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CORPORATE GOVERNANCE AND DOUBLE ROLE CASUISTRY

A. Introduction

In short and previous lines the author want mention that this paper here developed showed part of his experience of 15 years as member of many Board of Directors and also as General Manager, mainly in port and maritime companies in Chile.

On September 11th, 2001USA suffered an attack in several representative icons, which certainly became the turning point of a series of changes that have since taken place in the world's landscape and normal pace. In the year 2000, the "dot-com" companies were collapsing by the dozens, producing the NASDAQ's plunge or what it would be later known as the "2nd attack against Wall Street".

At the end of 2001, when the world was still suffering from the battering and consequences of those tremendous acts against the United States and its most sensitive areas, an attack though, that had been thought of and conducted from outside the USA frontiers, the already mentioned 2nd attack took place this time at the very heart of the World financial center, managed and conducted from the inside of the USA, and making the rest of the whole world suffer, once again, the consequences of what had happened in the United States.

The most emblematic case of corruption has been that of Enron, it was necessary to "increase" profits (obviously, artificially), because the company should show a strong performance to make banks and Financial Institutions grant them additional loans for the next business period. In this creative adventure ENRON was dully assisted by its accounting company, Arthur Andersen, which not only was an accounting company but also a consulting one, thus performing both activities.

The above briefing description made hundred of thousands of smaller investors lose their whole life savings, causing a devastating confidence crisis, due to the

fact that this very precious asset of the stock market operations, trust, had been abused and betrayed. The collapse shown by the main stock markets all over the world was a clear effect of the significant and relevant attitude of investors who decided to infringe punishment on the market due to the devastating betrayal to the business ethics.

What has happened is neither exclusive of North American companies, nor it only happens in the private sector, it also happens in companies of other parts of the world and in governmental institutions or services and in companies owned by the State or Government.

On the other hand, a survey carried out to a wide group of Chilean companies, showed that 38% of them had been victim of a fraud or another type of economic crime, being estimated that this percentage could be higher, since companies are unwilling to admit that they have suffered some kind of economic fraud.

Situations like the already mentioned have put to the center of the debate the Corporate Government issue, particularly at present times:

- In a world in which the economics, political, social and cultural relations are absolutely interdependent.
- With a widespread presence and deepening of the market centered economy concept,

the need to develop confidence in the remote management of business and investments has become one of the most important issues.

Having the intention to provide stronger support to countries in general, International corporations are working to improve the governing principles on this matter, from a perspective that considers worldwide realities as dynamically hostile and deeply evolutionary. The intention is to support these countries in the

establishment of a corporation that allows them an efficient, effective and transparent way to functioning on the markets.

The above mentioned demand the need to generate certain and consistent commitments, which not only have scope in the managerial area and legal aspects, but they consider society as a whole: businessmen, political actors, state and private employees, consumers' associations, universities, academicians, definitively, the society as a whole.

B. Chilean Corporate Governance Framework

The strong participation of Chile in the international markets since the end of the 1970's, first, unilaterally reducing tariffs, and then adopting an economic model based on the market, together with the free development of private initiatives with a strong support and development of the foreign trade has made our country one of the 5 economies with more agreements and international treaties signed and currently operating. This option has been a State Policy, which has been implemented beyond the ideological differences of the last 30 years Chilean different governments, making it possible to achieve a major and better economic and social development by means of economic growth.

In this long and complex, but not less pleasant road followed by our country, a series of situations have had to be overcome, among the most significant ones, has been in the political stage with the transition from a non democratic government into a democratic one, by which simultaneous social and economic reforms were made.

In 1974 the process of tariff reduction began producing decreasing levels that ranged from 750% to 35% by the period 1979-1980. The process of non tariff barriers elimination also began by not demanding previous deposits to the imports, as well as allowing those previously banned imported goods to enter the country free of any restriction.

In 1981 the reform to the Systems of Pension is introduced, setting up the Associations of Pension Funds (AFP, Admiistradoras de Fondos de Pensiones) which also introduced the concept of saving and capitalization of all the workers fund. By the end of their labour life, a pension is provided based precisely on the amount of savings carried out during his/her labour active life, and the profitability that these institutions (AFP) have achieved and can be added to these resources. Due to the great quantity of involved resources, intended to pensions, a major supervision was demanded to the companies behavior that were interested to attract these Institutional Investors, which for law, can only invest a part of the amounts administered in stocks, due to their condition of long term funds, with a high social impact. There is a very active Supertrendence that controls the system's performance, and consequently supervises the performance of the companies in which its funds are invested.

In 1997 the so called "Chispa case" took place in Chile, which became a milestone in our Stock Market. The situation gave birth to the so called OPAS Law[1]. This case involved Enersis, Parent Company of Endesa Chile, which by that time was the major generating electricity company in Latin America.

This OPAS's Law, regulates the Public Acquisition of stocks and establishes a Corporate Governance Practice, which is the frame that regulates the Control Taking and the Company Governance.

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[1]Law N º 19.075, published in the official newspaper on December 20, 2000, It Regulates the public bids of shares acquisition (OPAS, Oferta Pública de Adquissición de Acciones) and establishes regime of Corporate Governance

Corporate Governance, as defined by OECD[2] is the system by which the companies are managed and controlled, intended to contribute to the companies performance and efficiency. In doing so, it has to look over the management transparency and the decisions taking; it has to set up the equity conditions within the company; and establish rules and standards that guide the acts of manager shareholders, directors and executives-managers, defining their rights and duties towards non manager or minor shareholders, creditors and other stakeholders.

The dynamic interaction with other economies, in many cases much more developed, established (and are still establishing) the challenge of being at the top level in what business practices is referred, regarding aspects such as be a credible and reliable Country (quite a major challenge for a small, little known country and besides a Latin-American one), for all those interested parties in setting up commercial exchanges, should there be import/export or domestic trade.

The strength, stability and transparency of our financial system, of our stock market, in a long term perspective (not less relevant, our short term one) had (and still has) a strong decision-making role in our world performance consolidation. Consequently, the Corporate Governance's characteristics and practices implemented regarding Good or Mal practices happen to be determinants in the concretion of the State intention of reaching economic development through sustainable growth.

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[2]Organization for Economic Cooperation and Development.

One of the most significant assets, inside the concept of Corporate Governance, and specifically, that regarding self regulations, is the conscience that there is a big percentage of Chilean society, that is ready to provide economic resources to new entrepreneurial projects, as long as their interests are protected against domestic and foreign investors, allowing stronger developed stock markets and minor financing costs, with minors risk premiums and a major price for our assets/companies.

A good Corporate Governance constitutes a creative source and/or highlights the value of the company, and thus of its shareholders, of all of them, and of the society in general (stakeholders).

In Chile, as in Latin America in general, the culture stocks investments is not very much developed, which favors the existence of companies with a high stock concentration. Thus the 3 main shareholders of the Public Limited Companies control around 70% of the property[3], making it possible for the manager shareholders to easily solve their agency problem with executives-managers, since they themselves appoint the directors.

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[3]Ownership and Capital Structure of Chilean Conglomerates; Facts and Hypotheses for Governance. Abante Magazine (2000).

Besides, OPAS's Law tends to the due protection of minor investors, taking care of the benefits related to the company control, this means equity in the earnings distribution between the majority ones and minors[4], its objectives are:

To regulate the relation between minor shareholders (outsiders) and manager shareholders (insiders).

Define the system through which percentages of companies are acquired (over 5 %) by means of public offer, no matter if this adquisition allows or not the control taking of the company.

To encourage, develop and strengthen the Stock Market (Equality of rights between ADR's holders and Shareholders).

To improve the quality of the information delivered by the companies.

This law establishes the creation of the Audit Committee -stated by law as Directors' Committee- in a compulsory way for all those Public Limited Companies, that possess a stock exchange equity equal to or over UF 1,5 million which is equivalent to US$ 40.-million (they provide a joint answer in case of economic damage caused to shareholders and / or to the society), its intention is to allow a major inspection inside of the companies, since its members have to be mainly independent from the manager shareholder (at least 2 of the 3 members), so as to partially balance the power of the major number of directors related to the manager shareholder party. They have very little power in the decision making of goverance issues and in the appointment of the directors. Their main faculties and duties are:

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[4]Minor shareholder: That one who does not exercise the control and who by himself cannot choose the majority of the board of directors, even though he/she might possess a significant participation on the equity.
Manager Shareholder: Is the shareholder who through his voting right can designate enough Directors for controlling the decisions of the Board and also of the stockholders general meetings. Corporate Governance in Chile after OPAS Law; Teodoro Wigodski, Franco Zúñiga.

- To examine and declare about reports and financial statements, Account inspectors and External Auditors, before giving this information to the shareholders.

- To propose the external auditors and risk classifier companies to the Board of Directors

- To examine operations between related and associate parts.

- To examine salaries and compensations systems (pay and perks) for managers and chief executives.

- Those issues established by the social statute, or those the shareholders' general meeting or the board of directors entrust them.

C. The Double Role Casuistry

The main statutory responsibility of a governing team of any organization is to guarantee that it meets the demands and intentions of its shareholders, of **ALL** of them, It also must respond to other groups of interest as well; the so called Stakeholders, today essentially located beyond local borders, therefore, the management of the company must bear in mind their duties and the rights of all these different actors, making the best effort to satisfy their requirements, otherwise the company might lose the economic supports of some of them , which may cause eventual negative effects. To harmonize so diverse motivations, in essence, it is not simple. It requires an ethical, fair and balanced behavior, a code of practice developed at the light of the institutional strategy.

As it can be observed, the interests of the different groups involved represent strong sources of conflicts and instability in the organizations, which not always

have either the money resources or the capacity to handle and keep all the interested parties satisfied. Let's provide a simple example:

- The employees requirements for higher wages (and other *ceteris paribus* conditions) produce an increase in costs to the company, which may result in a good or service being sold at an unreasonable price, not meeting the market expectations, that might cause the company to lose its selling opportunity. This will affect both shareholders expectations and the company performance as a whole.

Nevertheless, another source of instability arises, **"The Double Role Casuistry",** this means that when a shareholder or stakeholder, in an active way not passive, plays two simultaneous actions, faced from two radically opposite negotiating positions (natural or legal) regarding to the same institution or company, he generates a misunderstanding or severe conflict of interests. So he lacks freedom to act in benefit of one part, on interests being committed in the counterpart of the decision.

This action makes the position of the represented company become weaker, which may end in developing commercial practices that do not exactly represent the interests of the company.

The following situations are, in general terms, examples of **"The Double Role Casuistry"** and its potential to destabilize de Corporate Government of the institutions.

1. **Shareholder and Customer of the Company**
2. **Shareholder and Supplier of the Company.**
3. **Act as Auditor and Consultant Company.**
4. **Work for State Companies and for Private ones (Plc, Ltd.) at the same time.**

1. Shareholder and Customer of the Company

Since a long time ago, a Shipping company has developed its commercial services providing international maritime transportation of cargo. To perform this service it is supported, in Chile, by a shipping agency in which it has equity participation.

International trade has become more complex. Particularly in Chile, and since the mid 70^{s}, it has developed a series of reforms, among which we can mention the unilateral opening of its borders, so as to currently have a meaningful and increasing exchange of commodities with the rest of the countries worldwide. The need to increase the transport capacity became obvious, and the interest other shipping companies had to participate and exploit the potential was also increasing steadily.

On the other hand, and as it is logic in the developing process of any company, growth and company projection constitute its main strategic statements, consequently, new opportunities are always looked for, what would also allow the company to diversify its portfolio.

Thus, for shipping agencies too new possibilities were opened granting them the possibility to take these challenges and succeed. Therefore, new third shipping companies were incorporated to the portfolio, and due to this joint work started new destinations, which were successful in terms of economic-financial results and in terms of consolidating services and routes, by establishing a constant and increasing demand for goods transport, which had not previously been adequately satisfied, neither in prices, nor in quality and services. A real opportunity that was positively handled and transformed into a very good business.

Evidently, this was reflected in the Profit and Loss Account of the shipping agencies, making shareholders feel very much satisfied by the company performance and its executives.

These interesting routes caught the attention of some shareholders of the shipping agency, especially those who represented the interests of ship owners and had equity participation. Under the idea of “why not take advantage of this market?” The agency I own part of as a shareholder, keeps the Know How, and, in addition they possess information on prices, clients, frequencies, and everything I need. As owner, he is able to request for all the necessary information that allows him to assess a future final decision of starting the same type of business. Eventually he might become a potential competitor of a new client who had been obtained by the agency and with whom the business had been consolidated.

The shipping company, shareholder of the shipping agency, demands information of management and performance of a business done with a third client of the company, thus using its rights that have been awarded as owner of part of it. Its intention is to analyse and to decide if it takes part of that transport activity that seems to be so attractive.

In the same way, the shareholder shipping company once having known the information of the performance to a deep level of detail, is able to request and demand its supplier (the shipping agency he owns) to lower the prices for the different services it is charging on them, now that he knows about the good economic results the supplier is having.

- **The shareholder shipping company, owner of the agency, demands information about a third client, with the intention to use it and eventually become a competitor to the agency’s representative.**

  What happens with the confidentiality that every company must respect about the information and commercial activities of its clients and representatives?

- **The shareholder shipping company, as owner of part of the shipping agency, aims at getting extra benefits in its client condition.**

What happens with the interests of other shareholders and those of the agency? Why should they be affected, if they are already providing market competitive prices and services?

2. Shareholder and Supplier of the Company

A manufacturing company of carton boxes, commercialises and distributes its products all over the country for the packing of all kinds of products for domestic consumption and exports, such as: furniture, flowers, fruits, books, detergents, wines and many others.

Particularly and in a specific way, the manufacturing company of boxes, already mentioned, considers the small and medium companies as a target market, which buy in small volumes and have not too much alternatives, though must be supplied by big carton manufacturers. Due to the fact that their purchase capacity is not big enough to make it attractive for these manufacturers, they are forced to buy in big quantities, much more of what they really need, what makes it necessary for them to have unmoving capital and big infrastructure facilities to keep these boxes for a long period of time, which should also be covered and protected from being damaged by rain or heat. The company of carton boxes mentioned above saw the conditions of this market segment as an opportunity for making business.

In general terms it can be said that demand for carton containers has been increasing due to two main reasons: the increasing commercial exchange and the higher environmental awareness, what has transferred interest on paper and its derivates such as corrugated paper used in packing.

The raw material used in the manufacturing of corrugated carton is a three sheets type of paper, (2 liner type and 1 corrugated type) which produces a kind of paper

“sandwich” called “corrugated carton”. The manufacturing of this “sandwich” requires a specialized corrugated machine, expensive enough to make just a few manufacturers able to afford it and get involved in this business. This situation produces an unfair an unilateral type of relationship between supplier and clients, favouring the supplier who now sets the conditions of delivery, guaranties and prices at his own will.

Now, the circumstances show that the manufacturing company of carton containers should purchase the corrugated carton from a carton manufacturing company, which at the same time manufactures boxes, making it both its supplier and its competitor.

These market conditions, suggests the idea of looking for an Alliance with a company that devotes itself to the carton manufacture, and by doing so guarantee a captive supply of the basic raw material (commodity) without having to accept the complex conditions established by the usual suppliers. Having that idea in mind, a partner in the corrugated business was looked for (this company was a small manufacturer of regular quality corrugated carton products, to which the company occasionally bought some products, nevertheless, because of some characteristics such as social size, they were thought to be an appropriate partner). The commercial successful agreement consisted on selling a part of the property of the manufacturing company of boxes to a medium size carton producer.

The Alliance was undoubtedly attractive: One of the partners was assuring itself a captive important market to place, in a practically exclusive way, his production and simultaneously, to penetrate into a new line of activity into which was not competing for different reasons. The other one was also assuring itself to have a constant supply, not bound to arbitrary conditions. In short, the capital participations of the corrugated company and the boxes manufacturer were different. Thus, in the latter one, both companies take part, this was not the case in the corrugated one.

The business was doing fine, the corrugated company increased its sales significantly, and the boxes manufacturer could start taking part in business of some major volumes, assuring its clients reliability and fulfilment of long term dates; in the same way, it could obtain better conditions referred to: period of payments, elimination of the need to set up guarantees, and prices somehow below the market average.

In spite of the increase in sales in the corrugated company (supplier) its margins became closer, taking into consideration the major participation in its portfolio, major volume sales to a lower level prices for mt^2 of carton; On the other hand, the situation in the boxes manufacturer was good enough, because sales and profit margins had grown.

The corrugated company started a market offensive with the intention of improving its situation, since they were working harder without getting any results. It sought to give priority to those clients who obviously were giving them major profits. From the boxes manufacturer point of view, this meant a decreased quality service, attitude that in the end did affect its performance. The opposite attitude would have been that of demanding it to pay a higher price for the raw material provided by its corrugated partner, under the argue that the time and payment conditions were not as narrow and severe as the average conditions of the industry, nor were there extraordinary guarantees, which would represent a significant financial expense. The alternative was to buy to other supplier who were able to give them a better service, certainly, paying higher prices and meeting with the additional requirements, which undoubtedly would have made it lose the competitive advantage reached by the time, producing in the end negative effects in its financial results.

- **The boxes manufacturer wants to obtain the best prices in raw material and it also seeks to keep the quality standards of its service,**

therefore if it can pay a lower price to its supplier (and partner) to whom it grants captivity in the purchase,

Why should it pay a higher price?

- **The corrugated company seeks to defend legitimately its profit margins, which have been affected by the captivity of its client portfolio, now formed by a client who pays lower prices for mt^2 of raw material.**

  It starts demanding an increase in prices of raw material once it gets to know the financial results of the boxes manufacturer, information it obtains as a condition of being partners. From the point of view of the boxes manufacturer, Is he guarding over the interests of his company?

3. Act as Auditor and Consultant Company.

It can be clearly observed the circumstance presented in the function performed by the Audits companies, which are both Auditors / consultants.

As Auditors, they act on behalf of the owners / partners / shareholders of the company, and are named by the shareholders' meeting, they must check and verify that the company's management is properly performing its role of maximizing the value of the company - for what they have been recruited - in agreement to the accounting principles prevailing in the country and accordingly to the current legislation.

As Consultants, they act giving advice to the management of the company in very many different managerial relative matters, to the higher management structure of

the company; such as: general accountings, tax aspects, human resources, aspects of general management, mergers, acquisitions and others.

Today we have all known about some cases in which the dual circumstance of Auditor and Consultant takes place, the most notorious case has been that of Enron at the end of 2001 (subject of study in business schools in many parts of the world, for managerial world analysis and international institutions), nevertheless, and strictly speaking, we must state that this case has been neither the 1st, nor the last one, - even after the approval of the Sarbanes Oaxley Act - and even if it is in the USA where the major cases have been known, it is not the only country where this has happened. Without forgetting that USA Enron case was probably the most media covered case; recently Italy has been the epicentre with Parmalat's case, as it also was France with the Vivendi Universal case.

Beyond checking how well it is done by those who have been selected to manage and lead the company, accordingly to the in force dispositions, on behalf of and ordered by the owners of the company, they have also given assistance, which has gone beyond their role of External Auditor, and by doing so they have received money compensation; that is to say, there is another service for what they are being paid.

- **This way of proceeding puts the Audit companies, in the role of being judge and part, since somehow their recommendations or part of them would be involved in the Audit they are carrying out. (in his Assistant's role and for what he has received and additional payment, different from that of an auditor). This is another form of losing the necessary objectivity and the required neutrality, and that one would demand in relation to the role of whom they have recruited.**

  His opinion and in general, his work, becomes that of the minister of faith, who contributes to delivering truthful and effective

information related to the company performance both to Shareholders and Stakeholders. By being Auditor and Consultant at the time, is he really contributing to developing confidence on the markets?

4. Work for State Companies and for Private ones (Plc, Ltd.) at the same time.

During a long time, worldwide and especially in Chile, the discussion focused on looking for response to 2 main questions intended to develop a higher and faster economic growth: How much should the size of the State be diminished? And, should the State move back from the commercial activities?

After more than 2,5 decades some conclusions have been arisen:

- There are 3 main institutional structures:

  The Market: Conceived as the main and best resources assigner of the economy: Reaching its best development pace represents the base of prosperity of all countries.

  The Community: Better educated people in a wide variety of areas, showing willingness and a responsible attitude, commitment, and with creative capacity

  The State: Conceived with excellence, responsible for an integral, sustainable and equitable development, which imply being a paradigm of transparency and honesty; efficient in the use of the resources; promoter of equal of opportunities in the social affairs;

suitable guarantor of full competition and of the rights of the consumers and the society in general.

- These 3 structures (props) are needed, their cooperation and integration within themselves is highly necessary

But be careful, these last 2 concepts do not jumble in confusion that can be misunderstood by unattended considerations.

In Chile Governmental Institutions have followed two basic lines of order: State Institutions or Services and States Companies (or those having State participation).

The State Companies belong to all the citizens of the country (as well as the State Institutions and Services) and they are managed according to the same parameters and regulations as for the private companies (this is not the case for the State Institutions and Services though). Consequently, they are supervised by the Superintendence Office of Insurance and Stocks (SVS); It has external Audits, are obliged by law to publish their financial results every three months (FECU: Unique Consolidated Statistics Chart). It should also have a Board of Directors, who are responsible for the running of the business and must give accounts to the owners (the whole country).

The role of the State, beyond its condition of proprietor of various companies, is that of providing the regulatory frame and the supervisory procedures. On the other hand, some private companies, even so, act in some areas providing services that charge tariffs that are regulated by the State, especially those that provide what is considered “basic services”, such as telephone, electric power, drinking water.

There have been some cases in which the same person is the Director in one of these State Companies and is also member of the Board of Director in a private

company. Particularly one case in which this private company have sued the Chilean Government.

It has also been the case that members of the parliament have participated in the discussion of laws, related to the industrial sector, where these members are investors and have a stake on the concerned business. Particularly the case of the Fishing Law, where they had to establish the maximum capture quota for different species.

- **It is legitimate, and it's also established by law, that the Chilean Government should regulate tariffs on specific public services provided by private companies which simply monopolize the market. The Government also have appointed Directors within its companies.**

  It is part of the Directors responsibilities to safeguard the interests of the companies he represents.

  What is the Director's situation?

  On the one hand, he's been appointed to safeguard the State's interests in a particular State company, but on the other hand, being member of the board of Directors in a private company, what does this position demand from the State he also represents?

- **In the case of the legislators or lawmakers (State Institution) who have equity participation in specific companies, and regarding the fact that these companies belong to the industrial sector where they are defining laws for and also voting for them.**

Does anyone safeguard the superior interests of the nation in this legislative matter or laws are approved according to the interests of a small entrepreneurial sector?

D. Recommendations and Conclusions

D.1 The following ones are some previous aspects to consider by the time of setting commercial alliances or business partnerships, especially in the current reality of deep international commercial integration, with such a cultural diversity, of customs, practices and idiosyncrasy, of increasing developments in foreign investment, as for foreigners coming to our countries or our people penetrating foreign markets:

- To form partnerships, besides the basic requirement that a potential commercial transaction might exist and it could be profitable for both partners, it is important that the intention of forming a society does exist. It should be understood and internalised that the business is neither of one of them nor of the other, but of both partners, it is a different legal person, different from that of each partner, with a particular and definite goal. It is very possible that before a decision making situation each one could have a different vision or way of approaching it, and that is a good thing if happens, welcomes the diversity and the capacity to think differently, nobody is the owner of the truth in the absolute way, the possibility to be -wrong is a real one in all our actions, therefore, again welcome any possibility to incorporate another point of view into the analysis, ***"the ability to understand each other, to yield, to tolerate each other , to emphasize, definitively, of being able to " look at each other's eyes " in a diaphanous, transparent and trusting way, is of vital transcendence"***.

- Partners' interests and motivations (or potential partners) within the partnership mush be shared in equal terms, searching the same company's goals or objectives, besides the intention to maximize the company's wealth. Both partners should strongly agree within the company's main issues. This is the most difficult task to achieve, mainly because what interested them in making an alliance is precisely to complement their business capacities or strengthen weak aspects of the business. ***"If I make a partnership with a 3rd company that could become my supplier, with the clear intention of assuring the supply or getting better price conditions, it is possible that some kind of conflicts will arise among us. Mainly because he will seek to maximize (legitimately) profits on his own company, and I will seek to obtain from it a lower price, affecting its financial result."***

- A partnership or alliance will be successful, if both parties obtain similar benefits: The share might not be necessarily an equal one, but depends upon the partnership agreement among them. This usually reflects the amount of capital each partner has invested in the business. When a partner tries to take advantage of a better position, it is the beginning of the end of the deal, which will inevitably come to and end at the exact moment the other partner feels himself betrayed by his partner. Who wins? Nobody, of course, on the contrary, the company loses, and its employees and the society are the most affected ones. ***" If a company form a partnership with a 3rd one, and the latter provides services only to the partner's company, as an exclusive client, the pressures on prices can become very strong, demanding the partner's company price reductions and discounts, so that the best profit derived from lower costs/prices will stay in the partner's company in which there is no partnership and consequently lower profit or eventual losses in the company where they are partners, obviously will be shared by both members of the partnership".***

D.2 Due to such diverse nature of the human being, it makes it necessary to establish common classifications and codes that would be generally accepted by the ones involved in a deal. In certain business circumstances in which both parties are interested in the same existing goals, those with different functions and visions in relation to the commercial agreement that ties them up, besides the good faith, and the best criterion and personal conduct, also require the setting up of regulatory aspects, in the form of compulsory legal duties, that would play an dissuasive role in case of malpractice, in such a way that it makes necessary to continue working on and deepening the complementary aspects involved in internal and international Regulations and Self-Regulations, this mean continues deepening Corporate Governance Best Practices.

D.3.- In strong terms, and beyond the necessary economic-financial considerations, two (2) lines of actions for the best development of the business are proposed; those which refer to the private acts, and those referred to the acts of the governing authorities.

1. **Acts of the Private ones**

   They are the power of the business in the market economy model -as natural or legal persons- so they must selfregulate themselves complementarily with the legal aspects, setting up with transparency and knowledge the areas of responsibility, and the rights and duties of the ones involved. These aspects once established, become liable procedures of reciprocal commitment for themselves; the self regulation concept is also included here, because it becomes vitally relevant since it is related to the ethics in the business environment or in the management activity, as an essential source for the empowerment of one of the most relevant assets that allows markets operation, that is **Confidence.** As centre of the

activities, the measures and actions in the legal and self regulatory areas, must lead the practices of a corporate government that generates confidence to the insiders and to the outsiders, these concepts understood as both **All the Shareholders** and all the **Stakeholders.**

- Know your partner and if they are too many (Corporation), get to know the commercial and legal regulations, uses and customs that apply to the general development of the business and the particular conditions of the industrial sector into which you will penetrate, and the place or places that will become influence areas.

- State without ambiguities what it is expected, which is the business Vision that you have.

- Demand the same transparency to the counterpart (s).

- Record these declarations in the shareholders' agreement that is intended to sign.

- Check in detail the legal regulation that applies in the country or region in which the business will take place.

- Get to an agreement on the policies and practices related to the administration and management of the company, business areas and eventual limitations that could affect interests of someone of the parties; the same considerations should be taken as for transactions among related parts, and for the information delivery.

- Get to an agreement on the mechanisms and practices to appoint directors and CEOs in their responsabilities in the implementation of the shareholders interests, beyond their liabilities stated by law.

- To fairly point out and arise conscience about the accountability concept, this means that managers ought to give account of the company performance as well as the shareholders responsibilities to demand from the management about their performance in the company.

- Define mechanisms to evaluate the directors' performance, and consequently the running of the business, so as to establish a constant checking of the real contribution to the creation of value to the company, its shareholders, having the due care and social respect.

- Implement ethics and/or good practices codes, which contents could really be incorporated in the company environment and so performed accordingly.

2. Acts of the Government Authorities

They are in charge of generating the suitable legal frame and regulations, of developing an economic infrastructure intended to improve, in a constant way, the market activities, of contributing integrally to make the Country attractive, motivating and reliable, both for national and foreign investors.

To improve and/or complement OPAS's law, by means of the concretion of what has been defined as The Second Stock Market Reform Project, in a way of adapting the Chilean legislation to the international standards, tuned and on line with the increasing

incorporation of Chile in the international economy, and the strengthening links with some other countries that have much more developed markets.

Showing a wide range of participation the political forces of the Country agreed on the so called "Pro-growth Agenda", that considers the modification of 13 laws, which includes 60 different subjects, tending to perfect and strengthen the functioning of the Chilean Stock Market, having two (2) supporting basis:

1. Promotion of the Industry of Venture Capital[5]:

This has the intention of creating the conditions in order to make possible for those who possess ideas but do not possess the economic resources to implement them, to get access to finance. Thus, conditions are established to attract investors, not necessarily those of the financial sector, in order to make them feel willing to support potentially profitable projects, which, precisely for this condition, are also risky.

For this purpose, a State guarantee to the Investment funds is offered, granted by the CORFO state entity (Production Promotion Corporation) and the FOMIN (Multilateral Fund of Investments of the Inter-American Development Bank).

Tax benefits are also offered to the major capital profit of the successful projects, up to UF's limit 10.000.-equivalent to US$ 270.000.- per shareholder, including his/her related ones.

2. Improvement of Corporate Governments Practices, takes into consideration the following most significant aspects[6]:

Eliminates the right of voice and vote of the stocks signed but not fully paid.

Extends the legal presumption regarding a negotiation whether the director's interest were involved, or the interest of the shareholders in charge of the management or any related person to these two parts previously mentioned, having the former been elected by the votes of these two.

The management shareholders and their related ones are prohibited to make use of in their own benefit, the opportunities of business that they get to know at the company.

Business oportunities must be strictly confidencial. The Board of Directors should establish this in each particular issue.

Corporate Governance Democracy (symmetry in the information):

- To allow remote voting, so that the ADR's holders may have a major participation in the Directors election.

[5 and 6] Second Stock Market Reform Project.

- To inform in advance about the main issues that will be presented and voted in the shareholders' general meeting. To make this, the Board in exercise must assure the due previous communication.

- Should also inform in due time about the candidates for the position of Directors and his/her projects.

- Extend powers of the Directors' Committee, giving them the right to propose to the Board the requirements for the auditors' recruitment; demands skills of at least one member of the committee to tacle financial statements; spread the activities of the committee through the annual report and also through the shareholders' general meeting.

The following ones are complementary aspects that, from the normative point of view, contribute to a more transparent and reliable Stock Market and to attract more potential investors:

- Appoint Independent Superintendents from the Political Government of the moment, to grant stability to the "enforcement" beyond contingency and political pressures.

- Set up a SupraSuperintendence, this is to integrate under a sole Superintendence the work of the following ones: Bank and Finance; Pension Funds (AFP); and

Values and Insurance. Thus, the work is coordinated between the enforcers of the Financial Market, considering that there are investors who play an active role in AFP's, Banks and Other Commercial Societies.

- Independent Directors, both from the company and from the management shareholders. This grants the director's acts are guided by the top benefit of the company and not by any particular interest of a group.

- Professional and Informed Directors, willing to dedicate quality of time to monitoring the company performance and to develop their resound role of the shareholders, as well as making the managers lead the Organization towards the strategic intentions established by the Vision . "A good Board of Directors is a cheap form of consultancy" (John Nash, President of the National Association of The Corporate Directors of USA).

- Directors' Committees, 100% formed by the independent directors, this one is a step in the sense of perfecting the protection of the minor investors' interests, considering the heavy concentration of companies' property on the Chilean market.

- To expand the Directors' Committees to all the Corporations so as to guarantee that those companies which do not necessarily trade in the Stock Market, are also well run. The Chilean commercial opening to the international trade, means that foreign investors are interested in coming to the Country, pondering their

decisions to initiate their projects making joint ventures with local partners. They, both, need to give each other a frame of actions clear, transparent and equitable .

- As regard of the Corporations with participation of the State, Ministers of State are not allowed to participate as Directors, so that they can dedicate, effectively in quantity and quality, to their governmental responsibilities. The higher ministerial responsibilities are incompatible with the other activities which can be so demanding as those of an active member of Board of Directors.

- Plc´s dispositions should also be made extensive to those Companies having 100% State participation (State is fully property), and hence to their Directors and Managers, whom in addition must be independent from the Political Government of the moment. Should these positions be granted to applicants who get them by their merits and not by political relationships.

- To regulate the "swing door", this is, to prevent the one who has worked for the State, when ending his/her State functions, within a short time join to companies from the sector he/she had had to regulate or audit.

The principles of the Corporate Governance are applicable in private and institutions/organizations/companies, so great persons are always in any one of them needed.

Good for the development of new legal regulations, which would help to reinforce the confidence on the markets and in the people's initiative. Good for the increase on legal punishment to those who wrongly use a position.

Nevertheless, one has to be persistent, mainly in the idea of developing people with strong integral values, not only having all the necessary technical aspects of their education, which is already something obvious to consider, but essentially, a person with great and strong values, with a strong moral structure, and a deep sense of it. A person who is able of behaving in limit situations, able of managing the power, able of managing, with confidence and responsibility, big amounts of money that the society, individually and collectively have increasingly entrusted him to care.

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