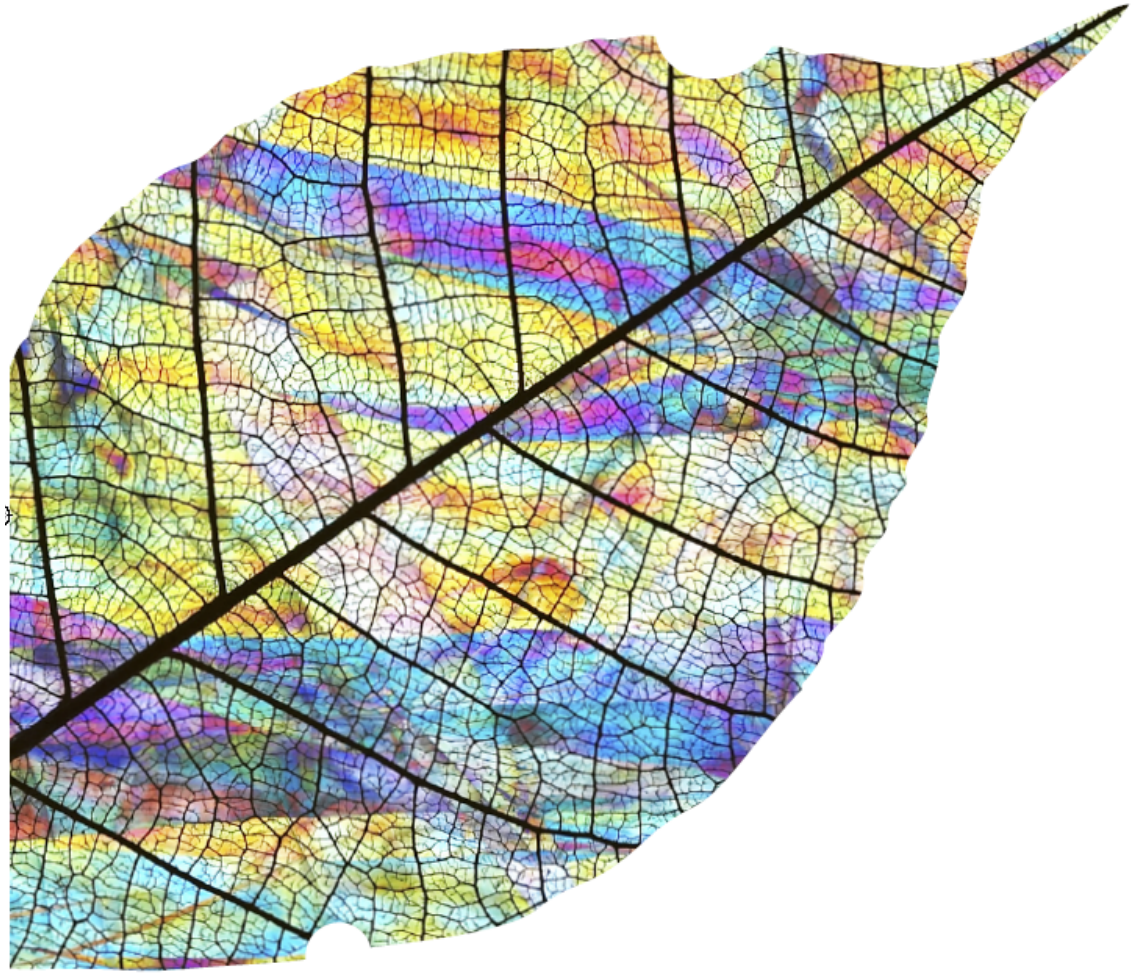
World Universities Comparative Law Project
Legal rating of Uruguay

carried out by students at the University of Montevideo

A production of the Allen & Overy Global Law Intelligence Unit



September 2014

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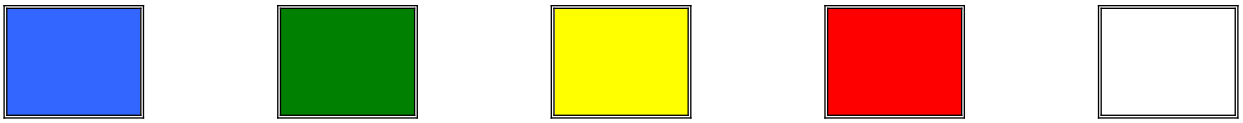

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World Universities Comparative Law Project

The World Universities Comparative Law Project is a set of legal ratings of selected jurisdictions in the world carried out by students at leading universities in the relevant jurisdictions. This legal rating of Uruguay was carried out by students at the University of Montevideo.

The members of the Faculty of Law at the University of Montevideo who assisted the students were:

- Nicolás Etcheverry (the Dean)
- María Federica Brugnini

The members of the Practitioner Expert Panel with whom the students could discuss the questions in the survey were:

- Leonardo Slinger
- Juan Manuel Mercant
- Federico Susena
- Carlos Brandes
- Javier Napoloene
- Jimena Lanzini
- Santiago Madalena
- Federico Florin
- Sofia Anza
- Alvaro Carrau

The Allen & Overy Global Law Intelligence Unit produced this survey and is most grateful to the above for the work they did in bringing the survey to fruition.

All of those involved congratulate the students who carried out the work.

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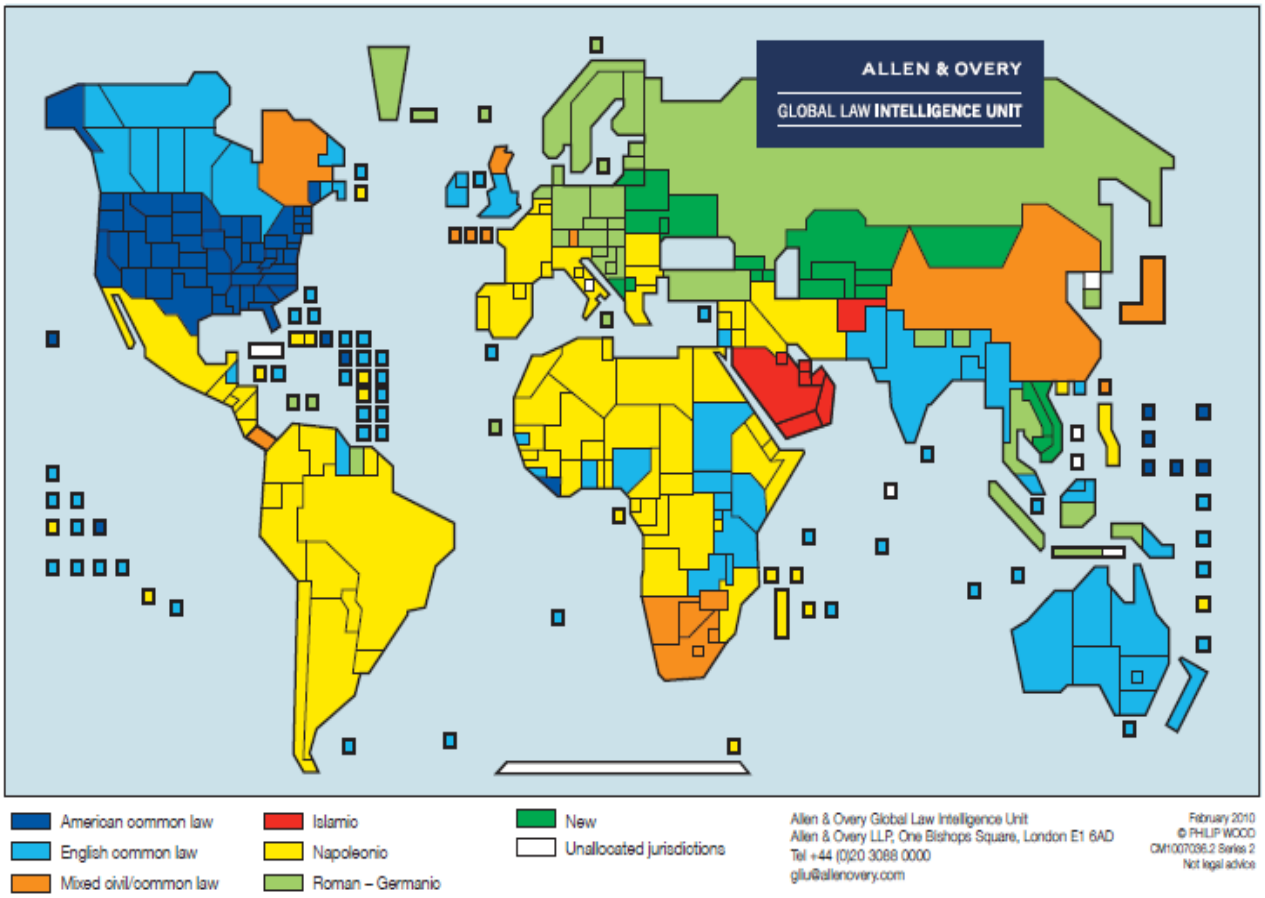
Families of law



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Foreword

Montevideo, 1 September , 2014.

Dear colleagues,

As Dean of the School of Law of Universidad de Montevideo, it is a great pleasure to present you the students Elianne du Boishamon, Thomas Biscomb, Magdalena Kunze, Victoria Núñez and Lucía Zóboli, whom for several months have been working on the research required by the World Universities Comparative Law Project.

The topic chosen, legal rating of selected jurisdictions was interesting and challenging for both the students, the practitioner expert panel as well as for ourselves, members of the Faculty of Law of Universidad de Montevideo.

I know the team of students worked hard, responsibly and spent a great deal of time asking the appropriate questions, interpreting the answers and summarizing the essential parts for each topic.

I trust the results achieved are well according to your standards of exigency.

Our School of Law has placed a very special interest in the development of International and Comparative Law since its early beginnings. Hence, eight compulsory subjects of our law curricula are related to the Common Law system. Furthermore, the UM has been participating in International Competitions such as the Philip C. Jessup Moot in Washington and the Willem C. Vis in Vienna since 2004 with excellent results. Many of the students that were part of those teams are now working as international lawyers in Paris, Washington, Madrid, London, Beijing, New York and Buenos Aires.

Consequently, it was a real honor and – as said – a pleasure to be part of this Project and I hope this will only be the beginning of new ways of working together in the nearby future.

Best regards,

Nicolás Etcheverry
Dean
Universidad de Montevideo
Law School

Description of the legal rating method

Introduction

This paper assesses aspects of the law in Uruguay with a view to rating the law in the relevant areas. The survey is concerned primarily with wholesale financial and corporate law and transactions, not with retail law.

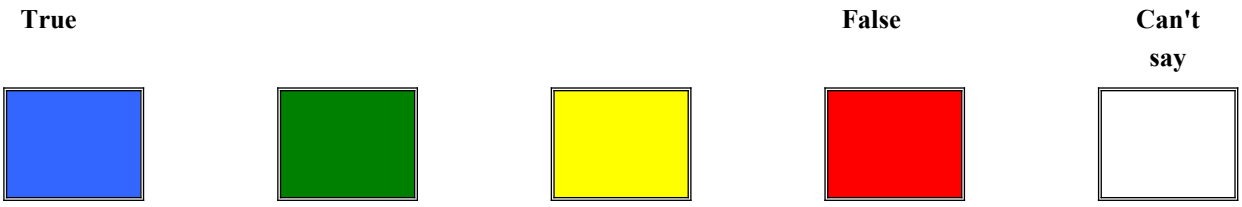
Legal risk has increased globally because of the enormous growth of law; because of its intensity; because many businesses are global but the law is national; because nearly all countries are now part of the world economy; and because the law is considered to play a very significant role in the fortunes of our societies. Liabilities can be very large and reputational losses severe.

The survey was carried out by students at the University of Montevideo. The survey was designed by the Allen & Overy Global Law Intelligence Unit.

The students were requested to express their views freely and in their own way. The views expressed are their views, not necessarily those of the University of Montevideo, the members of the Practitioner Expert Panel or the Global Law Intelligence Unit, the members of Allen & Overy.

Methodology

The survey uses colour-coding as follows:



Blue generally means that the law does not intervene and the parties are free, ie the law is liberal and open.

Red generally means that there is intense legal intervention, usually in the form of a prohibition.

Green and **yellow** are in-between.

The purpose of this colour-coding is to synthesise and distil information in a dramatic way, rather than a legal treatise. The colours correspond to a rating of 1, 2, 3 or 4, or A, B, C or D.

The cross in the relevant box signifies the view of the students carrying out this assessment of the position of Uruguay. This is followed by a brief comment, e.g. pointing out qualifications or expanding the point. These comments were written by the students.

The colour-coding does not usually express a view about what is good or bad. Whether the law should intervene in a particular arena is a matter of opinion. The scale is from low legal intervention to intense legal intervention or control. This is not a policy or value judgment as to whether or not the law should or should not intervene. Jurisdictions often disagree on whether the law should intervene and how much. So one of the main purposes of this survey is to endeavour to identify some of the points of difference so as to promote fruitful debate.

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Black letter law and how it is applied

This survey measures two aspects of law. The first is black letter law, ie what the law says or the written law or law in the books.

The second measure is how the law is applied in practice, regardless of what it says. Thus, the law of Congo Kinshasa and Belgium has similar roots but its application is different.

Although there is a continuum, these two measures have to be kept separate. Otherwise we may end up with just a blur or noise or some bland platitude, eg that the law depends upon GDP per capita.

In fact, only the last two questions deal with legal infrastructure and how the law is applied. All of the others deal with the written law, without regard to enforcement or application.

Key indicators

The survey uses key indicators to carry out the assessment. It is not feasible to measure all the laws or even a tiny fraction of them. The law of most jurisdictions is vast and fills whole libraries.

The key indicators are intended to be symptomatic or symbolic of the general approach of the jurisdiction. To qualify as useful, the indicator must usually be (1) important in economic terms, (2) representative or symbolic and (3) measurable. In addition, the indicators seek to measure topics where jurisdictions are in conflict. There is less need for measuring topics where everybody agrees.

An important question is whether this method is useful or not, and, if it is, whether the indicators are relevant.

Legal families of the world

Most of the 320 jurisdictions in the world, spread just under 200 sovereign states, can be grouped into legal families. The three most important of these are: (1) the common law group, originally championed by England; (2) the Napoleonic group, originally championed by France; and (3) the Roman-Germanic group, originally championed by Germany, with major contributions from other countries.

The balance of jurisdictions is made up of mixed, Islamic, new and unallocated jurisdictions.

Many aspects of private law are determined primarily by the family group, but this is not true of regulatory or economic law.

Excluded topics

This survey does not cover:

- transactions involving individuals
- personal law, such as family law or succession
- competition or antitrust law
- intellectual property
- auditing
- general taxation
- macroeconomic conditions, such as inflation, government debt, credit rating or savings rates
- human development, such as education, public health or life expectancy
- infrastructure, such as roads, ports, water supply, electricity supply
- personal security, such as crime rates, civil disorder or terrorism.

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Banking and finance

Introduction

Banks and bondholders (typically also banks, but also insurance companies, pension funds and mutual funds) provide credit or capital. Their main risk is the insolvency of the debtor and therefore the key indicators intended to measure whether the law supports those habitual creditors or debtors, such as large corporations as borrowers, when it matters, ie on bankruptcy. This is when commercial law is at its most ruthless in deciding who survives and who drowns.

This debtor or creditor decision is implemented mainly through the bankruptcy ladder of priorities. A feature of common law systems is the presence of super-priority creditors who are paid before anyone else - creditors with a set-off or a security interest and beneficiaries under a trust. For example, if a bank has universal security over all the assets of a company, the bank is paid before all other creditors, including employees and trade creditors. This regime therefore protects significant creditors who such as banks.

Jurisdictions based on the English common law model give super-priority to all three claimants. Traditional Napoleonic jurisdictions typically do not allow insolvency set-off, have narrower security interests and do not recognise the trust. Their bankruptcy ladder favours greater equality of creditors. Most traditional Roman-Germanic jurisdictions are in-between. They allow insolvency set-off and have quite wide security but most do not recognise the trust. There are wide exceptions to these generalisations.

Insolvency set-off

Generally If set-off of mutual debts is allowed on insolvency, the creditor is paid. If it is not allowed, then effectively the creditor is not paid. Very large amounts are involved in markets for foreign exchange, securities, derivatives, commodities and the like, so that the question of whether exposures should be gross or net is a matter of policy as to who the law should protect.

Q1 In Uruguay, creditors can set off mutual debts on the insolvency of a debtor if they are incurred before notice of the insolvency.

True			False	Can't say
✓				

Comment:

According to article 65 of Act number 18.387, in Uruguay, all debts can be set off, even once the insolvency has been declared, as long as they were compensable before this declaration took place.

Security interests

Generally Security interests give priority to the creditor with security - typically banks - who are the main providers of credit in most countries.

In traditional common law jurisdictions, a company can create universal security over all its present and future assets to secure all present and future debt owed to a bank. Once registered, the security is valid against all creditors, except that the floating collateral ranks after preferred creditors - typically wages and taxes. The security can be granted to a trustee for creditors. On a default there are no mandatory grace

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periods and the creditor can enforce out-of-court by appointing a receiver (a type of possessory manager) or by private sale. But in some common law jurisdictions there are freezes on enforcement in the event of a judicial rescue of the debtor. Also, in some of these jurisdictions there are stamp duties.

On the other hand, in many traditional Napoleonic jurisdictions, universal security is not possible, neither is security for all future debt. There is no trustee to hold the security. On enforcement, there are grace periods and no receiver. Sale is through the court and a public auction. Preferential creditors rank ahead. Some countries have a freeze on enforcement under a judicial rescue statute.

The main policy issue is therefore whether security should be encouraged or whether the law should intervene to impose greater equality.

The main tests are (1) scope of eligible assets, (2) debt secured, (3) trustee, (4) priority over preferred creditors, (5) private enforcement and receiver, (6) no rescue freezes and (7) low costs.

Q2 In Uruguay, the law offers a security interest which is highly protective of the secured creditor.

True			False	Can't say
	✓			

Comment:

When we talk about security interests in Uruguay, we can see that this institute is highly used in our country in order to protect secured creditors, but this fact does not grant the creditor an undisturbed execution of his rights.

We can see for example, that this securities will not be held untouched in cases of insolvency, where, most of the times these securities will fail and creditors will have to report together with other creditors which might have no guarantees or not as good ones.

Nonetheless, there is a hypothesis which is given by article 160 of Act number 18.387 which saves the securities in cases in which the creditor did not vote in favour of the proposed agreement.

Universal trusts

Under a trust, one person, called the trustee, holds title to the assets of another person, called the beneficiary, on terms that, if the trustee becomes insolvent, the assets go to the beneficiary and are not used to pay the trustee's private creditors. The assets are immune and therefore taken away from the debtor-trustee's bankrupt estate.

The main examples of trusts are custodianship of securities, pension funds, securities settlement systems and trustees of security for bondholders and syndicate banks. The amounts involved are enormous.

All jurisdictions have an effective trust of goods (called bailment or deposit). The common law group has a universal trust for all other assets (land and intangible property). Most members of the civil code group do not have a universal trust, subject to wide exceptions, especially for custodianship of securities. A few countries in this group have a universal trust by statute, e.g. France and China.

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Q3 Uruguay has a universal trust for all assets.

True			False	Can't say
✓				

Comment:

When it comes to trusts, we can see that in Uruguay we admit effective trusts such as deposits and bailments, but we accept universal trusts as well, because it can be seen spread all along our legislation, that you can put land and intangible property as a trust to grant any other obligation you have got.

It is important however, to say that you will have to comply with certain formalities such as sign in specific registers.

Other indicators

Other bankruptcy indicators not measured here include freezes on the termination of contracts, fraudulent preferences, the priority of rescue new money, the presence and intensity of corporate rescue proceedings and recognition of foreign insolvencies. Director liability for deepening the insolvency is dealt with below.

Other financial law topics not covered in this survey include the regulatory regime, especially capital, liquidity, authorisation of financial business, conduct of business, control of prospectuses, control of market abuse and frauds, such as insider dealing, and the insolvency regime for banks. Financial regulation is a very large field.

Corporations

Introduction

Financial law involves competition between debtors and creditors so that jurisdictions can be positioned on a straight line. Corporate law however involves three main competitors: (1) shareholders, (2) creditors and (3) managers - a triangle. If the key indicators show that a jurisdiction strongly favours one or other of the parties at the points of the triangle, whether creditors, shareholders or management, then one can begin to build up a picture of the choices which the jurisdiction habitually makes in resolving the conflicting interests of the parties.

For example, a very tough prohibition on financial assistance (which is protective of creditors against shareholders) tends also to support an attitude to other principles of the maintenance of capital or to support the proposition that mergers by fusion are difficult (because they can prejudice creditors). This would be true of the English regime in 1948. Similarly, a view which easily imposes personal liability on directors for deepening an insolvency might also show a legal approach which is not supportive of the veil of incorporation in other areas, eg shareholder liability and substantive consolidation on insolvency.

The two extreme corporate law models are the Delaware model and the traditional English model, exemplified by the English Companies Act 1948 (now superseded). Napoleonic and Roman-Germanic models are in-between to varying degrees.

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The Delaware regime is highly protective of management in the key areas. The traditional English regime favours creditors on most of the key contests and, where creditor interests are not involved, it tends to favour shareholders as opposed to managers.

Director liability for deepening an insolvency

Generally If the law imposes personal liability on directors for deepening an insolvency, eg carrying on business and incurring debts where there is no reasonable prospect of paying them, then the regime is hostile to the interests of management. The legal risks of management are increased.

There are basically four regimes internationally: (1) directors are hardly ever liable for deepening the insolvency, eg Delaware and most US jurisdictions, plus some traditional English jurisdictions which only punish fraudulent trading; (2) directors are liable for serious negligence (England, Singapore, Australia, Ireland); (3) directors are liable for mere business misjudgements deepening the insolvency (France); and (4) directors are liable if they fail to file for an insolvency proceeding after the company becomes insolvent (France, Germany and others).

Q4 In Uruguay the law rarely imposes personal liability on directors for deepening the insolvency and there is no rule that the directors must file for insolvency when the company is insolvent.

True			False	Can't say
		✓		

Comment:

In 2008 the insolvency regime was completely altered in Uruguay by the enactment of Act number 18.387. This law establishes that insolvency process must be qualified either as guilty or fortuitous, which has an impact on the development and the consequences of the insolvency procedure that will conveniently be catalogued as fortuitous. However, if the directors (which are considered to be the debtors of the company) fail to file for insolvency within two years prior to the insolvency process, being aware that their goods were patently insufficient or inadequate to continue the company's activity, there is an absolute presumption of guilt. Moreover, a relative presumption may also take place by the simple omission of the director to file for insolvency without further requirements. Finally, and regarding their liability, the law previously mentioned states that if the insolvency procedure is qualified as guilty, the court's ruling that qualifies the insolvency process as such may also condemn the directors, who can be liable for part or all, of the company's deficit. Notwithstanding this fact, this question is not completely false, as in order for directors to be personally liable, certain provisions of the law must be met.

Financial assistance to buy own shares

Generally Many jurisdictions prohibit a company from giving financial assistance to buy its own shares. The typical example would be where a bidder finances the acquisition of a target company by a loan and after the takeover arranges for the target to guarantee the loan and charge its assets to secure the guarantee.

The commercial effect is similar to the repayment of the share capital of the target before its creditors are paid. Shareholders should be subordinated to creditors.

The prohibition therefore favours creditors against shareholders of the target.

The Delaware regime does not prohibit financial assistance. The traditional English regime has a wide prohibition (not England any more). Most Roman-Germanic regimes are against it, with Napoleonic regimes hesitant. The EU has a prohibition against financial assistance by public companies. Some countries allow financial assistance by private companies if solvency is established.

A contravening transaction is usually a criminal offence and void.

Q5 Uruguay permits a company to grant financial assistance for the purchase of its own shares.

True			False	Can't say
			✓	

Comment:

Uruguayan legal framework does not permit companies to grant financial assistance to shareholders or third parties to acquire its own shares.

Public takeover regime

Generally A public takeover regime which is free and open tends to favour managers who can guard against takeovers by poison pills and the like and who have relative freedom to acquire other companies. An example is the Delaware regime. A restrictive regime on the lines of the British system tends to favour shareholders.

The chief features of a restrictive regime are: (1) the bidder must make a mandatory bid in cash when a threshold of shares in the target is reached, eg 30%; (2) the bidder must pay the same price to all shareholders (sharing the control premium); (3) no partial bids (getting control on the cheap); (4) proof of certain funds to implement the offer; (5) compulsory acquisition of dissenting minorities (squeeze-out); (6) fixed timetable; (7) no ability of the managers to frustrate a bid by poison pills without shareholder approval; and (8) control of the content of circulars, especially forecasts.

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Q6 Apart from exchange controls and restrictions on foreign direct investments, the public takeover regime in Uruguay is open and has few restrictions.

True			False	Can't say
		✓		

Comment:

In Uruguay public takeovers have been regulated for the first time in 2013 thought de Circular N° 2139 of the Central Bank of Uruguay ("BCU").

This new regulation, which in general terms has few restrictions, implies that whoever takes control of a listed company must make a public offer to acquire the remainder of the shares at a fair price. One of the objectives pursued by the new regulation is to protect certain groups of shareholders who would otherwise be out of the transaction of purchase of shares and would see the value of their participation in the market diminished once the buyer obtains the majority required for control of the company.

Other indicators

Other important indicators are corporate governance (difficult to measure), free ability to merge companies by fusion, the one-share-one-vote rule, and, to a lesser extent, minority protections. Other indicators relate to quick and cheap incorporation, the *ultra vires* rule, maintenance of capital, no par value shares, shareholder liability, substantive consolidation on insolvency and disclosure. These are not measured here.

Commercial contracts

Introduction

Contract is at the heart of commercial life, and is everywhere. In fact, the main tenets of contract law across the main families of jurisdictions are consistent - it is in the fields of insolvency and property law where the main differences emerge. It is true that there are contract differences, for example, between writing requirements, open offers, the time of acceptance and specific performance, but often these differences are of lesser significance in practice in the business field.

The key indicators the survey chooses all tend to symbolise whether the approach of the jurisdiction to contract is hard or soft. If the approach is hard, then the jurisdiction tends to support predictability in business contracts so that certainty and freedom of contract are valued more than mitigating the risk of occasionally abusive behaviour and unfair results, especially for weaker parties. A soft jurisdiction tends to give greater primacy to notions of good faith and the like.

Exclusion of contract formation

Generally Commercial parties often wish to be able to negotiate heads of terms commercially without being bound by a contract. In some jurisdictions, the courts are ready to infer that the parties are bound if the terms are sufficiently clear, even if they have said expressly that they do not intend to be bound.

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Q7 In Uruguay, parties are not bound to heads of terms if they expressly state that the terms are "subject to contract" or some such clear phrase.

True			False	Can't say
✓				

Comment:

In Uruguay once the offer is accepted and the party who made the offer finds out about the acceptance, the contract is perfectioned, which means that the parties have already agreed on the terms of the contract. For that reason, it is possible to say that the heads of terms could be a contract itself that could be binding for the parties, but it is also true that it is possible for the parties to establish that the terms are "subject to contract" which is known as a suspensive condition. This means, that the heads of the terms will bind the parties only when this condition is fulfilled. In fact, when this kind of condition is agreed, our Code of Commerce states that the obligation does not exist until the "condition" is fulfilled.

Termination clauses

Generally Many contracts, especially loan contracts, leases of goods and long-term sales contracts, contain events of default on the occurrence of which one party can terminate the contract. Jurisdictions which uphold freedom of contract and the literal interpretation of contract give effect to these clauses and do not rewrite the contract according to the court's notions of what is fair. Other jurisdictions prefer good faith. We ignore consumer contracts - where there may be consumer protections.

Q8 In Uruguay, a termination clause in a loan or sale of goods contract between sophisticated companies (not individuals) providing for the termination of the contract immediately on certain events is usually upheld, even if the event concerned is relatively trivial.

True			False	Can't say
✓				

Comment:

First of all, in Uruguay, there is no special regulation for a loan or sale of goods contract between sophisticated companies, therefore this kind of businesses are regulated by the Code of Commerce, Civil Code and any other regulation as applicable, as well as good faith and reasonability, using prior judgments as guidelines.

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Regarding the possibility of terminating the abovementioned agreements, we state that it is possible to include a relatively trivial cause of termination, however the fulfillment of the same should be objective.

Resolutory conditions can be described as those clauses that once they are verified, cause the revocation of the obligation. When this kind of clause is expressly agreed by the parties, the contract is automatically terminated.

Exclusion clauses

Generally Contracting parties often seek to exclude their liability for defective performance of the contract. So the issue is whether these exclusion clauses are generally upheld if they are clear and whether freedom of contract is allowed in this area.

Q9 In Uruguay, exclusions of liability in most commercial contracts between sophisticated companies, such as a sale of goods contract, are generally upheld if they are clear.

True			False	Can't say
✓				

Comment:

The freedom of contract is usually allowed by courts. In fact it is established by the law that the words used in the contracts must be understood in their literal sense. Therefore, if the contract contains a clause which provides an exclusion of liability, it should be effective without existing a legal risk of exclusion of the clause.

However, it is important to highlight that in this kind of clauses that exclude the liability of the parties, it is necessary to take into account if the parties gave their consent without fraud, error, or coercion. If the parties do not give their voluntary consent, the contract is void.

Other indicators

Other contract indicators not assessed here include writing formalities, open offers, mistake, frustration, damages, penalties, specific performance and whether notice of assignment of the contract to the debtor is mandatory if the assignment is to be valid on the insolvency of the assignor.

Litigation

Introduction

The first three key indicators of governing law, jurisdiction and arbitration tend to show whether the jurisdiction does or does not place a high value on international comity and freedom of contract as opposed to national primacy.

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The indicator on class actions tends to show whether or not the jurisdiction's litigation system is orientated towards plaintiffs, especially mass plaintiffs in product liability cases. This indicator may also show the attitude of the jurisdiction to the protection of individual parties as against business parties, both in terms of the incidence of costs and enforcement.

Governing law clauses

Generally Most countries apply a foreign governing law of a contract even if there is no connection between the contract and the jurisdiction. If the courts do not uphold the governing law, the effect is that the contract obligations may be different.

Q10 The Uruguayan courts will apply an express choice of a foreign law in a loan or sale of goods contract between sophisticated companies, even though the contract has no connection with the foreign jurisdiction, but subject to Uruguayan public policy and mandatory statutes.

True			False	Can't say
			✓	

Comment:

In Uruguay, article 2403 of the Civil Code prohibits the parties to modify the legislative competence determined by the law. Therefore, Uruguayan courts will apply the law that is determined by the Uruguayan law itself, not the law determined by the parties.

If such choice of law clause exists in a Uruguayan contract, that clause will be held as not written since it is not valid in our country according to the said article of the Code.

For example in a contract for the sale of goods in Uruguay, the law is determined by the location of the product to be sold (if the product is in Uruguay, then the Uruguayan law applies), not by the agreement of the parties. Therefore in this situation, that clause would be taken as not written and the courts will apply Uruguayan law.

Foreign jurisdiction clauses

Generally Many contracts confer jurisdiction, sometimes exclusive, on the courts of a foreign jurisdiction, usually accompanied by a choice of foreign governing law.

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Q11 The Uruguay courts will generally uphold a clear submission in a loan or sale of goods contract between sophisticated companies to the exclusive jurisdiction of the courts of a foreign country, even if there is no connection between that country and the contract.

True			False	Can't say
			✓	

Comment:

According to article 2403 of the Uruguayan Civil Code, parties cannot modify the jurisdiction of a Uruguayan contract in use of their autonomy. If Uruguayan parties to a contract agree to have their disputes solved by an Argentinian court -for example- that agreement will be null, since the applicable law to the contract (the Uruguayan law) does not admit that mechanism.

Moreover, according to 2399 of the aforementioned Code, the applicable law to the contract is the one in which the contract is to be enforced. In addition, Uruguay has adopted the "ASSER criteria" which means that the judge will apply the law of its own jurisdiction.

Therefore, the jurisdiction and the applicable law will always coincide.

Arbitration recognition

Generally Contracting parties, especially in trading and construction contracts, but less so in loan contracts, wish to submit disputes to arbitration, sometimes in a foreign country. The resulting award is often enforceable locally under the New York Arbitration Convention of 1958, to which most countries have adhered.

Q12 In Uruguay, the courts allow sophisticated contracting parties to submit contract disputes to a foreign arbitral tribunal to the exclusion of the [ ] courts.

True			False	Can't say
✓				

Comment:

Uruguay has a long tradition of respecting the international tendency on diverse dispute resolution mechanisms. The ratification of almost every treaty and convention regarding this issue in the last 120 years, as well as several cases, evidences this fact.

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The weakness in the Uruguayan system regarding arbitration is the lack of internal ruling on the matter. Despite this aspect, it is possible to affirm that the Uruguayan system is "dualist", this means that it regulates domestic arbitration and international arbitration differently. Domestic arbitration is regulated by the "General Procedural Law Code" which establishes the dispositions of an arbitral proceeding in the country; while international arbitration lacks a concrete law. Therefore the latter is regulated by international treaties, principles and conventions that are integrated into the system and are universally accepted.

Regarding case law, despite not being abundant, it shows a clear intention to favor arbitration over other dispute resolution mechanisms.

In response to the question, despite having a clear lack of ruling on the aspect, sophisticated companies can perfectly agree on an arbitral clause to resolve their disputes though arbitration.

Class actions

Generally In some countries, such as the United States, a plaintiff can be authorised by the court to sue on behalf of all claimants who are similarly situated. Claimants have to opt out or they are bound.

Q13 In, class actions where the class is bound if they do not opt out are generally not allowed.

True			False	Can't say
	✓			

Comment:

On the contrary, the rule in the Uruguayan system is that once the class starts a proceeding in name of a whole and unidentified group, the whole class is bound by the final judgment. In these cases, the judgment will have general effect. This is an "*ergaomnes*" effect that reaches everyone involved with the class.

Once there is a firm judgment, the finality of the award applies and there is no possibility to reopen the issue in front of another tribunal. However, if the object of the proceeding is denied due to lack of proof, the finality does not apply and the cause is open to future trials.

The first time that Uruguayan law recognized the validity of a class action was in 1934 when ruling over the artistic and historic heritage of the nation. Since that moment, the regulation over this issue has risen, but there is still a lot to regulate and there is still a need for a firm and unified regulation that would perpetuate a single system.

Other indicators

Other indicators not covered by this survey include contingent costs, loser pays the costs of the winner, prejudgment freezes or arrests, appeals, scope of disclosure (discovery of documents), efficacy of waivers of sovereign immunity and the enforceability of foreign judgments.

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Real property

Ownership of land

Generally In most countries, nationals can own land absolutely and are not restricted simply to leases for a limited term or simple rights of occupancy. However, in some jurisdictions, absolute ownership of land is not available to nationals or local corporations. If this is so, then the jurisdiction would be coloured green if citizens can lease land for a very long term without material restrictions, such as 999 years, and can also mortgage or sell the land or give it away or bequeath it under their wills without official consent because the ownership is a close proximate of absolute ownership. If on the other hand citizens are entitled only to a lease of, say, 70 years or less, or to similar rights of occupancy, and if there are limitations on dealing with the land without official consent, such as mortgaging, selling or bequeathing it, then the jurisdiction would be red.

Q14 In Uruguay nationals and local corporations are entitled to own land absolutely.

True			False	Can't say
	✓			

Comment:

Our Constitution establishes that property is an inviolable right, although it is possible to be limited by laws enacted for reasons of public interest. As a consequence, this right may be limited by restrictions such as expropriations by the State or easements. In all these cases, compensation has to be paid to the owner.

Besides, there is a limitation of time for the leases, set on a term of 15 years or less which can be renewed. However, in certain activities such as afforestation, it is allowed to establish a contract with a maximum term of 30 years. It is necessary to add, that even if it is possible to bequeath according to your own will, there is a limitation about that because for our law it is impossible to dispose of all property by testament since a portion of it has to be for what we call the compulsory heirs (unless there would be a causal to disinherit), and the same limitation is applicable for the donations.

Finally, there is no official consent required to sell or mortgage the land. Even though there is freedom to dispose it, in some cases there are "preemptive rights", where in some cases it is mandatory to offer it to certain public agencies because they have preference in the acquisition.

Security of land title and land registers

Generally Many jurisdictions improve the security of title to land by a registration system which, although not necessarily state-guaranteed, has high reliability. An example is the Torrens system developed in Australia and used in many other countries, eg Canada and England.

Most countries in the civil code groups do not have a title register but instead require documents concerning land to be notarised and filed at the registry so that they can be searched. The United States does not

generally have title registers for land although there may be mortgage registers. They rely on title registration companies which provide title insurance.

Q15 Most land in Uruguay is registered in a land register which records most major interests in land, eg ownership, mortgages and longer-term leases.

True			False	Can't say
✓				

Comment:

In Uruguay there is a public register, where it is mandatory to register not only real estate or immovable property, but also other sections such as some kinds of movable property, commerce, etc. Focusing especially in the land property, in that register there is information about the ownership, identification, and location of the land. It also includes information about the mortgages and every issue that affects the property such as: leases, leasehold, easement, seizure or any domain dismemberment.

Regarding the immovable property, there is a special register called "Direccion Nacional de Catastro". It is an inventory of the real estate, where it is possible to find information about the description of the land, location, dimensions, value and ownership, among others.

Land development restrictions

Generally Many countries restrict development and the change of use of land and require permits to be obtained for any development or change of use.

Q16 In Uruguay, apart from environmental controls (dealt with later), the control of commercial development and the change of use of land is very light and, where required, permits are quick and cheap to obtain.

True			False	Can't say
				✓

Comment:

In Uruguay there is no general regulation about the commercial development or the use of the land. This means that it depends on each particular case to know if it is required to obtain permits and, if so, how cheap or quick they are, because in some cases it is needed to obtain them from different departments of the Executive Power or from another governmental body depending on the case.

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Other indicators

Other indicators not surveyed include transfer costs, stamp duties and lessee protections.

Employment law

Generally The indicator here is whether it is easy or hard to hire and fire employees. The measures include high minimum wages, maximum hours, minimum holidays, maternity rights, equal pay for equal work (non-discrimination) and severance costs.

Q17 In Uruguay, there are few controls on hiring and firing employees or on the terms of employment.

True			False	Can't say
		✓		

Comment:

Especially since 2005, the Uruguayan Parliament has enacted many Acts which protect the employee's rights and which regulate the functioning of trade unions. Moreover, there are several controls regarding the firing of employees.

Uruguayan legislation provides a fixed compensation that is to be paid to the worker, should he be fired for any circumstance (except for misconduct). What is more, the aforementioned monetary compensation is only destined to cover the damage that is caused by the dismissal itself. Consequently, if the employer breaches the contract of employment in any other way (rather than the anticipated termination of the contract), that breach is to be compensated by multiplying the fixed compensation that it is set by law. In this way, moral claims are to be considered when an employee is being fired. However, and in spite of the fact that there are a lot of controls regarding the termination of the employment contract, so as to protect its stability, such statement cannot be verified regarding the hiring of employees.

In Uruguay, there are few requirements in order to hire a worker, which is clearly demonstrated on the fact that employment contracts are not even required to be written. Moreover, Uruguayan courts have ruled in favor of employers that were able to demonstrate the existence of verbal contracts where the employee was subject to a probationary term, in which the contract could be ended without that being considered as a dismissal. To conclude, this question cannot be considered as completely false, as there is vast regulation regarding the dismissal of workers, which does not occur regarding their hiring.

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Environmental restrictions

Q18 In Uruguay the rules governing the environment and liability for clean-up are very light and relaxed.

True			False	Can't say
			✓	

Comment:

In Uruguay, environmental regulation is of utter importance. According to the most accepted doctrine, it is established as one of the priorities in the activity of the government. Reason enough to seek for its intense protection, even amongst the national constitution itself.

In the Uruguayan Constitution, article 47 clearly states that the protection of the environment is of general interest, and that people must refrain from any kind of harm or pollution. Giving the hierarchy of the rule, the high level of interest on this matter is evident.

Apart from this, one of the main regulations in the country is Act number 17.283, also known as "The general law on environmental protection" ("Ley general de medioambiente"). It establishes the political orientation and planning as well as the development of several sanctions for breach of the new principles established on the law.

Apart from the Constitution and the "general law", there are several individual rules that control the environmental activity on specific areas. For example: laws 14.859, 17.234 and 16.688 (regarding the use of water); law 16466 (referring to the Environmental Impact Assessment); law 18.308 (incorporating the concept of environmental sustainability); laws 17.283 and 10.007 (regulation of the air pollution); law 17.852 (related to sound pollution, its prevention and correction); law 17.234 (regarding the protection of specially protected green areas in the country); law 13.640 (regulating the use of agrochemicals and fertilizers); law 16.320 (prohibiting the introduction of radioactive waste); amongst many others.

Uruguay has also ratified several international instruments to adapt and support the international concern on the environmental protection. Some of these instruments include the Kyoto Protocol, the Stockholm Convention on Persistent Organic Pollutants, the Convention on Biological Diversity, the United Nations Framework Convention on Climate Change, the Rio Declaration on Environment and Development, and several others.

This non-exhaustive list of rules evidences the vast regulation and interest of the Uruguayan government in the protection of the environment. This shows, as a conclusion, that the ruling in the country is not "lax and relaxed", on the contrary, the environment is of utter importance and this is clearly shown on its strict regulation.

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Openness to foreign business

Generally These indicators measure the degree to which the country is open to foreign businesses. The indicators are quite generic and therefore subjective.

Foreign direct investment

Q19 In Uruguay foreigners may freely own and control local companies outside protected industries, such as media, banks and defence.

True			False	Can't say
	✓			

Comment:

Regarding foreign direct investment, we can see that in our country we are willing to promote this kind of interference in the economic life because it enlarges our market. However, this fact cannot be seen as if there were no restrictions to the foreign investment.

An example of this can be seen on the regulation regarding banking, where it is said that only the Uruguayan Central Bank is authorized to determine whether a foreign person can establish a Bank in our country, and this will depend on its absolute discretion.

Regarding the other areas where an investment can be made, there are no restrictions but the compliance with our internal legislation.

Exchange controls

Q20 In Uruguay, there are no exchange controls. Businesses may therefore have foreign bank deposit accounts in foreign currency, borrow in foreign currency and repatriate profits to foreign shareholders in foreign currency.

True			False	Can't say
✓				

Comment:

In Uruguay there are no Exchange controls. Therefore, Uruguayan businesses can have foreign bank deposit accounts, in foreign currency, borrow in foreign currency and also repatriate profits to foreign shareholders.

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As it can be read from the aforementioned paragraph, there are no controls regarding the activity of foreign investors in our country, because, again, Uruguay is broadly open to international investments in order to widen the scope of international relations.

Alien ownership of land

Q21 In Uruguay, foreign-controlled companies have the same rights as nationals or residents to own or lease land without a permit.

True			False	Can't say
✓				

Comment:

When it comes up to foreign controlled companies we can see that they have the same rights as nationals in everything related to ownership or lease of lands.

Application of the law

Generally These indicators deal with the application of the law, as opposed to what the law actually says. They are bound to be generic and subjective, a matter of impression.

Q22 In Uruguay, the higher courts usually treat big businesses as fairly as they treat individuals and do not favour local interests over foreigners.

True			False	Can't say
		✓		

Comment:

There is not a different treatment between national and foreign businesses. On the other hand, there is a differentiation between businesses and consumers. There has been a tendency to act in favor of the consumer. This differentiation between businesses and consumers began after the enactment of the consumer relations act, where relations between consumers and businesses were regulated. Nevertheless, the newest case-law has shown the possibility of this tendency being reversed.

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Costs and delays of commercial litigation

Q23 The costs and delays of commercial litigation in the higher courts in Uruguay are not considered materially greater than in other comparable countries.

True			False	Can't say
	✓			

Comment:

In Uruguayan high courts, litigations last about 6 and 8 months. According to OECD data, in Germany – where they have a civil law system as in Uruguay – delay of commercial litigation lasts about 6 months. In France, commercial litigation lasts about 11 months. This is why we can find that delays of commercial litigation in Uruguayan higher courts are not considered materially greater than in developed countries.

On the other side, costs of commercial litigation in Uruguayan higher courts can be found below the average if we take into account the costs of commercial litigation in developed countries. In Uruguay, the only expenses presented in higher court litigations are the ones related to judicial stamps and lawyers' fees. This makes the costs of litigation in higher courts in Uruguay lower than the costs of litigation in developed countries.

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Overall ranking

This overall ranking is achieved by a survey of all the rankings as shown in this table:

	Question	Rating
1.	Insolvency set-off	
2.	Security interest	
3.	Universal trusts	
4.	Director liability for deepening insolvency	
5.	Financial assistance to buy own shares	
6.	Public takeover regime	
7.	Exclusion of contract formation	
8.	Termination clauses	
9.	Exclusion clauses	
10.	Governing law clauses	
11.	Foreign jurisdiction clauses	
12.	Arbitration recognition	
13.	Class action	
14.	Ownership of land	
15.	Security of land title and land registers	
16.	Land development restrictions	Can’t say
17.	Employment law	
18.	Environmental restrictions	
19.	Foreign direct investment	
20.	Exchange controls	
21.	Alien ownership of land	
22.	Court treatment of foreign big business	
23.	Costs and delays of commercial litigation	

True **False** **Can't say**

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Profiles

The survey was carried out by the following students:

Thomas Biscomb (22 years old)

- Studies:
  - Coursing 3rd year of law at Universidad de Montevideo.
  - Political course dictated by the National Youth Institute and the United Nations Development Programme.
- Working experience:
  - Deputy advisor at Legislative Power (2014-present).
  - Trainee and Senior at the German-Uruguayan Commerce Chamber (2013-2014).
- Other:
  - Participation in the Latin-American Commercial Arbitration Competition (Perú, Lima - 2014).

Victoria Núñez (21 years old)

- Studies:
  - Coursing 4rd year of law at Universidad de Montevideo.
  - Legal English course in Oxford University and Cambridge, England (2009, 2012, and 2013).
- Working experience:
  - Legal trainee at Guyer & Regules (2014-present).
- Other:
  - Participation in the VII Latin-American Commercial Arbitration Competition (Perú, Lima - 2014).
  - Participation in the VIS moot Commercial Arbitration Competition (Vienna, Austria - 2014).
  - Participation in the VI Latin-American Commercial Arbitration Competition (Colombia, Bogotá – 2013).

Magdalena Kunze (22 years old)

- Studies:
  - Coursing 5th year of law at Universidad de Montevideo.
  - Exchange programme in University of East London (2012-2013).
  - Intermediate title of "paralegal".
- Working experience:
  - Legal trainee at Posadas & Vecino Consultores Internacionales (2014-present).
  - Contract coordinator at Altisource Portfolio Solutions (2013-2014).
- Other:
  - International Legal English Certificate (ILEC, 2011).
  - Currently participating in a case-law investigation project coordinated by the Universidad de Montevideo.

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Lucía Zóboli (22 years old)

- Studies:
  - Coursing 5th year of law at Universidad de Montevideo.
  - Exchange programme in University of East London (2012-2013).
  - Intermediate title of "paralegal".
- Working experience:
  - Associate at Olivera Abogados (2013-present).
  - Legal trainee at Noronha Advogados, London, England (2012).
- Other:
  - International Legal English Certificate (ILEC, 2011).
  - Currently participating in a case-law investigation project coordinated by the Universidad de Montevideo.
  - Co-author of article "Employer`s Criminal Liability Act Passed in Uruguay" in Terralex Connections. (2014).

Elianne du Boishamon (23 years old)

- Studies:
  - Coursing 5th year of law at Universidad de Montevideo.
  - Intermediate title of "paralegal".
- Working experience:
  - Legal trainee at Ferrere abogados (since August 2014)
  - Legal trainee at Borrás, Pott & Asociados. (2013-July 2014).
- Other:
  - Currently participating in a case-law investigation project coordinated by the Universidad de Montevideo.
  - Participation in the VI Latin-American Commercial Arbitration Competition (Colombia, Bogotá – 2013).

Expert practitioners panel

ALVARO CARRAU

Born in 1980. Doctor in Law, University of Montevideo, 2003.
Masters of Law Duke University, North Carolina, USA, May 2009 (oriented to Environmental Law).
Experience abroad: NH Hotels Group, Madrid and Buenos Aires, 2009.
Attended several courses and postgraduate studies as well as several conferences relating especially to Administrative and Environmental Law.
Seminar on Business Organizations at the University of Montana, U.S.A. (2003).
Assistant Lecturer at the Administrative Law Chair, University of Montevideo.
Member of the Bar Association.

Languages: English and Spanish.

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FEDERICO SUSENA

Federico Susena, notary public, develops his activities mainly in the Notary and Real Estate Department of Guyer & Regules, but he also works at the Corporate Department in the Energy and Infrastructure division.
His practice in energy began in the area of natural gas. He advised the dealership of the pipeline Buenos Aires - Montevideo (Cruz del Sur Pipeline) in all matters relating to rights of way and expropriations under the applicable regulations involved in this construction, so as to permit the introduction of natural gas to Uruguay (from Argentina). He also advised as to the issuance of the regulatory framework applicable to the case.

He also advised several renewable energy Companies in the planning and construction of wind farms and power plants using biomass energy sources. Federico also participated in all matters relating to the hiring of the land required for this activities, analysis of regulatory frameworks, tenders with UTE , the negotiation of energy-purchase contracts and the procurance of funds for it.

Furthermore, he took a prominent part of Uruguay Rounds I and II, on which ANCAP convoked interested persons in the search and exploration of hydrocarbons in the offshore basin of Uruguay. Federico advised 4 of the winner Companies, who won blocks for exploration of oil, and he also negotiated the respective "Production Sharing Agreements."

Going to his general experience, he has a Master in Economic Administrative Law at IEMM, Studies on Oil Contracts (University of Buenos Aires, 2006), studies on contracts Exploration and Exploitation of Hydrocarbons with the international firm Thompson & Knight and ORT (2009) and is currently Postgraduate professor at the University of Montevideo.

JAVIER NAPOLEONE

Javier Napoleone mainly specializes in civil and commercial law. He works in Guyer & Regules, at the Corporate & Banking Department of the Firm. His practice includes advising financial institutions in banking transactions in general, and those related to commercial and corporate law regarding the set up and daily operations of different manufacturing/ services companies, as well as venture capital transactions. Additionally, Mr. Napoleone has participated in financing transactions, public and private securities offerings and mergers and acquisitions. On the academic aspect, he is an Aspiring Professor of Corporations at the University of Montevideo, School of Law. Fluent in English and has an intermediate level of Portuguese

FEDERICO FLORIN

Even before obtaining his degree, Federico Florin has been a passionate learner of the intricacies of law advocating, specializing early on in civil and commercial law. Since his incorporation into Guyer & Regules, he has dedicated his time to acquiring a diverse and broad set of skills, namely to become a litigator with a rich corporate background. Currently a part of the Litigation Department of the Firm, he has been involved in complex administrative, civil and commercial litigation and arbitration and his practice also includes advising clients in civil and commercial matters, bankruptcies, agreements and settlements. Mr. Florin has also applied his hands-on approach in several share or business purchase deals both drafting the

corresponding agreements and negotiating the terms thereof. Being of a practical mind-set, he is however still very much in touch with the academic, being an Assistant Professor of Civil Law II and Private Law III (civil law contracts and torts) at the Universidad de la República, School of Law and has published papers on civil and commercial issues. He is a member of the Uruguayan Bar Association and has been commended by international publication Chambers & Partners for his "cleverness in court". Fluent in English and has a basic mastery of Japanese.

MARIA SOFIA ANZA

María Sofía Anza, lawyer, works mainly in the Banking and Corporate Department. Her practice includes advising financial institutions in banking transactions in general and those relating to securities' market, merges and acquisitions and corporate law at large. She also assists clients in data protection matters.

LLM in Corporate & Finance Law at the University of Westminster (London, 2011-2012).

Professional experience abroad: Uría Menéndez, Madrid (September 2012 – February 2013)

Languages: Spanish, English and French.

JIMENA LANZANI

Jimena Lanzani, escribana (notary public), mainly works in the Notarial / Real Estate Department. She is member of the Association of Notaries of Uruguay (Asociación de Escribanos del Uruguay). Her practice includes mortgages, pledges, leasing, real estate transactions and security interests.

Languages: Spanish, English and Portuguese.

CARLOS BRANDES

Profession: Lawyer / Escribano
Position: Partner
E-mail: cbrandes@guyer.com.uy

Phone:(598) 2902 1515 ext. 196
Born:1970, Montevideo, Uruguay
Graduated:1997, Uruguay School of Law, University of Uruguay
Practice Group: Litigation

Carlos Brandes, lawyer and notary public, heads the Dispute Resolutions Department. He is Assistant Professor in Procedural Law at the School of Law, University of Uruguay. His vast practice includes complex civil and commercial Litigation, International Commercial Arbitration, Torts and Antitrust, being specialist in procedural and commercial law. He is member of the board of directors of the Uruguayan Bar Association.
Recognized among prestigious international legal publications such as "Chambers & Partners", "Latin Lawyer", "Legal 500" "Who´s Who Legal" for his outstanding performance in Dispute Resolution matters.

Professional and academic experience abroad

Master in International Law (LLM) at American University, Washington College of Law (2001).
He worked at the Inter-American Investment Corporation in Washington, DC (2001-2002).

Languages: Spanish, English, German

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LEONARDO SLINGER

Leonardo Slinger, lawyer, mainly concentrates his activities in the Labor and Litigation Departments. He is Assistant Professor of Labor Law at the University of Uruguay, the Catholic University, and the University of Montevideo. His practice includes advising on labour matters, companies reorganizations, as well as negotiations with unions in conflictive collective cases and social security issues. Specialist in labour law, he also handles labour, civil and commercial litigation. He is the coordinator of the Litigation Department. Member of Asociación Uruguaya de Derecho del Trabajo; Vice President of Asociación Uruguaya de Relaciones Laborales. Author of several publications of labour-related issues.

Recognized among prestigious international legal publications such as "Chambers & Partners", "PLC Which Lawyer", "Latin Lawyer", "Who´s Who Legal" for his outstanding performance in Labour & Employment and Dispute Resolution matters.

Academic experience abroad

Has attended executive education courses at Harvard University.

Languages: Spanish, English

JUAN MANUEL MERCANT

Juan Manuel Mercant, lawyer, mainly works in the Banking and Corporate Department. His practice includes advising financial institutions in banking transactions in general, and those relating to securities' market, mergers and acquisitions, corporate law at large and venture capital transactions. He also assists clients in all competition law matters and pre merger controls.

Recognized by international legal publication "Chambers & Partners" for his performance in Banking & Finance matters.

Professional experience abroad:

- Pérez Alati, Grondona, Benites, Arntsen & Martínez de Hoz (h) - Buenos Aires, Argentina (January 1999 – June 1999).
- Cleary, Gottlieb, Steen & Hamilton, New York, USA (September 2000 – May 2001).

Languages: Spanish and English.

Allen & Overy Global Law Intelligence Unit

The Allen & Overy Global Law Intelligence Unit is part of the international firm of Allen & Overy and produces papers, surveys and other works on cross-border and international law within the field of its practice. Allen & Overy is one of the largest legal practices in the world with approximately 5,000 people, including some 512 partners, working in 40 offices worldwide. For further information, please contact Philip Wood, philip.wood@allenovery.com or Melissa Hunt, melissa.hunt@allenovery.com.

Philip R Wood CBE, QC (Hon) BA (Cape Town), MA (Oxon) LLD (Lund, Hon)

Head, Allen & Overy Global Law Intelligence Unit
Special Global Counsel at Allen & Overy LLP
Visiting Professor in International Financial Law, University of Oxford
Yorke Distinguished Visiting Fellow, University of Cambridge
Visiting Professor, Queen Mary College, University of London

Philip Wood is one of the world's leading comparative lawyers and practitioners. He has written about 18 books on financial law. He was formerly a partner and head of the banking department of Allen & Overy. For many years he has been developing innovative and pioneering methodologies for assessing legal jurisdictions and has produced a book of maps of world financial law. His university textbook on the Law and Practice of International Finance has been translated into Chinese and a Japanese version is forthcoming.

Melissa Hunt is project director of the Intelligence Unit and is responsible for the management of the project. She carries out other work for the Intelligence Unit, including the preparation of tables covering rule of law and legal infrastructure risks in the jurisdictions of the world.

Allen & Overy LLP
One Bishops Square
London E1 6AD

T: 00 44 (0)20 3088 0000
D. 00 44 (0)20 3088 2552
M. 00 44 (0)7785 500831

philip.wood@allenovery.com
intelligence.unit@allenovery.com

D. 00 44 (0)20 3088 2750
melissa.hunt@allenovery.com

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Allen & Overy LLP

One Bishops Square, London E1 6AD United Kingdom | Tel +44 (0)20 3088 0000 | Fax +44 (0)20 3088 0088 | www.allenovery.com

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