

# Antofagasta

Corporate Governance Extract from the 2008 Annual Report

# Corporate Governance

## Introduction

Antofagasta plc (“Antofagasta”) has an uncommon ownership structure for a company listed on the London Stock Exchange. The E. Abaroa Foundation, an entity in which members of the Luksic family are interested, controls 60.65% of the ordinary share capital and 94.12% of the preference share capital of the Company through two investment vehicles, Metalinvest Establishment and Kupferberg Establishment. Aureberg Establishment, which is controlled by Antofagasta’s Chairman, Mr. J-P Luksic, holds 4.26% of the ordinary share capital of the Company. Although incorporated in the United Kingdom and listed on the London Stock Exchange, the Group’s businesses, which comprise mining, transport and water distribution, are principally located in Chile, the largest copper-producing country in the world.

Antofagasta’s Board is committed to managing the operations of the Group with a view to maximising value for all shareholders. The Board currently has nine members, comprising an Executive Chairman and eight Non-Executive Directors. Two of the nine Directors (including the Chairman) are members of the Luksic family. Seven of the Directors, including the Chairman, are based in Chile, where the Group’s operations are principally located; one Director is based in the United Kingdom, where the Company is incorporated and listed on the London Stock Exchange; and one Director is based in the United States.

The day-to-day operations of the Group are carried on through the boards of each division of the Group, Antofagasta Minerals S.A. (mining), Antofagasta Railway Company plc (FCAB – railway and other transport services) and Aguas de Antofagasta S.A. (water distribution). Each division is headed by a chief executive officer who reports to his divisional board and the Chairman of the Group. The Antofagasta Board oversees these divisional boards and provides strategic direction.

In its consideration of Corporate Governance matters, the Board is mindful of the principles set out in the Combined Code on Corporate Governance issued by the Financial Reporting Council in June 2006 (“the Combined Code”). However, given the ownership

structure and asset base of the Group, the Board believes that full adherence to the Combined Code is not practicable. Nevertheless, the Board considers that its structure and balance (as set out in more detail below under the heading “Directors”) provide an appropriate basis for ensuring its effectiveness and the protection of the interests of all shareholders in the Company.

The Board describes below how it applied the corporate governance principles contained in the Combined Code during 2008. Two areas where the Company did not comply with the detailed Combined Code provisions are set out at the end of this report under the heading “Statement of Compliance with the Detailed Provisions of the Combined Code”.

## Directors

### The Board

The Directors collectively have responsibility for the conduct of the Group’s business. The Board, which met eight times during 2008, comprises an Executive Chairman and eight Non-Executive Directors, six of whom are considered by the Board to be independent. There is a schedule of matters specifically reserved for the Board. The Board is responsible for:

- providing leadership;
- setting the Group’s strategic objectives and key policies;
- ensuring that appropriate resources are in place to enable the Group to meet its objectives;
- reviewing the Group’s performance; and
- overseeing the Group’s internal control systems.

The Chairman will always attempt to persuade the Board to act as a single team by obtaining consensus at Board meetings but, in exceptional circumstances, decisions will be taken by majority. The agenda for Board meetings are set by the Chairman in consultation with the other Directors.

Responsibility for developing and implementing the Group’s strategic and financial objectives is delegated to the senior management of the Group. Accordingly, the boards of Antofagasta Minerals S.A. (mining), the

Antofagasta Railway Company plc (railway and other transport services) and Aguas de Antofagasta S.A. (water distribution) meet monthly to consider strategic, operational and risk management issues in more detail. There is substantial overlap between membership of the Board of Antofagasta plc and these three divisional boards. The chief executive officer of each division reports to his divisional board and to the Chairman of the Group; the Board oversees these divisional boards and provides strategic direction. The Board is also responsible for reviewing the performance of management. The Non-Executive Directors scrutinise the performance of management in meeting goals and objectives and also monitor the reporting of performance, through the activities of the Remuneration Committee and the Audit Committee.

Directors who served during 2008 are set out on page 149. There were no changes to the membership of the Board during 2008.

The recognised senior independent Non-Executive Director is Mr. C H Bailey, who is also Chairman of the Audit Committee. Mr. G S Menéndez is Chairman of the Remuneration and Nomination Committees. The Board does not have a Director formally designated as Chief Executive.

### The role of the Chairman

Mr. J-P Luksic is Chairman of the Board. His role is that of a full-time Executive Chairman, and he has no other significant commitments that prevent him from devoting sufficient time to this role. As explained above, the Group does not have a Board member who is designated as Chief Executive. Mr. Marcelo Awad is chief executive officer of Antofagasta Minerals S.A.; Mr. Miguel Sepúlveda is chief executive officer of the Antofagasta Railway Company plc; and Mr. Marco Kútulas is the chief executive officer of Aguas de Antofagasta S.A.

The Board believes that the Company is not at risk from a concentration of power by Mr. J-P Luksic having executive responsibilities as Chairman. In reaching this conclusion, it has taken into consideration the strong presence of Non-Executive Directors on the Board, the structure of the Audit, Remuneration and Nomination

Committees designed to devolve away from the Chairman responsibility and control of certain key areas of Board responsibility, and the delegation of management responsibility to the chief executive officer of each division.

### Board balance and independence

The Board considers six of its eight Non-Executive Directors to be independent – Mr. C H Bailey, Mr. G S Menéndez, Mr. D E Yarur, Mr. J W Ambrus, Mr. J G Claro and Mr. W M Hayes. The Board is satisfied that this balance limits the scope for an individual or small group of individuals to dominate the Board's decision-making. The Directors' Report sets out biographical details of each Director and identifies those Directors standing for re-election on page 53.

Mr. Yarur, Mr. Claro, Mr. Ambrus and Mr. Hayes meet the independence criteria set out in Combined Code provision A.3.1 and the Board is satisfied as to their independence.

The Board is satisfied that Mr. Bailey remains independent in character and judgement, notwithstanding that he has served on the Board for more than nine years, since he does not receive any remuneration from the Company other than Non-Executive Directors' fees, nor does he have any other relationships with the Company or its majority shareholder. The Board is also satisfied that Mr. Menéndez remains independent in character and judgement, notwithstanding that he has also served on the Board for more than nine years and notwithstanding that he is a non-executive director of Quiñenco S.A. (a Chilean-listed company also controlled by the Luksic family) and some of its subsidiaries, including Banco de Chile and Telefónica del Sur S.A. This is because he does not receive any remuneration from the Group other than in a non-executive capacity. His position in the Quiñenco group is also solely as a non-executive director. The Board considers that Mr. Bailey's and Mr. Menéndez's length of service is of considerable benefit to the Board given their wealth of knowledge and experience of the Group and of Latin America and of the mining industry, and therefore proposes both for re-election.

## Corporate Governance *continued*

Mr. Ambrus was appointed a Non-Executive Director of Antofagasta plc in 2005, and consequently has served as a Director of the Company for three years. He was appointed a non-executive director of Antofagasta Minerals S.A., a subsidiary of Antofagasta plc, in 1997, and has consequently served as a director of that company for eleven years. While this is not a circumstance listed in Combined Code provision A.3.1 as relevant to determining a director's independence (unlike the length of service as a Director of the listed Company), the Board has nevertheless considered this factor and remains satisfied that Mr. Ambrus remains independent in character and judgement as he does not receive any remuneration from the Company other than in a non-executive capacity and does not have any material business relationship with the company. Details of fees paid by the Group to Ingeniería y Servicios Computacionales Geovectra S.A., a company controlled by Mr. Ambrus, are disclosed in Note 38 to the financial statements. The Board has also considered these amounts and does not consider them material either to Mr. Ambrus or the Group.

The Board does not consider Mr. R F Jara or Mr. G A Luksic to be independent. Mr. R F Jara provides advisory services to the Group, as explained in the Remuneration Report on page 66. Mr. G A Luksic is the brother of Mr. J-P Luksic, the Chairman of Antofagasta plc. Mr. G A Luksic is chairman of Quiñenco S.A. and Madeco S.A., and a director of Quiñenco's other listed subsidiaries. Mr. J-P Luksic and Mr. G S Menéndez are also Non-Executive Directors of Quiñenco and some of its listed subsidiaries. Like Antofagasta, Quiñenco is also controlled by the Luksic family.

A committee of Independent Directors was formed during the year, in order to review and approve the transaction whereby the Group acquired a 100% interest in certain mining properties previously owned 51% by the Group and 49% by Mineralinvest Establishment, an entity ultimately controlled by the Luksic family. Further information relating to this transaction is given in Notes 32 and 38 to the financial statements. The members of this committee were Mr. C H Bailey, Mr. J W Ambrus and Mr. W M Hayes,

and the committee met three times during the year. Antofagasta was advised in this transaction by Rothschild and Clifford Chance LLP.

### Appointments to the Board

The Nomination Committee currently comprises Mr. G S Menéndez (Chairman), Mr. C H Bailey and Mr. R F Jara.

As explained above, Mr. C H Bailey and Mr. G S Menéndez are considered by the Board to be independent Non-Executive Directors.

The Nomination Committee periodically reviews the composition of the Board including the balance between Executive and Non-Executive Directors and considers succession planning for both Executive and Non-Executive Directors and the Group's senior management. It is also responsible for the process for new Board appointments and makes recommendations to the Board on the appointment of new Directors and is responsible for ensuring that appointments are made on merit and against objective criteria. In fulfilling these responsibilities, the Nomination Committee consults the Chairman, Mr. J-P Luksic. The Nomination Committee meets as necessary and, in any case, at least once a year. Its terms of reference are available from the Company's registered office and may be viewed on the Company's website – [www.antofagasta.co.uk](http://www.antofagasta.co.uk).

In making appointments to the Board, the Nomination Committee considers the skills, experience and knowledge of the existing Directors and assesses which of the potential candidates would most benefit the Board. It considers the potential candidate's knowledge and experience of Chile, the mining industry in Latin America, capital markets and the regulatory environment, and that they have sufficient time to devote to the role. The Chairman ensures that any new Directors are provided with a full induction on joining the Board.

All Non-Executive Directors have letters of appointment with the Company, for an initial period of three years from the date of their appointment, subject to reappointment at the Annual General Meeting. These letters require the Non-Executive Directors

to undertake that they will have sufficient time to discharge their responsibilities. The letters of appointment are available for inspection at the Company's registered office during normal business hours and at the Annual General Meeting (for 15 minutes prior to and during the meeting).

### Information and professional development

The Directors receive information for review ahead of each Board or Committee Meeting. In addition, they receive regular reports and forecasts for the Group and each significant operation to ensure that they remain properly briefed about the performance and financial position of the Group throughout the year. All Directors have access to management and to such further information as is needed to carry out their duties and responsibilities fully and effectively. Furthermore, all Directors are entitled to seek independent professional advice concerning the affairs of the Group at the Company's expense.

The Company also provides Directors with the necessary resources to develop and update their knowledge and capabilities. In particular, the Directors are regularly updated on the Group's business, the competitive and regulatory environment in which it operates and other changes affecting the Group as a whole. The Directors

based outside Chile visit the country regularly and at least once a year, and the Directors based outside the United Kingdom also regularly visit this country, again normally at least once a year.

Group management in the United Kingdom and Chile is responsible for ensuring that Board procedures and applicable rules and regulations are complied with and for advising the Board, through the Chairman, on all governance matters. Company secretarial advice is provided by Petershill Secretaries Limited.

### Performance evaluation

The Board periodically considers its performance and effectiveness. A performance evaluation of the Board, its committees and its individual members was conducted during 2008 by Mr. G S Menéndez, with the assistance of senior management. Mr. C H Bailey, as the senior independent Non-Executive Director was responsible for the evaluation of the Chairman. The results were discussed with the Chairman and considered by the Board and were taken into account in the decision to recommend re-election of the retiring Directors at the forthcoming Annual General Meeting during 2009. The Board is satisfied that each Director continues to contribute effectively and to demonstrate commitment to his role.

### Directors' attendance at meetings in 2008

The number of Board and Committee meetings held during 2008, together with details of each Director's attendance, is set out below:

	Board		Audit Committee		Nomination Committee		Remuneration Committee		Independent Committee	
	Number attended	Maximum possible	Number attended	Maximum possible	Number attended	Maximum possible	Number attended	Maximum possible	Number attended	Maximum possible
J-P Luksic	7	8	–	–	–	–	–	–	–	–
C H Bailey	7	8	3	3	1	1	2	2	3	3
G S Menéndez	8	8	3	3	1	1	2	2	–	–
R F Jara	7	8	–	–	–	1	–	–	–	–
D E Yarur <sup>(1)</sup>	4	8	1	3	–	–	1	2	–	–
G A Luksic	4	8	–	–	–	–	–	–	–	–
J W Ambrus	8	8	–	–	–	–	–	–	3	3
J G Claro	6	8	–	–	–	–	–	–	–	–
W M Hayes	8	8	–	–	–	–	–	–	3	3

<sup>(1)</sup> All Directors in office at the time of the Annual General Meeting in June 2008 attended that meeting with the exception of Mr. D E Yarur, who was unable to attend due to flight disruptions.

Each Director withdrew from any meeting when his own position was being considered.

The Independent Committee is described above on page 60.

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### Re-election

Each Director is elected by shareholders at the Annual General Meeting following his first appointment. The Company's Articles of Association provide that not less than one-third of the Directors must retire by rotation each year and that each Director is re-elected at least once every three years. Non-Executive Directors who have served for more than nine years are subject to annual re-election in accordance with provision A.7.2 of the Combined Code.

The Directors retiring and standing for re-election at this year's Annual General Meeting are Mr. C H Bailey, Mr. R F Jara and Mr G S Menéndez. Biographical details of these Directors are set out in the Directors' Report on page 53.

The Chairman confirms that the Board is satisfied that each of the Directors proposed for re-election continues to be effective and continues to demonstrate commitment to his role.

### Remuneration

The membership of the Remuneration Committee, a statement of the Company's policy on remuneration, and the remuneration details and shareholding interests of each Director are contained in the Remuneration Report on pages 65 to 68.

### Accountability and Audit

#### Internal control

The Board has applied principle C.2 of the Combined Code by establishing a continuous process for identifying, evaluating and managing the significant risks the Group faces. The Board regularly reviews the process, which has been in place from the start of the 2008 financial year to the date of approval of this report and which is in accordance with revised guidance on internal control published in October 2005 ("the Turnbull Guidance"). The Board is responsible for the Group's system of internal control and for reviewing its effectiveness. Such a system is designed to manage rather than eliminate the risk of failure to achieve business objectives, and can only provide reasonable and not absolute assurance against material misstatement or loss.

In compliance with Provision C.2.1 of the Combined Code, the Board regularly reviews the effectiveness of the Group's system of internal control. The Board's monitoring covers all controls, including financial, operational and compliance controls and risk management. It is based principally on reviewing reports from management to consider whether significant risks are identified, evaluated, managed and controlled and whether any significant weaknesses are promptly remedied and indicate a need for more extensive monitoring. The Board has also performed a specific assessment for the purpose of this Annual Report. This assessment considers all significant aspects of internal control arising during the period covered by the report including the work of internal audit. The Audit Committee assists the Board in discharging its review responsibilities.

During the course of its review of the system of internal control, the Board has not identified nor been advised of any failings or weaknesses which it has determined to be significant. Therefore a confirmation in respect of necessary actions is not required.

Further information relating to the Group's risk and management systems is given in the Corporate Sustainability report on pages 44 to 51.

#### Going concern

The Board's statement on going concern is included in the Financial Review on page 43.

#### Corporate sustainability

The Board takes into account the community, social, environmental and ethical impact of its decisions and is responsible for the relevant policies of the Group. A Corporate Sustainability committee was formed during 2008, comprising Mr. J-P Luksic, Mr. G S Menéndez and Mr. R F Jara. It is intended that the committee will start to meet during 2009. The committee's purpose is to assist the Board in its responsibilities with respect to the Group's social responsibility. Key issues of social responsibility are identified and assessed through the Group's risk management processes described under "Internal Control" above. During 2008 the Group also published a separate Sustainability Report in respect of 2007

to provide further information on its social and environmental performance. More information on corporate sustainability is given on pages 44 to 51.

### “Whistleblowing” procedures

The Audit Committee, whose other functions are described below, is responsible for reviewing arrangements by which employees of the Group may, in confidence, raise concerns about possible improprieties in matters of financial reporting or other matters. An Ethics Code is in place across the Group, which includes a procedure to enable employees to raise concerns, anonymously if necessary. An Ethics Committee, comprising members of senior management, is responsible for implementing, developing and updating the Ethics Code and investigating any allegations of impropriety. The Ethics Committee reports directly to the Chief Executive of Antofagasta Minerals S.A. The Audit Committee considers the results of this work and the operation of the Ethics Code as part of its annual review of the effectiveness of internal control.

### Audit Committee and Auditors

The Audit Committee currently comprises Mr. C H Bailey (Chairman), Mr. G S Menéndez and Mr. D E Yarur, all of whom are considered by the Board to be independent Non-Executive Directors. All three members are considered to have recent and relevant financial experience.

The Audit Committee meets at least twice a year with the external auditors in attendance. The Audit Committee’s purpose is to assist the Board in meeting its responsibilities relating to financial reporting and control matters. In particular, it reviews the scope and nature of the audit and issues arising from it and is responsible for ensuring the independence of the external auditors (including their objectivity and effectiveness), monitoring the provision of any non-audit services and for making recommendations to the Board for the appointment, reappointment or removal of the external auditors. It reviews the internal control and risk assessment procedures adopted by the Group described in the section under the heading “Internal Controls” above, including a review of the effectiveness of the internal audit function. It also

monitors the integrity of the financial statements and Directors’ statements on internal controls and reviews the going concern basis prior to its endorsement by the Board. The Committee also reviews the preliminary announcement, the interim report and any other public reports relating to the Group’s financial performance. The terms of reference of the Audit Committee are available from the Company’s registered office and may be viewed on the Company’s website – [www.antofagasta.co.uk](http://www.antofagasta.co.uk).

The Audit Committee is authorised by the Board to investigate any activity within its terms of reference. It is authorised to seek any information it requires from any employees and all employees are directed to co-operate with any request made by the Audit Committee.

The Company’s external auditors, Deloitte LLP, have provided non-audit services to the Company, which amounted to US\$225,000. This comprised the provision of services relating to the preparation for the adoption of IFRS by the Group’s Chilean subsidiaries, tax compliance and other consultancy services.

The Audit Committee has reviewed the level of these services in the course of the year and is confident that the objectivity and independence of the auditors are not impaired by reason of such non-audit work. The Audit Committee has also considered the effectiveness of the external audit function through the year through meetings with Deloitte LLP, a review of their audit plan and a consideration of the results of work performed by the external auditors prior to release of the interim and full year results.

### Relations with Shareholders

Directors and senior management regularly meet with institutional shareholders and analysts in the United Kingdom, Europe, Chile and the United States. The senior independent Non-Executive Director, Mr. C H Bailey, also attends meetings with major shareholders when required. Other Non-Executive Directors are given the opportunity to meet with major shareholders and attend meetings if requested to do so by shareholders. These meetings ensure that the Board is able to develop and maintain an

## Corporate Governance *continued*

understanding of the views of several of the Company's major investors.

The Company carries out a formal programme of presentations to update institutional shareholders and analysts on developments in the Group after the announcement of the half year and full year results. In addition, quarterly production figures and financial results are published for the mining, transport and water divisions. Copies of these results and production announcements, presentations and other press releases issued by the Company are available on its website. As noted above, during the year the Group also published a separate Sustainability Report in respect of 2007 to provide further information on its social and environmental performance.

The Company's Annual General Meeting ("AGM") is also used as an opportunity to communicate with both institutional and private shareholders; the Board of Directors encourages all shareholders to attend. The notice of the AGM is sent to shareholders at least 20 working days in advance of the meeting. At the meeting, the Company complies with the Combined Code as it relates to voting, including votes withheld, the separation of the resolutions and the attendance of committee chairmen.

### Statement of Compliance with the Detailed Provisions of the Combined Code

As explained above, the Company complied with the detailed code provisions contained in the Combined Code throughout 2008 and to the date of this report except as follows:

- the Board does not have a separately identified Chief Executive and hence at Board level there is no formal separation of the functions of Chairman and Chief Executive (provision A.2.1). As explained above, the Group has separate chief executives for its mining, transport and water distribution divisions who report to their respective divisional boards and to the Chairman of the Group. The Board considers that its predominantly non-executive composition combined with the delegation of management

responsibility to the chief executive officer of each division achieves an appropriate balance and prevents a concentration of power in its Executive Chairman; and

- performance related pay measures did not apply to Board members (provision B.1.1). The Board considers this appropriate given its predominantly Non-Executive composition and the role of the only Executive Director, who is a member of the controlling family, as Chairman of the Board. Performance related bonuses are paid to senior management in the Group based on a combination of personal, divisional and Group performance assessed against targets set at the start of each year.





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