

# Uruguayan Stock Exchanges – IPO Overview

The Uruguayan securities market is a small one with scarce activity compared with other regional markets like the ones in Argentina and Brazil, whose stock exchange indexes are models in Latin America. Currently there are just 52 issuers listed on the two stock exchanges existing in Uruguay. However, the Uruguayan stock exchanges have lately improved their level of activity and in December 2012, banks and institutional investors showed special interest in an IPO issued by the Uruguayan Electric Entity (“UTE”) which raised approximately USD 100 million. This was the biggest IPO to date in Uruguay. Moreover, there is a current project between the main Uruguayan stock exchange and the Argentinean stock exchange to jointly perform IPOs in order to invigorate both markets.

In Uruguay, only local companies are currently listed on the stock exchange. Most of the activity on the stock exchange is in public securities, except for the trading of stocks and negotiable bonds.

Even though the Uruguayan stock exchange is not big, recent legislation has attempted to re-launch the Uruguayan securities market in a bid both to trigger economic development, something that was originally projected by lawmakers when they passed the General Corporation Act of 1989, and to facilitate corporate financing outside the banking system, giving companies access to private investors. Since the late 1980s, Uruguay has been committed to enhancing its securities laws in order to convert Uruguay into a financial center.

Securities stock exchanges in Uruguay are regulated by the Uruguayan Central Bank (“UCB”) and, typically, are mobilized by government securities. The government issues treasury bills (*Letras del Tesoro*), which are short term securities and treasury bonds (*bonos del tesoro*), which are long-term securities. The government also issues securities in foreign currencies and foreign markets, global notes and bonds. The UCB also issues short-term securities for monetary policy purposes (*letras de regulación monetaria*). Private sector securities consist of stocks and negotiable bonds. However, listings of private securities are very limited, as previously mentioned.

## 1. Regulatory Background

### 1.1 Overview of Regulatory Background

Securities market activities are concentrated on two stock exchanges: (a) Bolsa De Valores de Montevideo (“BVM”) created in 1867 and (b) Bolsa Electrónica de Valores (“BEVSA”, and together with BVM, the “Stock Exchanges” and each a “Stock Exchange”) created in 1993. Currently, both BVM and BEVSA are organized as Uruguayan corporations.

Uruguay passed a new Uruguayan Securities Act, No 18,627 (the “Act”), which was published in the Uruguayan Gazette on December 16, 2009, and expressly struck down the former Securities Act (16,749) of 1996 which, when it was passed, improved the Uruguayan securities market as a complement to the General Corporation Act (16.060) mainly in terms of the issuance of bonds by openly-held corporations and book-entry securities. After more than a decade in force and having been incorporated into to the

Uruguayan system together with other laws such as the Trust Act and the Act regarding Closely Investment Fund of Credits, it became clear that the Uruguayan system needed an updated securities act. The new Act, more complex than the 1996 act, regulates not only IPOs and the stock market but also pays special attention to securities brokers, the regulation of which was not comprehensive in the former act.

The Act recognizes two types of securities: book-entry and paper-based, a distinction that has existed in Uruguayan law since the General Corporation Act (16.060). However, in this case the Act extensively regulated book-entry securities; paper-based ones are only mentioned and regulated by reference, on the same terms of book-entry securities.

The idea of “security” that is used by the Act, as well as by the former securities act, includes those assets (tangible and intangible) and rights that are easily transmissible, such as stocks, bonds, commercial papers, shares of investment funds, etc.

## **1.2 Regulatory Entities**

### **Uruguayan Central Bank (“UCB”)**

The Uruguayan Central Bank is the governmental agency that oversees the transparency, competitiveness and correct operation of the securities market by offering complete and accurate information to investors and reducing systemic risk. The UCB is also in charge of administrative intervention and liquidation of market exchange entities (*bolsas de valores*), similar entities and securities brokers as well, in a role similar to that it undertakes regarding banks and other financial institutions.

### **Securities Market Promotion Commission**

A commission for securities market promotion was created by the Act in order to assist the Executive in the promotion and development of securities market.

## **1.3 Required Approvals**

Section 3 of the Act provides that not only securities but also issuers must be listed with the Securities Registry (Financial Services Agency of the UCB). This is not mandatory if the issuer is the Uruguayan government, local governments or the UCB itself.

## **2. Listing Criteria**

Pursuant to Section 4 of the Act, the process for the listing of issuers and securities starts with an application that is submitted by the prospective issuer to the Financial Services Agency of the UCB. The applicant is required to furnish the agency with personal information and information about the securities for which listing is being sought.

### **2.1 Suitability of Listing Applicant**

The Financial Services Agency of the UCB, in accordance with the Act, establishes the

requirements with which an issuer must comply. Moreover, the Act allows the agency to set different requirements depending on the type of the security, the offer, the issuer, etc.

After the listing of the issuer and the securities with the UCB, the issuer must submit an application to the Stock Exchange. One of the requirements set by this regulation concerns the issuer's records as well as financial information. The applicant and its business must, in the opinion of the Stock Exchange be suitable for listing. The Stock Exchange has discretion to accept or reject listing applications. Typically, provided that a company meets all the qualifications for listing, it will be listed.

### ***Public companies***

The General Corporation Act (16.060) and the Act and their regulations, as well as Stock Exchange rules, set out certain registration and authorization requirements applicable to the issuance of public shares and other securities, and require public companies to periodically disclose relevant information.

These requirements are mainly focused on regulating initial public offers ("IPOs"), capital increases and market transparency.

In Uruguay, a corporation may be an open or closed company. An open corporation may raise public funds to pay for its initial capital or for increases in such capital, will be listed on a stock exchange, and may incur debt by issuing securities that may be sold to the general public. All other companies are considered to be closed corporations.

### ***Competing interests***

The Act provides that stock exchange entities, as well as other institutions where securities are bought and sold and issuers must follow corporate governance principles.

Among other obligations (fiduciary duties), issuers must inform the public, in an accurate and complete way, about their financial statements and further relevant information. Also, they need to use international standards for accountability and audit practices.

Among others, section 82 of the Act sets forth that directors of issuers must comply not only with provisions of the General Corporation Act (16.060) but also with several requirements in terms of competing interests regulated by the Act (*e.g.* it expressly regulates the corporate opportunity doctrine).

### ***Management presence***

In Uruguay, corporations can be managed by only one director who can be a foreigner and non-resident. However, the applicant should have a sufficient management presence in Uruguay to perform its duties as issuer, mainly with the UCB. This management can be performed by managers who are not necessarily directors.

## **2.2 Track Record Requirement**

The Act states that listed companies must comply with good disclosure standards, and issuers have especially strong disclosure duties.

In addition, Uruguayan Law provides that listed companies, financial institutions and large non-listed companies must file an annual audited report, which includes a cash flow statement, changes in equity, notes and the audited opinion of the consolidated statement.

Furthermore, according to Section 197 (bis) of the General Corporation Act (16.060), any company with assets of more than USD 930,000 (approx.) or with revenues exceeding USD 3,100,000 (approx.) must file financial statements with the relevant governmental agency that deals with companies (similar to a Secretary of State in the United States of America). The General Corporation Act (16.060) points out that banks and listed companies (issuers) are not bound by its rule since they have to do the same pursuant to the UCB regulations, as previously discussed.

### ***Listing decisions / guidelines***

According to the guidelines of the Stock Exchange, issuers must submit financial statements corresponding to the last three years following International Accounting Standards. Financial Information for the last year needs to be filed along with other documents like the Audit Report. Financial information must be less than six months' old.

## **2.3 Minimum Market Capitalization**

There is no minimum market capitalization. As we have already pointed out, recently an IPO in Uruguay raised USD 100 million and was the biggest in Uruguay's history. Similarly, the very same day another issuer, Casa de Galicia (a medical provider), launched an IPO for USD 3.3 million.

## **2.4 Sufficiency of Working Capital**

In Uruguay, patrimonial solvency is deemed when an issuer is authorized by the Uruguayan authorities. Afterwards, the very same issue will be reviewed by the Stock Exchange when the issuer and its securities are listed. There is no specific regulation in terms of what is the minimum percentage to be considered "sufficient" in terms of working capital.

## **2.5 Eligibility for Electronic Settlement**

There is an electronic settlement system in Uruguay.

The confirmation process for electronic settlement takes place in the 30 minutes after the close of trading. Settlement takes place on T+1 for domestic securities and T+3 for securities issued on foreign markets. At 5p.m. (the hour at which banks close in Uruguay), securities traded and global securities are left in the custody of a private bank. Government and UCB dematerialized securities are held at the UCB under the name of

the corresponding Stock Exchange and identifying the broker-dealer that participated.

Once the Stock Exchange receives the funds in its funds settlement account through the private bank, or in its account at the UCB via the Electronic System of Communications, the Stock Exchange transfers the ownership of (or delivers if in physical form) the securities.

If securities or funds are not delivered at settlement, the Stock Exchange rules include buy-in and sell-out procedures at the cost of the failing party through its generic stock exchange guarantee.

The other Uruguayan exchange, the Electronic Stock Exchange, operates an electronic trading system open from 10:00 a.m. to 5:00 p.m. This trading system is connected online with the UCB custody. Settlement takes place in real time for both securities and funds. Trading in other securities is settled bilaterally. Global securities settlement takes place bilaterally through international custodians on T+3.

### **3. Overseas Companies**

In Uruguay, currently all issuers are Uruguayans. However, in certain cases, subsidiaries of foreign groups (e.g. BBVA Bank) have issued securities on the Uruguayan Stock Exchange acting through their Uruguayan entities.

Notwithstanding the foregoing, a foreign incorporated company can list on a Uruguayan Stock Exchange even though it is already listed on a foreign market.

### **4. Shareholding Requirements**

#### **4.1 Public float**

In Uruguay, corporations and other business associations cannot hold their own stock except in specific cases like mergers and only for a limited period of time. Consequently, an issuer's total outstanding stock must at all times be held by the public. There are no requirements in terms of a percentage of shares to be held by the public. The key here is that shares cannot be held by the company but shareholders can be affiliates or connected persons of the issuer.

#### **4.2 Restrictions on Major Shareholders**

#### **4.3 Spread of Shareholders**

There is no provision in this regard in Uruguay.

#### **4.4 Post-IPO Lock-up**

There is no provision in this regard in Uruguay.

### **5. Listing Procedure and Timetable**

### ***Listing process and timeframe***

Provided that all relevant listing criteria can be satisfied and the documents required to be submitted to the Stock Exchange are in good order, the listing process may be achieved within 3 to 5 months. The proceeding before the UCB varies in terms of time, depending on the complexity of the case.

### ***Marketing the Offer***

Listing applicants need to make their offers known by the public. All publicity material which is to be released in Uruguay in connection with an IPO is supervised by the UCB. Insider trading doctrine and confidential measures are ruled by the Act in order to preserve crucial information about the IPO. Consequently, no press releases should be published in relation to the IPO prior to the issue of the prospectus.

### ***Required Documentation***

The most important document in the listing process is the prospectus, which is regulated by Section 21 of the Act. This section provides that the prospectus must include the following elements:

- a) It can be drafted by the issuer;
- b) Identification of the registering entity;
- c) Features and conditions of the securities; and
- d) It must be issued with signatures certified by a Notary Public.

### ***Publication of the Prospectus***

When securities are offered to the “public” in a listing, a prospectus must be prepared in accordance with the requirements of the Act. A prospectus needs to be in the possession of the issuer and it can be requested by the UCB or the registering entity.

## **6. Documentary Requirements**

### **6.1 Contents of the Main Listing Document**

The content requirements for a prospectus are set out in the Act. As a general principle, investors are considered as “consumers” and, consequently, a prospectus needs to be in Spanish and to contain the detailed information specified above.

### **6.2 Other Documents**

As already pointed out, the new Act created a legal framework based on dematerialized securities. In this regard, Section 23 of the Act sets forth that the “registering entities” are the ones that register the securities that are listed on the stock exchange, under international standards. These entities have a book in which securities are registered.

For securities that are issued by the Uruguayan Government, this book is held by the UCB.

### **6.3 Articles/Constitutional Documents**

As noted above, in Uruguay, corporations can be openly-held (public) or closely-held. In the case of public or open corporations, the entity in its formation period receives subscriptions of capital from public savings and these shares are traded on the stock exchange.

The Act and its regulations, as well as Stock Exchange rules, require special registration and authorization to issue public shares and other securities. Public companies must disclose relevant and periodical information. These requirements are mainly focused on regulating IPOs, capital increases and market transparency, but may apply in certain business combination transactions (when one or more public companies are involved).

Moreover, publicly-held corporations need to be managed by a board of directors (a sole manager is not allowed in this case) and an internal controller (*Syndic*) is mandatory.

## **7. Financial Information**

The accountant's report and financial reports are required to be included in the prospectus. They must contain the audited income statements, balance sheets and cashflow statements for the issuer for the upcoming period, which means that a cashflow forecast must be included.

## **8. Parties Involved**

### **8.1 Registering Entity**

As previously stated, an issuer seeking to list dematerialized securities on the Stock Exchange must appoint a registering entity. This entity keeps the book in which securities are registered. Any modification in the ownership of the securities or if the latter becomes subject to a pledge, for instance, is included in the book.

### **8.2 Fiduciary Agent**

Typically, issuers appoint a fiduciary agent whose main purpose in the process is to represent investors that buy the securities offered. It is not mandatory under Uruguayan law to have a fiduciary agent, but it is very usual not to have one, and its name is required to be written on the first page of the prospectus. Local banks, generally speaking, are appointed as fiduciary agents.

According to Resolution 1723/00 of the UCB, if an issuer does not appoint a fiduciary agent, this information has to be expressly included in the prospectus.

### **8.3 Other persons, advisers and professionals appointed for the listing process**

### ***Stock Exchange Broker dealer***

The prospectus must also identify the stock exchange broker dealer that, working as a member of a Stock Exchange entity, exercises a brokerage activity with the securities that are bought and sold.

### ***Underwriters***

Underwriters may underwrite the offer in whole or in part.

### ***Legal advisers***

Legal advisers are typically involved in the preparation of the securities' issuance, as well as in the preparation of the prospectus together with other professionals appointed for the listing process. Moreover, if the issuer is a legal entity (*e.g.* a publicly-held corporation) the legal advisers are the ones that deal with formation and activities of the referred corporation.

## **9. Listing Costs**

The listing costs may vary in accordance with several factors such as the issuer's size, the amount of funds to be raised, etc.

### **9.1 Fees charged by the Exchange**

#### ***Initial listing fess***

The fees charged by BVM in relation to a listing are set out by internal regulations of BVM. The initial listing fee payable on the application for listing (usually on submission of the listing application form) ranges from USD 2,000 to USD 7,000 plus taxes.

These are also the costs to have securities listed on BEVSA.

#### ***Annual listing fee***

An annual listing fee is also required to be paid by the issuer, which is 0.055% over the amount issued and listed.

#### ***Broker fees***

Broker fees depend on which type of security and IPO is at issue (equity, fixed income security, etc.).

### **9.2 Lawyers' and Accountants' Fees**

Fees charged by the professional advisers to the issuer will vary according to the size and complexity of the issue.

## 10. Corporate Governance Requirements

The Act provides that Stock Exchange entities as well as other institutions where securities are bought and sold and issuers involved in IPOs must follow corporate governance principles in order to assure correct supervision, control of the direction and fair and egalitarian treatment to shareholders, if applicable.

Among other obligations, it will be necessary for the issuer to inform the UCB and the Stock Exchange in an accurate and complete way about their financial statements and further relevant information. Also, they need to use international standards regarding accountability and audit.

Uruguayan Law has been recently audited by the OECD (World Bank) and the final report showed that Uruguay mainly complies with relevant principles of corporate governance.

### (i) **Principle I: Ensuring the Basis for an effective Corporate Governance Framework**

This principle is partially observed by Uruguayan Law. The main factors stressed by the OECD were the lack of transparency (an issue which Uruguay has improved with the Act), the lack of an institute or code governing corporate governance and that the regulatory authorities have overlapping functions.

### (ii) **Principle II: The Rights of Shareholders and key Ownership Function**

The OECD deemed that the four sub-principles related to shareholder's rights in terms of fundamental corporate changes and shareholder information before shareholders' meetings are "partially observed" in Uruguay.

### (iii) **Principle III: The Equitable Treatment of Shareholders**

The World Bank deemed the sub-principles of Principle III, concerning the egalitarian treatment of all shareholders are "partially observed" in Uruguay.

### (iv) **Principle IV: The Role of Stakeholders in Corporate Governance**

The World Bank reported that the sub-principle concerning stakeholder's opportunity to obtain effective indemnification is "largely observed" in Uruguay. However, the two other sub-principles regarding stakeholders' rights were deemed to be "partially observed".

### (v) **Principle V: Disclosure and Transparency**

The sub-principles of Principle V related to: (a) quality of standards of accounting, (b) independent annual audit and (c) channels for providing information, were deemed as "partially observed".

The report stated that listed companies have good disclosure standards and

financial firms have especially strong disclosure.

In addition, the report recognizes that listed companies, financial institutions and large non-listed companies must file an annual audited report, which includes a cash flow statement, changes in equity, notes and the audit opinion of the consolidated statement.

**(vi) Principle VI: The Responsibility of the Board**

Sub-principles of Principle VI, concerning board members behavior and access to information, were deemed as “partially observed” by the report. The sub-principles that deal with fair treatment of shareholders, ethical standards, fulfilling of certain key standards and exercising objective independent judgment were rated as “materially not observed”.

Boards of directors of companies in Uruguay are generally non-independent, being usually composed by members who act both as executives and representatives of the controlling shareholder.

**11. Our Office**

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