Ricardo Escobar C.
Carey Cía. Ltda.

REPORT ON CORPORATE GOVERNANCE ISSUES IN CHILE

Sao Paulo, April 2000

Ricardo Escobar C.
Carey Cía. Ltda.

CORPORATE GOVERNANCE IN CHILE

The following is our report in connection with the questionnaire regarding certain issues on corporate governance in Chile.

I. Definitions.

As used in this memorandum, the following terms shall have the following meanings. Likewise, unless otherwise defined, capitalized terms shall have the same meanings assigned to them in this section I.

"Closed Corporations" shall mean Corporations not subject to the Chilean Superintendency of Securities ("SVS") supervision and that do not trade their securities in any Chilean stock exchange.

"Company" or "**Companies"** shall mean Closed Corporations and Open Corporations indistinctly.

"Corporation or Company" shall mean a stock corporation according to the rules of the Corporations Law.

"Corporations Law" shall mean the Stock Corporations Law N° 18.046, and its amendments and regulations.

"Decree Law 3,538" shall mean the Organic Law enacted on December 23, 1980 whereby the SVS was created and its authority determined.

"Open Corporations" shall mean corporations that offer their shares to the public in accordance with the Securities Law, those that have 500 or more shareholders, those in which at least 10% of its subscribed capital belongs to a minimum of 100 shareholders and those subject to the supervision of the SVS and that trade their securities in at least one of the Chilean stock exchanges.

"Rules and Regulations Governing Corporations" shall mean the Rules and Regulations enacted to complement the Corporations Law (*Reglamento de la Ley de Sociedades Anónimas)*.

"Securities Law" shall mean the Securities Law N°18.045 and its amendments and regulations.

"SVS" shall mean Chilean Superintendency of Securities and Insurance (*Superintendencia de Valores y Seguros)*, which is the governmental entity that oversees Open Corporations and securities markets

"SVS Rule" shall mean a mandatory instruction issued by the SVS.

II. Disclosure and Transparency.

1. What aspects of financial performance must be disclosed to all shareholders, and on what schedule, and in what detail?

The Corporations Law, provides that Companies must issue a balance sheet reflecting the results thereof as of December 31 of each year. Such balance sheet must be prepared by the board of directors and subjected to the ordinary shareholders meeting which must take place within the first four months of the following year. Such shareholders meeting may approve or reject the balance sheet presented to it.

In addition to the yearly balance sheet, the Board of Directors must prepare a yearly annual report, which is a written document that enables the shareholders to know the main aspects of the businesses of a Company, and allows a better comprehension of the yearly balance sheet.

The Corporations Law provides that the directors must submit to the ordinary shareholders meeting a reasoned annual report regarding the situation of the Company during the latest yearly exercise, attaching a profit and loss statement, and the report issued by the external auditors. These documents must reflect the financial situation of the Company as of the end of the year, and the profits earned or losses incurred during that period.

In addition to the general content of the annual report, the Corporations Law also provides that it must contain certain specific information, such as all compensation received by the directors during the respective annual exercise. The annual report must also contain the comments and proposals made by the shareholders that hold 10% or more of the shares with voting rights.

The SVS rules also contain additional information that must be included in the annual report, such as operations with or investments in related persons or entities, and the dividend distribution policy.

The Corporations Law provides a general obligation of the Board of Directors to inform the shareholders as to the financial condition of the Company. Specifically, the Corporations Law provides that a Company must make available to the shareholders thereof, during the 15 days prior to annual ordinary shareholders meeting, the following information: annual reports, balance sheet, inventory, minutes, books and reports [1] issued by the account inspectors or the external auditors, in relation to the Company and its subsidiaries. The Corporations Law provides that only during this period may the shareholders examine such data, notwithstanding the case of judicial claims based on conflicts affecting the Company and its shareholders, [2] which could trigger the Company's obligation to provide that kind of information to the authorities and to the shareholders.

In addition to the foregoing, an SVS Rule states that Open Corporations must present to the SVS their quarterly financial statements within the thirty-day period as from the date when the corresponding quarter elapses. This information provided to the SVS is public, therefore the shareholders of such Open Corporation have full access thereto.

Also, the Securities Law provides that Open Corporations (specifically the Board of Directors thereof) must communicate to the SVS and the stock exchanges about any material information regarding themselves, their businesses and/or their securities as soon as the facts which constitute the base of such information is known by the Board of the Company. Since, in general, the information granted to the SVS and to the stock exchanges is public, it will be available to the shareholders.

Notwithstanding the foregoing, the Securities Law allows the Board of Directors of an Open Corporation, with the vote of three-fourths of its exercising members, to grant a "reserved status" to pending negotiations, that could affect the Company's interest if disclosed. This provision is a legal exemption, and must therefore be interpreted restrictively. The director or directors that maliciously or negligently concur with their vote

[1] Though the information is mostly financial in nature, this also includes non-financial information, especially since the shareholders have access to the minutes and books and reports issued by the account inspectors. Further, the annual report also contains non-financial information, and describes the business transactions and projects of the Company.

[2] This means that in case of judicial procedure based on conflicts between the Company and its shareholders, the Company may be obliged to disclose information even if this does not occur during the "disclosure period" described.

on the reserve are penalized, with joint and several liabilities for consequent damages. [3]

2. What requirements exist to assure that an independent auditor certifies a company's financial statements on a regular basis?

There is a financial control mechanism set forth in the Corporations Law, which provides that, in the case of Open Corporations, such supervision must be made by an external auditor (i.e. an independent auditor not linked with the Company or its management), permitting also that the bylaws of an Open Corporation established, in addition, the appointment of account inspectors.

In particular, in the case of Open Corporations, the Corporations Law requires that the ordinary shareholders meeting, held during the first four months of each calendar year, must appoint such independent external auditors plus, if so stated in their bylaws, the account inspectors. [4] On the other hand, in case of Closed Corporations, the Corporations Law states that in the annual ordinary shareholders meeting (to be held during the above mentioned period) the shareholders must either appoint two incumbent and two alternate account inspectors or independent external auditors.

The legal function of the independent external auditors is to examine the accounting records, balance sheet, inventory and financial statements. They are obligated to issue a report in writing to the shareholders of the Company prior to the next annual ordinary shareholders meeting. Likewise, external auditors are required by law to supervise [5] the Company operations and the acts of the management to ensure proper compliance of its legal and corporate duties. Notwithstanding the foregoing, the shareholders have the last say as to the fulfillment of the tasks and obligations of the auditors, since, in the annual shareholders

[3] There has not been much experience with respect to "reserved information" and consequent liability of the Board members that concurred with their vote to fraudulently withhold information from the shareholders. This issue only arises when the shareholders pursue the liability of the Board members in a judicial conflict with the Company.

[4] Account inspectors are officers appointed by the shareholders to ensure proper compliance with legal obligations of both the Company and its Board. They have the same function as the independent external auditors indicated in the next paragraph. The Corporations Law provides that account inspectors and/or external auditors may exercise this "supervision of the administration". In the case of Open Corporations external auditors must be appointed, though the Company may still appoint account inspectors in addition to the external auditors, if thus provided in the bylaws

[5] The corresponding section in the Corporations Law titled "Supervision of the Administration"; the legal obligations are quite minimum, as can be appreciated, and does not really require "ongoing" work, but rather the periodic review of books and records of the Company.

meeting, the shareholders must approve or disapprove the balance sheet and the Company's annual report (*Memoria Anual*) presented by the Board of Directors (which contains the auditors report).

Independent external auditors must be duly registered with the SVS. SVS Rules establish the registration requirement of external auditors. The information regarding this registration is available to the public. The SVS is entitled to cancel or suspend such registration when the registered auditor does not fulfill its obligations properly. [6]

3. What accounting and auditing standards are required of companies when preparing their financial statements?

The Corporations Law provides that Companies must keep accounting records in line with applicable legislation, and with Chilean generally accepted accounting principles.

Further, Decree Law 3,538 allows the SVS, with respect to the entities subject to its supervision (i.e.: Open Corporations), to determine the principles under which accounting records must be prepared by such entities. This allows the SVS to order the rectification or correction of values or figures included in certain accounts, when the values or figures consigned do not correspond to the real value of the assets, liabilities or others. In any event, in exercising its legal powers, the SVS must respect Chilean generally accepted accounting principles. [7]

There are numerous SVS rules that determine the manner in which certain assets or liabilities must be registered in a Company's accounting records in order to ensure that the financial statements of the Companies reflect the real financial situation thereof. [8]

4. What requirements exist for disclosure regarding the composition of a firm's equity ownership?

The Corporations Law requires each Corporation to keep a shareholders registry which shows the share ownership of each of the shareholders and where all share acquisitions and sales are recorded (only registered

[6] There is no other registration requirement for external auditors except relating commercial banks and pension funds administration Companies.
[7] Chilean GAAP do not vary substantially from US GAAP or International GAAP. One of the main differences is inflation adjustments, which usually does not form part of foreign GAAP.
[8] The legal provisions of Decree Law 3,538 enable the SVS to issue rules which usually will not conflict with GAAP, as they are an expression of such GAAP.

shareholders are entitled to vote at shareholders meetings).The general manager or the person that acts on behalf of the Company is obligated to register any transfer of shares within 24 hours as of the date the Company is notified thereof. The SVS and the shareholders of the Company are entitled to access and review the shareholders registry.

In addition to the foregoing, the Securities Law states that in case of Open Corporations, each member of the Board of Directors, the general manager and managers thereof, and/or each shareholder which holds 10% or more of the capital stock of an Open Corporation, must communicate to the SVS and the Chilean stock exchanges where its shares are traded each purchase or sale of shares of such Open Corporation made by such director or shareholder. Through such mechanism the public and the shareholders are informed any relevant change in ownership. Also, the Securities Law states that the management of an Open Corporation must communicate to the SVS and the stock exchanges of all the transfers of such Company's shares made by main shareholders, board of director members, general manager and other legal and natural persons related, that take place in each month, during the first five days of the following month.

5. What requirements exist for disclosure of the identity, compensation, equity ownership, and background of directors and senior managers, and of any relationships between a director, the company and managers?

The general criteria in this subject matter is that the personal identity of board members, their remuneration and shareholding in the Company, constitutes public information available to all Company shareholders.

Pursuant to the Corporations Law, Companies must keep –both at Company headquarters as in their branch offices– an updated list of all Company shareholders, with an indication as to the number of shares owned by each board member. In this manner, it is possible to establish their equity ownership.

Corporations must also carry a book or registry indicating the names of the Chairman of the board, Company managers, and legal liquidators, [9] which must remain available to all Company shareholders, thereby enabling access to information about such corporate senior executives.

[9] Under the provisions of the Corporations Law, dissolved Companies in the process of liquidation retain their legal entity for the duration of the liquidation process. This liquidation process is overseen by a commission of "legal liquidators", which acts as representative of the Company during liquidation.

With respect to the remuneration received by board members, it should be noted that corporate bylaws determine whether or not they shall receive remuneration. Should they receive remuneration, the amount of said remuneration should be established by the ordinary shareholders meeting. Corporations are required by the Corporations Law to inform in their annual report all remuneration received by their board members throughout the corresponding fiscal year, even those paid out to them on account of reasons other than their position as members of the board, such as representation expenses, other expenses or any other payment made to them by the Company. Such annual report should also consign the identity of each board member along with a brief personal background. [10]

6. What are the requirements for disclosure of related party transactions?

The Securities Law determines and classifies as related parties to a given Company, the following persons:

(i) entities belonging to the same corporate business group to which the Company belongs;
(ii) legal persons that link up with the Company as parent Companies, co-linked Companies, affiliates or related Companies;
(iii) Company board members, its managers or administrators or liquidators, as well as their spouses and relatives to a certain degree; and
(iv) any person who, alone or in association with others, is able to appoint at least one person to the Company's senior management or who may have control over 10% or more of the voting stock capital .

The SVS may, in certain circumstances, determine as a general rule whether certain individuals or legal persons are indeed related or not to the Company. [11]

On the other hand, the Corporations Law establishes its own general criteria with respect to transactions between related parties, when covering the subject of Company board members. It indicates that the

[10] The general practice is that Board Members of Open Corporations do receive remuneration for their services, usually a percentage calculated on EBIT, or some other such formula. Board Members of Closed Corporations are usually not remunerated for their services.
[11] This is achieved through the issuance of an SVS Rule, as defined.

Company may execute acts or contracts in which one or more board members may have a stake in either by themselves or as representatives of another person, when such operations are known to and have been approved by the Company's Board of Directors and are consistent with conditions of fairness, similar to those that normally prevail in the market. [12] Any agreements reached along these lines must be divulged at the upcoming shareholders meeting, and they must be reported in the summons to such meeting. The law assumes that board members have a personal interest in the actions, negotiations or contracts in which they must take part, their spouses or relatives, up to the second degree of kinship, or the Companies in which they perform as members of the board or through individuals or legal persons in whose capital stock they have 10% stake or more.

Regarding the operations between colinked Companies, between the parent Company and its affiliates, those carried out by affiliated Companies among themselves, or with colinked Companies, or those carried out by Open Corporations with its own related persons, it is also required that they observe the normal conditions of fairness that prevail in the market. The same requirement is also applicable to the operations of an affiliate Company in which one of the board members of the parent Company may have a stake, in which case this situation must also be reported to the respective shareholder's meetings of both such Companies.

III. Minority Shareholder Rights.

1. What provisions guarantee minority shareholders the right to participate and vote in company meetings and shareholder ballots?

The Corporations Law provides various mechanisms to this effect. Among others, we would like to highlight the following:

a) The summons for a shareholders meeting shall be made by means of a clearly visible advertisement in a newspaper of the legal domicile established by the shareholders meeting, which shall be published at least three times on different dates;

b) Open Corporations must send each shareholder a summons by mail at least 15 days in advance to the date of the referred shareholders meeting, indicating the agenda to be debated on such

[12] If this standard has not been met, the board of directors that have participated are subject to joint and several liability for damages caused to the Company.

occasion. [13] Any omission in this respect becomes the liability of board members, liquidators and Company managers, all of whom must respond for the damages caused;

c) Not later than the first summons toward an ordinary shareholders meeting the board of directors of an Open Corporation must forward to each and every shareholder registered in the Shareholder's Registry a copy of the Balance Sheet and of the Annual Report of the Company (the SVS may limit such forwarding requirements under certain circumstances). On the other hand, Closed Corporations must only provide such information to those shareholders who specifically request it.

d) Open Corporations must publish the information determined by the SVS, through its Rules, concerning the Balance Sheets, Financial Statements and others, in a newspaper with wide circulation within the legal domicile established by the Company, with no less than 10 and no more than 20 days of anticipation of the shareholders meeting.

e) The Annual Report, Balance Sheet, Inventory, Minutes, Books and External Auditors' Reports and Account Inspectors, as the case might be, must be made available to all shareholders for their examination at Company headquarters, during the 15 days prior to the date set for the shareholders meeting. Shareholders may do the same with respect to affiliate Companies.

f) In order to participate at shareholders meetings and exercise their right to voice and vote, shareholders must have registered their shares in the Shareholders' Registry at least 5 days in advance to the respective shareholders meeting. [14] Such official Shareholders' Registry must be made available at Company headquarters;

g) All Open Corporations must notify the SVS of upcoming shareholders meeting at least 15 days in advance;

[13] The summons must indicate the date of the shareholder's meeting and a brief description of the agenda (issues to be debated). In the case of special shareholders meeting, shareholders cannot debate on issues not included in the agenda.

[14] Transfers of shares are not blocked during this period.

h) In shareholders meetings, the approval of the following matters require an affirmative vote of at least two thirds of the voting issued shares: [15]

(i) The transformation of the Company, its division and merger with another corporation;
(ii) A change in the term of duration of the Company, if any;
(iii) The early dissolution of the Company;
(iv) A change in the corporate domicile;
(v) A decrease in the capital equity;
(vi) The approval of contributions and estimate of assets not consisting of cash;
(vii) A modification in the powers reserved for the shareholders meeting or in the limitations on the attributions of the Board of Directors;
(viii) A decrease in the number of members on the Board of Directors;
(ix) The conveyance of the Company's assets and liabilities or of all of its assets; [16]
(x) The way to distribute corporate profits; and
(xi) Other resolutions as indicated in the bylaws.

A bylaws amendment the purpose of which is to create, modify or eliminate preferences shall be approved by the affirmative vote of two-thirds of the shares in the affected series.

Freeze-outs are not allowed under Chilean law. Indeed, a shareholder may not loose its status of shareholder or may not be obliged to tender its shares in cases of mergers, transformations, divisions or other reorganizations.

---

[15] Please note that there is currently a bill in Congress whereby amendments to both the Corporations Law and the Securities Law are proposed (the "Bill"). It is proposed under the Bill to include two additional matters under this paragraph: "(xi) the creation of one or more guarantees or security interests in collateral for third parties debts, which considered jointly with the remaining guarantees or security interests in collateral for third parties debts, are equivalent or exceeds 50% of its assets, except in the case of affiliates in which the Board approval shall be enough" and "(xii) the purchase of the Company own stock shares", subject to the specific rules established by the Bill.

[16] Under the Bill, the latter provision is proposed to be amended as follows: "the conveyance of 50% or more of its assets whether it includes its liabilities and the approval or amendment of business plans considering the conveyance of assets in excess of the foregoing percentage. For this purposes, it shall be presumed that it constitutes a same conveyance operation, those executed by means of one or more agreements with respect to any Company asset within any 12 consecutive month period."

i) In the shareholders meetings, the approval of the following matters enables dissenting shareholders to tender their shares to the Company and be bought-out of the same:

(i) The transformation of the Company into a different type of entity;
(ii) The merger of the Company;
(iii) The transfer of the assets and liabilities of the Company or all of the assets of it;
(iv) The creation of preferences for series of shares or the modification of such preferences (in which case, the affected series of shares are entitled to be bought out such rights); and
(v) Such other cases as provided in the bylaws.

A dissenting shareholder is the one that voted against the resolution that triggers such rights to be bought out, or whom has indicated its disagreement to it by delivering a notice in writing to the Company within 30 days as of the date of the shareholders meeting that adopted such resolution.

In Closed Corporations, the value of the dissenting shareholders' shares to be paid by the Company is the book value. In Open Corporations, such value is the market value.

The Board of Directors may convoke a new shareholders meeting to be held not later than 60 days as of the date of the shareholders meeting that adopted such resolution in order to reconsider or ratify it. If in such shareholders meeting such resolution is revoked, the rights to be bought out will be extinguished.

2. What requirements are in place concerning whether shareholders' voting rights are commensurate with their equity stake in the firm?

Article 21 of the Corporations Law provides for a one-share-one-vote system. Thus, the value of the vote of shareholders is proportional to their shareholding percentage of the Company's capital stock.

The foregoing is applicable notwithstanding the existence of preferred stock without the right to vote or with a limited vote.

3. What issues do shareholders have the right to approve by proxy vote?

The Corporations Law states that only those shareholders who have registered their shares in the Shareholders' Registry 5 days in advance of the date scheduled for the shareholders meeting shall be eligible to exercise their right to voice and vote at such meeting.

Shareholders are entitled to vote by proxy at either ordinary or special shareholders meetings, by means of a power of attorney conferred to a third party, regardless of the subject matter under debate. This means that any and all matters may be approved by proxy vote, provided that the proxy has been duly issued.

The Corporations Law states, in its article 64, that shareholders are entitled to representation at shareholders meeting by means of third parties, regardless of whether such persons are shareholders or not. To that effect, a power of attorney must be granted in writing for all the shares owned by the respective shareholder.

The Rules and Regulations Governing Corporations indicates the information that is necessary to be consigned in such powers of attorney:

(i) date and venue of issue;
(ii) name of the agent;
(iii) name of the principal;
(iv) nature and date of the shareholders meeting for which such power of attorney is being granted;
(v) declaration that the respective shareholder is entitled to exercise or to freely delegate all the rights that correspond to the principal;
(vi) declaration that such power may only be revoked by means of another subsequent power of attorney; and
(vii) signature of the principal.

All powers of attorney granted via a public instrument must at least contain the three first requirements. Those powers of attorney granted by means of private instrument may not include references other than those indicated above. In this latter case, the venue, date and name of the agent must be handwritten also.

There are no rules that require voting in person. Proxies are very customarily and are frequently used. In case of conflict, the powers of attorney issued are reviewed and contested if they do not comply with the requirements indicated above.

4. What measures are in place to ensure investors the ability to securely register shares?

The purchaser or its representative (i.e. the broker) must notify the General Manager or the person that represents the Company of the transfer of shares, and the General Manager has 24 hours, by law, to register the transfer in the Shareholders Registry. Failure to do so will give rise to liability for damages caused.

In order for a Company to trade its stock in the stock market, the following requirements must be met:

a) Registration of the Company and its shares with the SVS.

   Only once the Company is legally and duly incorporated, it may initiate the process of registration of the same with the SVS. According to the Chilean Security Law, in order to make public offerings of the shares of an Open Corporation or of a Closed Corporation voluntarily submitted to the regulations of Open Corporations, the Corporation and its shares must be registered with the SVS Securities Registry.

   According to General Regulation N°30 of the SVS, the above mentioned application requires disclosure of the following legal and financial information of the Corporation:

   a) General Economic and Financial information;

   b) Relevant or Essential Information;

   c) Additional Information, such as:

      (i) Public deeds containing the articles of incorporation and subsequent amendments of the Company bylaws, and their corresponding legalization;
      (ii) Certificate of good standing of the Company issued by the corresponding Register of Commerce;
      (iii) Information provided through the prospectus established in the General Regulation N°30 of the SVS, if pertinent;
      (iv) List of shareholders and percentages of participation;
      (v) Last annual report;
      (vi) Facsimile of the Company's share certificates.

The foregoing information may be accessed at SVS's offices by any interested party.

Once the SVS has registered the Company and its shares, the same information provided to the SVS shall be sent to all Chilean stock exchanges within three business days as of the date of such registration.

The foregoing information shall be permanently available to the public at all stock exchanges.

As evidenced in the preceding paragraphs there are no minimum capital requirements for registering a Company and its shares with the SVS for the purpose of publicly offering its shares.

b) Listing of a Company and its shares with the stock exchanges.

Once the Company and its shares are registered with the SVS, the Company has to apply to list its shares on the stock exchanges within a period of 30 days. Such application requires the disclosure of legal and financial information of the Company very similar to that filed with the SVS.

Once the application has been submitted, the Board of Directors of the Stock Exchange has a period of 10 business days to review the documentation thus filed. This period may be extended in case the Board requests certain amendments or additions to the information submitted. After the expiration of the 10-day period, the Board has 3 more business days to issue a final resolution.

5. Do all shareholders have the ability to freely transfer share ownership?

According to the system currently in effect in our country, shareholders are free to transfer the shares that they own.

The Corporations Law states that Companies have no right to any opinion concerning the transfer of stock, furthermore, it obligates the Company to merely record such transfers as submitted.

The same law provides that the bylaws of Open Corporations must not include any provision limiting the free assignment of stock. Private agreements limiting transfer rights may be carried out among shareholders and they must be deposited in the Company and made

available to other shareholders and interested third parties. The law also requires that these shareholder agreements be mentioned in the Shareholders' Registry.

The Rules and Regulations Governing Open Corporations also indicates the manner in which stock may be transferred. Thus, stock transfers may be made either through:

(i) A private instrument signed both by the assignor and by the assignee before two witnesses of age or before a stock broker or before a notary public, or;
(ii) A public deed executed by the assignor and by the assignee before a notary public.

The assignment produces effects in regard to the Company and third parties from the moment it is recorded in the Shareholders' Registry. [17]

6. What recourse do shareholders have to ensure that their rights are enforced?

In order to protect their rights, shareholders have the following recourses or alternatives at their disposal:

a) To submit any queries, petitions or claims on subject matters in which they are being affected, for the consideration of the SVS, pursuant to the provisions of Decree Law 3,538. .

b) To appeal for the reconsideration of a judgment before the Superintendent [18] when, as a result of an administrative action of the SVS, a given petition is sentenced and provided the alluded appeal contributes new evidence.

c) To submit an appeal before the Santiago Court of Appeals, when considering that a general norm, instruction, communication, resolution or omission on the part of the SVS may be illegal and cause damage.

[17] As previously noted, the actual registration of the transfer of shares must be made by the General Manager, within 24 hours as of notification of the transfer, either by the vendor, purchaser or broker. The registries are kept by each Company. The stock exchange does not handle Shareholders Registries.
[18] Chief executive officer of the SVS appointed by the President of the Republic.

d) To sue for damages those persons that may have violated the Corporations Law or its Rules and Regulations, thereby causing damage to the shareholder.

e) To sue and enforce the joint and several liability of Company board members in case of fraudulent or negligent actions, and for the damages eventually caused to the Company and to its shareholders.

f) To summons, together with shareholders representing at least 10% of the shares with a right to voice and vote, to an ordinary or special shareholders meeting, clearly stating in the summons the agenda which is to be submitted for debate.

g) Shareholders of Open Corporation may -with 10% or more of the shares issued with a right to vote- request that an accurate summary be included as an attachment to the Annual Report with comments and proposals submitted, concerning the business progress of the Company.

All of these remedies are used from time to time, depending on the nature of the rights to be protected. The most common are f) and g). Usually, if this route does not remedy the situation, the shareholder will proceed with alternatives d) and e). The remedies indicated in letters a), b) and c) are more "technical" in nature, and therefore not used as often by "regular" shareholders as by "institutional" investors (i.e. pension funds, etc.)

IV. Oversight of Management.

1. What mechanisms or structures are in place to ensure that management acts prudently to use investors' assets in the best interest of the firm?

The Rules and Regulations governing Corporations contain several management control and supervision mechanisms. Noteworthy among them are the shareholders meetings empowered with supervisory functions and powers; the account inspectors and the external auditors; and the supervision of the SVS with respect to Open Corporations and to Closed Corporations that voluntarily submit to its supervision. A further contribution to supervision and management comes from various measures concerning advertising and disclosure required of Companies with respect to different acts performed by them. Some of the main aspects of these are:

a) The Shareholders Meeting:

The Shareholders Meeting constitutes a corporate body for the expression of the collective will of the Company. In it, shareholders exercise their rights in the manner of majority agreements or resolutions. Shareholders may participate in shareholders meeting with the right to voice and vote provided their stock is registered in the Shareholders' Registry at least 5 days in advance to the scheduled date of the respective shareholders meeting.

Shareholders meetings may be of an ordinary or special nature.

(i) Ordinary shareholders meetings are held annually within the first 4 months of the year. Such meetings consider matters such as: i) examining the overall situation of the Company and the reports of the respective account inspectors and external auditors, and approving or rejecting the Annual Report, the Balance Sheet, the Financial Statements of the Company and the financial information submitted by Company managers or liquidators; ii) distributing each year's profits and payment of dividends; iii) electing or revoking the Company's Board of Directors, liquidators and management supervisors; and, iv) any other subject matter of corporate interest that may not be of the exclusive concern of a special shareholders meeting.

(ii) Extraordinary shareholders meetings are held any time that the business interest of the Company so requires and they consider the following subject matters: i) termination of the Company; ii) transformation, merger or subdivision of the Company and amendments to the bylaws; iii) the issue of bonds or debentures convertible into Company stock; iv) selling the Company's fixed assets and liabilities or all of its assets; v) pledging real or personal guarantees in order to cover third party debt; and vi) other topics as established by its own bylaws or by the Corporations Law. Bylaws usually do not add more topics than those indicated.

b) External auditors:

The external auditors are annually appointed by ordinary shareholders meetings of Open Corporations. Their functions, among others, are to examine the Company's accounting, inventory, balance sheets, and other financial statements. External auditors must disclose any deficiencies they may detect with respect to the adoption of accounting practices, the maintenance or creation of accounting administration systems and the adequacy of internal control systems. They must ensure that the Company's financial statements are prepared in accordance with the accounting principles and norms accepted by the SVS. Auditors must issue their reports in writing, and they may participate with a right to voice at shareholders meetings.

c) Account inspectors:

The ordinary shareholders meeting of Closed Corporations must annually appoint two account inspectors and two alternate account inspectors, or else, independent external auditors, with functions similar to those of the external auditors of Open Corporations.

d) The SVS:

The SVS is an independent organization created pursuant to Decree Law 3,538, and it is responsible for supervising Open Corporations and those Closed Corporations that are willing to submit themselves to its supervision. In very general terms, the Corporations Law entrusts this organization with enforcing compliance with the laws, the corporate bylaws, the rules and regulations, the norms issued by the SVS and other regulatory norms, as appropriate, with respect to all entities governed by it.

2. What mechanisms are in place to ensure effective oversight of the audit function?

As indicated above, the ordinary shareholders meeting must approve the yearly balance sheet, and is obligated by law to pronounce itself in regard to the balance sheet. Article 77 of the Corporations Law provides that the shareholders meeting called to this effect must issue a pronouncement on the balance sheet. If this obligation is not complied with, or if a shareholders' resolution (approving, rejecting or changing the balance sheet), does not comply with accounting principles, any shareholder (and also the board) is entitled to file a legal action before the courts to determine the composition of the balance sheet.

Authors agree that as external auditors are appointed by the same entity that appoints the management of the Company (both external auditors and Board of Directors are appointed by the Shareholders), there is, in practice, only limited independence of the auditors.

Article 4, letter l of Decree Law 3,538 grants the SVS the faculty to appoint external auditors to undertake specific tasks. Minority shareholders may request, in justified cases, that the SVS exercise such faculties. [19]

3. What is the legal liability of directors who fail to perform their duties?

Article 41 of Corporations Law establishes that board members must apply in their functions the same care and diligence that men or women normally apply in their own businesses, being jointly and severally liable for the damage caused to the Company and to its shareholders by their fraudulent or negligent actions. The alluded norm indicates that the civil liability of board members may not be limited by contractual agreement or in the bylaws, further establishing that the approval of balance sheets and annual reports by shareholders meeting does not exempt board members from the responsibility of their own actions when executed committing misdemeanors, crime or fraud.

Article 133 of the Corporations Law, contains the general rule governing responsibilities within the scope of Open Corporations. This article provides that any person that violates the Corporations Laws, its Rules and Regulations, the bylaws, or the norms issued by the SVS, is obligated to indemnify for damages, notwithstanding any other civil, penal or administrative sanctions that may be levied against him/her, as appropriate.

It further states that Company managers or legal representatives respond also on behalf of legal persons for civil, administrative and criminal liabilities [20] unless it is proven that they are not responsible. Those board members, managers and liquidators found to be responsible, shall be joint and severally liable among themselves and toward the Company that they

[19] This occurs, specially when minority shareholders –that cannot influence the appointment of external auditors- have cause to believe that their rights are not being respected.

[20] "Administrative" liability means liability before a governmental agency, for example, before the labor authorities, the Central Bank, Customs, etc. "Penal" liability means "criminal" liability, that is, those acts which can be penalized with corporal punishment (i.e. prison or jail).

manage for all indemnification and other civil or monetary sanctions that may be derived from the application of the norms currently in effect.

The legislation considers cases or situations in which the board members are presumed responsible. These responsibility presumptions may be either irrefutable presumptions or simple presumptions of law. [21]

a) Irrefutable Presumptions of Responsibility:

(i) An Irrefutable Presumption is the interest of a board member in the negotiations, contracts or operations in which he may be directly involved, or through his/her spouse, or through certain relatives, or through the Companies or enterprises in which he/she may be a member of the board, or the direct or indirect owner through other individuals or legal persons of 10% or more of the stock capital.

(ii) In very serious and specified (described by the law) circumstances, shareholders who own at least 10% of the issued stock may ask for the modification of the liquidation system and request the appointment of a single liquidator. It is an irrefutable presumption of responsibility when there is a serious and typified case of a liquidation that does not end within a period of six years from the date of the Company dissolution, or within a shorter period of time, as it may be determined by the shareholders meeting at the time of appointing the liquidating board.

b) Legal Presumptions of Responsibility:

The responsibility of the board of directors is legally presumed in the following cases:

(i) if the Company does not carry its Books and Records;
(ii) if provisory dividends are distributed having accumulated losses;
(iii) if the Company hides its assets, acknowledges supposed debt, or simulates the transfer of real property. This

[21] Irrefutable Presumptions are those that do not admit proof to the contrary. Legal presumptions admit proof to the contrary. In the latter case, the burden of proof lies with the party that intends to prove that the legal presumption is false.

triggers the joint and several liability of board members for the damage that might be caused, and

(iv) if board members unduly benefit -directly or indirectly, or through third parties or through an individual or legal entity- of a Company business accruing damage to the Company.

Other implicit presumptions of board members responsibility are:

(i) board members who do not express and record their opposition -in the respective minutes- to questioned or objected acts or agreements that were adopted by the board;
(ii) managers and legal representatives of legal entities respond to civil, administrative or criminal liabilities, unless their lack of participation or opposition to the fact or event can be proven; and
(iii) board members of a Company dissolved by judicial sentence or revoked by the SVS, unless their lack of participation or opposition to the fact or event which caused dissolution can be proven.

The Bankruptcy Law presumes knowledge on the part of the board members of the bankrupt Company, in the following cases:

(i) if the Company had executed private agreements with certain suppliers to the detriment of the others; and
(ii) if -subsequent to interrupting all payments- the Company should pay one supplier to the detriment of others, whether or not it is done by advancing the expiration of its credit.

As it may be inferred from the above, the general criteria applied by the law consists in the joint and several responsibility of all board members. Notwithstanding the general norms already analyzed, the law provides joint and several responsibility on specific cases, among them are:

(i) The obligation of board members to abide by the law regarding the form of payment of the shares subscribed by shareholders or agreed in the bylaws;
(ii) The obligation of board members of furnishing information to shareholders and the public;

(iii) Lack of accuracy or validity in records concerning the Company chairman, board members, managers or liquidators;
(iv) The lack of compliance of the formalities required by law in the event of the dissolution of the Company; and
(v) Any board member who may benefit from a remuneration that has not been authorized or approved by a shareholders meeting and those who -on behalf of the Company- may have instructed its payment.

4. What recommendations or requirements are in place regarding independent member inclusion on the board of directors?

Our legislation does not have any particular requirements regarding the inclusion of independent members on the board of directors of Companies.

What Corporations Law does, on the other hand, is to establish certain requirements that are necessary to assume and discharge the responsibility of board members, determining who may not be elected, namely:

(i) persons who are under legal age (18);
(ii) board members who may have been removed from their position because of the rejection of the Company's balance sheet;
(iii) persons who may have been legally indicted or punished for crimes involving, personal restraint or penal servitude or perpetual disqualification to be elected for public offices, and bankrupt individuals or the administrators or legal representatives of bankrupt individuals legally indicted or punished for fraudulent or negligent bankruptcy and others established in articles 203 and 204 of the Bankruptcy Law;
(iv) fiscal or semi-fiscal employees who work for Companies or for state agencies, or for autonomous Companies where the State may contribute capital or provide management, in respect to those entities over which such employees exercise, directly and as provided by law, control and supervision functions.

Also barred from becoming board members of Open Corporations or of their affiliates are:

(i) Senators and members of Congress;
(ii) State Secretaries or Undersecretaries, Department managers and other Senior executives;

(iii) SVS personnel;
(iv) Stock brokers and securities agents, except at stock exchanges.

In relation to the issue of "independent directors", the previously referred Bill does not propose to establish the creation of independent directors, as the current text of the law already provides that the directors are obliged to seek the wellbeing of the Company, and not that of the shareholders who placed them on the board. However, the Bill does propose several amendments referred to "corporate governance" of Open Corporations:

(i) it complements existing provisions concerning business carried out by directors with related parties when they have interest in them, establishing that two fairness opinion shall be required in the case of operations in excess of a given amount and in which respect is not possible to determine if their conditions are consistent with those that normally prevail in the market, except there is unanimous consent of the Board;

(ii) it grants voting rights to mutual funds (heretofore forbidden);

(iii) it reinforces provisions regarding the supervision of the administration, creating an "auditing committee" to be formed in the case of Companies (w) controlled with less than 75% of the voting issued stock, (x) with one or more institutional shareholders holding at least 5% of the issued stock, (y) with a networth equal or higher than a given amount or (z) those not comprised in any of the latter alternatives who voluntarily decide to constitute such a committee. Companies with auditing committees shall be administered by a Board of Directors comprised of 7 members. An auditing committee shall be formed by three directors, two of which must be independent from the controlling shareholder;

(iv) it entitles any shareholder representing at least 5% of the issued stock of the Company or any director thereof, to initiate class actions for damages to the Company networth as a consequence of an infringement of the Corporations Law, the Company's bylaws or the Rules;

(v) and other measures to the ends of making the administration of Companies more efficient and responsible for the protection of minority shareholders interest.

5. What rules exist for disclosure by managers directors and large shareholders for trading in the securities of the company, and what penalties exist for those who engage in insider trading?

The managers and directors must keep confidentiality regarding business matters of which they become knowledgeable in the exercise of their functions. Any transactions made by them, their spouses, relatives, and related parties in securities of the Company must be duly informed to the SVS,

The following are the norms that govern the information regarding Open Corporations in the Chilean legislation:

a) Material Fact Reporting Requirements.

Under Chilean law an Open Corporation is required to make full disclosure, on an ongoing basis, of essential or material information ("Essential Information") regarding itself and its securities. As Article 9 of the Securities Law puts it, such disclosure shall be sufficient, timely and not misleading.

Essential Information has been defined as such information that a "reasonable man" (sic) deems important for his investment decisions. Such Essential Information shall be disclosed promptly after the fact or circumstance which is subject to disclosure becomes known to the respective Company.

The SVS, by means of the Norma General (in English, General Rule) No. 30, has regulated that it shall be disclosed as Essential Information, among other information, "any fact or circumstance that may have a positive or negative influence in the Company's business, in its securities and in the offer of the same to the public".

However, on an exceptional basis, a publicly held Company is authorized not to disclose certain information ("Confidential Information") when:

(i) it refers to pending or ongoing negotiations of the Company;
(ii) if disclosed, it may cause damage to the Company's interest; and

(iii) the Company's board with a supramajority of 3/4 of its members passes a resolution to keep such information undisclosed.

The board resolution approving the confidentiality of the Confidential Information shall be reported to the SVS the following business day. In any event, the Company is required to make the Confidential Information public and to inform it as Essential Information (if it corresponds) once the circumstances that make it confidential disappear.

As we understand it, Chilean rules have followed a different path than U.S. rules in regard to the information on Open Corporations. In fact, Chilean law has adopted a full disclosure standard rather than a disclose or abstain from trading rule.

As a consequence of the above, a Chilean Open Corporation is not authorized to retain for itself any information that qualifies as Essential Information, unless a filing with the SVS has been done in regard to Confidential Information.

If a filing for Confidential Information has been made, it is highly unlikely that the SVS would authorize a placement of the issuers stock or a tender offer in regard to such stock while such filing remains in effect.

b) Privileged Information and Insider Trading.

Article 164 et seq. of the Securities Law contain the rules governing privileged information and insider trading.

Under Article 164 "privileged information" is any information referring to any issuer, its business and its securities which has not been disclosed to the market, the knowledge of which may affect or impact its market price. Confidential Information is also privileged information.

Under the above Article 164, privileged information is by definition Essential Information. Therefore, the mere fact that such information remains undisclosed, even in the event there is no trading, puts the respective Company on a violation of its obligation to disclose Essential Information; thus, under Chilean regulations Open Corporations are not supposed to keep privileged information undisclosed unless confidential filings

have been made. Therefore, if a bidder finds during the course of a due diligence process that any Essential Information remains undisclosed, then such holder would be entitled to request the respective Company to disclose such Essential Information in order to avoid any risk of claims against her/him based on insider trading.

Article 165 provides that anyone who has access to privileged information because of his/her position, title, activity or relationship should maintain a strict confidentiality of such information and cannot use it to his/her own benefit or to the benefit of someone else, nor can he/she purchase the securities on which he/she has privileged information for himself/herself or third parties, either directly or indirectly.

When describing who is found to be liable, Article 165 of the Securities Law is particularly broad and somewhat redundant and vague. Under such description, certain practices are included that in some foreign jurisdictions are known as tipping and tuyautage. It is clear that a tipper would act in violation of Article 165, but what remains unclear is if the tipee is or is not in breach when trading. In our opinion, the concepts of position, activity and relationship are so broad that a tipee may easily fall in any of such categories when the relevant information was not obtained by mere chance; specially if it is not clear whether the words position, activity or relationship, implies or does not imply some kind of fiduciary information. There is no jurisprudence nor any doctrine on which a conclusion may be solidly based, but in our opinion a tipee is liable when trading on information that is given to him by somebody in breach of a fiduciary responsibility.

In any event, criminal actions may not be brought against a tipee but only against the individuals specifically referred to in Article 166.

Article 166 contemplates a legal or refutable presumption against certain insiders such as board members and key management, and against certain outsiders under a fiduciary duty such as auditors, consultants and certain family members, among others. By virtue of such legal presumption the burden of proof lies with such persons who in order not to be incriminated, shall provide proof that they did not use any privileged information when trading the corresponding securities.

Insider trading constitutes a criminal offense and, thus, breaches of legal duties by any person may be sanctioned by any of the degrees of minor imprisonment (65 days to 5 years).

In addition, any injured person may seek damage compensation. The statute of limitation runs for a period of one year beginning on the date when the respective privileged information was disclosed to the public.

There has been some experience with insider trading cases, initiated by the SVS, against managers and directors of Companies that have engaged in this activity.

It is important to bear in mind that the previously referred Bill of amendment also proposes to penalized illicit behavior heretofore not described as penal actions or crimes; and also to improve the current description of “Insider Trading” and “misuse of privileged information”.