DOING BUSINESS IN Chile

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**Business Structures:**

What types of business structures are permitted?

The main types are:

- **Corporation (S.A):** company with shares, similar to American corporation, 2+ partners, most complex in terms of organization and costs. Governed by board of directors. Publicly traded or closely held.

- **Limited Liability Company:** From 2 to 50 partners, fewer reporting requirements and simplified corporate structure. Rigid (unanimous consent typically required for all corporate actions), Simple, Family, rights transfer.

- **Branch Office (Agencia):** Foreign corporations may establish a branch office in Chile by appointing by public deed a person domiciled or with permanent residence in Chile as its agent and vesting him/her with broad powers to represent the corporation.

- **Simplified Stock Corporation (SpA):** is the newest legal vehicle to establish a company in Chile. Similar to corporations, can have 1 shareholder, more tailor-made, flexible, shareholders are free to regulate every aspect.

**Taxation:** Briefly explain the country’s tax regime including rates and how rates differ based on business structures.

**Corporate taxation**

**Tax Basis** – Companies resident in Chile and permanent establishments (PEs) pay Chilean tax on a worldwide basis. Non-residents pay tax on their Chilean-source income. Remuneration paid to non-residents for services rendered abroad also are subject to Chilean income tax.

**Taxable income** – Taxable income is defined as gross income from worldwide sources and is calculated by deducting the direct costs of goods and services and necessary expenses incurred in earning income.

**Taxation of dividends** – Distributions of profits between Chilean entities are not subject to income tax. Profits corresponding to Chilean individual residents are subject to a global complementary tax at progressive rates of 0%-35%, on an accrued basis (Attribution Regime or "AR") or on a perceived basis (Partially Integrated Regime or "PIR") against which the corporate tax may be used as a credit totally (AR) or partially (PIR). With the New Law, the top global complementary tax rate was reduced to 35% as of January 1st of 2017. Likewise, profits distributed to non-resident entities or individuals are subject to a 35% tax upon distribution, against which the corporate tax may be used as a credit in whole or in part (65%) depending on the Chilean corporate tax regime (AR or PIR, respectively) applicable to the payer of the dividend.

**Capital gains** – Capital gains are generally taxed as ordinary income. Capital gains on the disposal of certain assets may be exempt from tax or subject to reduced rates if certain requirements are met. Starting January 1st of 2017, Capital Gains are levied with final taxes (either global complementary or additional tax) at a rate corresponding to the regime that the entity has at the time of sale. This means that, if the income is accrued before the beginning of year 2017, there is a sole tax at a rate of either 21%, 22,5% or 24% to be paid (depending on whether this gain is triggered in 2014, 2015 or 2016, respectively). As of January 1st 2017 the tax rate is 35% in case of foreign investors. The capital gain arisen in the transfer of foreign shares, instruments, interest, etc. of a foreign entity whose underlying assets are (i) shares or interest in a Chilean entity, (ii) a permanent establishment or a branch domiciled in Chile, (iii) tangible assets or real estate placed in Chile, that represent 20% or more of the total assets of said foreign entity, is subject to a 35% tax, which is calculated on the percentage of the capital gain that the Chilean underlying assets represent in relation to the total assets.

**Losses** – Tax losses may be carried forward indefinitely. Tax losses are non-transferable and may be used only by the taxpayer that incurred the losses.

**Rate of taxation** – Corporate income tax is imposed at a rate of 25% (Attribution Regime- AR) and at a rate of 27% (Partially Integrated Regime- PIR) that is known as “first category income tax”, also known as “Corporate Tax”.
**Dividend Tax applicable to foreign investors** – Profits repatriated to a parent company abroad are subject to a 35% Additional Tax against which the Corporate Tax may be used as a credit in whole or in part, depending on the tax regime (AR or PIR) chosen by the underlying Chilean entity or on whether or not a Double Tax Treaty has been signed, resulting in a total combined tax burden of 35% or 44.45%.

**Foreign tax credit** – Income taxes paid on dividends received from abroad by a Chilean entity may be credited against Chilean income taxes capped at 30%.

**Reporting obligations of foreign shareholders** – Foreign shareholders, investing directly in a Chilean entity, must obtain a Chilean Tax Identification Number (RUT) for purposes of being identified by the Chilean Tax Authority (SII) and grant a power of attorney to an agent that is a resident of Chile, duly empowered to be served on behalf of the foreign investor in case the SII audits any potential tax liability. Please note that the foreign interest holder or shareholder that indirectly invests in Chile through a foreign entity that holds shares or an interest in a Chilean entity is not liable for any tax, penalty or any other liabilities that the Chilean entity or the direct shareholder owes to the Chilean Treasury. Additionally, foreign shareholders of a Chilean entity are not generally obliged to report to the SII or other Chilean authorities the identity of their shareholders, controllers or beneficial owners.

**Interest** – Interest paid abroad is subject to a 35% withholding tax on the gross amount. A 4% reduced tax rate applies, inter alia, to interest on loans granted by foreign banks and financial institutions without limitations, provided the lender and borrower are unrelated; in case parties are related, thin capitalization rules apply at a debt to equity ratio equal to 3:1, considering in the numerator of this ratio the indebtedness with related parties and also with third parties. In case the lender is tax resident of a country that is a party to a Double Tax Treaty (DTT) that is in force in Chile, interest is usually levied at a 15% rate (each DTT must be revised to check effective rate and additional reductions).

**Royalties** – Royalty payments for the use or exploitation of trademarks, patents, formulas and other similar services are subject to a 30% withholding tax. Payments for the use or exploitation of patents, utility models, industrial designs and drawings, blueprints or topography of integrated circuits, and of new plant varieties, are subject to a 15% withholding tax. The 15% rate also applies to payments for the use and exploitation of software. The rate increases to 30% if the parties are related and/or if the beneficiary is resident in a tax haven jurisdiction, as provided on a list issued by the Chilean Ministry of Finance. Please note that royalties and technical assistance are expenses that can be deducted from the Corporate Tax basis, even in the case that they are provided by a related party domiciled abroad, always under the assumption they have been provided on an arm’s length basis.

**Other** – An income tax on non-deductible expenses is applicable at a rate of 35% in the case of corporations and branches of foreign companies. An extra 10% could be applied in case these rejected expenses are considered as a disguised distribution of dividends or profits. Starting on January 1st, 2017, said 35% rate increases up to 40%.

**Anti-avoidance rules:** Transfer pricing – The tax authorities may challenge and reassess transfer prices between related parties where the terms and conditions of transactions are not conducted at arm’s length. Related parties include the participation of one of them in the management, control, capital, profits or income; or when the same person or persons participate directly or indirectly in the management, control, capital, profits or income of both parties. At the same time, agencies, branches or any form of permanent establishment are deemed related with their main offices. Lastly, our regulation considers that parties are related when the transactions are conducted with counterparties residing, domiciled, established or incorporated in tax havens.
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<th><strong>Thin capitalization</strong></th>
<th>Thin capitalization rules apply to related party loans that are entitled to the reduced 4% tax rate on interest paid abroad (see item on Interest above).</th>
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<tr>
<td><strong>Tax year</strong></td>
<td>Calendar year</td>
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<td><strong>Rulings</strong></td>
<td>Guidance may be obtained from the SII on the tax consequences of a planned transaction.</td>
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| **International Taxation** | (i) Double Taxation Treaties - Chile, as a member of the OECD, uses its Model Tax Convention to regulate taxes on income and on capital, and avoid double taxation and prevent fiscal evasion (Double Taxation Treaties). In particular, Chile has historically chosen the Credit Method of avoidance.  
(ii) As a general rule, Chile uses the Source Principle for taxation of income.  
(iii) The criterion generally adopted for material application of our Double Taxation Treaties is the residency or permanent establishment of the taxpayer in one or both contracting States.  
(iv) Chilean Double Taxation Treaties regulate tax on dividends through the denominated “Chile Clause” that establishes that, as long as our internal tax regime is integrated (corporate tax can be used as a credit against final taxes) the typical restriction to dividends found in these treaties shall not apply. Our country is able to levy on distributed income with a 35% rate and not the reduced rate (which is typically 0% to 15%). In other words, dividends paid abroad from Chile are always subject to an Additional Tax at a 35% rate. |

### Immigration: Summarize immigration laws, including visas available for foreign employees.

Chile has a “soft” immigration regulation. The types of visas available are:
- Residence visa subject to employment contract: The granting of a residence visa subject to employment contract for foreigners, who have been hired by a company with residence in Chile, has a maximum duration of two years renewable.
- Temporary residence visa for work reasons, which allows working for a maximum period of one year renewable, with one or more employers.
- Special permission to work with temporary visa/subject to employment contract in process, which is requested at the time of sending the application for temporary residence/visa subject to employment contract. Applicants are allowed to work once the request is processed and paid the permit.
- Visa for artists who come to work for less than 90 days.
- Authorization to work as a tourist: Tourists are prohibited from developing remunerated activities, even when these are canceled abroad. The Ministry of the Interior and Public Security, in highly qualified cases, may authorize tourists who have their current permit to work in the country for a period not exceeding 30 days, extendable for equal periods until the expiration of the tourism permit.

### Foreign Investment Review and Issues: Does the government review and approve foreign investments? What factors are considered?

It is pretty easy to bring money to Chile, whether bringing it on your lap or sending it through a wire transfer. In either case, there are no exchange restrictions, only an obligation to inform the Central Bank if you bring an amount greater than US$ 10,000. In this sense, there are no exchange restrictions per se. Foreign investments do not require government approval. However, there are foreign ownership restrictions applicable to the following specific sectors:
- Media: industry.
- Airlines: companies owning aircraft registered in Chile.
- Merchant navy: companies owning ships registered under the Chilean flag.
- Fishing Concessions.
- Energy: Nuclear Energy.

There is also a restriction on nationals from Peru, Bolivia and Argentina to have a substantial interest in companies that own real estate located in areas that are close to the border with these countries.
All types of foreign companies are subject to the restrictions.

Approval

Approval can only be obtained in connection with the following:

- Companies owning aircraft: approval can be obtained from the Dirección General de Aeronáutica Civil (Directorate General of Civil Aviation) if the respective companies are operating permanently in Chile. Foreign airlines can operate in Chile, prior permission granted by the Directorate General of Civil Aviation. Such authority will grant such permission on a reciprocity basis.
- Companies owning ships: approval can only be obtained in relation to the fishing industry (fishing ships) on the basis of reciprocity between two countries involved.
- Media: Concessions for free access radio broadcast entities could be granted on the basis of reciprocity between two countries involved. The same requirements should be fulfilled in case of acquisition of a previously existing concession.

Television broadcast concessions can be transferred only with prior approval by the Consejo Nacional de Televisión (National Television Counsel).

- Fishing concessions and their transfer, leasing and any other act that may involve its assignment can only be obtained by Chilean persons or foreign ones with permanent residency. In the case of companies with foreign participation in the capital, such participation has to be approved by the Foreign Investment Committee (Comité de Inversiones Extranjeras). The transfer, leasing and any other act that may involve its assignment must be registered in the Registry of Concessions or Authorizations for Aquaculture (Registro de Concesiones o Autorizaciones de Acuicultura) kept by the Navy Undersecretary (Subsecretaría de Marina) or Fishing Undersecretary (Subsecretaría de Pesca), respectively. If the requirements for such registration are complied with, the registration is made (there is a 2 month term after which if no comments have been issued from the pertinent undersecretary, the registration must be made).

- Nuclear Energy: it can only be produced by the Nuclear Energy Chilean Commission (Comisión Chilena de Energía Nuclear). Companies can only produce nuclear energy with prior permission from such authority.

No approval can be obtained in other industries to which foreign ownership restrictions apply, except in connection with restrictions on borderland real estate acquisitions from Peruvian, Bolivian or Argentinean nationals.

Thresholds

- Companies owning aircraft: the relevant foreign ownership threshold for prior approval is “the majority of the capital” of the respective company.
- Companies owning ships: the same threshold applies.
- Legal entities applying for or owning a concession for free access radio broadcast: the relevant foreign ownership threshold for prior approval is 10% of the capital of the respective entity.

Calculation

When the law in the case of companies owning aircraft and companies owning ships refers to “the majority of the capital” of the company, it is understood that this refers to a percentage holding of more than 50% which is calculated in the same way as for the purpose of shareholders disclosure. In the case of the companies owning aircraft it is not clear whether shareholdings should be aggregated among subsidiaries of each company if the subsidiary is not a foreign subsidiary. In the case of companies owning ships, if the subsidiary is not foreign, the shareholding should still be aggregated. Shareholdings are aggregated among all foreign countries. Approval has to be obtained before the acquisition takes place.

Authorities

The relevant authorities from whom approval must be obtained are the following:

- In the case of companies owning aircraft: Dirección General de Aeronáutica Civil (Directorate General of Civil Aviation).
- Companies owning fishing ships: Director General del Territorio Marítimo y de Marina Mercante (Directorate General of Maritime Territory and Merchant Navy).
- Legal entities applying for or owning a concession for free access radio broadcast: Subsecretaría de Telecomunicaciones (“SUBTEL”), the Telecommunications Undersecretary.

The above restriction applies to both the acquisition of shares and the increase in a holding through the external dilution of the company’s share capital.

**Dealing with the Government:**
Identify major issues when dealing with local and federal governments.

The major issues when dealing with local and national governments are (although improving): Time: may occur that the authority delays the resolution of some petition, as a consequence of lack of internal processes, or clarity in the assignment of responsibilities.

Lack of coordination between public agencies: it is frequent to be forced to do several times the same action before different authorities, or to get the same information more than once, regardless of whether the information may be available in public registers.

**Dispute Resolution and Court Systems:** Summarize the court system, including the use of juries and arbitration.

In Chile, there is hierarchical organization of the judiciary system and the Courts. As well, there are courts that belong to the Judicial Power and others that do not. Nonetheless, the Supreme Court has the correctional and economic superintendence of all the Courts and Tribunals of the Nation, with the exception of the Constitutional Court; The Election Qualification Court and the Regional Elections Courts.

Those that belong to the Judicial Power are: The Supreme Court, The Courts of Appeals and the general Circuit Courts that judge on civil, commercial, and penal matters.

In addition, there are Circuit Courts that are specialized in certain subjects and that also belong to the Judicial Power, such as Courts that judge Family, Labor and Pension matters and Military Courts in times of peace.

Likewise, there are other Courts that are not part of the Judicial Power, such as, Minor Circuit Courts, which is however subject to the oversight of the pertinent Court of Appeals; and the following courts which are all subject to the control and supervision of the Supreme Court: the Anti-Trust Court, Court of Public Procurement Taxation and Customs Courts and Environmental Courts.

Arbitration. It must be said that as a general principle, any matter can be submitted to arbitration, unless it is specifically forbidden such as alimony, crimes; Minor Circuit Court matters; and any other forbidden by law, mainly those regarding specialized jurisdictions.

On the other hand, there are mandatory matters of arbitration, such as partitions of inheritances and assets which are co-owned.

In Chile arbitration is an ADR method, commonly used by parties to contracts, in which they submit the controversy to an ad hoc arbitrator or to an institutional arbitrator, mainly those appointed by the Center for Mediation and Arbitration of the Santiago Chamber of Commerce (CAM), the most respected arbitration center in the country and renowned in Latin America.

Finally, please be advised that in Chile the institution of the jury does not exist.
Chile has adopted a statute on criminal liability of legal entities for certain crimes (including bribery of public employees/officials, both Chile and foreign, money laundering, laundering of proceeds from certain criminal offenses, and the financing of terrorism) committed by their employee. The statute provides a defense for the legal entity if the entity puts in place a crime prevention plan, which includes identifying the relevant risks and the adoption of adequate policies and procedures, in addition to the appointment of a compliance officer that is sufficiently empowered and receives sufficient financial resources to implement and monitor the plan. The following is a summarized list of the anti-corruption and anti-bribery provisions in Chile’s criminal code:

**Influence Peddling:**
- Public employees (the lines below are a summary of the relevant sections of the statute book):
  - The Chilean Criminal Code punishes in its article number 240 all public employees who directly or indirectly are interested in any kind of contract or operation in which they must intervene due to their position.
  - The same article 240 expands the scope of the prohibition, stating that the public employee (i.e. person employed by the government) who in the operation in which he must intervene due to his position, gives benefits to third parties associated with him or with some specific persons, or to companies, associations or businesses in which said third parties or those persons have an interest, more than ten percent if the company is publicly traded, or exercise its administration in any way.
  - Then, the article 240 bis covers another hypothesis and says that the same penalties will also be applied to the public employee who, directly or indirectly interested in any type of contract or operation in which another public employee must intervene, exerts influence on the latter to obtain a favorable decision to his interests.
  - Now, the aforementioned article 240 bis also declares that the same penalties shall be imposed on the public employee who, in order to give interest to any of the persons expressed (…), in any kind of contract or operation in which another public employee must intervene, shall exercise influence in order to obtain an decision favorable to those interests.
- Nonpublic employees:
  - The Chilean legislator has chosen so far not to autonomously typify influence peddling as a felony. In that sense, the legislation does not contemplate the hypothesis of influence peddling committed by individuals different from public employees.

**Corruption:**
Article 248 of the Criminal Code: The public employee who requests or accepts to receive greater rights than those indicated for his position, or an economic benefit for himself or a third party to execute or for having executed an act proper to his position, will be sanctioned with the penalty of imprisonment for 61 days to 540 days, suspension and a fine of half of the rights or benefits requested or accepted.
- Article 248 bis of the Criminal Code: The public employee who requests or accepts to receive an economic benefit for himself or a third party to omit or for having omitted to perform his duty, or to execute or for having executed an act in violation of the duties of his office, shall be sanctioned with the penalty of imprisonment for 541 days to 3 years, and in addition, with the penalty of absolute disqualification for temporary positions or public offices and fine of the double of the benefit requested or accepted.

If the breach of the duty of the position consists in exercising influence on another public employee in order to obtain from him a decision that may generate a profit for an interested third party, the penalty of absolute perpetual disqualification shall be imposed for public charge or office in addition of the penalties of imprisonment and fine mentioned in the preceding paragraph.
**Types of transaction: How may businesses combine?**

In general there is ample freedom of contract to determine business combinations, subject to, in the case of listed companies, compliance with relevant tender offer rules and the relevant procedure to be followed for a shareholder vote on a merger or asset sale.

Tax considerations can be an important driver of which structure is ultimately adopted in a private transaction. This is something that fact specific since it depends to a significant extent on the tax position of the parties involved as well as on contingencies detected as part of the due diligence process.

**Competition Law: How do laws impact competition?**

Chile has specific legislation that protects competition and strong competition institutions, including the antitrust prosecutor (FNE) and the antitrust court (TDLC). Chile recently amended its antitrust statute to introduce mandatory premerger clearance (subject to thresholds based on turnover) and reintroduced criminal penalties for cartel activity, thus bolstering the already existing leniency program.

The thresholds as of which it is mandatory to notify a concentration to the FNE are a two pronged test based on turnover, not on market share: aggregate turnover of UF 1,800,000 (approx. US$ 70 million) of the merging market players, on the one hand and individual turnover of UF 290,000 (approx. US$ 11.3 million) of at least two of the merging players, on the other.

If one of the two elements of the test is not met, then it will not be mandatory to notify the proposed concentration.

The relevant turnover is only that of sales in Chile of the relevant entities. Sales made outside of Chile are not considered for the calculation of the turnover for the purposes of these thresholds.

A significant fine will be imposed on those who fail to notify prior to completion of the merger: approx. US$16,000 per day of delay.

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**-Article 249:** The public employee who requests or accepts to receive an economic benefit for himself or for a third party to commit any of the crimes or simple crimes expressed in this Title (corruption, public peddling), or in paragraph 4 of Title III (human rights abuses), will be sanctioned with the penalty of absolute, temporary or perpetual disqualification, for positions or public offices, and fine of triple the benefit requested or accepted.

**-Article 250:** Whoever offers or consents to give a public employee an economic benefit, for the benefit of the latter or a third party, to perform the actions or incur the omissions indicated in articles 248, 248 bis and 249, or for having performed or incurred in such actions or omissions, will be punished with the same penalties of fine and disqualification established in said provisions.

- In the case of the benefit offered in relation to the actions or omissions of article 248, the briber will be sanctioned, in addition, with the penalty of imprisonment for 61 days to 540 days.

- In the case of the benefit consented or offered in relation to the actions or omissions indicated in article 248 bis, the briber will be punished, in addition, with a penalty of imprisonment for 541 days to 3 years, in the case of the benefit offered, or with imprisonment for 61 days to 3 years, in the case of consented benefit.

- In the case of the benefit consented or offered in relation to the offenses mentioned in article 249, the briber will be sanctioned with a penalty of imprisonment for 541 days to 3 years, in the case of the benefit offered, or of imprisonment for 61 days to 3 years, in the case of consented benefit.
The pre-merger clearance system consists of two phases, both before the FNE, which must approve the transaction if the latter is not capable of substantially reducing competition, where Phase I will last 30 days and Phase II up to 90 days, with limited room for extensions. The possibility of judicial review of FNE resolutions relating to merger control are limited. The conditions for approval of mergers may only be those formally proposed by the applicant for merger clearance. The statute contains significant restrictions to third party intervention in the application process.

The regulations (Regulations) detailing the information requirements for the notification of concentrations to the FNE require the submission of a large quantity of information and supporting documentation related to the projected operation, its structure, rationale, definition and description of the relevant markets affected, entry barriers and possible efficiencies, among others.

These Regulations also consider a simplified notification mechanism for concentrations that are unlikely to raise competition concerns. The Regulations include the possibility that the FNE may dispense the notifying parties from the obligation to provide any particular information required for the notification where it considers that such information is not necessary for the examination of the projected operation.

The employment relations are regulated in the Labor Code contained in Decree with Force of Law Nº1 of July 31, 2002; and Law Decree Nº3,500 and its modifications, regarding the private pension system; Law Nº 19,728 regarding unemployment insurance. Recent modifications of the labor code were enacted by the following laws:

- **Law Nº 23,063** (Published 30.12.17). Creates an insurance for the accompaniment of children suffering from certain diseases, and modifies article 199 bis of the Labor Code for this purpose;

- **Law Nº 23,042** (Published 8.11.17). Grants the same work permit/benefit to the employee that enters into a civil unión as the one granted to those get married. Its only article replaces article 207 bis of the Labor Code;

- **Law Nº 23,018** (Published 20.06.17). It confers jurisdiction to the labor courts to hear the disputes in which the assignees of the worker seek to make effective the responsibility of the employer, derived from work accidents or occupational diseases;

- **Law Nº 23,015** (Published 15.06.17). Encourages the inclusion of people with disabilities.

- **Law Nº 23,012** (Published 9.06.17). It guarantees the safety of workers in situations of risk and emergency;

- **Law Nº 23,009** (Published 28.04.16). Facilitates payment of tips in establishments of attention to the public.

The main laws and regulations governing business combinations are:

- Chile Civil Code
- Chile Commercial Code
- Law 18.046 on Corporations
- Law 18.045 on Securities Markets, containing tender offer rule rules and
- DFL 211; Antitrust Statute.
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<th><strong>Governing Law:</strong> What law typically governs the transaction agreements?</th>
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| The laws typically governing the transaction agreements are:  
-The Civil Code  
-Commercial Code  
-Law Nr. 18.046 on Corporations  
-Law Nr. 18.045 on Securities Markets |

| **Filings & Fees:**  
Which government or stock exchange filings are necessary in connection with a business combination? Are there stamp taxes or other government fees payable in connection with a business combination? |
|---|
| Except for some Chilean IRS filings regarding the corresponding update of tax information, no other government or stock exchange filings are required except for business combinations of listed entities.  
Neither stamp tax nor any other governmental fees are payable in connection with a business combination. |

| **Information to be Disclosed:**  
What information must be made public in a business combination? Does this depend on the structure used? |
|---|
| When one or more persons directly or through an affiliate or related company intend to obtain control of another company that is regulated by the Comisión para el Mercado Financiero (hereinafter the “CMF”), such persons must inform the CMF (in the case of banks it is the SBIF) and the stock exchanges (in writing) and the public in general.  
This type of disclosure obligation is dependent upon whether or not control is intended.  
Control is defined more by majority voting, or obtaining a majority of directors of the board or whether someone has a decisive influence in the management of the company. There is a presumption that someone has a decisive influence in the management of the company when that person (whether directly or indirectly) controls at least 25% of the voting share capital of the company, provided there does not exist a person or group controlling directly or indirectly the same or a higher percentage or, provided there does not exist a person or group controlling directly or indirectly more than 40% of the voting share capital of the company and, simultaneously, the percentage that is controlled is lower than the sum of the holdings of shareholders owning more than 5% of said voting capital.  
Disclosure has to be made (i.e. the publication made to the general public) as soon as the negotiations leading to taking control are formalized or confidential information or documentation has been delivered to whoever is trying to gain control of the issuer. In no case can such disclosure occur less than 10 business days prior to the date in which the acts and agreements to be subscribed for the purpose of obtaining control are to be executed.  
In case of competitive takeovers to be executed on a stock exchange regarding a same corporation, all such competitive POAs must terminate on the same business day. If the competitive POAs are not to be executed on an exchange, they can be terminated at different times, except if the first POA announces an extension, in which case any extension of the subsequent POAs must terminate on the same date of termination of the first POA.  
All communications, whether for the general public or the CMF and the stock exchanges, must comply with the requirements and formalities set forth in General Rule No. 104 of the CMF. |
Disclosure obligations apply only in respect of certain issuers registered in the Securities Register kept by the Chilean securities regulator, the CMF. Such issuers are the following:

(i) Issuers of securities traded in at least one of the three stock exchanges in Chile: the Santiago Stock Exchange (Bolsa de Comercio de Santiago), the Electronic Stock Exchange (Bolsa Electrónica de Chile) and the Valparaiso Stock Exchange (Bolsa de Corredores);
(ii) Stockholding companies that have 500 shareholders or more, or that have at least 10% of their substantial share capital owned by at least 100 shareholders;
(iii) Stockholding companies that have voluntarily registered in the Securities Register and make a public offer of their shares.

Disclosure obligations are triggered by the acquisition of any type of shares. A threshold of share ownership of 10% or more will trigger disclosure obligations.

The persons that directly, or through other natural or juridical persons, or by a joint agreement to act on behalf of the issuer, own 10% or more of the subscribed capital of the company, or that as a result of an acquisition of shares obtain said percentage, acquire or dispose of shares (including entering into an option or futures contract) would be subject to the disclosure obligations.

Any acquisition or disposal of agreements or securities whose price, flows or profitability depends on or is conditioned by the variation or evolution of prices of certain shares. This case is applicable regarding the issuer of the pertinent shares. According to the CMF, those agreements or securities would be those whose price, flow or interest depends in more than 50% on the price, flow or interest of the target shares, for instance:

- Derivatives;
- Stocks of companies or entities whose assets are comprised in more than 50% by the shares of the target company;
- Repos or other similar operations regarding the instruments or securities mentioned above.

Any acquisition or disposal by a director, manager, representative or attorney of the issuer.

A change in the number of issued shares, number of voting shares, or share capital would not trigger disclosure obligations on the part of the shareholders. The disclosure obligation is not conditional on knowledge that a person or entity has passed or fallen below a relevant threshold.

The disclosure must be made no later than the next day following the execution of the trade by using a mechanism called “SEIL”, which is an electronic platform of the CMF that permits, among others, such reporting (General Rule No. 269).

Where a person or entity is a market participant (e.g. market maker) and the frequency of his or its dealings is such that he or it crosses thresholds on a regular basis, he or it must make a disclosure on each such occasion, or in the case of insiders any time they trade shares of the company in respect of which they keep such position. There is no facility for such a market participant to state his or its positions on a daily/weekly/monthly/quarterly basis.

Disclosure must provide the specific information that the CMF has determined by means of General Rule No. 269, filling out an electronic form.

The details that the disclosure must include are the following:

(i) Chilean tax identification number (R.U.T.) of the company whose shares are being traded.
(ii) Chilean tax identification number of the entity making the disclosure.
(iii) Relationship between the entity making the report and the issuer.
(iv) Name of the entity that is making the report, and in its case, of the entity that made the actual transaction.
(v) Date of the transaction.
(vi) Type of the transaction.
(vii) Type of the security.
(viii) If the transaction was made on shares or if the transaction was made on other type of securities.
(ix) Code of the shares, or if not available, tax identification number of the issuer and name of the issuer.
(x) Series of the shares being transacted.
(xi) Number of shares traded.
(xii) Price per share.
(xiii) Amount involved on the transaction.
(xiv) Indicate if the transaction was made on a stock exchange.
(xv) Name of the broker-dealer intervening in the transaction.
(xvi) Indicate if the transaction was made with the purpose of obtaining the control of the issuer.
(xvii) Percentage of shares acquired or disposed of with respect to the total capital of the company.
(xviii) Percentage obtained in the company of the entity making the disclosure, once the operation has been completed.
(xix) Additional comments.

The disclosure should be made to the CMF, as well as to the respective stock exchange where the company shares are listed.

Industries where the acquisition of shares requires prior approval from regulatory authorities additional to the disclosure obligations indicated above:

**Banks and insurance companies.** This occurs when a person directly or indirectly acquires 10% or more of the share capital of the respective bank or insurance company, or that as a result of an acquisition of shares obtains directly or indirectly said percentage.

 Authorities that are to grant this approval:
The Chilean commercial bank regulator, the Superintendencia de Bancos e Instituciones Financieras (the “SBIF”) in the case of banks and the CMF in the case of insurance companies.

**Telecommunications, Electricity, Public works, Media, Airlines and Sanitation Services:** They may be regulated from a double perspective:

- As companies registered with the Chilean securities regulator (“CMF”), regarding assignments of their shares, in which case the 10% threshold is applicable; or,
- As companies entitled to a concession for providing one of the services indicated above, in which case the specific regulation referring to the transfer of the concession itself is also applicable:

  - **Telecommunications:** The change in the company entitled to the concession must be previously authorized by the Telecommunication Undersecretary (Subsecretaría de Telecomunicaciones, SUBTEL). Any assignment of shares must be reported to the same authority (Article 21 and 22 of Law No. 18,168).
  - **Electricity:** Prior approval of the Ministry of Energy is required regarding the change in the entity entitled to the concession. Such changes include transformation of the concessionaire, merger of the concessionaire or any other form of transferring the title to the concession. The law in this respect is so broad that it might be deemed to encompass cases of change of control (article 79 47 of the DFL No. 4, General Law of Electrical Services).
  - **Public works:** Prior approval is required if the concession for public works is assigned. Such assignment must be in its entirety except if approved by the Ministry of Public Works (Ministerio de Obras Públicas) (Article 21, Decree No. 900). Furthermore, any transfer of shares must be reported to the Ministry of Public Works in order that it verifies that the transferee complies with the applicable legal requirements.
**Media:** The assignment or other similar act affecting the ownership of the TV concession must be previously approved by the National Television Council (Consejo Nacional de Televisión) (Article 16 of Law No. 18,838). Furthermore, any transfer of shares must be reported to the National Television Council in order that it may verify that the transferee complies with the applicable legal requirements (Article 19 of Law No 18,838).

**Airlines:** They can be transferred without prior approval of the authority to another domestic airline (Article 3, D.L. No. 2,564).

**Sanitation Services:** The assignment of the concession must be approved previously by the Sanitation Services Supervisor (Superintendencia de Servicios Sanitarios) (Article 32 of DFL No. 382). The holding of shareholder in a concessionaire must comply with concentration limits regarding those having ownership in a natural monopoly electric or telephone company (Article 65 of DFL No. 382).

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<tr>
<th>Duties of directors and controlling shareholders:</th>
<th>They do not differ: combinations do not suppose additional obligations to directors and managers of the companies. They are always under fiduciary duties of diligence, care and loyalty. Of course the circumstances can intensify them in some respect, but they remain the same duties. The law treats equally all directors and shareholders in terms of their duties between them and towards other stakeholders or creditors.</th>
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<tr>
<td>What duties do the directors or managers of a company owe to the company’s shareholders, creditors and other stakeholders in connection with a business combination? Do controlling shareholders have similar duties?</td>
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<th>Approval and appraisal rights:</th>
<th>Shareholder meetings have, according to art. 57 of the Law Nr. 18.046 on Corporations, voting rights regarding the transformation, merger or division of the corporation, and over the reform of its bylaws. In that sense, the board has the duty of give all information relevant to the operation to the shareholders meeting so they can take a decision upon solid grounds.</th>
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<td>What approval rights do shareholders have over business combinations? Do shareholders have appraisal or similar rights in business combinations?</td>
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<th>Hostile transactions:</th>
<th>There is no unsolicited transactions legislation or anti-takeover legislation. However, the Law No. 18.045, Securities Market Law (Section XXV) regulates the procedures applicable to intend to acquire control of an open corporation and establishes tender offer rules as it was explained above.</th>
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<td>What are the special considerations for unsolicited transactions?</td>
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### Break-up fees – frustration of additional bidders:

**Questions:**
- Which types of break-up and reverse break-up fees are allowed?
- What are the limitations on a company’s ability to protect deals from third-party bidders?

**Answers:**
- There are no specific rules governing break-up and reverse break-up fees. This matter depends on the parties who entered into an operation and their willingness to keep certain bona fide before and after the closing date, as well as to punish the one who breaks it.
- Companies and parties can protect deals from third-party bidders by setting penalties, applicable either while they are negotiating the final agreement, by virtue of a letter of intent or, a MoU, or directly agreeing on a penalty some formula in the contract. In either case, pursuant to article 1544 of the Chilean Civil Code, such penalty cannot exceed double the amount of the corresponding price (when the referred document establishes the obligation of one of the parties to pay a price).
- They could also agree on a non-compete provision, whereby even declare that during negotiations or even for some time afterwards if they fail, none of them is allowed to maintain any other negotiation with any other participant in the relevant market.
- In addition, articles 3 and 4 of Law N° 20,169 of Unfair Competition establish that, in general, any conduct contrary to good faith or good practices which by illegal means seeks to divert clients from a market agent is considered an act of unfair competition, particularly any conduct intended to incite suppliers, clients or other parties to breach their contractual obligations with a competitor. Against any such conduct, the affected party could claim for damages, as well as the declaration and cease of the specific action.

### Conditional offers:

**Question:**
- What conditions to a tender offer, exchange offer or other form of business combination are allowed? In a cash acquisition, may the financing be conditional?

**Answer:**
- All conditions are allowed provided they don’t violate antitrust legislation and other applicable laws.
- However, note that in certain cases related to corporate control’s acquisition the bidder has to offer the same terms to all the shareholders of the public corporation.
- Related to the financing being conditional, there are no specific rules. It can be subjected for example to the condition of gathering enough shares under a tender offer process.

### Financing:

**Question:**
- If a buyer needs to obtain financing for a transaction, how is this dealt with in the transaction documents? What are the typical obligations of the seller to assist in the buyer’s financing?

**Answer:**
- There are no specific rules regulating how financing must be dealt with in the corresponding transaction documents. Therefore, it is left to what the parties agree.
- On the other hand, although the law does not establish specific obligations for the seller, it is not uncommon to include certain information obligations, whereby the seller must inform the financing party of the buyer’s compliance status and also, to grant the corresponding warranties and insurances in favor of the financing party as well.

### Minority squeeze-out:

**Question:**
- May minority stockholders be squeezed out? If so, what steps must be taken and what is the time frame for the process?

**Answer:**
- The law grants the minority shareholders the right to squeeze out when the controller acquires more than ninety five percent of the shares of a public corporation. This right to squeeze out must be exercised within 30 days from the date on which the controlling shareholder reaches the indicated participation, which will be communicated within the following two business days by means of a notice published in a newspaper and the company’s website.
**Cross-border transactions:**
How are cross-border transactions structured?
Do specific laws and regulations apply to cross-border transactions?

As it was mentioned above, there are foreign ownership restrictions applicable to the following specific sectors:
(i) Media: industry.
(ii) Airlines: companies owning aircraft registered in Chile.
(iii) Merchant navy: companies owning ships registered under the Chilean flag.
(iv) Fishing Concessions.
(v) Energy: Nuclear Energy.

There is also a restriction on nationals from Peru, Bolivia and Argentina to have a substantial interest in companies that own real estate located in areas that are close to the border with these countries.

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**Waiting or notification periods:**
Other than as set forth in the competition laws, what are the relevant waiting or notification periods for completing business combinations?

According to the regulations regarding companies making public offers, the information that the notification and the publication of a takeover must include varies depending on whether the takeover leads to a Public Offer Acquisition (POA) or not. The regulations require such publications and notifications to include several details and a large amount of specific information.

(i) Takeovers that lead to a POA
(a) Any takeover that allows having the control of a company;
(b) Any acquisition of two thirds of the shares issued by the company. In this case, the bidder has 30 days to make a POA for the rest of the shares issued by the company. Except if the acquisition occurred as a consequence of a prior POA for all outstanding shares issued by the company, or if exempted according to the Law;
(c) Whenever a person plans to acquire the control of a company which is the controller of another open corporation, and whose shares represent 75% or more of its consolidated assets. In this case, before taking over the target company, such person will have to make a POA to the shareholders of the company controlled by the company that will be subject to the takeover;
(d) Any takeover that the bidder voluntarily decides to conduct through a POA. Any takeover or acquisition not falling within the above four situations is not required to be made through a POA.

In addition, the following transactions do not give rise to a POA even though they may meet some of the requirements outlined above:
(a) Acquisitions of shares as a consequence of an increase of capital;
(b) Acquisitions of shares from the controller of the company, if the shares meet a minimum regulatory trading volume and the price to be paid is not substantially higher than the market price. The concept of price substantially higher than the market price pursuant to General Rule No. 101 of the SVS, dated December 20th, 2000, is determined by the SVS and cannot be higher than a percentage that varies from 10 to 15%. Please note that currently such percentage is 10%;
(c) Acquisitions of shares as a consequence of a merger;
(d) Acquisitions of shares that belonged to a dead shareholder, by his/her successors;
(e) Acquisitions of shares as required by law.

(ii) Information that must be included both in the notification and the publication announcing a takeover bid that does not give rise to a POA
(a) The name of the target company, the word “CONTROL” and the name of the people or entities that are disclosing the information;
(b) How the control of the company will be acquired. It must be specified whether the control will be acquired as a consequence of an increase of capital, a merger, a transfer of shares by the controller or any other way legally permitted;
(c) The total amount of the transaction, number of shares that will be acquired, their price, the percentage that such shares represent in the total capital of the company and conditions of the negotiation to be conducted;
(d) The percentage of capital that the bidder expects to acquire as a consequence of the takeover, and details of whether that percentage might be increased in the future;  
(e) A description of the business plan that the bidder proposes for the company and its subsidiaries for the next 12 months, following the acquisition of control of such company;  
(f) The name, tax payer number and domicile of the individuals or legal entities that plan to take over the company. Furthermore, it is necessary to include the same information regarding the controller of the company that will make the takeover bid, and legal information concerning its constitution;  
(g) A description of the most relevant activities and business of the person or company that will acquire the shares, and the investments that such person or company has conducted in Chile;  
(h) Information concerning the latest credit rating of the company planning to acquire the shares and of the parent company if it is the case, if they have been rated;  
(i) Details as to whether the company making the takeover bid trades its securities in a stock market and, if so, details of such stock market;  
(j) The percentage of property that the bidder (or one of its controllers, if applicable) owns in the target company and the role that they play, if any, in the administration of such company.  

(iii) Publication after taking over a company  
Within two business days following the closing date of the agreements that have led the bidder to take over a company, a publication must be made in the same newspaper in which the first publication (announcing the takeover) was made. Such publication must include the following information:  
(a) The name of the target company, the word “CONTROL”, and the name of the person or company making the disclosure;  
(b) The number of shares that have been acquired, their price, the percentage that they represent in the total capital of the target company, the percentage of shares, if any, that the person or company making the disclosure owned before the transaction took place, and the total percentage of shares of the target company that such person owns after the transaction;  
(c) Details of the date of the first publication announcing the acquisition of shares, and the name of the newspaper where such publication was made.  
(iv) Information that must be included in the publications concerning a takeover bid that gives rise to a POA  
(a) The prospectus  
In addition to the publication announcing the POA, the regulations require a written prospectus containing all the terms and conditions according to which the POA will be made. A copy of the prospectus must be available to the public at the offices of the target company. On the same date on which the publication announcing the POA is made, the bidder must submit copies of the prospectus to the SVS and to the Stock Exchange Markets. The law and regulations of the SVS specify the minimum information that the prospectus must contain. The main details that must be included in the prospectus are:  
(i) The name of the target company, the sentence “OFERTA PUBLICA DE ADQUISICION DE ACCIONES”, and the names of the individuals or company making the disclosure;  
(ii) Identification of the bidder;  
(iii) Identification of the controller of the bidder, if applicable;  
(iv) Economic and financial information about the bidder;  
(v) The relationship between the target company and the bidder before the POA;  
(vi) The purpose of the POA and plan of business;
(vii) Specific terms and conditions of the POA;
(viii) The price and terms of payment;
(ix) The procedure to accept the POA;
(x) The right to withdraw the POA;
(xi) Financing of the POA;
(xii) The guarantee;
(xiii) The name of the administrator or organiser of the POA;
(xiv) The independent adviser of the bidder;
(xv) The risk factors in relation to the proposed POA;
(xvi) The expected impact of the POA in the price of the shares matter of the bid;
(xvii) Any other information that the bidder thinks is useful to include.

(b) Publications

The law requires a publication to be made announcing the POA, and another publication announcing its disclosure once the term proposed for the transaction has expired.

(I) Information that must be included in the publication announcing the POA:
(i) The name of the target company and the sentence “OFERTA PUBLICA DE ADQUISICION DE ACCIONES”;
(ii) Identification of the bidder and the percentage of property that the bidder owns in the target company;
(iii) The purpose of the POA;
(iv) Specific features of the POA;
(v) The price and terms of payment;
(vi) The procedure to accept the POA;
(vii) Termination details of the POA;
(viii) Details of the right to withdraw the POA;
(ix) The financing of the POA;
(x) Any guarantee;
(xi) Identification of the administrator or organiser of the POA;
(xii) Places where information regarding the POA may be obtained.

(II) Information that must be included in the publication closing the POA:
(i) The name of the company whose shares were acquired and the sentence “RESULTADO DE LA OFERTA DE ADQUISICION Y CONTROL”;
(ii) Details of whether the POA has been accepted or rejected and, in the first case, the number of shares received, the number of shares that will be acquired as a consequence of the POA, and the percentage that the acquired shares will represent in the total amount of capital of the company;
(iii) Details of the date when the publication announcing the POA was made.

In any case, the publication must be done in the same newspaper in which the announcement was published.

The notification must be made in Spanish.

Authorities

Disclosure needs to be made to the following entities:
- Comisión para el Mercado Financiero (SVS).

If a bank is the target company:
- Superintendencia de Bancos e Instituciones Financieras (SBIF).

If a regulated Pension Fund Manager (“AFP”) is the target company:
- The CMF (if regulated by the CMF) and the Chilean pension regulator, the Superintendencia de Pensiones (the “SP”).

If a regulated private health insurance company is the target company:
- The CMF (if regulated by the CMF).
- The Stock Exchange Markets
  - Bolsa de Corredores-Bolsa de Valores
  - Bolsa Electrónica de Chile-Bolsa de Valores
  - Bolsa de Comercio de Santiago-Bolsa de Valores

As mentioned above, the disclosure has to be made also to the public in the form of an advertisement in a newspaper.
Yes. There are specific regulations governing certain industries. Typically we have in place regulation over natural monopolies, sensitive industries providing fundamental services, and rules addressing ecological impacts production may cause.

For a general idea of the sectors subject to specific regulations, it may be useful to review the following list of regulatory agencies overseeing certain markets: Banks and Financial Institutions, Social Security, Electricity and Fuels, Commission for the Financial Market, Water and Sewage Services, Health, Casinos (Gambling), Pensions Funds, Environment, Education, Insolvency and Re-entrepreneurship, ISAPRES (private health insurance)

Please see our responses above.

Some adverse effects that could trigger in a business combination such as the loss of VAT credits or the dilution of deductible losses.

Under art. 4 of the Labor Code, any total or partial modification of the ownership, possession or mere holding of the company does not alter the rights and obligations that arise from the employment agreements or collective agreements, which will maintain its validity and continuity with the new employer or employers.

Insolvency, procedures and the rights of creditors are now regulated in Law No. 20,720 (the “Law”), introduced by Congress in 10 October 2014, which abrogated the system regulated in the Commercial Code.

The Law now contemplates three different procedures, namely: (i) a procedure aimed at reorganizing debtors (the “Reorganization Procedure”); (ii) a simplified procedure to liquidate assets and offset liabilities (the “Liquidation Procedure”); and (iii) a procedure allowing individuals to renegotiate their debts. As we will see next, these three procedures pursue different approaches to dealing with insolvency.

Debtors are classified into two categories: (i) corporate debtors, including non-profit organizations (“Corporate Debtors”); and (ii) individuals as debtors. Both types of debtors are subject to different procedures. For the purposes of this brief summary we will only refer to corporate debtors.

It is worth noting that banks, financial institutions and insurance companies and other regulated entities are subject to special rules when they appear as, or become insolvent. Chilean law does not contemplate the existence of special courts of justice in charge of resolving insolvency or bankruptcy issues; hence, ordinary courts are tasked with trying and ruling all matters derived from or connected to insolvency or bankruptcy matters. The competent tribunal is that of the debtor’s domicile.

**REORGANIZATION PROCEDURE**

The Law expressly regulates the procedure by means of which Corporate Debtors can avoid being declared bankrupt, thus preventing the forced sale of its assets: this is the Reorganization Procedure mentioned above.
Pursuant to article 18 of Law N°20,393 of Criminal Liability of Legal Entities, in case of voluntary or mutually agreed transformation, merger, absorption, division or dissolution of the legal person responsible for one or more crimes referred to in the referred Law, its responsibility for the offenses committed prior to the occurrence of any of such acts shall be transferred to the legal persons resulting thereof, if any, according to the following rules:

1. If the imposed penalty is a fine: in case of transformation, merger or absorption of a legal person, the resulting legal person shall be responsible for the total quantum. In the event of division, the resulting legal persons shall be jointly and severally responsible for the payment thereof.

2. In cases of dissolution by mutual agreement of a for-profit legal person: the penalty shall be transferred to the members and participants in the capital thereof, who shall be responsible up to the limit of the value of the liquidation share assigned to them.

3. If any other penalty is concerned: the judge shall assess its convenience, depending on the pursued purposes in each case. In order to adopt this decision, the judge shall, above all, consider the substantial continuity of the material and human resources and the activity being carried out.

4. From the request for hearing of the formalization against a non-profit legal entity and until the acquittal or conviction and pending enforcement thereof, the authorization provided for its dissolution in the event of expiry of its term, shall not be granted.

The latter is notwithstanding the rights of third parties acting in good faith.

LIQUIDATION PROCEDURE
The Law contemplates a simplified procedure for the forced sale of the debtor’s assets for purposes of offsetting its liabilities, thus closing an insolvent business. The effects of the declaration of Liquidation are the following:

a) The appointment of the Liquidation Administrator, whom as previously indicated will represent the insolvent, and will be in charge of liquidating the debtor’s assets in order to its creditors.

b) The order to bring any other procedure being tried against the debtor to the court that is in charge of the liquidation procedure.

c) The debtor is prevented from managing his own assets, except those of a non-attachable nature.

d) The suspension of the creditors’ rights to bring individual claims for payment against the debtor.

e) The creditors have 30 days since the declaration is published in the gazette, to verify their credits, along with the documentation that support such credits.

f) Rights to termination

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**Anti-corruption and sanctions:** What are the anti-corruption, anti-bribery and economic sanctions considerations in connection with business combinations?

Pursuant to article 18 of Law N°20,393 of Criminal Liability of Legal Entities, in case of voluntary or mutually agreed transformation, merger, absorption, division or dissolution of the legal person responsible for one or more crimes referred to in the referred Law, its responsibility for the offenses committed prior to the occurrence of any of such acts shall be transferred to the legal persons resulting thereof, if any, according to the following rules:

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