
Chile

Minority Shareholder Rights

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SOURCES OF PROTECTION AND ENFORCEMENT

Please provide an overview of the sources of protection for minority shareholders in your jurisdiction. Who enforces these rights?

The Chilean Corporations Law No 18,046 (the Chilean Corporations Law) contains many of the rights of, and protections for, minority shareholders in Chile.

Public corporations are subject to stricter requirements to protect minority shareholders than closed corporations. These protections are mainly set out in the Chilean Corporations Law and in the Chilean Securities Market Law No 18,045 (*Ley de Mercado de Valores* or LMV). However, some protections are also set out in special rules issued by the Chilean securities and insurance regulator (Comisión para el Mercado Financiero or CMF), which oversees the conduct of public corporations and their compliance with applicable regulations, including those protecting the rights of minority shareholders.

Public corporations, as defined in Article 2 of the Chilean Corporations Law, are those that, on a voluntary or mandatory basis as applicable, register their shares in the Securities Registry of the CMF. According to the LMV, corporations with 500 or more shareholders, or corporations in which 100 or more shareholders collectively own at least 10 per cent of the subscribed capital (excluding those shareholders who own directly or through other entities 10 per cent of the subscribed capital) must register themselves and their shares in the Securities Registry of the CMF.

The enforcement of these rights will depend upon the nature and intended purpose of the right in question. Most minority shareholder rights are directly enforceable by minority shareholders because they are intended to redress balance of power concerns. Other protections, specifically regarding public corporations, may be enforceable by the CMF, whose broader statutory purpose is to regulate market conduct.

PROTECTION AGAINST DILUTION

Are there any mechanisms in your jurisdiction to protect against dilution of shareholdings? For example, are existing shareholders granted any rights on the issue of new shares in a company?

Shareholders have different mechanisms to protect their shareholdings from being diluted.

One such protection is set out in Article 57 of the Chilean Corporations Law, which provides that any capital increase and issue of shares must be agreed by a special shareholders' meeting specially summoned for such purpose. Although not technically a protection specifically for minority shareholders (authorisation may be given by a majority shareholder vote), it nonetheless brings the potential for dilution of shareholdings to the attention of existing shareholders.

Shareholders also have statutory pre-emption rights in respect of capital increases, or issues of any kind of securities convertible into shares (Article 25 of the Chilean Corporations Law). Such rights effectively grant all shareholders, notwithstanding their percentage of ownership, a first refusal right over the new shares in question. The pre-emption rights operate in proportion to the existing shareholdings in the corporation, granting minority shareholders the opportunity to purchase enough of the new shares to avoid dilution in the company. Pre-emption rights may be exercised, waived or transferred within the 30-day period from the date the relevant corporation offers such rights. Should any shareholder not exercise any of the aforementioned options within the 30-day offering term, they will be deemed to have waived their pre-emption rights.

Except as set out below, no shareholder may lose their status as a shareholder or be obliged to tender their shares in relation to mergers, transformations, divisions or other reorganisations. In limited cases, Article 71 *bis* of the Chilean Corporations Law allows squeeze-outs in respect of public corporations, provided the following conditions are met:

- The articles of association of the corporation expressly authorise the squeeze-out mechanism in favour of the incumbent controlling shareholder (however, any such provision will not apply to shares acquired before the provision was included in the articles of association).
- The controlling shareholder reached more than 95 per cent share ownership through a tender offer for all shares pursuant to that tender offer, acquired from non-related shareholders at least 15 per cent of the issued and outstanding shares.

RIGHTS TO APPOINT DIRECTORS

Do minority shareholders have any special rights to appoint directors to safeguard their interests? Are other protections available to minority shareholders in this context (such as general duties of directors)?

In closely held corporations, minority shareholders have no specific rights to appoint directors unless such rights are expressly granted in a shareholders' agreement or in the corporation's articles of association.

Under Article 39 of the Chilean Corporations Law, directors are subject to general duties towards the corporation to which they are appointed and all of its shareholders, which should help to ensure that directors appointed by majority shareholders do not act in a way that favours their appointing shareholders at the expense of minority shareholders. For instance, directors must promote the success of the corporation 'as a whole', and must avoid situations where a given course of action may result in them having a conflict of interest.

Furthermore, Article 44 of the Chilean Corporations Law provides a special process to approve any matter involving relevant amounts (exceeding 1 per cent of social equity, or exceeding US\$750,000) in which a director has an interest. Under Article 44, it is assumed that a director has an interest if the controlling shareholder who appointed that director is involved in the subject matter to be discussed. In such cases, the decision on the matter must:

- be agreed by the board with the abstention of the interested director;
- be executed on arm's-length terms; and
- be relayed to the shareholders in the next shareholders' meeting.

Regarding public corporations and their subsidiaries, Title XVI of the Chilean Corporations Law provides strict requirements for entering into transactions with related parties. These are intended to ensure that all transactions, including those with related parties, promote the corporation's interest and are executed on arm's-length terms.

If the legal requirements regarding transactions with related parties are not met, the act or contract will not be void. However, the corporation, its shareholders and interested third parties may sue the persons who have breached the legal provisions that apply to the relevant transaction for damages.

Additionally, corporations that meet the following conditions must appoint at least one independent director:

- the shareholders' equity is equal to or greater than approximately UF 1.5m (approximately USD 56m); and
- at least 12.5 per cent of the voting shares outstanding are held by shareholders that individually own or control less than 10 per cent of the voting shares.

The Chilean Corporations Law establishes strict criteria for determining directors' independence. For example, a director will not be 'independent' if they have any significant relation, interest or dependence (whether economic, professional, financial or commercial) with the corporation, its related corporations, the controller, the corporations' key managers, etc; or if they are a close relative of any of those persons.

Shareholders representing 1 per cent or more of the shares issued by the corporation may nominate candidates to be elected as independent directors.

Additionally, public corporations that meet the conditions described in the previous section must set up a directors' committee, which must comprise three members, the majority of whom must be independent directors.

If there is disagreement as to who should be nominated to the committee, the board must prefer those directors elected with a larger percentage of minority shareholders' votes (which means, shareholders owning or controlling less than 10 per cent of the total shares outstanding). In addition, if there is only one independent director, they must designate the remaining committee members from among the non-independent directors.

The committee's members must be compensated for their functions. The directors' committee has authority to:

- examine and give its opinion on external auditors' reports and the corporation's financial statements prior to their presentation for shareholder approval;
- to propose the name of the external auditors and private rating agencies that will be recommended at the shareholders' meeting;
- to examine the information about transactions with related parties and to prepare a report on those transactions;
- to examine the manager and senior executive compensation plans and salary systems; and
- to prepare an annual report on their work.

A corporation's bylaws, shareholders and directors may grant additional authorities to the Directors' Committee.

PROTECTION AGAINST TAKEOVER BIDS FOR THE COMPANY

Do minority shareholders have any protection in your jurisdiction where the company is the subject of a takeover bid?

Takeovers of corporations are regulated by the LMV. Under the LMV, any person attempting to take control of a public corporation must implement the takeover through a tender offer (*Oferta Pública de Adquisición de Acciones* or OPA), which must be open to any and all of the corporation's shareholders. Accordingly, minority shareholders have a legal tag-along right where a change of control is proposed (with some exceptions such as where the change of control would be due to a capital increase, merger or the sale of control by the controlling shareholders, provided that the price of the shares is paid in cash and with a premium over market price of less than 10 per cent).

The LMV sets out the basis for determining what constitutes control, describing it as 'the power of a person, or group of persons acting pursuant to a joint action agreement, to direct the majority of votes in a corporation's shareholders' meetings and to elect the majority of members of its board of directors; or to have a "significant influence" on its management'. Significant influence is deemed to exist for a person or group holding, directly or indirectly, at least 25 per cent of the shareholders' votes, unless:

- another person, or group of persons acting pursuant to a joint action agreement, directly or indirectly, controls a stake equal to, or higher than, the percentage controlled by such person;
- the person or group does not control, directly or indirectly, more than 40 per cent of the voting share capital and the percentage controlled is lower than the sum of the shares held by other shareholders holding more than 5 per cent of the share capital; and
- in cases where the CMF has ruled otherwise, based on the distribution of the overall shareholding.

The offeror must pay the same tender offer purchase price to all shareholders that sell their shares in the period starting 30 days prior to the tender offer and ending 90 days after the tender offer expires. This rule is meant to prevent potential abuses of privileged information and discrimination among shareholders.

A shareholder who has taken control of a corporation must not, within 12 months following the date of the transaction, acquire shares of the corporation for a total amount equal to or higher than 3 per cent of the outstanding shares, without making a tender offer for such shares. The price per share under such a tender offer must not be less than the price paid in the transaction through which control was acquired. However, if the acquisition is made on a stock exchange and on a pro rata basis, the controlling shareholder may acquire a higher percentage of shares, according to the regulations established by the relevant stock exchange and authorised by the CMF.

ACTIONS AND SEEKING REMEDIES ON BEHALF OF THE COMPANY

Are shareholders in your jurisdiction able to bring actions and seek remedies on behalf of the company? For example, is there any mechanism for a judicial or other official representative to oversee or intervene in the management of the company?

The Chilean Corporations Law, together with general rules on civil and commercial breach of contract, allow shareholders to seek redress through the judicial system for violations of their rights.

Shareholders may sue persons who have breached the Chilean Corporations Law or its regulations for damages. Shareholders may also sue board members where fraudulent or negligent action is alleged. No minimum ownership proportion is required for a shareholder to seek redress through the courts of justice, and there is no need to exhaust remedies with the issuer first. Chilean laws do not distinguish between domestic and foreign shareholders for the purposes of allowing shareholders to seek redress through the judicial system.

Article 133 *bis* of the Chilean Corporations Law allows any shareholder or group of shareholders that holds at least 5 per cent of the corporation's shares, or any director of such corporation, to claim, in the name and on behalf of the corporation, compensation for losses caused to the latter from anyone who has breached the Chilean Corporations Law, its regulations, the regulations issued by the CFM applicable to public corporations, the corporation's bylaws or the legal resolutions of the corporation's board of directors.

RIGHTS TO PARTICIPATE IN DECISION-MAKING

To what extent do minority shareholders have rights to participate in the decision-making of companies in your jurisdiction?

Shareholders have the right to speak and vote on matters at general and special shareholders' meetings. Under the procedure established under Article 58 of the Chilean Corporations Law, shareholders representing at least 10 per cent of the issued and outstanding shares of a corporation may require the directors to call a shareholders' meeting. This shareholders' meeting must be held within 30 days of the date it is required by shareholders. If not held within this period, the shareholders have the right to summon the meeting themselves. This procedure is established to ensure that directors (potentially acting on the instruction of majority shareholders) cannot prevent minority shareholders from tabling a resolution by refusing to call a general meeting.

As it may be difficult in some circumstances to summon a meeting in accordance with a corporation's usual rules and procedures, especially those regarding shareholders' quorum requirements (as a general rule, meetings must be attended by shareholders who hold at least the majority of the issued and outstanding shares), Article 61 of the Chilean Corporations Law provides that, if the meeting does not achieve the required quorum on its first summoning, the meeting will be legally held on a second summoning with the attending shareholders (with no minimum quorum required). This may be useful for minority shareholders where the non-attendance of majority shareholders would otherwise result in the meeting not achieving the corporation's quorum requirements.

Provisions also exist to ensure that minority shareholders are given sufficient information about the corporation's decision-making activities. Any shareholder of any corporation has, among others, the following rights:

- access to the articles of association and a list of the corporation's shareholders, with an indication of their addresses and the number of shares held by them;
- access to the financial statements and management's annual report on the corporation for the last five fiscal years, and the external auditor's reports;
- access at the corporation's headquarters, within the 15 days prior to any shareholders' meeting, to the balance sheets, inventories, minutes of shareholders' and board meetings, accounting books and auditors' reports on the corporation and its subsidiaries (Article 54, Chilean Corporations Law).

However, some of the above documents can be deemed private and so not disclosed to shareholders if the board agrees on keeping them undisclosed by at least three-quarters of its members.

All shareholders must be given notice of general meetings, which should include details of the time and location of the meeting, as well as a statement about the nature of the matters to be considered at the meeting. Notice to convene an ordinary annual meeting or a special meeting is given by means of three notices, which must be published in a newspaper and if the shareholders fail to decide, the notice must be published in the *Official Gazette* at least 10 days prior to the date of the meeting. In the case of public corporations, a reference shall be made to the matters to be discussed therein and an indication of how to obtain copies of the documents supporting the various options submitted to vote, which shall also be made available to shareholders on the company's website. These summoning formalities can be omitted if all shareholders attend the meeting.

Most decisions at shareholders' meetings are approved on a majority basis (by a majority of the shares with voting rights at the meeting). However, other majorities apply for specific decisions. Changing a corporation's articles of incorporation in closely held corporations requires at least the approval of the absolute majority of the outstanding shares with voting rights (bylaws can establish a higher majority for approval). Also, certain decisions of the corporation may only be made with the majority approval of shareholders holding at least two-thirds of the outstanding shares with voting rights (Article 67, Chilean Corporations Law), potentially giving minority shareholders the ability to block decisions that would be harmful to their interests. The decisions that must be approved by such special majority include:

- transformation, merger or spin-off of the corporation;
- amendment to the term of the corporation;
- dissolution of the corporation;
- change of the corporation's domicile;
- decrease of social capital;
- approval of contributions to the corporation's equity in goods other than money;
- amendment to authorities reserved to special shareholders' meetings;
- decrease in the number of directors;
- disposal of 50 per cent of the corporation's assets;
- amendment on rules on dividends distribution;
- granting guarantees to third parties' obligations; and
- approve the execution of acts or agreements with related parties.

Furthermore, any amendments to the articles of association intended to create, modify, suppress, extend or eliminate preferential rights concerning a certain series of shares must be approved by an affirmative vote of shareholders holding two-thirds of the shares in the affected series.

The Chilean Corporations Law provides that, whenever shareholders representing 10 per cent or more of the issued voting shares so request, a Chilean corporation's annual report must include, in addition to the materials provided by the board of directors to shareholders, such shareholders' comments and proposals in relation to the corporation's affairs. Similarly, whenever the board of directors of a public corporation convenes an ordinary shareholders' meeting of the shareholders and solicits proxies for that meeting, or distributes information supporting its decisions or other similar material, it is obliged to include as an annex to its annual report any pertinent comments and proposals that may have been made by shareholders owning 10 per cent or more of the corporation's voting shares who have requested that such comments and proposals be so included.

RIGHTS WHEN A COMPANY IS EXPERIENCING FINANCIAL DIFFICULTIES

Do minority shareholders have any particular rights or protections when a company is experiencing financial difficulties? For example, are they able to demand that the company be wound up?

Shareholders who hold at least 20 per cent of the total issued shares of a corporation may apply to court to have it wound up on grounds that there is cause for such a petition, such as a serious breach of applicable law or regulations or deceitful administration (Article 105, Chilean Corporations Law).

Minority shareholders may also claim that certain administrative decisions have breached the board's legal obligation to 'not take decisions which do not pursue the company's interest' (Article 42, Chilean Corporations Law), but they would have to provide sufficient evidence to support such a claim.

RIGHTS ENFORCEABLE AGAINST OTHER SHAREHOLDERS

Do minority shareholders have any rights or protections which are enforceable against other shareholders; for example, where the majority of shareholders act in contravention of the company's articles of association?

According to Article 133 of the Chilean Corporations Law, any person who breaches the law, regulations, articles of association or rules issued by the CMF, and provided such breach causes damage to others, will be obliged to compensate for such damages. If the breaching person is a legal entity, their representatives will also be liable (both civil and criminally) for such indemnification.

Furthermore, as mentioned above, under Article 133 *bis* of the Chilean Corporations Law, any shareholder or group of shareholders, that hold at least 5 per cent of the corporation's shares, or any director of that corporation, may claim, in the name and on behalf of the corporation, compensation for the losses caused to the latter by anyone that has violated the Chilean Corporations Law, its regulations, the regulations issued by the CMF applicable to public corporations, the company's articles of association or the legal resolutions of the corporation's board of directors.

According to Chilean general rules on civil and commercial breach of contract, any act in contravention of a corporation's articles of association (even if agreed by the majority of its shareholders) may be declared void at the request of any shareholder (who is a party to the breached contract).

SUMMARY OF RIGHTS

Below is a table providing a brief summary of the rights of minority shareholders in Chile, organised according to the percentage threshold at which the various protections become available.

Shareholding (per cent)	Description	Reference
One-third	A resolution at a shareholders' meeting to approve certain amendments to a company's articles of association must be passed by a special resolution (which requires the approval of shareholders' holding at least two-thirds of the outstanding shares with voting rights).	Article 67, Chilean Corporations Law
	Where a corporation has different series of shares, shareholders holding at least one-third of a particular class of shares may block a proposed change to the rights attaching to their class of shares.	Article 67, Chilean Corporations Law
5 per cent	Shareholders who represent at least 5 per cent of a corporation's issued and outstanding shares may bring a claim on their corporation's behalf in respect of an act or omission by a director involving a breach of the laws, regulations, bylaws, board directions or instructions given by the CMF, to be indemnified for damages to the corporation.	Article 133 <i>bis</i> , Chilean Corporations Law
Any	<p>Any shareholder of any corporation has, among others, the following rights:</p> <ul style="list-style-type: none">• access to the articles of association and a list of the corporation's shareholders, with an indication of their addresses and the number of shares they hold;• access to the financial statements and management's annual report on the corporation, for the last five fiscal years, and the external auditor's reports;• access at the corporation's headquarters, within 15 days prior to any shareholders' meeting, to the balance sheets, inventories, minutes of shareholders' and board meetings, accounting books and auditors' reports of the corporation and its subsidiaries.	Article 54, Chilean Corporations Law

	Shareholders may sue persons who have breached the Chilean Corporations Law or its regulations for damages for losses caused to them. Shareholders may also sue board members where fraudulent or negligent action is alleged.	Chilean general rules on civil and commercial breach of contract
	When the controlling shareholder of a public corporation acquires 95 per cent or more of the corporation's issued and outstanding shares, any minority shareholder may require the corporation to acquire their shares.	Article 71 <i>bis</i> , Chilean Corporations Law
	<p>Any shareholder may require the corporation to acquire their shares when any of the following matters are approved at a shareholders' meeting:</p> <ul style="list-style-type: none"> • transforming the corporation; • merging the corporation; • disposing of 50 per cent or more of the corporate assets; • granting security for third parties' liabilities where the amount exceeds 50 per cent of the corporate assets; • establishing preferential shares, or increasing or amending existing preferences; • and other matters established by law. 	Article 69, Chilean Corporations Law