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Changes in corporate governance regulations

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During the last decade, regulations on capital markets in Chile have been the focus of a series of reforms which have tended to bring Chilean standards level with those of developed countries.

Law 19,705 of 2000 introduced changes to the securities market law, fine-tuning the mechanisms that foster transparency and public information, establishing a tender offer procedure as the only possible means for anyone to acquire control of a stock company that publicly offers its shares, unless an exception is expressly provided by law.

Laws 19,768 and 19,769 of 2001, known as the First Reform to the Capital Markets and the more recent Law 20,190 of 2007, known as the Second Reform to the Capital Markets, differ from each other and address and amend issues such as stamp tax, income tax, bankruptcy, the securities market, corporations and pension funds, with the aim of enhancing the Chilean capital markets and safeguarding their proper operation.

The latest reform promoted by the government, currently under discussion in the Chilean Congress, is a Bill that proposes to introduce improvements to corporate governance regulations. It has four key objectives: (i) to increase the amount of relevant information about a company available to its partners or shareholders and the market in general; (ii) to shrink the gap between information available to controlling shareholders and that provided to minority shareholders, in order to avoid agency problems, insider trading and other abusive practices; (iii) to strengthen the rights of minority shareholders by enhancing regulations related to independent directors, among other measures; and (iv) to promote a

more active role for the shareholders of a corporation in key situations.

To achieve these objectives, the Bill introduces a series of amendments to the Chilean securities market and corporation laws.

Information to the market and transparency

The Bill requires that companies adopt internal measures and guidelines that provide accurate and complete information to the market and promotes the use of the internet for the provision of information to stakeholders. Information must be provided in a timely manner: the term for the communication of relevant resolutions adopted by the board has been shortened to the day of their adoption.

Likewise, the obligation to communicate a purchase or sale by majority shareholders, directors or main executives of a company, either directly or indirectly, of securities issued by that company, is extended to securities issued by another company of its group. In the case of majority shareholders, the obligation extends to securities whose price depends significantly on the price of the securities of the company they have a direct relationship with. These transactions must also be communicated on the day they take place.

The Bill also states that directors, officers and main executives of corporations whose securities are listed on a stock exchange will inform any interest they may have in the corporation's main suppliers, clients or competitors.

Insider trading

The Bill increases the strictness of Chilean regulations on insider trading. It broadens the concept of insider trading to include not only the purchase of securities with respect to which the insider has non-public information but also the sale of them. It also includes a rebuttable presumption that distinguishes between actual knowledge of privileged non-public information and access to it.

The Bill also sets forth new criminal sanctions for persons who have access to privileged

non-public information or who, with the purpose of deception, disclose false information about an issuer or its securities to the market.

Corporations with securities listed on a stock exchange must establish internal policies regarding procedures, controls and responsibilities for the purchase or sale of its securities or others whose price depends significantly on the price of such securities, by their directors, officers or main executives or by companies under their control. These guidelines can provide for a total prohibition to enter into transactions or provide for blackout periods.

Independent directors

The current regulations for independent directors are enhanced. The Bill states that corporations with a certain net worth and with relevant minority shareholders (those in which at least 12% of its voting stock is held by shareholders that individually do not hold more than 10% of such stock) must have at least one independent director.

The Bill defines a director as independent when he has no relationship with the corporation or any member of the group of companies to which the corporation belongs, or with the controlling entity of the same or with any officer or main executive of any of those companies, which may deprive a regular person of a reasonable degree of autonomy, or interfere with his ability to perform an objective work, generate a conflict of interest or disturb his independence of judgment. It also states the conditions of independency, as well as events that lead to a lack of independency.

Independent directors must be proposed by shareholders representing at least 1% of the stock of the corporation, and they will be elected when, after subtracting the controlling shareholder vote from the decision, they have the necessary votes to be elected.

Other provisions

The Bill also includes provisions related to duties of the audit committee, transactions with related parties, tender offers and new

regulations regarding conflicts of interest for external auditors.

These reforms represent a step towards a more developed, efficient and transparent capital market and are welcome among its participants, even though the imposition of the independent director has generated conflicts in a market where the concentration of ownership is very high.

Financial and corporate

Recommended firms	
Tier 1	Carey y Cía Claro y Cía Philippi Yrarrázaval Pulido & Brunner
Tier 2	Barros & Errázuriz Cariola Díez Pérez-Cotapos & Cía Guerrero & Harnecker Morales & Besa Prieto y Cía
Tier 3	Cruzat Ortúzar & Mackenna Larraín y Asociados Urenda Rencoret Orrego y Dörr

Chile is experiencing an economic slowdown in 2008 after five years of sustained growth. The country has benefitted from high commodity prices, since copper and other metals make up the bulk of Chile's exports. But the recent US dollar devaluation coupled with the rise of inflation has put a crimp on exports.

Once upon a time, these would be signals for investors to flee for safer havens. This time, however, Chileans are optimistic about riding out any financial turmoil. "Chile is in a position that will allow it to weather a storm much better," says a local partner, "but that doesn't mean there won't be one".

The country's economic fundamentals are strong - a fiscal surplus, low public debt, and high levels of liquidity and investments in the local financial markets. The strength of the economy is perhaps best seen in the project finance works being done across the country.

Foreign investors are most interested in energy deals. Traditional and alternative energy projects alike are attracting private-equity firms, which are beginning to see opportunities arising from the energy shortage in Latin America.

The government is looking for ways to combat the looming energy crisis, which is partly the result of a regional drought which has affected the production of hydro-electric-

ity. The problem is made worse by the fact that Chile imports most of its natural gas from Argentina, which has been notoriously unreliable in fulfilling its energy obligations in the past year. Luckily, there are newly-discovered capacities for generation across Chile. Several dams are being constructed in southern Chile, and power plants are being built in the north of the country.

Traditional project financing is giving way to collateralised syndicated loans as a means to raise capital. There is so much liquidity in the country that many companies, particularly in the copper mining industry, prefer to finance through bank loans to more complex project financing schemes.

The government is also expected to put together secondary projects, such as the construction of smaller airports. It should take some time to get all these deals put together, which is typical for these projects. Port and road concessions that the government awarded a few years ago are finally going to market for financing. Considering the opportunities available throughout Chile, attitudes remain positive despite the economic slowdown.

Carey y Cía

Carey y Cía is the largest firm in Chile, which enables it to handle a number of large transactions simultaneously. The firm has a long roster of multinational clients, particularly in the financial sector, and is often involved in handling the Chilean leg of complex international transactions.

The firm is best known for its banking work. In June 2008, Carey helped client BG Group to secure a \$1.1 billion 15-year loan to finance its natural-gas regasification plant. The loan was provided by a syndicate including Banco Santander.

Carey's banking group has been involved in the recent spate of energy project financing. In October 2007, the firm advised Hidroeléctrica la Confluencia on a \$208 million funding programme from IFC. The project is one of several across the country, promoting low-cost renewable energy. The deal consists of the development, construction, and operation of a hydro-power plant in the Andes foothills.

The firm also handles a significant portion of Chile's corporate deals. Jaime Martínez, for example, led the team advising Bank of Nova Scotia on its international acquisition of Banco del Desarrollo. Scotiabank launched a tender offer for a \$1 billion acquisition which would more than double Scotiabank's business in Chile.

In August 2007, the firm represented the Ontario Teachers' Pension Plan on its \$376 million acquisition of a 48.9% interest in

Eskal. This acquisition required advice on compliance with Chilean securities law, which required OTPP to launch a public tender offer for the remaining shares of Eskal.

Leading lawyers

Jaime Carey
Jorge Carey
Juan Guillermo Levine
Jaime Martínez
Diego Peralta
Salvador Valdés

Claro y Cía

Claro y Cía is a traditional family-owned firm, with a high profile in financing work. The firm represents many foreign banks in Chile, and has established a reputation for the work it does in this sector. "Claro y Cía has a high standard of quality and a commitment to helping clients," says an in-house corporate lawyer who has instructed the firm.

The firm represented Deutsche Bank as originator and placement agent of \$65 million securitised bonds. Bonds issued by Sociedad de Inversiones Pampa Calichera were the underlying assets for the securitisation.

Deutsche Bank again turned to Claro as counsel for Socovesa's IPO. The German bank acted as underwriter in the \$161 million listing. This was the first placement of a local real-estate developer to be issued simultaneously in New York and Chile.

The firm advised another international client, Saba Estacionamientos de Chile, a local subsidiary of the Spanish group Abertis, in the \$125 million financing and refinancing of the group's operations regarding local parking concessions in different Chilean cities.

Rodrigo Ochagavía, one of the most respected lawyers in the country according to his clients and peers, specialises in the energy sector, one of the busiest practice areas in Chile. In December 2007, Ochagavía led the team representing AEI on its acquisition of a 50% interest in Chilquinta and 38% interest in Luz Del Sur, for a total consideration of \$685 million.

Leading lawyers

Cristóbal Eyzaguirre
José María Eyzaguirre
Sebastián Eyzaguirre
Rodrigo Ochagavía

Philippi Yrarrázaval Pulido & Brunner

Philippi Yrarrázaval Pulido & Brunner retains its position as one of the most prestigious and traditional firms in Chile, but the firm experi-

enced some changes when several senior partners left to form a new firm. Such is the firm's reputation that its rivals are confident in Philippi's resilience. Says one: "Philippi is doing well under the circumstances. Although they have been weakened, the problem has been solved and they will recover. Despite of all this, they are still a tier-one firm." The firm also benefits from a close relationship with the Spanish law firm Uría Menéndez, which has resulted in a large number of Spanish clients.

Philippi was busy with M&A work in 2007. The firm counselled Carlyle Group in the \$1.5 billion worldwide purchase of Goodyear's Chilean engineering products division. The acquisition demonstrates a large part of Philippi's business: providing legal services for the local portion of worldwide acquisitions.

The firm also represented client Centros Comerciales Sudamericanos on its \$500 million acquisition of Supermercados Wong. The acquisition portfolio includes 23 retail chains and 17 plots of land for the development of other commercial projects in Peru.

In June 2008, Philippi advised Bancomext, Mexico's foreign trade and development bank in the disposal of its shares in two Chilean highway concessions. Bancomext held an open bid for the shares, and awarded Spanish highway developer Global Via Infraestructuras the stock purchase agreement with a winning offer of \$553 million.

Leading lawyers

Marcelo Armas
Juan Francisco Gutiérrez
Jaime Irarrázabal
Alberto Pulido
Andrés Sanfuentes

Barros & Errázuriz

"Barros & Errázuriz has a finger in every section of the capital markets pie, which is remarkable for such a young firm," says one competitor. The firm works with a lot of different clients in the capital markets, including large investment banks and investment advisors and brokers. The firm has experienced dynamic growth since 2003, with five new partners just since 2007.

Barros acted across from Claro y Cía on the Socovesa IPO, the first time a real-estate company has listed on New York and Santiago simultaneously. Barros advised the Chilean real-estate developer, which raised \$161 million from its dual listing.

On the debt side, the firm advised electricity generation company Colbún on a \$380 million bond issuance. The firm again represented Colbún in June 2008, when the company obtained a revolving credit facility. The

lending syndicate included Banco de Chile and Banco de Crédito e Inversiones.

Leading lawyers

Pablo Guerrero
Luis Alberto Letelier
Gonzalo Molina

Morales & Besa

Morales & Besa (formerly Morales Noguera Valdivieso & Besa) experienced a shake-up in 2007. Name partner Diego Noguera left the firm, taking with him a number of corporate lawyers, specifically M&A specialists. The market consensus is that while this was not a highly damaging event for the firm in the long term, some time will need to pass before the impact of the departure is fully appreciated.

Morales & Besa's deals in the past year confirm that Noguera's defection has yet to take effect. The firm has been involved in a number of locally syndicated loans. This funding option is growing in popularity with borrowers, who seek local finance rather than turning to foreign lenders, many of which have been afflicted with the fall-out of 2007's credit crunch. Pedro García led the banking team that advised on a facility agreement between a local bank syndicate and Indura Industria y Comercio. This deal provided \$165 million in acquisition financing for shares issued by Colombian gas company Gases Industriales de Colombia.

Morales & Besa has also been active in project finance, mainly advising lenders in the infrastructure and energy sectors. With Pedro García at the helm, the firm advised on a \$10 million credit agreement between Soluciones Ambientales del Norte Sociedad Anónima and its client, WestLB New York. This deal provided financing for the development of an industrial-waste management facility in Antofagasta.

Leading lawyers

Eugenio Besa
Pedro García
Guillermo Morales
Carlos Silva