (e.g. for lawyers, for bankers) also provide pension funds to retirees. Such institutions can own investment funds and invest in corporate bonds, but not equity.

<sup>11</sup> Another 4.5% are invested in bank deposits, and the predominant portion – 82% - are held in government and BCU securities.

<sup>12</sup> As well as Decree # 335/990 of 1990 and Decrees # 103/991, 105/991, 223/998, 274/998, 486/001 and 162/004.

<sup>13</sup> The Economic Census 2003. Data by size of sales or assets not available. The estimate of sizeable firms (with assets above \$300,000 and/or revenues above \$1 million) is around 300-500.

<sup>14</sup> The notable ones are Usinas y Transmisiones Eléctricas (UTE), Administración Nacional de Combustibles, Alcohol y Portland (ANCAP), Administración Nacional de Telecomunicaciones (ANTEL), Obras Sanitarias del Estado (OSE), Primeras Líneas Uruguayas de Navegación Aérea (PLUNA), Administración de Ferrocarriles del Estado (AFE), Banco República (BROU), Banco de Seguros (BSE), Banco de Previsión Social (BPS), Banco Hipotecario (BHU), Administración Nacional de Correos (ANC), Administración Nacional de Puertos (ANP).

<sup>15</sup> In addition, in force are the following special statutes: Decree # 344/996 of 1996, Financial intermediation Act (Law # 15,322 of 1982), Holding Companies Act (Law # 11,073 of 1948), Free Zone Users Act (Law # 15,921 of 1987), Insurance companies Act (Law # 16,426 of 1993); Pension funds Act (Law # 16,713 of 1995); Cooperatives Act (Law #10.761); Civil Associations (Civil Code §21).

<sup>16</sup> BCU Recopilación de Normas for capital markets: [http://www.bcu.gub.uy/autoriza/ggmvr/recv/recvvalores.htm](http://www.bcu.gub.uy/autoriza/ggmvr/recv/recvvalores/recvvalores.htm); BEVSA Manual de Registro de Emisores y Valores, BEVSA Reglamento de Funcionamiento, BEVSA Manual de Operaciones Mercado de Valores: <http://www.bevsa.com.uy/ppal.html>; and the Trading and listing rules of BVM (not available online).

<sup>17</sup> The prospectus contains basic information such as business name, corporate form, main activities, social address; features of the securities; subscription conditions; description of the business; legal contingencies; financial status and future projections. Other disclosures at listing include information regarding controlled or controlling companies; a letter of the issuer's attorney describing pending lawsuits or actions that may affect its economic or financial situation; financial statements for the last three years; risk rating provided by a registered risk rating agency; AGM minutes approving the listing and / or establishing the conditions of the issue; and trustee agreement.

<sup>18</sup> The plan for development of BCU 2005 for financial institutions, [http://www.bcu.gub.uy/autoriza/sieras/plan\\_de\\_actividades\\_2005.pdf](http://www.bcu.gub.uy/autoriza/sieras/plan_de_actividades_2005.pdf).

<sup>19</sup> Law 16.696 §14, National Constitution Chart §187.

<sup>20</sup> Decree 500/991 administrative proceedings.

<sup>21</sup> National Constitution Chart §196, 197, 198, Law 16.696.

<sup>22</sup> Manual de Registro de Emisores y Valores de BEVSA, §61; Reglamento de Emisores y Valores de BVM §58, 59.

<sup>23</sup> Upon an alert, all the involved operators may be contacted to provide an explanation, and BEVSA can decide to void the operation.

<sup>24</sup> Law Number 17,904 (Ley de Rendición de Cuentas y Balance de Ejecución Presupuestal) of October 2005, §13-16 provide for the reporting of all appointments and removals of administrators, members of the Board or company representatives, shareholder agreements, and changes of corporate address, to NRC. Companies have until January 1<sup>st</sup> 2006 to file the relevant information.

<sup>25</sup> AIN is created by Law 16,736 of 1996, as an autonomous body under the executive branch of government.

<sup>26</sup> LUSC §89, 409-16, Decree 335/990, Decree 486/001.

<sup>27</sup> With assets of \$300,000 or revenues of \$1,000,000.

<sup>28</sup> LUSC §5, 7, 10, 361, 409-16, Decree 335/990, Decree 486/001.

<sup>29</sup> A party may only recover costs when his counter-party has acted with "*malicia temeraria*" (aggravated malice). There is no mandatory recovery for the party succeeding on its claim (C.G.P. Art 56, Civil Code §688).

<sup>30</sup> Shares must be registered for activities involving agriculture and livestock raising, financial intermediation, insurance companies, exchange agencies, air transportation, port services, radio broadcasting, cable television, pharmacies, security companies, and condominium apartment buildings. The registration procedure involves evidence of title for ownership, annotation in the respective ledger, and signature of both transacting parties. In the case of non-endorsable registered shares (issued in the name of a particular person), the issuer also needs to be notified, and the title needs to be delivered to the new owner. Endorsable registered shares (issued in the name of the original subscriber and to the order of the original subscriber, with the name of the holder appearing in the Registered Stock Ledger) involve endorsement and delivery of title, notice by the endorsee to the issuer regarding

---

transfer, annotation of the transfer in the Registered Stock Ledger, and signature by the endorsee of the items in the Registered Stock Ledger. LUSC §303, 304, 305(3), 333.

<sup>31</sup> LUSC §16, 93(3), 98, 99, 319, 320.

<sup>32</sup> LUSC §284, 285, 295, 343-6, 361, 362, Decree 486/001.

<sup>33</sup> LUSC §325, 326, 328, 330.

<sup>34</sup> LUSC §118, 362, 402(10).

<sup>35</sup> Waiver of pre-emptive rights; issuance / changes in preferred shares/ rights; conditions for redemption/amortization of shares; subsidiary ownership; merger, spin-off, transformation; dissolution; transfer of domicile abroad; change in business purpose; capital increase.

<sup>36</sup> LUSC §358. In the presence of 100% of the capital and a unanimous approval, any item can be heard ad hoc.

<sup>37</sup> Preferred shares may not be granted rights disproportionate to the contributions made. LUSC §25(2), 305, 307(2,3), 311, 322(2), 323.

<sup>38</sup> Decree 162/004; BCU Rule 2005/029; BCU Recopilación de Normas for capital markets Book I §6. The share register (which excludes bearer shares) can only be obtained via a judicial procedure pursuant to LUSC §339 and requested by 10% shareholders, arguing violations to the law or the bylaws, proving they have exhausted other means provided by the law or the bylaws.

<sup>39</sup> LUSC §331, BCU Recopilación de Normas for capital markets §6. The typical clauses from shareholders agreements are the following: appointment of directors and key executives; establishment of the majorities required for some resolutions; regulating the share of profits that will be distributed as dividends; establishment of rights of first refusal in case of stock sales; drag along / tag along clauses.

<sup>40</sup> E.g. radio and television networks, aviation companies, and long-distance bus lines are restricted to only Uruguayan ownership.

<sup>41</sup> E.g., the purchase of Cia Salus S.A. by the Danone group; and Montevideo Refrescos by Coca Cola Interamericana.

<sup>42</sup> Law 15.322 (as modified by Law 17.613), §43; BCU Recopilación de Normas for financial institutions §17.1, 17.3; BCU Recopilación de Normas for AFAPs §4.1; Law 16.426 §7; Law 16,774 §6; Decree 354/994 §19.

<sup>43</sup> Specifically, the law states that AFAPs need to inform about their position taken in bondholders meetings held for changes or restructuring in the terms and conditions of a public bond issue. By extension, some AFAPs interpret that voting should be reported in the case of all securities investments and in the case of equity in particular, which is not explicitly regulated.

<sup>44</sup> S&P offers a voluntary certification of "good investment practices", which for example, Republica AFAP has obtained.

<sup>45</sup> LUSC §365-8, 370. In exceptional cases and due to serious reasons, the court may suspend execution of the challenged resolution *ex officio* or at the request of a party, provided such suspension does not cause damages to third parties. Suspension shall be carried out through the procedure for precautionary measures, and the party requesting same must offer counter-measures.

In the case of challenge of the resolutions of the shareholders meeting, the LUSC provides a mechanism through which the judge may publish an edict for three days in the *Diario Oficial* and another newspaper, so that interested parties may support the plaintiff, within fifteen days from the last publication. In this case, all supporters are represented by a common proxy (LUSC §369).

<sup>46</sup> Laws 17,008, 17,016, 17,060, 17,835, Recopilación de Normas BCU for financial institutions article 39.4.

<sup>47</sup> Laws 5,350; 10,542; 10,570; 10,789; 12,590; 12,597; 12,840; 13,556; 14,159; 14,188; 14,320; 14,328; 14,407; 15,355; 15,996; 16,074; 16,713; 16,906; Decree 611/980.

<sup>48</sup> Wages Councils Act - Ley de Consejos de Salarios 10,449. The Wages Councils are tripartite bodies with representatives from the employees, companies and the government, with the function of establishing minimum wages for each sector of the economy. The wages agreed within these councils are confirmed by the executive government and become mandatory for the firms of each sector involved.

<sup>49</sup> Código General de Proceso (General Procedural Code) §42.

<sup>50</sup> Commercial Code; Law on the Concordato 2,230; Laws 8,045; 17,292; 17,613. The Concordato allows a renegotiation of debt with unsecured creditors with the consent of 75% of the credit.

<sup>51</sup> The property registry has information in electronic form on mobile and immobile property from 1995 onwards, and is planning to computerize the data from 1975-95 as well.

<sup>52</sup> BCU Communication 2003/189, <http://www.bcu.gub.uy/autoriza/gqsegg/segcco03189.pdf>.

<sup>53</sup> Recopilación de Normas BCU for capital markets, Book I, §7, 8. Controlling companies must present consolidated information (LUSC §89). Controlling or controlled issuers must present consolidated financial statements and a compilation report. Issuers also file the AGM approval of financials (BEVSA Manual de Registro de Emisores y Valores §14; BVM Reglamento de Registro de Emisores y Valores §14).

<sup>54</sup> Recopilación de Normas BCU for financial institutions §24.1.

<sup>55</sup> Decreto 253/001. Large companies are defined as companies of any corporate form with assets above UR 30,000 (approximately USD300,000) or net income above UR 100,000 (approximately USD1,000,000), except financial institutions. They also file a statement of fixed assets, intangibles and depreciation, and if applicable, consolidated financials and a compilation report.

<sup>56</sup> Recopilación de Normas BCU for capital markets, Book I, §40.

<sup>57</sup> AIN has the statements of 3758 firms per a recent study (Ignacio Munyo, CERES, "The Determinants of Capital Structure: Evidence from An Economy Without Stock Market"), of which about 2000 are offshore companies, and the number of locally operating private non-financial firms with annual reports available is unavailable from AIN records.

<sup>58</sup> LUSC §321. Compensation is available on the BCU website, e.g. [www.bcu.gub.uy/autoriza/ggmvr/graladomvrfasam300405.pdf](http://www.bcu.gub.uy/autoriza/ggmvr/graladomvrfasam300405.pdf).

<sup>59</sup> Decree 162/004; BCU Rule 2005/029.

<sup>60</sup> Decree 253/001; Recopilación de Normas BCU for financial institutions §24.1; Recopilación de Normas BCU for capital markets §7, 8; Manual de Registro de emisores y valores de BEVSA §14; Reglamento de emisores y Valores de BVM; §14; BCU Rule 81;

---

Decree 162/004. BCU standards differ from ISA in that they require a partial inflation adjustment, do not require balancing deferred tax, allow deferred charges in the assets (with authorization from BCU), do not follow the same disclosure criteria, allow generic liability provisions.

<sup>61</sup> Recopilación de Normas BCU for capital markets Book I, §9; Recopilación de Normas BCU for financial institutions Book I, §7.

<sup>62</sup> BEVSA Manual de Registro de Emisores y Valores §14, sub-chapter 3.2; BVM Reglamento de Registro de Emisores y Valores §29.

<sup>63</sup> A draft BCU resolution prohibits auditors from performing certain services: bookkeeping, accounting services; financial information system design and implementation consulting; valuation services or other similar; actuarial services; internal audit services; legal services.

<sup>64</sup> Recopilación de Normas BCU for capital markets Book I, §9.1; Rule 1.733.

<sup>65</sup> Usually the third person is the internal auditor, a lawyer, or an externally selected director, in the case of international firms.

<sup>66</sup> Recopilación de Normas BCU for financial institutions §35, 36.

<sup>67</sup> BEVSA Manual de Registro de Emisores y Valores §17; BVM Reglamento de Registro de Emisores y Valores §23. Examples of material facts provided in the law are: changes of control in the company; conversion of a publicly held corporation to a closed corporation, merger, spin-off, dissolution; bankruptcy; lawsuits; relevant changes in the structure of the assets and liabilities of the company; changes in the rights granted by the securities issued by the company; acquisition by the company of its own shares; changes in dividend distribution policy or delays of dividend distribution; execution, substantial amendment or cancellation of a major agreement for the company (BEVSA Manual de Registro de Emisores y Valores §18; BVM Reglamento de Registro de Emisores y Valores §24).

<sup>68</sup> LMV §39; LUSC §456, 457, 464. Trust funds require a trustee by law, to whom ownership of the asset stream is transferred.

<sup>69</sup> Recopilación de Normas BCU for financial institutions Book I, §3.6: good conduct, no lawsuits or insolvency, and high ethics.

<sup>70</sup> The directors appointed by the holders of a series of shares or of preferred shares may only be revoked by them, unless the AGM has resolved to bring an action for liability against same or there are grounds for disability, prohibition or disqualification (LUSC §377, 381).

<sup>71</sup> Simon Wong, "Improving Corporate Governance in SOEs: an Integrated Approach", *Corporate Governance International*, 7(2), 2004.

<sup>72</sup> E.g. Puerto de Montevideo in 1901, Usinas Eléctricas del Estado (UTE) in 1911, Frigorífico Nacional in 1928, and Administración Nacional de Combustibles, Alcohol y Portland (ANCAP) in 1931, as well as Obras Sanitarias del Estado (OSE) in 1947, Primeras Líneas Uruguayas de Navegación Aérea (Pluna) in 1951, Administración de Ferrocarriles del Estado (AFE) in 1952, Administración Nacional de Telecomunicaciones (ANTEL) in 1974, and Administración Nacional de Correos (ANC) in 1996 (<http://www.uc.org.uy/rs150802.htm>).

<sup>73</sup> Article 221 of the Constitution. The more important SOEs are: BROU, BHU, Banco de Seguros del Estado (BSE), Administración de los Ferrocarriles del Estado (AFE), Administración Nacional de Puertos (ANP), Administración Nacional de Correos (ANCO), Administración Nacional de Telecomunicaciones (ANTEL), Administración Nacional de Combustibles, Alcohol y Portland (ANCAP), Usinas y Transmisiones Eléctricas (UTE), Administración de las Obras Sanitarias del Estado (OSE).

<sup>74</sup> OPP is directly under the President, and is independent from Parliament.

<sup>75</sup> In the case of servicios descentralizados, as opposed to entes autónomos, the executive branch of government has more power to approve acts and circulars of BD, and has a say in more decisions.

<sup>76</sup> The TCR (*Tribunal de Cuentas de la República*) is the supreme audit institution and is independent of the executive branch of government. The president of the Tribunal is appointed by the legislative branch.

<sup>77</sup> Oficina Nacional de Servicio Civil is directly under the President, and is independent from Parliament.

<sup>78</sup> National Constitution article 187. Directors are appointed by the Executive Branch with 3/5<sup>ths</sup> approval by Parliament.

<sup>79</sup> Ordenanza 81 of the *Tribunal de Cuentas*.

<sup>80</sup> SOEs in Uruguay are divided into two types – autonomous entities and decentralized services. The difference is subtle, in terms of the extent of executive branch power to supervise the entity management.

<sup>81</sup> As in most SOEs, some of the board positions are currently unoccupied, following the failure of the opposition party to appoint candidates in its assigned board seats.





## Uruguay Terms/Acronyms

<b>AFAP:</b> Administradoras de Fondos de Ahorro Previsional
<b>AGM:</b> Annual General Shareholders Meeting
<b>AIN:</b> National Audit Office (Auditoria Interna de la Nación)
<b>AMV:</b> Area Mercado de Valores y Control de AFAP (Uruguay's securities regulator)
<b>BCU:</b> Banco Central de Uruguay
<b>BVM:</b> Bolsa de Valores de Montevideo
<b>BEVSA:</b> Bolsa Electrónica de Valores del Uruguay S.A.
<b>Cumulative voting:</b> Cumulative voting allows minority shareholders to cast all their votes for one candidate. Suppose that a publicly traded company has two shareholders, one holding 80 percent of the votes and another with 20 percent. Five directors need to be elected. Usually, each shareholder must vote separately for each director. The majority shareholder will get all five seats, as s/he will always outvote the minority shareholder by 80:20. Cumulative voting would allow the minority shareholder to cast all his/her votes (five times 20 percent) for one board member, thereby allowing his/her chosen candidate to win that seat.
<b>EGM:</b> Extraordinary Shareholders Meeting
<b>ISA:</b> International Standards on Auditing
<b>IFRS / IAS:</b> International Financial Reporting Standards (before: International Accounting Standards)
<b>LMV:</b> Ley de Mercado de Valores # 16,749 of 1996
<b>LUSC:</b> Ley de Sociedades Comerciales # 16,060 of 1989
<b>MEF:</b> Ministry of Economy and Finance (Ministerio de Economía y Finanzas)
<b>Pre-emptive rights:</b> Pre-emptive rights give existing shareholders a chance to purchase shares of a new issue before it is offered to others. These rights protect shareholders from dilution of value and control when new shares are issued.
<b>Proportional representation:</b> Proportional representation gives shareholders with a certain fixed percentage of shares the right to appoint a board member.
<b>Pyramid structures:</b> Pyramid structures are structures of holdings and sub holdings by which ownership and control are built up in layers. They enable certain shareholders to maintain control through multiple layers of ownership, while at the same time sharing the investment and the risk with other shareholders at each intermediate ownership tier.
<b>RNC:</b> National Registry of Commerce (Registro Nacional de Comercio)
<b>RPT:</b> Related party transactions. The OECD Principles of Corporate Governance hold that it is important for the market to know whether a company is being operated with due regard to the interests of all its investors. It is therefore vital for the company to fully disclose material related party transactions to the market, including whether they have occurred at arms-length and on normal market terms. Related parties can include entities that control or are under common control with the company, and significant shareholders, such as relatives and key managers.
<b>Shareholder agreement:</b> An agreement between shareholders on the administration of the company, it typically covers rights of first refusal and other restrictions on share transfers, approval of related-party transactions, and director nominations.
<b>SOE:</b> State-owned enterprise (Entes Autónomos y Servicios Descentralizados)
<b>Squeeze-out right:</b> The squeeze-out right (sometimes called a "freeze-out") is the right of a majority shareholder in a company to compel the minority shareholders to sell their shares to him. The sell-out right is the mirror image of the squeeze-out right: a minority shareholder may compel the majority shareholder to purchase his shares.
<b>Síndico:</b> A corporate "internal control body", which can be a single controller or a body of several members. The síndico monitors compliance of management and board with the bylaws and the law, examines the company books and can request the preparation of accounts, verifies annual statements, reports to the AGM, responds to shareholder complaints and provides information to minority shareholders, and can call an EGM, or the AGM if the board should fail to do so. The síndico is considered a tool for providing a voice to minority shareholders, and there is typically a provision for minority shareholders to request the formation of a síndico if the company bylaws do not provide for one.
<b>Tag-along rights:</b> The right of investors to sell their shares in a change of control on the same terms as the controlling
<b>Withdrawal rights:</b> Withdrawal rights (also referred to as the "oppressed minority," "appraisal" or "buy-out" remedy) give shareholders the right to have the company buy their shares upon the occurrence of certain fundamental changes in the company.

This report is one in a series of corporate governance country assessments carried out under the Reports on the Observance of Standards and Codes (ROSC) program. The corporate governance ROSC assessments examine the legal and regulatory framework, enforcement activities, and private sector business practices and compliance, and benchmark the practices and compliance of listed firms against the OECD Principles of Corporate Governance.

The assessments:

- use a consistent methodology for assessing national corporate governance practices
- provide a benchmark by which countries can evaluate themselves and gauge progress in corporate governance reforms
- strengthen the ownership of reform in the assessed countries by promoting productive interaction among issuers, investors, regulators and public decision makers
- provide the basis for a policy dialogue which will result in the implementation of policy recommendations

To see the complete list of published ROSCs, please visit  
[http://www.worldbank.org/ifa/rosc\\_cg.html](http://www.worldbank.org/ifa/rosc_cg.html)

To learn more about corporate governance, please visit the IFC/World Bank's corporate governance resource  
Web page at: <http://rru.worldbank.org/Themes/CorporateGovernance/>

---

Contact us at [CG-ROSC@worldbank.org](mailto:CG-ROSC@worldbank.org)