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Tender Offers: The Chilean Case

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The purpose of this report is to summarize the main aspects involved in setting a framework to regulate corporate tender offers in Chile, which turned into the provisions of the so-called *Ley OPA bill* (tender offers law) recently submitted to Chile's Congress for its final approval.

I. *Current Conditions*:

The issues related to tender offers for publicly traded corporations has been a fundamental chapter of the takeover and corporate governance legislation discussed since 1998 and finally enacted in April of 2000. Neither the Securities Act, Law No. 18.045 nor the Corporations Law 18.046 considered the extent and detail of a takeover transaction, nor any formal tender offer procedure. The legislation had an empty subject , inadequate to the on going international market practices . This in turn , drove to the chilean takeover cases we have had over the last years.

The stakeholders transactions resulting in different corporate control that took place since 1997 made it clear that a framework of reference was needed to permit all players and participants in the Chilean stock market to know in advance local market's takeover provisions and rules on corporate tender offers. Specifically, the rights of both the actual controllers , the new controllers and the remaining shareholders needed to be clarified.

The lack of clear-cut rules, adequate shareholder protection and transparency in takeover transactions has resulted in constraints and limitations to the normal development of such transactions on the stock market and, on the other hand , has eroded the confidence of non-controlling shareholders and the capital market as a whole. One key figure that reflects the need for a new legislation is the low liquidity of the market , perhaps a key element to measure the impact of the reforms in the stock market in the long run.

Up to now , the regulatory deficiencies cleared the way for tender offer operations that have been enormously beneficial to the controlling shareholders, who retained the entire control premium at prices substantially above prevailing market levels. In addition, these changes in control occurred without due transparency or sufficient information disclosure to the stock market. The table below shows the operations that triggered the alarm that motivated the legal changes.

CONTROL PREMIUMS IN THE CHILEAN MARKET

Year	Stock	Price Paid to the Controller	Worker's Control Price	Investor's Control Price	% Control Price
1997	Chispas Serie B	$200.000			
1997	Chispas Uno	$260		$160	63%
			$220		18%
1997	Chispas Dos	$260		$160	63%
			$220		18%
1997	Almendro	$580		$340	71%
			$490		18%
1997	Luz y Fuerza	$580		$340	71%
			$490		18%
1998	IANSA (*)	$132,66		$38	249%
1998	Cruz Blanca	$80		$40	100%

(*) A 12.5% share of stocks in the hands of controllers was purchased at $132.66 on a prorated basis.

MARKET LIQUIDITY

	Turnover ratio (%)			Volume Traded (*)		
	1998	1997	1996	1998	1997	1996
Chile	7,2	10,5	12,0	4.419	7.445	8.460
USA	76.0	69,0	63,0	13.148.480	10.216.074	7.121.487
UK	53.4	n.a.	n.a.	1.167.382	829.131	578.471
Brazil	71,0	85,8	61,1	146.594	203.260	112.108
Mexico	28,6	39,7	42,5	33.841	52.646	43.040
Argentina	35,0	49,5	10,6	15.809	25.702	4.382
Peru	19,2	25,9	31,5	2.634	4.082	3.805

(*) Millions of dollars
n.a.: not available

II. ***Underlying Principles***:

The existence of a tender offer regulations is essential to guarantee , a fair treatment to all shareholders of the same class , when a change in control occurs. This is a material corporate event and as such each and every one of the company's shareholders is entitled to be duly informed.

Some of the basic principles involved are included in Chile's legal provisions as well as in the legislation governing other markets. The three most important of such principles are:

1. Transparency: Information must be adequate, timely, and complete. All relevant data must be provided so that the market can correctly assess the prospective tender offer. Proper disclosure

of the prospective buyers' intentions is also necessary in order for the market to be aware of their intention to make future purchases. Similarly, agreements or prospective agreements to transfer control must be disseminated to the market accurately and on a timely basis.

2. Clarity in tender offer procedures: These processes must be specific, clear, precise and fair, and not conductive to errors or misinterpretations by market players. They must include equal prices for every shareholder; prorated allocations; inhibit off-bid transactions, and; limit excessive concentration of ownership without requiring a tender on the total shares, etc.

3. Oversight: The role of the Superintendencia is to ensure that all trades safeguard both corporate interests as well as public faith in the market. The Superintendencia also emphasizes self-regulation within the companies, sets forth the Board's fiduciary tasks in the trade; governs conflict of interest and cases of inside information and supervises company executives in a position to affect the company's market value as the tender offer operation moves toward a close.

III. Principal objectives of the amendments to the law on tender offers

The new tender offer legislation seeks to modify the securities market law in order to ensure shareholder protection, transparency and equal treatment of shareholders with equal rights. As such, the recently approved bill focuses on:

a) Improving and enhancing regulations governing tender offers of corporations engaged in public stock offerings;

b) Setting forth a regulatory framework by adding a new section on tender offers;

c) Specifying new criminal violations (breaches that went unpunished under the old legislation) and enhancing the language banning the use of inside information.

Economically, this bill seeks to:

a) Facilitate long-term financing of open stock companies by attracting passive investors, domestic and foreign, with equitable and unambiguous rules;

b) Reduce companies' financial costs through increased protection for investors rights via the capital market;

c) Provide incentives for the dispersal of corporate ownership, thus encouraging current controllers to maintain control at lower levels of ownership concentration;

d) Increase market liquidity by thinning out market ownership, increasing amounts traded and bolstering turnover indicators in the stock markets. Increased liquidity, in turn, results in a virtuous circle between issuers and investors that incorporates a liquidity "premium" to the overall securities market;

e) Correct asymetries of information that could produce extraordinary gains for those participating in tender offer transactions.

Measures contained in the new law to attain these goals:

1. Improving information requirements vis-à-vis tender offer processes:

Several articles seek to improve the quality of information provided to shareholders interested in selling their shares during a tender offer (article 54 and article 12 of the Securities Act) and to ensure that this information is consistent with the new section on Tender Offers contained in the regulations.

Toward this end, the law calls for:

a) Sufficient time to disclose even preliminary agreements to take control of a given company. The parties to the tender offer have thirty business days as of the time negotiations for the tender offer begin or the trade concludes. The controller must report such discussions to the stock exchange, the Superintendencia and the market in general through the media. In addition, the public at large must be informed of the result of the tender offer within two days following the completion of the operation.

b) The contents of communications surrounding any tender offer effort are to be determined by the SVS through general market instructions.

c) A reporting requirement for any majority shareholder owning more than 15% of a company's shares that acquires 3% or more during a given year, whether such purchases are intended to take control or are investments of a financial nature.

2. Managers' Responsibility:

In addition, the provisions on tender offers require that the members of the Board of directors of corporations engaged in such actions and those of subsidiary companies which are also putting up shares prepare and file a written report expressing their reasoned opinion on the advantages and disadvantages of the proposed tender offer from the shareholders' perspective.

Board members voicing objections to the report must include their observations at the end of said document. Each Board member is required to add any information he or she may have, in their capacity as members of that board, that may be deemed useful or germane for the shareholders.

In addition, board members shall include in the report a sworn statement declaring whether they participate, directly or indirectly, in the same interests as the company or individual attempting to take control of the company and indicate any relationship they may have with said party or parties.

The utmost importance is placed on the role played by the Board of director of the company subject to the tender offer, as well as those of subsidiary firms, in reporting their views to the shareholders

on the offer tendered within a short, specific period of time. The time frame must be shorter than the one specified to formalize the acts leading to the tender offer, since the Board is ultimately responsible for management and is the best representative of shareholder interests.

Furthermore, it is crucial that board members submit any information they may have that may benefit shareholders. This helps protect against conflicts of interest arising from acceptance of the offer.

These requirements are especially important in light of Chile's Latin-based legislation –the Napoleonic Code, as opposed to regulations of Anglo-Saxon origin. Our law did not directly and explicitly include the fiduciary role that every Board member of any given company must perform on behalf of all the shareholders. Today, however, even if a Board member obtains his or her seat thanks to the ballots cast by significant block of voting stock and therefore feels obligated to their particular interests, the law requires them to represent all shareholders once they are appointed to the Board.

In Chile today, the high concentration of corporate ownership results in a limited number of independent Board members. Institutional investors have –in some cases- a larger representation, but the controller holds the voting majority at Board sessions. Thus, the obligation to make a formal, public statement on the proposed new controller and the advantages of accepting the purchase offer is all the more critical.

In addition, any activity by senior corporate executive that may result modifications to the company's economic value or interests during a tender offer is prohibited.

3**. Insufficient information penalties**

New controlling shareholders who fail to communicate negotiations intended to gain control of a given company are required to make a public offering on 20% of the company's remaining outstanding stock immediately after the initial trade is completed. This offer must be extended in the terms and conditions provided for in the legislation on tender offers within sixty days following the operation and shall involve payment to the rest of the shareholders of the maximum price paid for the controlling shares. This obligation shall apply notwithstanding any administrative, civil or criminal injunctions.

Experience shows that mechanisms designed to discourage non-compliance with information requirements on content, time limits and tender offer notices are essential. The obligation to purchase additional shares when these provisions are violated offsets the benefits of failing to properly disclose pertinent tender offer information.

The purpose of deadlines and indications on the type of information to be disclosed by potential sellers and buyers is to provide shareholders sufficient time to appraise the effects of the change in control. These provisions also foster the timely dissemination of information and, potentially, permit other bidders to emerge and compete for control.

4. Tender Offer Procedure:

Formulating a General Rule for the process of tender offers or tender offer procedures involves a number of aspects. Regulators can turn to a variety of models around the world, depending on the level of market and corporate controls to which they aspire. The alternatives range from an accent on market solutions (e.g. the United States) to systems in which the rights of every shareholder are duly protected, including those of minority shareholders (e.g. the United Kingdom). Regulatory set-ups in other foreign markets reflect local conditions and share greater similarities with the Chilean marketplace. These systems impose constraints designed to rectify market imperfections and move toward increased protection of minority shareholder rights.

Countries with less developed securities markets also tend to share certain controversial subjects in their search for adequate market regulations.

Two issues are often found at the core of the discussion: control premiums and the requirement to make tender offers every time control of the company changes.

4.1 Establishing possible tender offer procedures:

Three criteria play a critical role in establishing tender offer procedures, depending on market conditions, the definition of a control premium and who the beneficiaries of that premium may be:

1. The control premium is created by the company, so it should belong to all shareholders in equal conditions, prorated to their respective stakes. Control of the company is secured through an established procedure, known as a tender offer.

2. The control premium is restricted to certain thresholds. This may be done through flexibility in the price paid above prevailing market rates that does not constitute a premium to be distributed, or through a percentage of shares exempted from the tender offer procedure, so that the control premium is distributed among the remaining shareholders.

3. Take-over premium and distribution thereof must be determined by market forces. This means that the control premium results solely from the effects of a faster tender offer. The proper disclosure of information will lead market prices to reflect the tender offer and therefore result in normal premiums.

4.2 Definition and ownership of the control premium:

In identifying a tender offer procedure, the first issue is to define the concept of a control premium and determine to whom it belongs.

A control premium can be defined as the difference between the going market rate and the price paid by the new controller to take control of a company.

The new controllers pay the additional amount based on their analysis of their ability to create value in the firm acquired, for the synergy it will bring to their holding corporation should one

exist, or because of the target company's importance within the purchaser's proactive or defensive strategy.

Overall, the surplus paid reflects the expected additional return on the investment made by the new controllers, given their comparative advantages and willingness to take on new risks. Thus, more than one control premium may exist for any given company, depending on the purchaser of the controlling stock package.

This premium belongs to the target company, as only the firm being acquired can provide the new controller with the opportunity to leverage the purchase price paid. The price of control *per-se* is based on an individual company's specific features. Thus, the control premium is payable to every shareholder, prorated on the basis of the number of shares of the same class held in the company.

This means that the control premium is nothing other than the extra price paid for the right to run the company, reflecting the new controllers' confidence in their own capacity to add value.

In liquid, deep and well-regulated markets such as New York, control premiums tend to be smaller than in less developed markets, because the potential for added value is already contemplated in the market price of the company's shares. In such markets, in fact, corporate ownership is scattered over hundreds of thousands of shareholders and the premium paid in a tender offer is often the fastest and most effective way of gaining control and moving forward with the vibrant growth strategy laid down by the new controllers.

Intense debate has surrounded the question of who should receive the premium.

1. The controllers case

Arguments in favor of having the premium go to majority shareholders is based on the fact that current controllers paid a premium when they got control of the company. This logic suggests that they should recover the price differential upon selling their controlling package. Failure to permit such a recovery could be interpreted as capital expropriation and a curb on their rights.

Some specialized literature also mentions control premium as a kind of "key money" that allows new controllers to draw value or make use of corporate cash flows and funnel them towards their particular interests at the expense of the company. According to this argument, the larger the control premium the greater the controllers' capacity and freedom to direct company flows towards other interests.

Third, it is argued that controllers have the right to receive a larger reward than the rest of the shareholders, larger than their ownership share, because they are tasked with running the company on behalf and to the benefit of all of the shareholders.

Finally, this argument holds that distributing the control premium among the shareholders of one company will have a negative effect on the stock market. On the one hand, it will encourage listed companies to be closed down by controllers and, on the other, it will hamper new

companies' ability to go public since controllers will prefer to get their funding through other mechanisms (rather than giving away something they believe they own).

The shareholders case:

The controllers arguments are not convincing.

First, the surplus paid by the current controlling shareholders for their control package has been repaid by dividends received and appreciated market value since they took over.

In fact, the regular price of the stock will reflect either a premium for the current controller –for sound management– or a loss (if the current management team failed to create value for the company). Naturally, the success of a company's management team is reflected in the evolution of stock prices, not solely when confronted with a prospective buyer.

Furthermore, given the shallowness and volatility of the Chilean market, there are many cases where controlling shareholders take advantage of temporary price drops to acquire additional stock packages or to subscribe issues at lower-than-historical prices. No control premium is paid in either case. Although these operations are normal and lawful on any stock exchange, the new controllers cannot allege a right to the premium nor demand reimbursement for a cost which was not incurred.

Second, the idea of the control premium as a "key money" that permits the controller to draw cash flows or conduct business at the expense of the acquired company or to use information to direct businesses towards other interests is not valid. In developed countries such actions are considered unprofessional conduct and are punished by law. In Chile, this issue has been addressed in the provisions on corporate governance included in the law on tender offers. Hence, this hypothesis should not be used to explain the existence of a control premium, although the existence of "private benefits" must not be overlooked.

As for the third line of argument, any task carried out by controlling shareholders and their greater responsibilities are compensated through board member fees or through the salaries paid to senior executives. Undoubtedly, the stock price will be the true measure of performance and the main source of compensation for their investment and effort.

It is worth noting that the essence of participating in a corporate tender offer is that all shareholders partake of every benefit and every risk, in keeping with their respective capital contributions (independent of the origin of their acquisition).

This principle is clearly and flagrantly flouted if only a few shareholders obtain a premium for putting their capital at risk.

The fiduciary role of the shareholders who control the company on behalf of the remaining stockholders is also worthy of note. The controllers, who appoint senior executives, the board of directors and define the strategies, are accountable for their actions and are duly compensated for them. Hence, in claiming a right to the control premium they are putting their own personal interests before those of the shareholders at large. In so doing, they fail to safeguard the interests of all shareholders and to perform their function as trustees.

Although investors currently obtain benefits from the capital market through the dividends they receive, this practice is gradually losing importance within the total return on investment. The trend is toward an accent on capital gains as the source of the highest returns and is thus actively sought after by shareholders.

Furthermore, mergers and acquisitions emphasize even more strongly the importance of stock prices or premiums paid above market prices. In this sense it would be unlawful, inconsistent and totally unacceptable to have shareholders of a same class of stock receive different dividend payments.

In practice, permitting controlling shareholders to take possession of the control premium is equivalent to allowing them to pay themselves higher dividends on each share.

Another commonly used argument is that more equitable conditions regarding the distribution of control premiums would lead to the demise of the capital market. This is a fallacy, far from the real world.

It is far from reality because it denies the essence of the securities market, a place where companies come in search of funding and where financial institutions, such as banks, turn in search of projects to finance. If institutional investors see no attractive opportunities for their venture capital, they will find new companies and other markets. The crux of the issue is that if these capital suppliers do not believe that their rights and funds are properly safeguarded in one market, they will seek out other –more secure– markets. Growing market globalization calls for shared, well-known rules and a move toward better standards in the case of emerging markets, such as Chile's.

If the regulatory framework in other markets protects capital suppliers, these financiers will naturally migrate to such markets and abandon those where legal provisions or treatment is weakest.

The lack of a proper framework for investor protection will hit non-controllers harder than controlling shareholders given that the former will be punished by a larger discount rate on their company's flows. Taken to an extreme, the market value of their shares will fall dramatically and withdrawing the company from the market will become an increasingly attractive option, leaving bank financing as the only way to raise capital for new projects. A significant loss of equity could ensue.

4.3 **Mandatory versus voluntary tender offers**:

Another major subject of discussion centers on whether tender offers should be mandatory every time control of a company is sought or whether they should be voluntary.

Both positions have advantages and disadvantages. Naturally, one group of investors will profit more than others if mandatory tender offers procedures are established in a General Rule.

However, beyond the arguments of who the beneficiary of the control premium should be, Chilean market conditions will determine what solutions are most acceptable and should be submitted to the legislature for approval.

A voluntary tender offer assumes that a deep market exists, that corporate ownership is scattered and that the tender offer is designed to ensure that control is gained in a specific, short period of time. The probability of success is also higher and prospective new controllers are willing to pay a above-market price. This is the case in the United States.

Nonetheless, under certain circumstances, the SEC can demand that tender offers be made, even if the tender offer process implies making private transactions, without the need to turn to the market or to a third party to acquire the control of a given company.

Under other conditions, when property is highly concentrated in the hands of one controller who owns more than 51% of the shares, where the local and foreign institutional investors are far-flung and/or there is a large number of small shareholders, regulations tend to require a tender offer. At present, it is in these cases where the control premium is highest and is received by a single majority shareholder, with the resulting damage to minority owners. Countries where these conditions are prevalent require a law that draws the boundaries.

However, because large swings of the pendulum between these two extremes are undesirable, exceptions to the rule must exist. In both cases, the law must provide for cases in which tender offers will not be mandatory.

The Proposed General Rule:

In Chile, the proposed tender offer procedure establishes, as a general rule, that tender offers are mandatory every time control changes hands.

Distribution of 100% of the control premium among all shareholders of any given company is maintained as a principle but is softened in its application by recognizing that highly concentrated property hinders the possibility of mergers or tender offers that are beneficial to both shareholders and the market if done properly.

Thus, thresholds are established that trigger the requirement to perform a tender offer. Specifically, transactions involving property transfers equal to or smaller than 25% are exempted.

In addition, to relax the control premium distribution criterion, the tender offer is considered mandatory until 50% plus one share of a given company is attained. In sum, the control premium is distributed among at least 25% of the minority shares.

Long discussions on the exceptions to the general rule were held, with the understanding that situations may arise that do not affect the minority interests and that some flexibility in the regulations was necessary. At the same time, the most significant argument for exceptions was the implicit constraint on the control exercised by majority shareholders imposed by the

mandatory requirement, since majority shareholders must wait for a tender offer in order to sell rather than being free to do so at will.

The first draft of the exceptions to mandatory tender offers, that is, the version initially approved by the lower house, was too vague and, in practice, would have made it extremely easy to skirt the mandatory tender offer process. The loophole was due to language that exempted tender offers expressed as the controlling party's interest in selling rather than as a prospective buyer's interest in making the acquisition. In effect, it meant that in the there would be no mandatory tender offers because property concentration would be so high there would be no need to go to the market to gain control.

The discussion in the Senate centered around how to correct the problem, making the regulations flexible enough to facilitate normal merger and tender offer processes that are beneficial to corporate governance and create value for shareholders, while acknowledging that more often than not a tender offer process containing the principles outlined above is needed.

MANDATORY TAKEOVER BIDS
Article 199, as proposed

The following is the tender offer provision contained in the general rule and the exceptions submitted for final approval by Congress.

The language on exceptions to mandatory tender offers under the general rule has the additional advantage that it leaves it to the stock exchanges to determine the most appropriate procedure for conducting these transactions and grants the non-controlling shareholders the option to sell out under the same conditions as controlling shares and limits control premium distribution to a specific percentage. The idea is to provide greater flexibility, increase private participation in choosing the most appropriate procedure and ensure that non-controlling shareholders can sell their shares under similar conditions on the stock market on a prorated basis.

Also the exceptions to the rule were set forth, namely any events not detrimental to minority shareholders, such as tender offers through capital issues, or by means of small purchases of up to 3% a year by a majority shareholder, duly reported to the market.

"*Article 199. – The following acquisitions shall be subject to the bid procedure contained in this Section, whether made directly or through a third party, of one or more stock series issued by any company making a public offering thereof:*

a) Any acquisition resulting in one person attaining or exceeding the equivalent of 25% of the shares;

b) Any additional acquisition made by any person owning between 25% and 50% of the shares;

c) Any person attaining or exceeding a 66% share of a company or of the respective series, shall make an offer for all the remaining shares of the company or of the respective series, within 30 calendar days at a price no lower than the price resulting from applying the provisions on withdrawal rights, and

d) Any person wishing to acquire shares of a company that in turn controls another company, which has public offering , and that account for 50% or more of its valued consolidated assets, shall previously make an offer that conforms with the provisions herein to the controlled company for an amount no lower than the % that obtains the control of the holding company.

Exceptions to the above provisions include the following operations:

1) Acquisitions of first-issue payable shares originating in a capital increase that because of their number permit the purchaser to obtain control of the issuing company.

2) Acquisitions involving, either individually or as a whole, a total amount equal to or lower than 3% of one or more series of shares issued by any company, provided that such acquisitions have been made within any 12-month period and by any person controlling 25% or more of the respective stock series.

3) Share disposals made by any shareholder owning a controlling interest of over 25% of the shares issued through a stock exchange transaction, provided that at least the following conditions are met:

a) An offer is made over an additional 20% of the shares issued, excluding those of the controller and related parties;
b) Acquisition is made on a prorated basis, and
c) The same negotiation conditions are held for every shareholder participating in the transaction.

For the purposes of this article, any stock acquisitions or sales performed indirectly through one or more related parties, or with whom dependency or subordination links exist, or who act under a joint agreement, shall be deemed direct or made by one same person".

Comments

This draft allows for more flexibility in tender offers, because stock brokers will determine which procedure to use for the trade. Nonetheless, the procedures chosen are subject to the oversight of the SVS.

The original bill's philosophy is preserved, because it considers: 1) participation of non-controlling shareholders; 2) prorated allocation and 3) equal negotiating conditions.

In fact, these alternatives establish the tender offer procedure as the general rule for those situations where property dispersion is such that the only way to take control is through this mechanism.

Similarly, whenever a company's degree of control is high and concentrated in a few hands, these exceptions become an effective, flexible means of taking control.

Additional advantages of this proposal include:

1. Private agents and stock brokers can agree on and define system of stock exchange transactions that reflects the interests of participants in the securities market.

2. A strengthening of the Chilean securities market by reflecting this type of operations in the amounts traded. The market's current low liquidity and the apparent ability of this mechanism to attract new investors are particularly salient.

3. The criteria and principles of the proposed law are maintained, such as granting non-controlling shareholders the option to sell their shares under conditions equal to those of the controller.

4. Stockbrokers will be able to work with the private players who will ultimately grant the minority shareholders the right to dispose of their shares in the same conditions as those of either the original or the new controller.

For example, the interpretation of eventual domain limitations currently imposed on the present controller, by requiring that minority shareholders participate as a general rule, would not apply. In this system, a stock-exchange control transaction mechanism could be established that included an additional offer to the minority holders by the new controllers.

5. Additionally, this solution lets the private sector directly involved in these operations devise the best mechanism with the necessary flexibility. This will result in cost-effective, fast processes.

The final proposal:

Although it is not the ultimate version , still to be approved by the Senate, there are some difference regarding the original proposal presented above , that are today being considered for its approval:

1.- Enable private transaction of the company's control , but nevertheless establishing the Securities Commission (SVS) power to require a formal tender Offer procedure in some cases.

2.- The authority to require a formal tender Offer by the SVS is only enforced if two or more of the Williams Act eight criteria are met.

3.- Exceptions to the rule are limited to few cases , such as takeovers through an equity increase, bankruptcy changes in control , or controller's death.

4.- Threshold is more flexible , definition of change in control is defined through an article 99, being in any case 25% and above the limit where control premium is distributed among all shareholders.

5.- The negotiation moves towards the takeovers rule of the USA markets.

Final remarks:

Setting forth or amending corporate tender offer regulations is a complex and protracted task because it implies adjusting the regulations commonly accepted in developed countries to local conditions.

In this process, intended to improve the securities market's regulatory framework, costs and benefits associated with the two primary participants are evaluated, namely current controlling shareholders and other stakeholders. Costs for one group shall be seen in the short run, while benefits can be reaped in the medium term.

In the opinion of some representatives of non-controlling shareholders, the regulations should not impose any cost on the controllers, since the new rule clarifies that control premiums belong to every shareholder in proportion to the shares held.

Current controllers will view this requirement to share the control premium with other stockholders as a cost they shall suffer. Nonetheless, they have yet to convincingly demonstrate why they should be granted an exclusive right to said control premium.

This has been the crucial problem in arriving at a faster, more flexible and appropriate solution to today's ownership concentration. A very demanding tender offer rule might have negative effects on the private sector and ward off new companies entering the market to finance its corporate projects.

Requiring mandatory bids every time a takeover occurs is the only way of establishing a new scenario and introducing new principles into the economic relationships between controlling and non-controlling shareholders. The fiduciary role of senior management, an aspect developed in depth in the provisions on corporate governance included in this tender offer law, is one principle enshrined in the provisions on tender offer processes.

The current bill is certainly no legislative innovation. Rather, it replicates certain Anglo Saxon principles commonly applied in international financial centers.

Adjusting our legislation to the demands of world investors will improve the standards of the Chilean market in terms of protecting the rights of non-controlling investors and enabling to interact more effectively with the world's global capital markets.

Similarly, the provisions contained in this legislation rectify a regulatory anomaly stemming from the financial crisis of the 1980s involving the protection and guarantees proffered to financial

institutions and banks lending with those granted to non-controlling investors in their financing of corporate projects.

In sum, the desired economic effects of this law including added incentives for new domestic and foreign investors to enter the Chilean market, increased capital inflows to listed companies, clear-cut rules on material corporate events and reduced incentives for companies to funnel rightfully owned flows toward other interests.

Finally, unless the move toward better standards is made soon, financial costs are likely to increase or, in a best case scenario, to remain steady. Clearly, investors will demand higher discount rates if they fail to benefit in full from the flows generated by corporate shares. On the contrary , a lower discount rate to the chilean market will be expected in the long run as investor's protection has its price.

ANNEX #2:
ARTICLE: INFORMATION DISCLOSURE

"*Article 54. Any person intending to take over control of a company, either directly or indirectly, who makes a tender offer, whatever the form of stock acquisition may be, including those made by direct subscription or private transaction, shall previously report such activities fact to the general public.*

For the purposes of the preceding paragraph, a written communication of the fact shall be sent to the company targeted for control, to the companies controlled thereby, to the Superintendencia de Valores y Seguros, and to the stock exchanges. With the same purpose, a feature advertisement shall be published in two daily newspapers of widespread national circulation. The aforesaid communication and publication shall be made at least ten business days prior to the date the acts aimed at gaining control of the respective company are to take place and, in any case, upon closing the tender offer negotiations as defined in article 97.

The content of the aforesaid communication and publication shall be determined by the SVS, through instructions of general application.

Notwithstanding the provisions contained in article 12, shareholders of any company making a tender offer who own 15% or more of the total shares and who engage in negotiations intended to acquire directly or indirectly a stake of 3% or larger within a 12-month period and ultimately gain control thereof, shall report this fact in the terms prescribed herein. Should any shareholder own said shares as a financial investment and have no interest in its control, he or she shall so state in the communication submitted pursuant to article 12.

Any controllers wishing to dispose of their shares shall previously comply with the regulations contained in this Section, and the operation shall only be completed ten business days after the publication of the respective notices.

Breach of this article shall not void the operation but shall grant interested shareholders or third parties the right to claim damages, in addition to any administrative and criminal sanctions that may apply. Similarly, operations resulting in tender offers or loss that fail to comply with the provisions herein shall be considered, as a whole, as an unlawful operations for the purposes of the provisions of article 29 of Decree-law Nº 3538 of 1980.".

ANNEX #3
Summary of tender offer regulations:

1. Tender Offers shall be reported in at least two daily newspapers of widespread national circulation and the effect thereof will commence the day following the publication. The information to be disclosed shall be determined by the SVS. A prospectus for interested parties shall be prepared containing a financial, legal and commercial description of the bidder, as well as price, conditions for success, etc.

2. The offer shall be effective during a period of 20 to 30 days. The bidder may extend the period one time only for an additional 5 to 15 days.

3. The bidder shall establish an address in Chilean territory.

4. During the effect of any tender offer, other competing tender offers may be presented, as long as they are done so with a minimum of 10 days notice before the original tender offer expires. Offers may be modified during their effective period only to improve the price tendered.

5. The offered company shall not merge, split, change quorum, become indebted, sell assets, incorporate subsidiaries or make any other material decisions during the effect of any tender offer.

6. The offered company's Board of Directors shall pronounce its opinion on the tender offer.

7. Tender Offers shall set a single price and prorate in case the purchase maximum is exceeded.

8. If the company is ceases to be meet requirements as a listed stock corporation,, shareholders can exercise the right of withdrawal. Upon delisting, company shareholders who exercise said right shall receive the same price paid in the tender offer.

9. Collateral no less than 10% of the offering shall be established to cover the cost of damages caused by breach of the obligation to pay the price.

10. Tender Offers are irrevocable.

11. If a tender offer is made on a series that is preeminent in the control of the company, a joint tender offer shall be made on the same percentage for the other series.

12. If tender offer transactions are conducted through stockbrokers, they may be effected over-the-counter.