

CHILEAN PROVISIONS ON A.D.Rs.

In Chile, A.D.Rs and the process related to their issuance are regulated in: **Chapter XXVI of the Compendium of Exchange Norms of the Central Bank of Chile** and **Circular N° 951 of the Superintendency of Securities and Insurances**.

A. Chapter XXVI, titled "Conventions on purchasing of stock corporations' shares and issuance of shares for transactions in foreign stock exchanges or other forms", mainly sets out the requirements to issue A.D.Rs and the mechanisms of inflow and flow back of capitals related to shares - A.D.Rs' transactions in Chile.

1. N° 1 of this Chapter (The Beneficiaries) reads as follows: "Natural or juridical persons domiciled and resident abroad, who meet the requirements pointed out in this Chapter are entitled to remit abroad, through the Formal Exchange Market, the product of the sale of shares of Chilean public (open) stock corporations domiciled in Chile [...] and that have been purchased with currency entered into the country, as well as the product of dividends or other benefits generated by such shares."

2. To apply for this system, it is required that the depositary bank jointly with the issuer file an application at the Central Bank, which must provide, among other things, disclosure about the issuer, about the other interested parties (depositary, custodian etc.) as well as their obligations arising from the respective A.D.R. program. In addition, the issuer's long term debt has to be classified in BBB category by two risk classifying companies registered in the Central Bank of Chile ⁽¹⁾. Simultaneously, applicants have to present a certificate issued by the Superintendency evidencing that:

- a)** the shares that will be purchased represent a capital raise of the future A.D.R. issuer;
- b)** these shares correspond to shares that have not been subscribed by its shareholders or the cessionaires of the option to subscribe them.

The custody agreement must also be attached to the application. Applicants must prove that the depositary bank or other foreign financial institutions (underwriters), acceptable for the Central Bank, commit themselves to purchase at least 90% of the initial issuance of A.D.Rs. If banks or financial institutions are the issuers, the total amount that is going to be brought into the country pursuant the rules of this Chapter cannot be under US\$50.000.000.-, and US\$25.000.000.- in all other cases.

3. Only once the application is definitely approved by the Central Bank, the capital may be entered into the country. The amounts must be brought into Chile under the provisions of Chapter XIV of the same Compendium ⁽²⁾.

^{1.} When the issuer is a bank or a financial institution, its solvency must be classified by the "Comisión Clasificadora de Riesgos" (Chilean classifying public entity) at least in a BBB+ category.

^{2.} This Chapter regulates one of the systems to enter funds into Chile as foreign investment.

4. According to Chapter XXVI, the custodian bank must carry out a register in which the A.D.Rs and their holders must be listed.

5. As mentioned, this legal body contemplates the system through which investors may swap A.D.Rs for shares and shares for A.D.Rs. These operations are evidenced, in each case, by a certificate issued by either the depositary or the custodian bank, when applicable.

In the first case, this certificate evidences, among other things, that the A.D.Rs have been canceled and that the depositary bank indefeasibly waives the access to the Formal Exchange Market for the amount corresponding to the respective shares.

If the operation is a share(s)-A.D.Rs swap, the custodian bank, if applicable, has to issue a certificate evidencing that A.D.Rs have been issued representing the underlying shares and that the purchaser indefeasibly waives the access to the Formal Exchange Market. These operations originate respective modifications in both the shareholders' and the A.D.Rs' register.

6. An important issue, once the application is definitely approved, is the Agreement that the Central Bank makes with the depositary bank, pursuant its attribution conferred by article 47 of its Constitutional Organic Law (N° 18.840 - 1989). The issuer as well as the custodian may be parties in this Agreement.

The purpose of such Agreement is to grant the depositary bank, within the agreed terms, access to the Formal Exchange Market in order to remit abroad the product of: dividends distributed by the issuer; the sale of held shares; the sale of bonus stock issued as consequence of divisions, mergers, decrease of capital, liquidation of a corporation or other similar circumstances; or transfer or transmission of options or preemptive rights. The access to the Formal Exchange Market is granted by filing an application which contains information about the applicant and the concept originating the remittance. Depending on the case, it is also required to evidence some other circumstance, for example, the fact of the liquidation of the issuer corporation.

7. On the other hand, foreign persons (natural or juridical), different from the depositary bank, are authorized to purchase directly the issuer's shares. However, underwriters cannot purchase these shares in different terms than those agreed between the issuer and the depositary bank. Other foreign natural or juridical persons may purchase shares of an issuer corporation subject to Chapter XXVI, as long as the purchase takes place in a Stock Exchange in Chile. In both cases and if the capital has been brought under the provisions of Chapter XIV and the shares have been purchased within the term of 60 days counted since the sale of the currency, these investors are considered as parties in the referred Agreement with the Central Bank. Investors may, therefore, leave the purchased shares in the custodian bank and obtain the issuance of the corresponding A.D.Rs from the depositary bank.

8. Likewise, according to this Chapter, it is authorized to sale shares as well as the rights they confer. To remit the obtained amounts, the seller, his inheritors or representatives may, at any time, request from the Central Bank the access to the Formal Exchange Market as it is above mentioned in point 6.

9. Recently, the Central Bank of Chile has extended to secondary A.D.Rs regulations establishing that a legal reserve of 30% must be constituted in connection with these transactions.

B. Circular N° 951 of the Superintendency of Securities and Insurances ⁽³⁾ sets out directives on relevant information on A.D.Rs that has to be disclosed by the issuer to the Superintendency, to Stock Exchanges and to local shareholders.

The issues treated in this Circular may be summarized as follows:

1. According to its attributions, the Superintendency estimates necessary to regulate the information that issuer corporations, depository banks, custodian banks and A.D.Rs holders have the obligation to provide.
2. This Circular, for its own purposes, establishes what it is meant by "A.D.R.", "depository and custodian banks", "Securities and Exchange Commission" (SEC) and "issuer corporation". The latter is defined as a public (open) stock corporation constituted (incorporated) in Chile, registered in the Superintendency 's Securities Register, and which shares originate A.D.Rs operations.
3. The information that has to be provided to the Superintendency by the issuer is related to the fact of having started the procedure to issue A.D.Rs; information on the shares involved in this process; the depository and custodian banks; the deposit and custody agreements; A.D.Rs transactions; the underwriting agreements and A.D.Rs holders.

The deposit agreement and the prospectus provided to investors must include, expressly, references to articles 12 and 54 of the Securities Market Law (N° 18.045 - 1981). These articles are referred to provisions on control and ownership of corporations subject to the Superintendency's examination.

4. Both the depository bank and the custodian bank must provide information to the Superintendency on their proper activities relating to the A.D.Rs issuance.

Furthermore, the depository bank has the specific obligation to provide the Superintendency with the same information on the A.D.Rs, at the same time as to the SEC. The custodian bank, in turn, must provide the Superintendency with all relevant information on custody, deposit and registration of the shares, as well as the rights relating to A.D.Rs that it exercises as consequence of the depository's instructions.

5. This Circular also sets out the obligation for the depository bank to carry out a register in which the current A.D.Rs holders are listed.

³. This entity is equivalent to the Securities and Exchange Commission in the U.S.A.

6. The shares that originate an issuance of A.D.Rs must be deposited in the custodian bank and listed in the depository's name in the issuer's registers. This permits the depository bank to exercise the rights corresponding to A.D.Rs holders.

7. Section III of this Circular points out the requirements of A.D.Rs operations with new issued shares. These requirements basically are:

- a)** the call to the respective shareholders meeting must express the intention of the board of directors to issue A.D.Rs with the part of the capital raise that was not subscribed;
- b)** it is mandatory to carry out the prior offer of the new shares to Chilean shareholders pursuant the national (Chilean) legislation;
- c)** the sale of the shares to third foreign persons cannot take place in more favorable terms than those established in the prior offer, and
- d)** the issuer must inform the Superintendency, as essential facts, the price and other relevant terms related to the A.D.Rs' allocation.

8. Finally, issuers must also provide relevant information to Stock Exchanges. The topics subject to this obligation are the deposit agreement, custodian bank, number of shares involved in the A.D.R. program and minimum allocation price.

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