

BUSINESS ENTITIES IN URUGUAY

Types of Business Entities Uruguayan law regulates practically all known forms of legal organization structure, including the formation of a new legal entity or the installation of a branch of a foreign entity. In case of formation of a new entity the most common forms of legal structure are the following: - Joint stock corporations (whose capital may be represented by registered or bearer shares); - Limited liability companies; - General partnerships; - Limited partnerships; - Capital and industry partnerships; - De facto partnerships. Consortiums and Groups of Economic Interest can also be formed as well as single individual undertakings, in the case of self-employed individuals. All types of corporations and partnerships mentioned above, and the groups of economic interest, have the status of legal persons; consortiums and single individual undertakings do not.

Joint Stock Company/Corporation (S.A.) This type of corporations is regulated by Law No. 16,060 from 1989. However, the main regulations relating to the activities carried out by these corporations are included in their bylaws. The common Corporation with bearer shares is the most frequent type of corporate structure used for carrying out commercial or industrial activities in general, and is almost always the structure adopted by large business entities. The law requires a special corporate structure to engage in certain activities, with formation and operation requirements different from those established for common corporations. - Activity: They have no operating restrictions and can engage in any type of business. - Liability: The liability of the investors, as shareholders, is limited to the amount of the capital subscribed by them. - Capital: They have a minimum share capital of US\$ 50,000 but no set maximum. - Personal involvement: Being capital-based structures they are dissociated from the individuals. - Anonymity: The shares can be registered or to bearer, except for financial and rural activities (excluding forestry), where the shares should be registered. - Earnings: The distribution of earnings is made in proportion to the paid in capital. - Share transfer: Bearer shares can be transferred simply by delivery of the share certificates. Registered shares must be endorsed and their transfer, while completely free, must be communicated to the corporation. - Other: After being formed, one shareholder may have a 100 percent shareholding in the Corporation. The investor can provide financing to the Corporation through loans granted in terms similar to arm's length transactions. There are two kinds of Corporations: open, i.e. basically those resorting to public savings or listing their shares at the Stock Exchange, and closed.

Board of Directors or Trustee Corporations are governed by a Board of Directors or a Trustee, as determined and appointed by the Shareholders' Meeting. The Trustee as well as the Directors can be entities enjoying legal status, either domestic or foreign and can be domiciled outside Uruguay. During the formation stage, they are jointly and severally liable for all corporate operations.

The Shareholders' Meetings The Shareholders' Meeting is the highest authority of the Corporation. An annual Ordinary Meeting must be held to consider the state of the business, the performance of the Board of Directors and approval of the annual financial statements. A Special Shareholders' Meeting should be convened to consider matters other than those that can only be dealt with at the Annual Meeting. The Meetings must take place in Uruguayan territory. In the Shareholders Meetings, and unless otherwise stipulated in the bylaws, resolutions are approved by more than 50 percent of the voting rights of shareholders in attendance. Shareholders can be represented in the Meetings by third parties through simple proxy letters, but these letters should contain specific voting instructions. All the Meetings must be convened by the Board of Directors or by the Administrator and a notice convening the meeting must be published in the Official Gazette and in another newspaper. These publications are not necessary when the shareholders in attendance are expected to represent the total share capital.

Controls The Corporations, with the exception of those operating in Free trade zones, are subject to the control of the National Internal Audit Office, a government control agency during the proceedings for their constitution, modification of bylaws or capital, winding-up, transformation, merger or split up. However, during their functioning and liquidation the control is confined, practically, to open Corporations.

Limited Liability Partnership (SRL) This type of corporation is regulated by Law No. 16,060 from 1989. However, the main regulations relating to the activities carried out by these corporations are included in their Deed of Incorporation and By-laws. The Limited Liability Partnership is the type of legal structure most often used by small and medium size business entities. Due to the legal ceilings established for their capital, normally they are not suitable for large business entities. - Activity: The only operating restriction is that they cannot perform financial activities. - Liability: Partners are liable up to the amount of their capital contributions. - Capital: They have minimum and maximum capital, the latter being the minimum share capital for corporations (US\$ 50,000). -Personal involvement: Dissolution can be agreed in case of death or disablement of one of the partners. - Anonymity: Capital quotas are registered. - Profits: Profits are distributed as provided in the partnership deed, which can be different from the proportional criteria based on the amount of capital holdings. - Transfer of quotas: Without limitations between partners; approval of 75 percent of partners required to transfer quotas to third parties. - Other: The partnership can have from two to fifty partners, which can be legal entities, with no restriction of nationality. Temporarily they can operate with only one partner.

Administration The SRLs are administered and represented by one or several persons, partners or not, designated in the articles of incorporation. Resolutions in the partners meetings are adopted, in general, by partners holding the majority of the capital quotas if there are less than 20 partners. If there are 20 or more partners, the resolutions, in general, are adopted by simple majority of votes of

the partners in attendance, computed at one vote per quota.

Controls The SRLs are not subject to the control of the National Internal Audit Office.

General Partnership The partners of a General Partnership are subsidiary and severally liable, without limitation in amount, for the partnership's debts. Usually, they are also its administrators.

Limited Partnership These have two classes of partners: active and silent. Active partners have a subsidiary and several responsibility, with no limitation of amount, for the partnership's debts. Silent partners are liable only up to the amount of capital contributed.

Capital and Industry Partnership In the Capital and Industry Partnership silent (capitalist) partners are liable for the partnership's debts as in the case of partners of General Partnerships. Partners who contribute their industry or work are liable up to the amount of their portion of retained earnings pending distribution.

De facto Partnership De Facto Partnerships are those lacking a written partnership contract; they have a regime similar to the General Partnership. - Activity: They have no operating restrictions, except for financial activities. - Liability: Active partners are liable subsidiary, severally and with no limitation of amount, for partnership debts. Silent partners are liable up to the amount of their contributed capital. Partners who contribute their industry or work are liable up to the amount of their retained earnings. - Capital: No minimum or maximum. - Personal involvement: Dissolution can be agreed in case of death or incapacity of any of the partners. - Anonymity: Capital quotas are registered. The shares of the silent partners can be issued to the bearer. - Profits: Profits are distributed according to the provisions of the partnership deed, which can depart from the proportional criteria based on capital holdings. - Quota transfers: These are subject to the unanimous approval of the partners. A different criterion can be agreed when transferring to existing partners. - Other: They have no maximum number of partners, but they must have at least two, which can be legal entities, with no restriction of nationality.

Self-employed Individuals or Single Individual Corporations Engagement in business can be undertaken individually, without forming a partnership or a corporation. Such single individual undertakings are not considered to be legal entities and thus do not have the status of legal persons. - Activity: They have no operating restrictions, except for financial activities. - Liability: The owner of the enterprise is personally liable for its debts without limitation of amount. - Capital: No minimum or maximum. - Personal involvement, anonymity, profits: There is a complete identity between the individual and the enterprise, the individual owns both capital and profits. - Quota transfers: The capital is not represented by shares or quotas that can be transferred or negotiated; it would be necessary to

transfer the assets and liabilities of the business. It must be registered at the General Tax Office, at the Social Security Bureau, at the Ministry of Labor and in case of having employees at the State Insurance Bank. Individual enterprises are not subject to the control of the National Internal Audit Office.

Consortiums and Joint Ventures - Activity: They cannot divert from the specific business purpose for which they were constituted. - Liability: In consortiums each member is liable for his own obligations, without several responsibility except if agreed to the contrary. In groups of economic interest the members have a subsidiary and several responsibility. - Capital: They do not have minimum nor maximum capital. - Personal involvement, anonymity, profits, transfers: They are directly associated with the members that form part of these groups and they are not aimed at obtaining or distributing profits.

Consortiums These are organized on the strength of a contract signed between two or more individuals or legal entities (typically between two or more companies), which join-up temporarily to engage in a specific construction job, to render a service or to provide certain goods. They are not intended to obtain or distribute profits but rather, to regulate the activities of the parties. The contract deed must be registered at the Public Trade Registry and an extract of the deed must be published in the Official Gazette and in another newspaper. Each party will carry out its own activities as established in the deed and will be liable for its own obligations, and not jointly, unless otherwise specified in the deed. Consortiums formed according to these characteristics (typical consortiums), provided they are not intended to obtain and distribute profits, are not a business entity from a tax point of view and, consequently, they are not subject to any taxes. Instead, all taxes are borne by the members of the consortium. Consortiums that obtain profits through a business activity for distribution to the parties (atypical consortiums), are considered to be de facto partnerships subject to taxation on their business activity.

Joint Ventures Because Joint Ventures (JV) are not regulated as a specific type of partnership, JVs in principle can adopt any partnership structure. However, a practical way to operate a JV may be to organize a group of economic interest. The group of economic interest is constituted through a contract which should be registered at the Public Trade Registry. Its object, form of administration and other characteristics can be freely agreed between the parties. Groups of economic interest developing business activities will be subject to taxation on their activity while, in other cases, all taxes are borne by the group members.

Branch of Foreign Company Companies established abroad can perform isolated business operations in Uruguay and can appear in court as plaintiffs or defendants, but to perform the activities foreseen in their bylaws or articles of incorporation they must establish a branch in Uruguay. - Activity: They have no operating restrictions but must engage in the same activities as their Head-Office. - Liability: The foreign Head-Office, whose net worth can not be separated from that of the branch, is responsible for the obligations of the branch. - Capital:

Same as corporations, a minimum of US\$ 50,000 with no maximum. - Personal involvement, Anonymity, Profits: Being the branch a foreign company, these aspects will depend on Head-Office regulations. - Capital transfer: Branch capital is not represented by shares or quotas that can be transferred or negotiated: the business entity operating as a branch must be transferred following the legal regulations which govern the sale of business concerns. - Other: The branch must keep separate accounting records in Uruguayan currency and in Spanish language. The branch is a foreign company and consequently it is unable to transform itself adopting a different type of legal structure.

Accounting and Audit Privately held corporations with assets in excess of US\$ 5 million, or sales in excess of US\$ 16 million must register their financial statements at the National Internal Audit Office. This information is freely available to all interested parties. The National Internal Audit Office may provide other information on privately held corporations if the information is asked for in writing with an indication of the reasons that substantiate the need for it. Publicly held corporations must publish their financial statements within 120 days of the end of every accounting year. The fiscal year is generally presumed to coincide with the calendar year, although in special cases the tax administration may permit otherwise. There is no special treatment for local, foreign, or mixed companies. There are special regulations for banks, insurance companies, co-operatives and state owned companies. Operations are regulated by institutions such as the National Internal Audit Office, the Social Security Bank (BPS), and the Internal Revenue Service (DGI). Annual Financial Statements, including a balance sheet, the profit and loss statement and notes must be prepared by a company within a maximum of four months from the end of its accounting year. The balance sheet date of most Uruguayan corporations is at 31st December of each year and an annual statement must be submitted to the Internal Revenue Service (D.G.I) in order to pay their Income and Equity / Net Worth taxes. Decree N°103/991 prescribes the accounting principles applicable in Uruguay, referring to the statements of the Uruguayan Professional Association of Accountants and Economists and International Accounting Principles, some of these being optional and some compulsory. The aforementioned decree also states that the Financial Statements to be prepared are the Balance Sheet and the Profit and Loss Statement, including a number of notes and supplementary statements. Circular N°1,444 of the Uruguayan Central Bank states that those debtors of the financing system which owe over 1.5 million US dollars must submit their Financial Statements to the Creditor Financial Institutions, together with an Audit Report by independent auditors. When amounts owed to financial organizations exceed 0.8 million US dollars, the Financial Statements must be submitted with a Limited Review Report.

Banking Activities Current legislation requires entities engaging in certain special activities to adopt a specific company structure. Within the field of financial entities: insurance companies, credit card companies, companies administering saving groups, investment funds, banks, banking houses and external financial institutions, the latter three are the most important. Banks may

carry out all types of intermediating financial activities, with no restrictions, but cannot depart from this business object. Banking houses, can neither receive deposits from residents nor open current checking accounts although they can grant loans or effect placements to residents. Banks and banking houses must adopt a corporate structure with registered share capital. Foreign institutions may also opt for the installation of a branch. To start operations, these banking institutions require authorization from the Executive Power and a further authorization is required from the Central Bank of Uruguay (BCU), which is the designated authority to control their ongoing operations. Basic minimum equity levels are established by the BCU, currently about US 5.7 million for banks and US 3.4 million for banking houses. Technical equity requirements based on the level of activity and the level of the assets at risk are also established following the Convergence Standards recommended by the Basel Committee. Client operations are covered by secrecy rules imposed by law. Banks and banking houses can operate with residents or with non-residents, but must have minimum reserve requirements, basically in connection with deposits by residents, which are fixed by the BCU.

Financial Intermediation Company (IFE) An External Financial Intermediation Company (IFE) can be established to perform intermediating financial activities exclusively with non-residents. This company must adopt the corporate SA structure with registered share capital or else operate as a branch of a foreign company. IFE companies are subject to the same requirements and controls as banks and banking houses. They must have a basic net worth of US\$ 500,000 deposited with the BCU. Their net worth cannot be less than 5 percent of their assets at risk. Banking secrecy is also imposed on their client operations. IFE companies have two main advantages: - They are exempt of all taxes, except for social security contributions. - They are not obliged to maintain minimum cash reserves.

Uruguayan Financial Services Company/Sociedad Anonima Financiera de Inversion (S.A.F.I.) This type of corporations is regulated by Law N°11,073 in 1948. The main purpose of these corporations is to invest abroad for themselves or for third parties, in bonds, shares, letters, debentures, real estate or other investments. The Uruguayan SAFI is a type of Uruguayan offshore company, which is exempt from all forms of taxation on profit. SAFIs do pay an annual license fee to the government. This is calculated with reference to the assets and liabilities and referred to below. SAFIs cannot trade or own real estate within Uruguay but otherwise are subject to few restrictions on their activities and little in the way of bureaucracy. Because of their ease of use and the fact that Uruguay is not immediately perceived as a tax haven jurisdiction, SAFIs can be extremely useful vehicles through which to conduct trading and investment activities around the world. SAFI companies can: - Make direct or indirect investments, on their own or for third parties. These investments can be on titles, bonuses, shares, warrants, debentures, real property or movable goods. - Use Uruguayan corporate vehicles to conduct brokerage, trading and money management for non-Uruguayan citizens worldwide. - Hold assets and

investments, under anonymity. - Hold bank accounts for foreign citizens. - Make trade structures to avoid excessive taxation in the countries where goods are imported to. - SAFIs are commonly used to trade instruments, including currencies, etc. for itself or for third parties, as allowed by law, and operating through a website. Main Advantages: Complete anonymity with respect to the identity of the shareholders of the corporation. Make direct or indirect investments, on their own or for third parties. It is the tax haven OECD forgot. Main Disadvantages: Incorporation takes between 1 and 2 months. The main prohibitions are the public offering or stock exchange offering of shares, their assets may not include shares, debentures and other commercial papers issued by local companies, which are not S.A.F.I.'s, and they do not have access to public savings for finance. Taxation: As stated, the SAFI is not subject to tax on corporate profits but does pay an annual tax or license fee equal to 0.3% of the net asset value. The taxable base is calculated by taking the amount of shareholder equity and adding to it a figure equal to all liabilities minus twice the shareholder equity. This somewhat complicated calculation normally results in only a nominal figure or zero becoming payable. Requirements: Companies need have only one shareholder and shares can be issued in bearer or registered form. There is no requirement to file the details of shareholders on any public record. A minimum of one director is required and corporate directors are permitted. There is no requirement to file the details of directors on any public record, but their details do have to be lodged with the tax office. Full accounts, in the prescribed format, must be prepared, audited and presented to the tax authorities within 4 months of the financial year end selected by the company. There are few restrictions on name and activity. All company names must end with the words 'Sociedad Anonima' or its abbreviation 'SA'. The company name cannot contain any words indicating that the company is undertaking banking or insurance business without obtaining the requisite license. Names, which are considered undesirable or offensive or implying government patronage would also be disallowed. However, words, which in other jurisdictions would not be allowed without further procedure such as trust, and investment services are not restricted nor is the company restricted from undertaking the indicated activities.

Captive Insurance Currently Uruguay does not offer any specific legislation or tax incentives for captive insurance industry. Local insurance companies are assessed at a 0,5 percent rate to a 15 percent rate depending on the insurance. In the case of foreign insurance companies that are not authorized or qualified to operate and they have contracts with local entities or individuals, the corresponding quotas may be increased to up to 40%. The taxes for general insurance companies are as follows: - Premium taxes: Tax on income of insurance companies is levied monthly on gross premiums of Uruguayan source. Rates are 5% for general business, 2% for marine, 15% for fire and 7.5% for automobiles. Non-resident re-insurers pay an effective rate of 2% for covered risks of Uruguayan source, except for Uruguayan source marine operations, which have an effective tax rate of 0.8%. - Capital taxes: Net worth tax is levied annually on all assets located, placed, or economically used in Uruguay, less some specific liabilities. Insurance reserves can be deducted in full, according to

Law No 16.736 in force since 1996. - Captive insurance companies: All companies, resident or non-resident are taxed on their Uruguayan source income.

Trusts Uruguay has introduced recently legislation on the Trust Institute. In practice, it is rarely used and hardly developed as a concept.