Information on legal obligations concerning Corporations, with regard to their stakeholder relationships and the associated reporting duties

This questionnaire is provided at the request of Robert G. Eccles, Professor of Management Practice at the Harvard Business School, in order to help with the analysis of viability of Annual Board Statements of Significant Audiences and Materiality, which is being developed by Professor Eccles.

This document is a bona fide academic contribution to the program in charge of Professor Eccles, is based in the template provided by Professor Eccles and in the laws existing in Chile at this date and does not purport to be a full legal report on the subject.

**Setting the legal landscape:**

1. Briefly explain the broader legal landscape regarding the obligations that a company has to its stakeholders, or with regard to its impact on stakeholders, and in particular whether its primary duty is or is not to shareholders, over all other stakeholders.

1.1 Chilean law does include the types of companies usually existing in most American and European countries, as follows.
   - The Collective Company (Sociedad Colectiva) regulated by article 2053 of the Chilean Civil Code,
   - The Limited Liability Company (Sociedad de Responsabilidad Limitada) regulated by Law Nr. 3.918 of 1923
   - The Shareholding Company or Corporation (Sociedad Anónima) regulated by (i) Law Nr. 18.046 of 1981 (the Law) and (ii) by the Regulation on Shareholding Companies, whose last version was issued in 2011.
   - The Company by Shares (Sociedad por Acciones) regulated in article 424 of the Chilean Code of Commerce, since 2007, which in the essence has the characteristics of the Shareholding Company, but is allowed to be incorporated or held by just one shareholder.

As reported herein below, it has to be stated that none of these legal regulations includes specific duties of the respective company, concerning stakeholders.

1.2 In Chile, shares held by one shareholder, in a Chilean corporation, may be traded without permission of the other shareholders. A Chilean corporation, once fulfilling certain conditions, is allowed to issue stocks or bonds and have them quoted or
traded in stock exchanges, either locally or also abroad. Thus, it is the Chilean corporation who appears to be relevant for further analysis of this matter.

1.3 Other than being a portion of the social capital, and being represented by the shares issued, the interest of the shareholders in a Chilean corporation is not specifically defined or regulated by the Law. According to the Law, article 1 and article 4, the business purpose of the corporation has to be duly stated in the bylaws. But the Law does not regulate the contents of the business purpose, which shall depend on the intention and stipulations stated by the initial shareholders, when incorporating the corporation.

As to the exercise of the rights of the shareholders, article 30 of the Law states that each shareholder shall exercise its rights in terms respecting those belonging to the corporation and to the other shareholders as well.

The Law does resolve that any corporation will always have mercantile nature, even if created to pursue non-commercial transactions. No reference is made though with regard to the interest of the community, or any stakeholders.

1.4 As to the board, it holds all powers for management and operation of the corporation, as per articles 31 and 40 of the Law. Those powers are granted to the board in order to pursue the business purpose stated in the bylaws of the corporation.

The duties of the board members, and of the officers of the corporation are submitted to the company bylaws, because as per article 39 of the Law, duties of the members of the board have to be exercised in favor the company and of all shareholders.

1.5 And in accordance with article 19 of the Chilean Civil Code, about interpretation of the laws, literal wording of the law shall prevail against the purposes thereof, meaning that legal regulation on corporations must normally be construed without deviation of their strict literal sense.

1.6 In conclusion, it is fair to state that as of this date, Chilean law and regulations on incorporation or management of companies or corporations do not include general regulations concerning the relationship of said legal entities with stakeholders.

Adding those duties to actual strategies, action plans, or management duties of a company or corporation, will depend on the bylaws of the respective entity and of the resolutions of their boards and of shareholders meetings.
It has to be borne in mind that there are several existing regulations, in the Law and in other rules, such as those concerning publicity of balance sheets, or information about shareholders meetings, or publicity or relevant facts concerning the business and financial circumstances of the corporation, which were enacted aiming to provide protection to shareholders, or to the public, or to protect transparency of securities markets, which concur in the benefit of stakeholders.

In my opinion, though those laws are a gender, and the regulations to protect stakeholder are a species. Both may be aligned in the same direction, but are not the same.

**Regulatory Framework**

2. **To what legal tradition does the jurisdiction belong, i.e. civil/common law, mixed?**

Chile belongs to the legal tradition of the French civil code, which is reflected in the organization and functioning of its government, its parliament and its judiciary.

This heritage is appreciated in our constitution, laws, regulations and contracts.

3. **Are corporate/securities laws regulated federally/nationally, provincially or both?**

As per article 3 of the Constitution of the Republic of Chile (the Constitution), our country is not a federal country.

Thus, there is only one source of laws, which is the National Congress in combination with the President of the Republic.

As per article 31, nr.6, of the Constitution, regarding matters not reserved to the law, which are stated in article 63 of the Constitution, the President of the Republic, as head of the Executive branch, does have the power to issue regulations and obligatory resolutions, directly or also through several authorities or governmental bodies.

As per article 118 of the Constitution, Municipalities have limited authority to issue rules on matters concerning their territories and neighbors, but submitted to the rules of superior hierarchy, such as laws and regulations.

Regulations on corporations and securities are part of the structures referred to in articles 31 and 118 above and are regulated on a national basis.

4. **Who are the government corporate/securities regulators and what are their respective powers (in summary only)?**
The Superintendency of Securities and Insurances (SVS) is the Chilean control and regulatory body for issuers of securities, securities markets, stock exchanges, entities trading on those markets, mutual funds and their managing entities, corporations submitted to the SVS authority and entities involved in the trade of insurances or reinsurances.

The SVS is part of the Executive branch of government, but enjoys a high degree of authority and independence. Its current legal statute was established by Decree Law 3.358 of 1980. One of the main legal tools available to the action of SVS is Law nr. 18.045, regulating the Securities Market.

According to article 4 of D.L. 3.538, the powers of SVS include, among other, to:

i- Provide general interpretations on the laws and regulations related to its authority, issue rules, instructions and orders, that shall be complied with by the markets and entities submitted to its authority.

ii- Provide answers to questions or petitions on matters of its authority and investigate complaints filed by shareholders, investors, or other legitimately interested parties.

iii- Issue reports required by State Attorneys throughout the course of Criminal Law investigations.

iv- Inspect all operations, balances, books and records of entities submitted to its authority.

v- Establish the general criteria and principles to be used for the preparation of balance sheets and accounts of the entities submitted to its authority and request amendments or changes of any noncompliance detected in any of them.

vi- Request the entities submitted to its authority to make public truthful, sufficient and timely disclosure of their legal, economic and financial situation. SVS may even make this publications or disclosures by itself.

vii- Request personal appearance and statements of representatives, managers and advisers of entities under its authority, or of persons having entered into any transactions with them, concerning facts the SVS may consider relevant for compliance with their duties.

5. **Does the jurisdiction have a stock exchange(s)?**

There are three stock exchanges operating in Chile

(i) The Bolsa de Comercio de Santiago, incorporated November 27, 1893


(iii) The Bolsa de Corredores de Valparaiso, incorporated in 1892.

6. **Do the concepts of limited liability and separate legal personality exist?**
Conforming what was stated in nr. 1 above, companies mainly used in Chile for business purposes are legal entities separated from their partners or shareholders, and the liability of such partners or shareholders is limited to their capital contributions, either paid or only subscribed.

The Collective Company (Sociedad Colectiva), is a separate legal entity, but does not limit the liability of the partners for obligations of the company.

The Limited Liability Company (Sociedad de Responsabilidad Limitada), is a separate legal entity and liability of the partners for obligations of the company is limited to the respective contributions of each partner to the social capital.

Individual Endeavors with Limited Liability (Empresas Individuales de Responsabilidad Limitada) are also separated legal personality and limit the owners responsibility as well.

Shareholding Companies or Corporations (Sociedad Anónima) are separate legal entities and the liability of the shareholders for obligations of the corporation is limited to the respective contribution of each shareholder to the social capital.

The Company by Shares (Sociedad por Acciones) in essence has the characteristics of the Shareholding Company, but is allowed to be incorporated or held by just one shareholder.

7. Did incorporation, or listing, historically, or does it today, require any recognition by the company or its directors of a duty to society, an obligation to take account of the company’s social or environmental impacts, or to respect its stakeholders?

Incorporation or listing of a company or corporation, historically and today, has not needed any recognition by the company, or by its directors of a duty to society, an obligation to take account of the company’s social or environmental impacts, or with respect to its stakeholders.

The duties and powers corresponding to members of a board, shall be found in (i) the bylaws of the corporation and (ii) the Law, which depending on the matter does complete, or limit, the stipulations established by the parties in the bylaws.

8. Do any stock exchanges have a responsible investment index, and is participation voluntary? (See e.g. FTSE4Good, Dow Jones Sustainability Index, the Johannesburg Stock Exchange’s Socially Responsible Investment Index.)

I am not aware of any such indexes in any of the existing Chilean stock exchanges.
Duties of Directors.

9. To who are directors’ duties generally owed?

As explained above, the main duties of any member of the board of a Chilean corporation are to serve the business purpose or the corporation, and to serve all shareholders.

Therefore, the duties of the directors are owed to all the shareholders, independent of their votes at the time of election of the directors.

10. What are the duties owed by directors – please state briefly. Please indicate if there are express or implied duties to avoid damage to the company’s reputation?

The main duty is to support achievement of the business purpose of the company.

Other practical or instrumental duties are regulated in the law, such as attending the board meetings, confidentiality of all matters discussed in the board, to sign the minutes of the board meetings.

There is no specific requirement or provision of an obligation not to damage the reputation of the company. This is notwithstanding prohibitions stated in the Law, such a article 42 thereof, which refer to several specific conduct of members of the board, whose occurrence may certainly result in damage to the reputation of the company.

Since the duty of member of the board has to be performed diligently, there is a very ample threshold of conduct that must always be kept. Damage to the company reputation may arise out of very negligent conduct when pretending to perform the duties as director and therefore may lead to claims of indemnity by shareholders.

11. More generally, are directors required or permitted to consider the company’s impacts on non-shareholders, including impacts on the individuals and communities affected by the company’s operations? Is the answer the same where the impacts occur outside the jurisdiction? Can or must directors consider such impacts by subsidiaries, suppliers and other business partners, whether occurring inside or outside the jurisdiction? (See e.g. s. 172 UK Companies Act 2006, and in particular, ss.(1))?

The Law and specific regulations on corporations in force at this time in Chile do not mandate nor prohibit any of these considerations. But as explained in nr. 29 below, there are been laws concerning other matters, which imply or sometimes request this sort of consideration.
Actions of foreign entities, which are affiliates of Chilean parent corporations, will normally be regulated by the respective foreign law.

But, if those situations taking place abroad, may be construed or demonstrated as a direct consequence of a negligent conduct when performing the duties as director or the Chilean parent company, they may lead to claims under Chilean law.

These requirements could nevertheless arise from: (i) the bylaws of the corporation, as a guideline set for the action of the board; (ii) a Shareholder Meeting, as a company policy, duly approved by the required majority, and (iii) as a policy or resolution approved or adopted by the board, which would not necessarily have to be submitted to previous approval of the Shareholders Meeting.

12. If directors are required or permitted to consider impacts on non-shareholders to what extent do they have discretion in determining how to balance different factors including such impacts? What, if any, do the board or individual directors assume in exercising such discretion?

The members of the Board do not have right to assume or adopt resolutions individually, unless by previous delegation or mandate of the board, on a case by case basis. As regulated by article 39 of the Law, the powers granted to the Board are to be exercised in a meeting, duly convened. Actually, there is only one legal exemption, not relevant for the matter discussed herein.

And, when acting as indicated, the board does have very ample powers and it may consider effects on one or more non-shareholders and it may, or may not, balance the respective impact.

As a general rule, in any resolution of the board there should be a rationale supporting the decision and reasonably demonstrating the benefit or convenience thereof in favor of the business of the corporation.

13. What are the legal consequences for failing to fulfill any duties described above; and who may take action to initiate them? What defenses are available? Can these issues given rise to other causes of action or regulatory routes whereby a stakeholder can exert pressure on a company with regard to its actions?

Referring to the Law, the basic rule is the obligation to indemnify damages, arising of a conduct causing harm to the company, such as an infringement of the statutes, missing the requested level of diligence.

It has to be borne in mind that authority of SVS to start an investigation is very ample. And parties who claim to be aggrieved may file a complaint at SVS.

The natural plaintiff, are the shareholders, especially if there is a provision in the bylaws, or there is a resolution passed in the Shareholders Meeting, setting
guidelines to be followed by the board and or by management. But third parties may also file complaints against the board members.

If the matter has been dealt with only at the board level, resulting in an adequate analysis of the matter and reasonable grounds demonstrating a benefit for the business of the corporation, no penalty should be expected.

Of course shareholders may not agree with the board and, eventually, that shall lead to a change of the board members.

14. Are there any other directors’ duties which are relevant to the interests of stakeholders?

There are no other director’s duties that stakeholders may consider relevant.

The general obligation of any member of the board is to perform his or her duties with reasonable care and diligence. This wide standard may mean very different specific duties, that have to be gauged on a case by case basis.

15. For all of the above, if these exist in your jurisdiction, does the law provide guidance about the role of supervisory boards in cases of two tier board structures. What obligations are owed by senior management who are not board directors? Is this determined by law if no specific contractual provision applies?

Our laws do not consider two tier board structures.

**Reporting.**

16. Are companies required or permitted to disclose the impacts of their operations (including stakeholder impacts) on non-shareholders, as well as any action taken or intended to address those impacts? Is this required as part of financial reporting obligations or pursuant to a separate reporting regime? Please specify for each reporting route whether it is mandatory or voluntary.

The Law requires that the Balance Sheet and Financial Report of each company are submitted to resolution of a Shareholders Meeting, to be held during the first quarter of each calendar year. For corporations submitted to SVS, a quarterly report is also requested. There are also detailed regulations on the disclosure of matters relevant to the company and its business, that are to be filed when those situations take actual place.
These reporting matters refer mostly to financial, accountancy or business matters and not necessarily on stakeholder impacts.

The contents and format of balance sheet are regulated by the IFRS standards, the standards set by the Chilean Professional Association of Accountants, the Chilean Revenue Service and the SVS, when involving entities submitted to its authority.

Therefore, besides of compliance with the criteria mentioned above for the financial reports, a corporation may voluntarily resolve to disclose the impacts of its operations on non-shareholders (including stakeholder impacts), as well as any action taken or intended to address those impacts.

17. Please describe any mandatory reporting requirement, major voluntary initiative or trend towards voluntary reporting with regard to transparency (for example, payments to government or state-owned entities, reports on government orders to undertake surveillance or interception, reports on tax payments etc.).

I am not aware of mandatory requirements, or significant initiatives towards voluntary reporting on transparency, within the context of this questionnaire, in Chile, at this date.

This, of course does not exclude the duties to inform certain mostly economic facts to SVS, or to other authorities which have been mentioned above.

18. Do legal reporting obligations extend to such impacts outside the jurisdiction; to the impacts of subsidiaries, suppliers and other business partners, whether occurring inside or outside the jurisdiction?

There are several information duties to which a corporation (including) management) is normally submitted in Chile. There is information to be provided to boards, or the committees of the boards. There is also information for the shareholders and the shareholders assemblies. Likewise, there is information for the Revenue Service. And last but not least, there is the SVS when referring to corporations submitted to its authority.

These information duties are substantially focused on financial, accountancy or business matters of a corporation.

Instead, this questionnaire aims to the relationship among corporations and their stakeholders. Therefore there is no detailed analysis of those information duties mentioned above.
The concept of "reporting obligations" is meant here as a duty for disclosure of the impacts of a company operations on non-shareholders, as well as any action taken or intended to address those impacts, in terms different than those other related to finance or accountancy. And in this precise regard, from a corporate law point of view, Chilean companies are not submitted to that duty.

I am not aware of the situation of Chilean affiliates of foreign companies, where the parent company may be submitted to those obligations, or of foreign affiliates of Chilean companies, subject to regulations of their local environment.

19. Who must verify these reports; who can access reports; and what are the legal or regulatory consequences of failing to report or misrepresentation? Is there a regulator tasked with investigating complaints of misreporting?

Please see my answers above.

20. What is the external assurance regime for reporting on a company’s impacts on stakeholders? Please specify any mandatory requirements and also where reporting is voluntary what the current market practice is as regards third party assurance.

Please see my answers above.

21. Please summarize any regulatory guidance on reporting that relates to impacts on non-shareholder stakeholders.

Please see my answers above.

**Stakeholder engagement**

22. Are there any restrictions on circulating shareholder proposals which deal with impacts on non-shareholders, including stakeholder impacts?

There are no legal, nor regulatory restrictions in this regard.

23. Are institutional investors, including pension funds, required or permitted to consider such impacts in their investment decisions? What is legal duty that pension funds owe with regard to investment decisions in this regard?

How does the legal duty of the fund align with term and contractual performance criteria of fund managers Î– does this facilitate or deter consideration of such impacts?
Institutional Investors and Pension Funds do have a complex and specialized regulation, whose analysis exceeds the terms of this document.

24. Can non-shareholders address companies’ annual general meetings? What is the minimum shareholding required for a shareholder to raise a question at a company’s AGM?

Shareholders Meetings are not open to the public, as per article 55 of the Law. There is no legal or regulatory minimum for a shareholder to raise a question.

**Other issues of corporate governance.**

25. Are there any other laws, policies, codes or guidelines or standards applied in the context of particular contractual relationships (for example project finance) or through adherence to particular sustainability principles (for example the UN Global Compact, the OECD Guidelines for Multinational Enterprises etc.), related to corporate governance that might encourage companies to consider in a structured way their impacts upon and the interests of their wider stakeholders including through a stakeholder engagement process?

International financing and international investors and companies are frequent presence in Chile. Our bank system is open to foreign investors and competitive. And the legal power for the parties of almost any contract, to add or to stipulate covenants or standards related to the interest of stakeholders is fully available. Thus, the inclusion of these principles and regulation is feasible,

Works or contracts related to mining industries and all other endeavors which fall under the powers of the Chilean environmental authority have been, for several years, conducting their projects under this prism.

26. Are there any laws requiring representation of particular stakeholder constituencies (i.e. employees, representatives of affected communities) on company boards?

There are no legal or regulatory requirements in this regard, in Chile, at this time.

27. Are there any laws requiring gender, racial/ethnic, religious or other stakeholder representation; or non-discrimination generally, on company boards?

There are no legal or regulatory requirements in this regard, in Chile, at this time.
28. In your jurisdiction is there any legal route whereby a parent company can incur liability with regard to the impacts that one of its subsidiaries has had on stakeholder groups? Are there any serious proposals to impose such responsibility?

As indicated above, almost all the society types that are used for business purposes in Chile, are entities separated from their partners or shareholders, and the liability from the latter for obligations of the earlier, are limited to the capital contributions, either paid or only subscribed.

These rules benefit any partner or shareholder, whether individuals or legal entities, whether Chilean or foreign.

Now, there is a legal structure frequently used in Chile, which is an Agency of a Foreign Company (Agencia de Sociedad Extranjera) regulated per article 447 of the Chilean Code of Commerce.

This entity does have legal existence in Chile, does have a Chilean tax registration number and pays taxes as a Chilean resident, but it is not a legal person different of the parent company.

Therefore, payment of indemnities granted by court resolutions, or by authority resolutions against these Agencies, can be enforced against the respective foreign parent company, submitted to the respective local laws and procedures.

Therefore, in any third party, whether stakeholder or not, may file a successful lawsuit, against a Chilean agency of a foreign company, and liability may eventually reach the parent company.

And there have been occasional judicial cases, in other areas, where the Chilean Supreme Court has eventually lifted the corporate veil and granted claims against the owners of a company.

29. Are you aware of any incoming law or proposals that are relevant to the issues raised in this questionnaire? If so please describe, providing an indication of the anticipated date the legislation will come into force or be adopted.

I am not aware of current law proposals in corporate or company matters, relevant to the issues raised in this questionnaire.

It has to be noted, though, that there are legal and administrative regulations, below the hierarchy of the law, where contact, information and care of interests of stakeholders are considered or required.

Main example thereof is Decree # 40, of 2013 which is the Regulation of Law 19.300, on General Basis of the Environment.
Article 7 of Decree # 40, requests participation of stakeholders, as part of a Study on Environmental Impact, when the reallocation of native peoples is involved in a project.

Article 85 of Decree # 40 regulates the referred consultation process.

Similar duties are established in articles 86 and 87 of Decree # 40, when the Study of Environmental Impact may affect land belonging to native peoples.

Santiago de Chile, January 6, 2015