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NEW REGULATION ON CHILEAN CORPORATIONS

News Alert New Regulation on Chilean Corporations

A new Regulation on Corporations has recently entered into force in Chile (the "New Regulation"). It aims essentially to complement the provisions of the Law on Corporations, updating the rules established in the prior Regulation on Corporations, clarifying or specifying certain articles that raised questions, adjusting the applicable provisions to the latest legal amendments and making certain practical aspects easier.

The New Regulation contains provisions intended to govern matters which treatment was not sufficient in the former regulation, notwithstanding their legal and economic relevance. Among them, it is possible to highlight the paragraphs which extensively discuss preferred series of shares as well as those detailing the procedure for the exchange of shares in different corporate restructurings, contemplating rules that make the merger processes more efficient.

In the subject of spin-off, conversion and merger of corporations, the New Regulation comes to establish a more complete treatment, providing certainty to the development of such processes. Thus, for the first time the information to be delivered to the shareholders, the registrations necessary for their validity and the nature of the required balances and expert reports are specified. In addition, special measures for the protection of minority shareholders are adopted, confirming that they cannot lose their quality as such due to a merger, conversion or spin-off, unless upon their consent.

The New Regulation also includes certain new provisions regarding the election of directors. For instance, the General Manager shall now inform and announce on the company's website in advance the list of candidates for the position of director who have accepted their nomination and have stated that they are not subject to any legal incapacity, thereby allowing minority shareholders to know in advance who the candidates for the position of director are and, therefore, making it possible for them to make a more informed decision.

Especially relevant is the section on rights and duties of the directors. Regarding the duty of care, the New Regulation emphasizes a more active and diligent role of the directors. On the other hand, the right of the directors to be fully informed is inserted within the context of the duty of care, being it possible to construe that the directors have not only the right, but also the duty to be properly informed.

As to the duty of loyalty, the New Regulation clarifies that directors having a conflict of interest must refrain from voting, although they may exercise their speaking rights. However, the New Regulation provides that a director wishing to be exempted from liability for a decision of the board must record his opposition in the minutes, even if the law obliges him to refrain from voting. In other words, the conflicted director will be exempted from liability only if he refrains from voting and if he additionally exercises his speaking rights to oppose such decision, which may lead him to formally oppose transactions between the company and the shareholder with whose votes he was elected. However, this only reflects that the directors owe the same duties to all of the company's shareholders equally.



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New rules for proxies are also included, providing that proxies may contain specific instructions for the representative about how to vote in each subject. Also, the proxies may be typed or digitally registered in their entirety. This amendment will allow Chilean corporations to establish systems to request proxies to the shareholders by means of forms indicating different voting alternatives, in a system similar to the one used in the United States.

On the other hand, relevant modifications are introduced regarding the withdrawal right, specifying its exercise by the shareholders who hold shares in their own name but on behalf of third parties (through custodians, for example). Besides, new rules to calculate the value per share to be paid to shareholders exercising their withdrawal right are contemplated, intending to reflect a more accurate and updated share value.

Finally, among the modifications intended to make certain practical aspects easier in close corporations, it is possible to highlight that their by-laws may allow now the issuance of shares without printing physical certificates, and to maintain in turn a book-entry system. Additionally, their by-laws may authorize the use of technological means enabling the remote attendance to shareholders meetings.

It is expected that the New Regulation will achieve to reflect the experience of decades and be a valuable contribution to the development of economic activities in Chile.