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Private  
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Deserve a Premium?

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Change will Affect LatAm

Perspectives for 2013 in  
Brazilian Oil and Gas



# Contents

## Sectors

### Emerging Markets

Winning by Failing: The New Entrepreneurial Paradigm Shift.....20

New IPOs and Fibras Listings Expected on the BMV in 2013.....25

### Hedge Funds

2012 Key Trends in Latin American Hedge Funds.....43

### Regulation

Crowd Funding: Not a Replacement for Private Equity in Brazil.....66

New Law Regulating Capital Markets in Argentina.....69

### Structured Finance

Bad Practices Infect the ABS Market in Brazil:.....74  
*Do Not Blame the CVM*

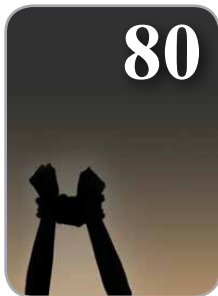
### News

Who's Competing for Power in 2013?.... 78

### Political Risk

Why isn't Human Capital a Foreign Policy Issue.....80

Brazilian Cyber Security.....83



## Issue Focus: Private Equity

Private Equity in Brazil: The Music Hasn't Stopped.....27

The Private Equity Landscape in Colombia.....32

Private Equity in LatAm Infrastructure Development.....38

Colombia: No Slowing Down.....52

Patience Is a Virtue; Dollars Too.....55

Post-Brazil PE.....58

A Helping Hand.....61

*Institutional Investors Enter Emerging Markets*

The Second Wave:.....61  
*Secondary PE Market in LatAm*

Proving Their Worth: What Global Institutions are Looking For.....63

## Cover Stories

Brazil 2013: Oil & Gas Industry Perspectives.....6


Liquidity Premium in LatAm Real Estate Private Equity.....14

China and Latin America: A New Normal?.....18



# New Law Regulating Capital Markets in Argentina

■ Javier Canosa



**On November 29, 2012, the Argentine Congress passed a new law regulating all the relevant aspects of capital markets and public offerings, thus terminating former Law 17,811 that regulated the same issue. The executive branch promulgated the law on December 28, 2012. We will briefly analyze the main aspects of such a new law on capital markets and public offerings.**

## 72 Regulation

The law aims to promote access to the capital market for small and midsize companies, as well as the participation of small investors, trade unions, associations, corporate associations, professional organizations and public savings institutions.

The new law broadens the spectrum for participating in capital markets as it eliminates the requirement of being a shareholder in any of the exchanges of Argentina in order to be a broker. With the demutualization promoted by the law, anyone who wants to be a broker shall request the enrollment in the registry of the National Securities Commission (NSC). In addition, the law provides for the possibility for universities to participate as ratings agencies.

The law also encourages the creation of a federally integrated market through shared computer networking.

The NSC is the only regulatory body of public offerings of securities. The NSC, directly and immediately, regulates, supervises, inspects, monitors and punishes all legal persons who perform public

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offerings of securities and other instruments, and/or perform operations and activities under the scope of the law. The NSC also keeps records of such persons and grants, suspends and revokes their authorization to operate, as well as the authorization of markets and enrolled agents.

All trading instruments comprising similar features to public offerings as defined by the law, shall be considered as such, and shall be under the scope of the rules of the NSC as well.

Public offerings of securities issued by foreign states must be authorized by the Executive Power, with the exception of member

countries of the MERCOSUR, which shall perform public offerings on condition of reciprocity.

The NSC will be headed by a board of directors composed of 5 members appointed by the Executive Power. The Executive Power designates the president and the vice president of the board. The board of directors may delegate functions to the respective holders of the regional headquarters, with the exception of those relating to the revocation of authorizations.

One of the main controversial features of the law is the faculty of the NSC to declare null, void, irregular and with no effects legal acts of companies under the supervision of the NSC, without prior summary or the intervention of a court.

Moreover and in the same venue, when as a result of “surveys conducted,” interests of minority shareholders and/or holders of securities subject to public offering are affected, the NSC may appoint supervisors with the power to veto resolutions adopted by the administrative bodies of the relevant company subject to intervention by the NSC. The NSC resolutions may only be appealed in unique instances before the President of the NSC.

For the same reasons, the NSC may also separate the administrative bodies of the relevant company for a maximum term of 180 days until the deficiencies found are regularized. The latter measure may be appealed in unique instances before the Minister of Economy and Public Finance.

Because of the features mentioned above, it has been said that this new law on capital markets actually promotes legal uncertainty over potential companies that want to trade their securities in the capital markets of Argentina. Furthermore, some state the possible unconstitutionality of these intervention regulations, where the right of defense may be compromised by the lack of summaries for the application of sanctions, and the possibility the NSC may declare void private corporate acts.

Also, the law permits the exchange of information protected by secrecy between the NSC, the Central Bank and the Superintendent of Insurance of the Nation, executed by formal requirement to each other, provided they are made by the highest authority of each entity.

By terms of the law, the NSC shall have an integral role in the control of the capital market, with an increased punitive capability, and the possibility of exchange of information with other entities of the state.

In relation with the legal regime of scriptural securities and book entry securities, the creation, issue, transfer or establishment of real

rights, precautionary measures and any other affectation of real rights conferred by the securities, is held by annotation in special registers carried by the issuer, or designated agents, commercial banks or investments banks, and shall produce effects and will be effective against third parties from the date of registration.

The entity authorized to carry the registration of securities shall grant the holder proof of opening of the account and any movement registered in it. Each holder has the right to be given a record of the current state of the account, at any moment and at their expense. The issue of a proof implicates the blocking of the account to the effects of transmission of securities or constitution of real rights over them, for a period of 10 business days.

If the issue of the proof was performed for the applicant to attend meetings or to exercise voting rights, the account shall be blocked until the day after the celebration of the corresponding meeting. If the meeting, whichever the cause may be, is held on a different date, the issue of a new proof is required.

In relation to the jurisdiction applicable for the resolution of conflicts, federal trial courts may hear in the claims of implementation of fines and audit fees, search warrants for the fulfillment of the supervisory functions of the NSC, and the designation of NSC of co-managers and supervisors. Within the city of Buenos Aires, courts of first instance in federal administrative litigation have jurisdiction to hear such disputes. The Federal Chambers of Appeal may resolve the revision of sanctions imposed by the NSC, as declarations of irregularity and inefficiency for administrative purposes.

With the same aims of the law of encouraging the creation of a federally integrated market, on November 21, 2012 the Stock Exchange of Buenos Aires (BCBA) and the Stock Market of Buenos Aires (MERVAL) executed a Memorandum of Understanding for the creation of a new business entity in the form of a corporation — Sociedad Anónima — which in the future will function as the Federal Stock Exchange or shall have a similar name. The intention is to create a new national market that can meet the needs of all the regions of the nation.

The law was approved within the precincts of the Senate by 43 votes in favor and 19 against of the dissenting Unión Cívica Radical (UCR) and Partido Justicialista (PJ) in the presence of the Economy Minister, Hernan Lorenzino, and the President of the NSC, Alejandro Vanoli.

The NSC shall issue the regulation of the law within 180 days as from the date of the enactment of the law, that is to say, before May 2013. Such regulation shall provide rules and schedules for the adequacy of entities, stock markets and brokers.

The NSC shall establish guidelines regarding (i) the offer of exchange of shares and similar processes; (ii) the vote exercised by entities which hold shares on behalf of third parties, in trusts, deposits or other legal relations, when the respective agreements authorize such vote; and (iii) the public request of powers to ensure the right to full information of the investor.

The law will be in effect on January 27, 2013, with the exception of those provisions described above subject to regulation by the NSC.

### Author Biography

Javier Canosa is a partner in the Buenos Aires firm Canosa Abogados. Javier's practice focuses on corporate law issues, advising several national and foreign companies in various corporate matters, including investment vehicles, corporate management, directors' duties and responsibilities, audits, risk detection and distribution, documents, policies and corporate contracts, and design and implementation of a suitable corporate form for each business.

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