

Chile

Matías Zegers and Gonzalo Rivera

Bahamondez, Alvarez & Zegers Ltda

Statutes and regulations

- 1 What are the relevant statutes and regulations governing securities offerings? Which regulatory authority is primarily responsible for the administration of those rules?

The main statute applicable to securities offerings is Law 18,045, Securities Act (LMV), which covers issuers, public offerings, publicly offered securities and their secondary markets (on the floor or over-the-counter), stock exchanges, brokers, etc. In addition, the Organic Law of the Superintendency of Securities and Insurance (SVS), the laws which cover stock corporations, third party fund management (investment funds, mutual funds, pension funds, housing funds and other similar), bank and financial institutions, insurance and reinsurance companies and the depositary and custody of securities, complete the basic regulatory framework related to the securities market.

The Pension Funds Act also plays a significant role due to the importance of pension funds as institutional investors in Chile. This Act introduces additional requirements to allow pension funds to invest in certain securities.

The SVS is the authority responsible for overseeing capital markets in Chile. It is the entity which approves the public offer of securities in the country, oversees the obligations of companies registered in the Securities Registry in issues such as financial information, accounting principles, information to the market and the supervision of secondary markets.

Lastly, the stock exchanges and the securities depositories also issue, supervise and enforce their internal rules.

Public offerings

- 2 What regulatory or stock exchange filings must be made in connection with a public offering of securities? What information must be included in such filings or made available to potential investors?

A public offering of securities requires the filing and publication of a prospectus and approval of the offering by the SVS. This prospectus must be drafted in conformity with the forms imposed by SVS General Rule 30 and 118 for stocks, SVS General Rule 30 for bonds and commercial papers, SVS General Rule 303 for securitisations, SVS General Rules 217 and 241 for stocks of foreign issuers, SVS General Rule 88 for the Central Securities Depository (DCV) and SVS General Rule 304 for bonds issued by foreign companies or governments. There are no major differences between equity and debt offerings.

Once the offering gets SVS approval, the issuers must file an application before the Stock Exchange with information about the issuer and the security, the same information delivered to the SVS for the filing and the SVS certificate. If approved, the issuer has to comply with several requirements of information, such as information about financial statements and condition, operations, shareholders meetings, investment in other entities, insolvency risks and in general, any other material information.

Depending on the nature of the offering and the market on which securities will be listed, issuers are usually requested to provide risk ratings issued by two risk rating agencies registered with the SVS and audited financial statements. Only one risk rating is required in case of short-term debt offering.

- 3 What are the steps of the registration and filing process? May an offering commence while regulatory review is in progress? How long does it typically take for the review process to be completed?

Steps of the registration and filing process

The application has to include the following information:

- general information about the issuer;
- economic and financial information about the issuer, including balance sheets, reasoned analysis of financial statements and risk analysis;
- economic and financial information of subsidiaries and other companies in which the issuer has invested;
- any material information;
- other information, such as by-laws and articles of incorporation, shareholders registry, etc; and
- a responsibility statement, signed by the board of the issuer.

If needed, the SVS may require additional information. Once received, the SVS has 30 days to register the issuer and the security, as the case may be. Once registered, the SVS has to issue the certificate of the filing within 3 working days.

May an offering commence while regulatory review is in progress?

According to the LMV, the offering cannot commence until both the issuer and the security have been registered with the SVS.

How long does it typically take for the review process to be completed?

The SVS has 30 days to register the offering. However, during this term, the SVS can require additional information, either legal, financial or economic, depending upon the issuer, the security or the offering.

- 4 What publicity restrictions apply to a public offering of securities? Are there any restrictions on the ability of the underwriters to issue research reports?

Any prospectus and informational brochures or any other information used in connection with the offering of securities may not be disclosed if it has not been filed with the SVS. As mentioned above, the SVS must ensure that it complies with the applicable regulations and contains the information that, depending on the characteristics and the nature of the offering, is required by the SVS.

Pursuant to article 65 of the LMV, the publicity, advertising and dissemination carried out by any means by issuers, stockbrokers, securities dealers, stock exchanges and any other persons or entities that participate in the issue or sale of securities may not contain statements, references or representations that may lead to error, mistakes or confusion among the public about the nature, prices, profitability, redemption, liquidity, guarantees or any other characteristics of the publicly offered securities or their issuers.

- 5 Are there any special rules that differentiate between primary and secondary offerings? What are the liability issues for the seller of securities in a secondary offering?

The secondary market is the market in which issued securities are transferred.

Any shares, which under the LMV must be registered in the Securities Registry, must also be registered with an exchange, which cannot refuse the registration if it complies with the formal requirements. In order to be registered in an exchange, it is sufficient to submit a formal submission, together with the certificate of registration with the Securities Registry and a certificate indicating the legal status.

As mentioned before, the shares of companies that are not registered with the Securities Registry may not be listed or traded in exchanges. Shares registered in the Securities Registry may only be traded by stockbrokers and these transactions must be carried out in the session of the exchange of which the brokers are members. No over-the-counter trading of non-registered shares is permitted in Chilean securities markets, except in specific cases related to the public offering of securities. However, non-registered shares may be sold in a public auction in the exchanges twice a month.

Securities other than shares, which are registered in the Securities Registry, may be traded by any stockbroker or securities agent registered with the SVS, or by banks and finance companies, in exercise of their legal powers. The trading of these securities may be carried out inside the exchanges only when they have been accepted for quotation by the exchange involved. However, they may also be traded over the counter.

According to the Corporations Act, any offer made by any issuer to subscribe new shares is subject to the preferred subscription rights of the existing shareholders proportionate to their stock ownership. This is a shareholder right, thus any shareholder may resign, exercise or transfer it within 30 days as from the date of the notice published by the issuer. The company may offer them to third parties, but only if one or more shareholders resigns or notifies their intention not to exercise such preferred option. It is common practice to have the controlling shareholder resigning to the preferred option to allow the company to offer them to the market.

Liabilities for the issuer are those mentioned in question 20 below.

- 6 What is the typical settlement process for sales of securities in a public offering?

Securities clearing and settlement is carried out through different procedures depending on the transaction settlement conditions and the type of securities. In transactions carried out off-exchange, which are significant in terms of amounts traded, the clearing and settlement is made bilaterally, both on the side of the delivery of securities (physical or electronic) as well as on the payment side.

In the case of stock exchange transactions, clearing and settlement may be carried out bilaterally, directly between the contracting parties, or in a centralised manner. In centralised settlements, bilateral netting is made through the physical transfer (at the exchange) or electronic transfer (in accounts registered with the DCV). Payments are always made in the exchange clearing system through multilateral netting. Multilateral netting is

only used for the settlement of trades that are undertaken on a T+2 basis and does not represent the general application.

Centralised settlement is the usual practice for equity securities traded at the exchanges.

In Chile, the institutions that clear and settle securities market transactions are the following:

- The exchanges – they participate through their departments engaging in the centralised and cleared settlement of transactions, when this is established and permitted in their operating regulations or manuals. Within each exchange there is a specific department in charge of the centralised clearing of securities called a ‘Clearing System’. Although stock exchanges participate actively in the process, under no circumstances are they responsible for the payment of the price of the securities or the delivery of them if the intermediaries do not provide the funds and the securities which are the subject of the transaction in full and on time.
- DCV – its exclusive purpose is to receive publicly offered securities in deposit for specific participants in the market (the depositors) and facilitate transfer of ownership transactions with such securities.
- Securities brokers and other market agents – entities for which stock exchanges and the DCV carry out clearing and settlement processes. Additionally, these agents directly carry out the bilateral settlement of some of their transactions.
- The Securities Clearinghouse – this is an institution entrusted with administering, controlling and settling the transactions and open positions of clients and brokers in the futures and options market.
- Securities intermediaries may participate in the clearing and settlement institutions as members of the exchange (only for stockbrokers) or as depositors in the DCV, where they can open accounts.
- The rule also allows stockbrokers and securities agents to settle their transactions directly.

Private placings

- 7 Are there specific rules for the private placing of securities? What procedures must be implemented to effect a valid private placing?

Private placements are not regulated by the LMV or the SVS. LMV defines public offer as offers aimed at the public (in general), at certain sectors or specific groups. The last part has been interpreted broadly and, even if an offering is addressed to a small group of investors with several restrictions, it might be considered addressed to a certain specific category and therefore classified as a public offering. It is common practice to make the private placement on a one-to-one basis or, negatively speaking, not making meetings with several potential buyers at once with no marketing or media announcements about the placement.

- 8 What information must be made available to potential investors in connection with a private placing of securities?

As mentioned before, no specific information requirements apply to the private placement of securities. Notwithstanding the above, LMV states that the publicity, advertising and dissemination carried out by any means by issuers, stockbrokers, securities dealers, stock exchanges and any other persons or entities that participate in the issue or sale of securities, may not contain statements, references or representations that may lead to error, mistakes or confusion among the public about the nature, prices, profitability, redemption, liquidity, guarantees or any other characteristics of the publicly offered securities or their issuers.

- 9 Do restrictions apply to the transferability of securities acquired in a private placing? And are any mechanisms used to enhance the liquidity of securities sold in a private placing?

There are no statutory or regulatory provisions regarding the transferability of securities acquired in a private placing. However, in certain cases, the issuer's articles of incorporation (in case of non-listed companies) or shareholders agreements may include certain provisions limiting the sale or assignment of securities.

There are no standard mechanisms used to enhance the liquidity of securities sold in private placements.

Offshore offerings

- 10 What specific domestic rules apply to offerings of securities outside your jurisdiction made by an issuer domiciled in your jurisdiction?

LMV authorises offerings of securities of a Chilean issuer abroad. However, it requires delivering the same information to the SVS and local exchanges and, within the same terms, must be delivered to the foreign regulatory authorities or exchanges where the offering has been made.

Likewise, the security holders will have the same rights of any other local security holder, to be exercised directly or through the depositary according to the terms and conditions of the deposit agreement.

Regarding voting rights, the depositary will vote first according to the stipulations of the deposit agreement, or, if nothing was stipulated, according to the instructions given by the security holder. If the depositary votes against the deposit agreement or the instructions, the vote will be valid but the depositary will be liable for damages.

Particular financings

- 11 What special considerations apply to offerings of exchangeable or convertible securities, warrants or depositary shares or rights offerings?

According to the Corporations Act (LSA), the issuance of convertible bonds has to be approved by more than 50 per cent of the shareholders entitled to vote at an extraordinary shareholders meeting of the issuer summoned to decide about the issuance of convertible securities.

It is common practice that such approval is given in general terms regarding the issuance of convertible bonds up to a specified amount or within certain conditions, delegating the specifics to the Board of Directors.

Underwriting arrangements

- 12 What types of underwriting arrangements are commonly used?

Underwriting agreements are drafted according to international standards and they regulate the relationship between the issuer and the underwriters. Depending on the offering, it is not uncommon to have some underwriting agreements subject to New York law.

It is also common to have book-building arrangements with the underwriters and to have a syndicate of underwriters with one leading managing underwriter.

- 13 What does the underwriting agreement typically provide with respect to indemnity, force majeure clauses, success fees and over-allotment options?

Indemnity

Indemnity provisions are used in underwriting agreements almost without exception. These provisions cover the rights of the underwriters suffering losses or damages arising from the offering, due

to statements that were false or made by the issuer in bad faith, or misrepresentations in the offering documentation.

Force majeure

As force majeure is defined in the Chilean Civil Code, its inclusion depends on whether the underwriting agreement is subject to Chilean or foreign law. If the former is the case, then no specific definition is included and general rules about force majeure under the Civil Code applies. If foreign law applies, then the agreement will follow international standards in allowing the underwriter to terminate the agreement if any case of force majeure occurs.

However, it is very common to include, besides force majeure provisions, other provisions about material adverse change, internal or international financial or political risks, etc.

Success fees

It is not common practice to include success fees.

Over-allotment option

Over-allotment options depend upon the type of security offering. They are more common in equity offerings because the managing underwriter, and sometimes the syndicate of underwriters, are allowed to purchase more securities to cover over-allotments from the issuer.

- 14 What additional regulations apply to underwriting arrangements?

No specific regulations apply to underwriting agreements, other than those arising from any contractual relationship agreed upon by the parties.

Ongoing reporting obligations

- 15 In which instances does an issuer of securities become subject to ongoing reporting obligations?

Once the issuers are registered with the SVS, they immediately become subject to reporting obligations to the SVS, the exchanges and the market in the forms, periodicity and publicity mentioned in the LMV and regulated by the SVS.

Additionally, the issuers have to report any material information about themselves and their operations and businesses, about the securities and about the offering as soon as they have knowledge of such information. The report delivered has to be truthful, sufficient and the information contained therein has to be released in a timely way. LMV defines material information as the information that a judicious man considers important for his investment decisions.

Likewise, once the issuer applies for registration, the SVS may request additional information about the issuer or the securities.

- 16 What information is a reporting company required to make available to the public?

A company registered in the Securities Registry has regular as well as continuous reporting obligations regarding material information, as mentioned above.

Continuous reporting obligations

A company registered in the Securities Registry must immediately disclose any material event or information regarding the issuer, its businesses and securities. Such information must be disclosed through a 'material event' notice sent to the exchanges and to the SVS (which makes it public immediately through its website) as soon as the event occurs or the issuers learns about such event or information.

However, with the approval of three-quarters of the acting directors of the company's board, certain facts or information related to pending negotiations that might damage the company's interests

Update and trends

The Ministry of Finance is currently working on different proposals to improve the LMV and other complementary rules. Some of these proposals include changes to tender offers rules, public offerings, private placements and some other specific issues.

It is expected that such changes will be sent to Congress during the second half of 2011.

The Stock Exchanges of Santiago, Bogotá and Lima entered into an agreement to create MILA (Integrated Latin American Market). However, although it was a private effort in its early stages, today it is a public-private one, with regulators, depository institutions, private companies and intermediaries involved.

The purpose of MILA is to create an integrated equity exchange platform with, at the outset, the most relevant issuers of each country trading in this market. MILA will provide recognition in the three countries for issuers and intermediaries already recognised in their local countries and will create uniform rules for trading, clearing and settlement of listed equity securities.

All the entities involved have been working to complete the current phase of integration in 2012, but there are several issues like applicable laws and regulations, exchange rates, currency risks, foreign exchange controls and tax considerations still to be resolved, which means regulatory and legal reforms in the three countries involved.

Nevertheless, the basic principles under which the integration should be made are:

- trading will be subject to securities regulations of the country where the issuer is registered;
- depository agents will be subject to the rules of their home country; and
- information of MILA will be managed through a joint information system managed jointly by the exchanges.

if disclosed may be considered reserved information. Nonetheless, for qualification as reserved information, such event or information must be confidentially communicated in writing to the head of the SVS on the business day following the decision of the board.

Regular disclosure obligations

Quarterly, half-yearly and yearly financial statements

All companies registered with the SVS must file with the SVS and deliver to the stock exchanges a copy of their annual financial statements, which have to be audited, within 60 days following 31 December of each year and no less than 20 days before the date of the annual shareholders' meeting. These annual financial statements must be accompanied by the management and the auditors' reports. In addition, listed companies are required to publish their annual financial statements in a newspaper and on their websites.

The first and third quarter financial statements must be filed with the SVS and delivered to the stock exchange within 30 days following the last day of March and September of each year, respectively.

The half-year financial statements, which have to be audited, should be filed and delivered within 45 days following the 30 June of each year.

The management report usually contains information about the company's strategy and business, a management discussion and analysis of the financial condition of the company and the results of operations, risk factors, corporate governance disclosures such as directors' and managers' compensation, the directors' committee report, reports about subsidiary companies, a list of material contracts the company has entered into and contracts with related

parties, the auditors' report, etc. There is no special regulation as to forward-looking information in the annual report.

The annual report must be published on the company's website and made available for any shareholder that requires it.

Capital variations

The above-mentioned companies have to report any dividend distribution, share distribution and share exchange at least 20 days before the actual date of such distribution or exchange. Likewise, these companies have to report any capital increase within five days.

Other economic and financial information

At least 15 days before any Shareholders' Meeting, the company will disclose any specific expert report requested to decide about any issue presented at such meeting.

Other disclosure obligations

In addition to the foregoing, companies registered in the Securities Registry must inform the SVS and the exchange about shareholders' meetings, amendments to by-laws, the identities of their shareholders on a quarterly basis, the appointments of board members and managers and regarding any other documents delivered to shareholders or information published in the press by the issuer as to its securities or business.

There are other disclosure obligations related to insider trading, both for the company and the directors, officers and certain managers and other persons related to them.

BAHAMONDEZ, ALVAREZ & ZEGERS

SOCIEDAD CIVIL DE RESPONSABILIDAD LIMITADA

ABOGADOS

Matías Zegers
Gonzalo Rivera

mzegers@baz.cl
grivera@baz.cl

Isidora Goyenechea 3120, Piso 13
CP 7550083, Las Condes
Santiago
Chile

Tel: +56 2 798 2600
Fax: +56 2 798 2650
www.baz.cl

Anti-manipulation rules

- 17** What are the main rules prohibiting manipulative practices in securities offerings and secondary market transactions?

LMV prohibits market manipulation and stabilisation. Furthermore, the LMV declares as illegal any fictitious transaction of any security in offerings or in secondary markets, whether made through an exchange or directly between the parties.

In fact, no person can deal or attempt to deal with securities by means of any act, practice or mechanism in any misleading or deceiving way.

Price stabilisation

- 18** What measures are permitted in your jurisdiction to support the price of securities in connection with an offering?

The only measures permitted by the LMV are in cases of public offerings of new or old securities already issued but not publicly offered to the market, made according to the general rule approved by the SVS.

Liabilities and enforcement

- 19** What are the most common bases of liability for a securities transaction?

The basic remedy for liabilities arising from securities transactions is damages. However, the person who acted in breach of the LMV or the regulations of the SVS is also subject to administrative and criminal sanctions.

In the cases of corporate entities, the directors, officers, executives and auditors who breach the LMV or the regulations issued by the SVS will be jointly and severally liable for damages. Likewise, if the directors or managers of an exchange do not control the issuers and the observance of its internal regulations, they will be liable before the SVS. In this case, they will also be liable for damages unless they prove they acted with due diligence.

If the security is cancelled from the Registry of Securities, the security holders will be entitled to damages. This remedy holds directors and managers liable, unless they prove they acted with due diligence, and likewise brokers, unless they prove they had no knowledge of the facts that caused the cancellation.

- 20** What are the main mechanisms for seeking remedies and sanctions for improper securities activities?

There are several mechanisms at different levels:

- Administrative – It is not a mechanism for seeking remedies, but the SVS has the authority to impose fines or other sanctions on any person breaching the LMV or the regulations issued by the SVS. In this regard, different departments of the SVS prosecute and decide the case, but the decision is subject to appeal before the Santiago Court of Appeals.
- Criminal – If the SVS considers that the activity may be considered to be a crime, it must notify the Prosecutors Office which, in turn, shall open an investigation. Defendants subject to criminal action may face different levels of imprisonment.
- Civil – As mentioned above, any person affected by securities offerings may ask for damages in the cases and against the person previously specified.