

## ENERSIS CAPITAL INCREASE

### Enersis closes record-breaking capital increase in Chile

Chile's Enersis has turned to the New York office of Chadbourne & Parke LLP and Chile's Carey to make a US\$6 billion capital increase, thought to be the largest capital increase in Latin America to date, with the aim of streamlining the energy company's operations and funding future acquisitions.

Enersis approved the transaction in December after months of negotiations with minority shareholders about the size and shape the capital increase would take, with the transaction was completed on Thursday. Chadbourne & Parke LLP partner Allen Miller, who led the deal, says the transaction "presented sophisticated corporate governance issues." The capital increase is comprised of two tranches: a corporate reorganisation that sees Enersis' Spanish parent Endesa relinquish its minority interest in Enersis-controlled companies in exchange for a greater stake in the Chilean holding company, and a US\$2.4 billion rights offering by Enersis.

Spanish electricity generation and distribution company Endesa, which already owns a 61 per cent stake in Enersis, is handing over its minority stakes in 14 operating companies throughout Latin America, worth a total of US\$3.6 billion, to the Chilean holding company. With Enersis' by-laws stipulating that a majority shareholder could not hold more than 65 per cent share of the company, Endesa's increased stake was made conditional on the minority shareholders' cash contributions to maintain the ownership balance.

Enersis raised US\$2.4 billion in cash through a global rights offering of shares and ADSs. For the rights offering, JP Morgan, BTG Pactual and Bank of America Merrill Lynch acted as global coordinators and joint bookrunners, while Banchile, BBVA, Credit Suisse, Deutsche Bank Securities, Goldman Sachs, HSBC, LarrainVial, Morgan Stanley and Santander acted as bookrunners, and BNP Paribas, Credit Agricole CIB and Mitsubishi UFJ Securities as co-managers. The New York office of Davis Polk & Wardwell LLP and Chile's Claro y Cía advised the dealer managers, placement agents and underwriters on

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the offering, while Citibank, acting as ADS rights agent and depository, turned to the New York office Patterson Belknap Webb & Tyler LLP.

Claro partner José Luis Ambrosy says the number of different institutional investors and their specific requirements added a layer of complexity. "Most, if not all, the main international banks were engaged in the transaction, which made it a challenge to coordinate all these areas," he says. The combination of Endesa's transfer of "in-kind assets" and the rights issue brought additional complexity for Chile's security regulator, which had to decide whether the transaction was a capital increase, a related party transaction or a combination of the two. The regulator eventually ruled that the deal was a mixture - a move that was contested by Endesa's local counsel Cariola, Díez, Pérez-Cotapos & Cía Ltda. "We still think that it was a wrong interpretation by the authority, but at the end we decided quite pragmatically to comply with the decisions of the regulator," says Cariola Díez partner Francisco Illanes, who adds that these discussions were taking place while institutional investors were also "looking to renegotiate the economic terms" of the deal. But Illanes says that once a deal was reached with the shareholders the process went "very smoothly" and without a hitch in spite of fears from some quarters about whether Chilean investors "had the appetite" for such a large capital increase. The transaction consolidates Enersis' assets in the region. "From an investor understanding of Enersis, it simplified the holding entity as vehicle for investment in the region," explains Miller. "Of the operating companies that contributed, most were already majority owned by Enersis, which had knowledge of the companies, so the process was one of streamlining and consolidating Enersis' Latin America holdings." Enersis will become Endesa's main investment platform in Latin America, while Italian utility company Enel, which owns a 92 per cent stake in the Spanish company, will also target investment through its Enel Green Power subsidiary. As well as streamlining Enersis' operations, the capital increase will allow the company to make future acquisitions, with Brazil, Colombia and Peru identified as targets. Recent months have seen a number of companies use complex financing structures to tap Chile's capital markets. In December, retailer Cencosud turned to Morales & Besa and Milbank, Tweed, Hadley & McCloy LLP to issue shares worth US\$1.6 billion and bonds worth US\$1.2 million to finance its record-breaking acquisition of the Colombian assets of French supermarket heavyweight Carrefour, while at the end of last

year Guerrero, Olivos, Novoa y Errázuriz helped embattled Chilean department store company La Polar (with Claro y Cía advising the placement agent) in securing a crucial capital increase following a scandal that wiped some US\$1 billion off its value and led the Chilean government to launch a criminal probe into the company last year.

Davis Polk & Wardwell LLP Partners Maurice Blanco, John Meade and Michael Farber, associates Alain Kuyumjian, Meghan Maloney, Elina Lae, Avinash Venkatesh and former foreign temporary associate Catarina Loureiro in New York Claro y Cía Partners Rodrigo Ochagavía, Felipe Larraín and José Luis Ambrosy, and associates Paulina Lasen, José Manuel Gazitúa and Juan Ignacio Alcalde in Santiago

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Partners Francisco Illanes and Juan Pablo Orellana, counsel Luis Oscar Herrera, and associates Juan Antonio Parodi, Carolina Pardo and Benjamín Salas in Santiago