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Tender offer regulations in Chile

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In Chile, the acquisition of shares in a public-owned corporation must comply with the relevant provisions of the Securities Law No 18.045 (the Securities Law) and the Corporations Law No 18.046 (the Corporations Law), established to protect minority interests and creditors. The key provisions include:

- i) the publication, and notification to the Superintendencia de Valores y Seguros, SVS) and to the stock exchange, of the intention to obtain control of a public-owned corporation. The notice of intention must include the price and other terms of the transaction;
- ii) the requirement to make, voluntarily or when ordered by law, a tender offer to acquire the controlling shares of a public-owned corporation; and
- iii) the notification to the SVS and to the stock exchange when a shareholding (whether direct or indirect) in a public-owned corporation reaches 10%, and notification of subsequent changes within two days of the change.

In the event of non-compliance with these requirements and other circumstances, the Securities Law permits the SVS to suspend the trading of shares in the relevant company for up to 120 days, and thereafter to revoke the company's registration.

Relevant issues to consider

When entering into a tender offer process of a public-owned corporation in Chile, a number of issues need to be considered.

Firstly, any procedural, legal or contractual problems associated with making the public bid must be identified. Such problems might include necessary exchange control consents, foreign investment approvals, government approvals, regulatory approvals, third-party consents, stock exchange requirements, or antitrust or merger referral issues.

Second, the potential acquiror has to understand the type and extent of the risks and liabilities attaching to the target and its business, such as product liability exposure, warranty exposure, litigation exposure or environmental liabilities. The acquiror also has to verify the accuracy of any representations or warranties already made by the seller in a signed acquisition agreement, or identify suitable representations, warranties and indemnities for a prospective acquisition agreement.

Tender offer regulation

In Chile, the following acquisitions of shares must be made through a tender offer:

- i) acquisitions that allow a person to obtain the control of a public-owned corporation;



- ii) offers that the controlling party must execute pursuant to article 69 of the Corporation Law. This article requires a person who acquires, by any means, more than two-thirds of the capital stock of a public-owned corporation, to make a tender offer for all the remaining shares of that corporation within 30 days. Where the shares are considered to already have exchange presence the purchase price must be no lower than the weighted average market price of the shares (which is calculated pursuant to certain rulings issued by the SVS). Where the shares do not have exchange presence, the purchase price must be no lower than the book value of the shares.
- iii) if the mandatory tender offer is not made within the 30-day period, a redemption right is triggered in favour of the minority shareholders, who can then require the target company to repurchase its shares at the minimum prices stated above.

If the offeror intends to obtain the control of a company that itself controls a public-owned corporation, and this public-owned corporation represents 75% or more of the consolidated assets of the target company, the offeror must first make a tender offer for the public-owned corporation, pursuant to the tender offer procedure explained above.

A shareholder who has taken control of a public-owned corporation is not allowed to acquire, within a 12-month period from the date of the takeover, additional shares of such company that amount to 3% or more of the company stock, unless the new acquisition is made by means of a tender offer, in accordance with the procedure explained above.

When the acquisition is made through a tender offer, the offeror is required to make public announcements informing the launch of the tender offer and to make available to all interested parties a prospectus containing all terms and conditions of the tender offer. The prospectus must contain, at least, the following information: (i) a complete description of the offeror; (ii) a description of the relevant shares or other securities and, if applicable, the minimum number or percentage of shares to be purchased; (iii) the price and payment terms; (iv) the tender period and acceptance procedure; (v) a description of, and details pertaining to, the offeror's current shareholding in the company; (vi) the financing of the acquisition; (vii) the amount and nature of any performance bonds guaranteeing the tender offer, if applicable; (viii) the conditions and events triggering the revocation of the offer; (ix) identification of the agent or broker in charge of the tender offer process; (x) identification of those consultants that have advised the offeror in connection with the tender offer; and (xi) any other conditions that may be appropriate.

A tender offer must be in place for at least 20 days, and for no more than 30 days after the notice of its launch. However, the offeror has the right to extend the offer for no less than five days and no more than 15 days.

During the tender offer period, competitive tender offers may be launched by publishing the relevant notice no later than 10 days before the expiration of the original offer.

During the tender offer period neither the public-owned corporation whose shares are object of the tender offer nor its

board are allowed to enter into any transactions that could alter the company's status.

The offer must be addressed to all shareholders of the target public-owned corporation, or to all shareholders holding the specific series of shares being acquired. If the tender offer has been limited to a certain number of shares, the shares tendered will be acquired by the offeror on a *pro rata* basis.

Shareholders that have tendered their shares in a tender offer process can always withdraw their acceptance of the offer until the date on which the tender offer period expires.

Finally, three days after the tender offer period has expired, the offeror must make a public announcement regarding the results of the tender offer, including, among other things, the number of shares acquired.

Banking

Recommended firms

Carey y Cia

Claro y Cia

Philippi Yrarrázaval Pulido y Brunner

Barros y Errázuriz

Cariola Diez Perez-Cotapos y Cia

Guerrero Olivos Novoa y Errazuriz

Morales Noguera Valdivieso & Besa

Alessandri y Cia

Barros Court & Correa

Larrain y Asociados

Urenda Rencoret Orrego y Dörr

Capital markets

Recommended firms

Carey y Cia

Claro y Cia

Guerrero Olivos Novoa y Errazuriz

Philippi Yrarrázaval Pulido y Brunner

Barros y Errázuriz

Morales Noguera Valdivieso & Besa

Alessandri y Cia

Cariola Diez Perez-Cotapos y Cia

Prieto y Cia

Urenda Rencoret Orrego y Dörr

Insolvency and restructuring

Recommended firms

Carey y Cia

Philippi Yrarrázaval Pulido y Brunner

Barros y Errázuriz

Cariola Diez Perez-Cotapos y Cia

Claro y Cia

Guerrero Olivos Novoa y Errazuriz

Prieto y Cia

Cruzat Ortúzar & Mackenna/Baker & McKenzie

Larrain y Asociados

Morales Noguera Valdivieso & Besa

Urenda Rencoret Orrego y Dörr

Vial y Palma

Mergers and acquisitions

Recommended firms

Carey y Cia

Claro y Cia

Philippi Yrarrázaval Pulido y Brunner

Barros y Errázuriz

Cariola Diez Perez-Cotapos y Cia

Guerrero Olivos Novoa y Errazuriz

Morales Noguera Valdivieso & Besa

Prieto y Cia

Alessandri y Cia

Barros Court & Correa

Cruzat Ortúzar & Mackenna/Baker & McKenzie

Vial y Palma

Alliende Villarroel Lecaros & Eguiguren

Larrain y Asociados

Portaluppi Guzmán y Bezanilla

Urenda Rencoret Orrego y Dörr

Yrarrázaval Ruiz-Tagle Goldenberg Lagos & Silva

Project finance

Recommended firms

Carey y Cia

Claro y Cia

Barros y Errázuriz

Guerrero Olivos Novoa y Errazuriz

Morales Noguera Valdivieso & Besa

Philippi Yrarrázaval Pulido y Brunner

Prieto y Cia

Alessandri y Cia

Cariola Diez Perez-Cotapos y Cia

Larrain y Asociados

Urenda Rencoret Orrego y Dörr

Alessandri y Cia

Alessandri y Cia is no longer the pure intellectual property practice it was when it was founded in 1893 by Arturo Alessandri Palma, the president of Chile from 1920 to 1925, and 1932 to 1938. It has broadened its expertise and is now recommended by the *IFLR1000* in banking, capital markets, project finance and mergers and acquisitions work.

The firm still has the largest intellectual property practice in Chile and a large team of highly regarded lawyers, several of whom played a role in drawing up Chile's intellectual property legislation. But it also worked on several stand-out finance deals such as the biggest bond issue in Chile last year, for Codelco, arranged by JP Morgan. In recent years it has also worked on a cross-currency operation for ENP Petroleos, a bond issue connected to the national postal service's operations for Banque Populaire and the first ever public offer of Irish investment trusts in Chile. In project finance the firm recently advised Swedish company Kapsch Traficom on a large toll-road project.

Felipe Cousiño is highly recommended by his peers.

Key contact partner

Felipe Cousiño

Leading lawyer

Felipe Cousiño

Barros Court & Correa

Barros Court & Correa has a reputation as a "small, very good firm with powerful connections to local industry". Recently, however, it has added some big international clients to its client list, including Canadian Imperial Bank of Commerce, Morgan Stanley, Goldman Sachs, Banco Santander and BBVA.

The firm also worked on the biggest merger of the year last year in Chile, acting for Sodimac, the country's biggest home improvement company, on its \$705 million merger with retailer Falabella in October 2003. Antitrust issues arose from the fact that the Del Rio family, which owns Sodimac, also owns chunks of several national banks. Other recent M&A work takes in the merger of UGC and Liberty Media, and the Córpora acquisition of Lucchetti Chile.

Barros Court's traditional areas of strength are finance and M&A, and last year the firm worked on several finance deals, including a 10-year bond issued by Empresas CMPC, a local syndicated loan to Esval, a syndicated loan to Córpora Tresmontes and a locally sold bond issued by Endesa. Max Letelier and Juan Pablo Schwencke lead the finance team.

Key contact partners

Max Letelier
Juan Pablo Schwencke

Barros y Errázuriz

Barros y Errázuriz has raised its profile over the last few years in an effort to become one of the leading firms in Chile along with Carey y Cia, Claro y Cia, Guerrero Olivos Novoa y Errazuriz and Philippi Yrarrázaval Pulido y Brunner. Competitors credit the firm for "beginning to work for some of the big international lenders" and winning some central mandates on the larger deals.

The firm is blessed with several leading lawyers, including partners Cristián Barros, Fernando Barros, José Tomás Errázuriz and Pablo Guerrero. Traditionally strong in project finance and mergers and acquisitions, the firm has also been working on more capital markets deals recently, advising Endesa and Coca-Cola on their offerings.

Project finance has revolved around toll roads in Chile in recent years, and Barros worked on Sociedad Concesionaria Costanera Norte's \$70 million financing of an expansion to its toll-road concession in Santiago and a \$138 million bond issue by Sociedad Concesionaria Autopista del Sol to pay for the refurbishment and maintenance of the Autopista del Sol toll road, which runs from Santiago to San Antonio in central Chile. The Santiago deal was highly innovative – it was the first deal in Chile to use a structure whereby the company sold funding promised by the Ministry of Public Works to Banco Santander to pay for work that had already started.

In mergers and acquisitions the firm worked on the sale of Karlovacka Pivovara (KPD), a Croatian brewery, to Heineken Adria by the Liechtenstein arm of Chilean brewery Compañía Cervecerías Unidas and the Southern Breweries Establishment. Barros y Errázuriz partners Fernando and Cristián Barros advised KPD and the Chilean sellers, alongside US firm Simpson Thacher & Bartlett.

Key contact partner

José Tomás Errázuriz

Leading lawyers

Cristián Barros
Fernando Barros
José Tomás Errázuriz
Pablo Guerrero

Carey y Cia

Carey y Cia has the greatest strength in breadth of any corporate law firm in Chile. It is the only firm to be recommended among the best for every one of our five practice areas. In the words of its clients, it is: "a firm that leaves the best impression on clients"; "very responsive and professional, with a team of lawyers that exceeds expectations"; "a top firm in every aspect, very punctual and extremely well prepared"; and, "the most consistent of them all, recognized as a quality firm".

In banking, clients are equally effusive, saying they "would rate Carey as the number one, ahead of others on transactional experience". Jaime Martinez and Diego Peralta

head the banking department, which counts international banks JP Morgan Chase, Bank Boston, Bando de Crédito e Inversiones, HSBC Bank and UBS among its clients.

Project finance is a particular strength for the firm. The run of positive feedback continues, with one client saying it has had “excellent experiences with Carey in project finance related to mining” and another saying it “has used the excellent Carey in two project finance projects and aircraft leasing”. Another is more diplomatic, saying that all the top firms “can deliver a top-quality service” for project finance, but adding that “Carey has more experience, particularly because of senior partner Juan Guillermo Levine”. Two examples of recent work are financing the concessionaire of the San Vicente port and funding the Sistema Norte-Sur toll-road concession through a \$250 million bond issuance.

Other recommended lawyers are Jorge Carey, Claudio Lizana and Jaime Carey, for a range of work from mergers and acquisitions to capital markets. Six of the firm’s 16 partners are seen as leading lawyers in Chile.

Key contact partners

Jaime Carey
Jorge Carey
Jaime Martínez

Leading lawyers

Jaime Carey
Jorge Carey
Juan Guillermo Levine
Claudio Lizana
Jaime Martínez
Diego Peralta

Cariola Diez Perez-Cotapos y Cia

Cariola Diez Perez-Cotapos y Cia has emerged in recent years as an up-and-coming firm in Chile. It was formed by the merger of firms Cariola y Cia and Diez & Perez-Cotapos in April 1999 – the first large merger of law firms in Chilean history.

The firm has a strong reputation for intellectual property work, rivalling that of Alessandri y Cia, but conducts all its patent, trademarks and copyrights work through sister firm Sargent & Krahn, which was founded by Thomas Sargent in 1889.

Mergers and acquisitions is a stronghold outside the realm of IP, and the firm advised Shell International on the \$100 million acquisition of its forestry assets by Empresas CMPC, which was a strategic move by CMPC to expand its forestry and paper businesses in Chile. Mergers and acquisitions and IP also occasionally meet in the firm’s work, as in April 2003 when it worked on Chilean ice cream company Industria de Alimentos Trendy’s acquisition of the Panda trademark and manufacturing operations from local food company Bresler Alimentos.

The leading lawyers at Cariola are partner Francisco Illanes, highly regarded for both his insolvency and mergers

and acquisitions work, associate counsel Luis Oscar Herrera and partner Sebastian Obach. There are 60 other lawyers in the firm’s Santiago and Antofagasta offices, the latter being close to Chile’s northern tip and set up to serve clients in the mining industry.

Key contact partner

Sebastian Obach

Leading lawyers

Luis Oscar Herrera
Francisco Illanes
Sebastian Obach

Claro y Cia

Claro is “a true top-notch firm” in Chile with a worthy reputation for being at the forefront of new financial structures in the country. No other firm won more recommendations during our research process for derivatives work. Clients said Claro was “used extensively for credit products” and “was very good, very helpful, particularly for derivatives work”. Rodrigo Ochagavia and Felipe Larrain are highlighted for their derivatives knowledge and skill in advising on structured transactions. Other leading lawyers at the firm are Matias de Marchena, Felipe Dalgarrando and the “very good” José María Eyzaguirre.

Last year Claro worked on a high-profile syndicated loan for the Unidas brewery that was arranged by Deutsche Bank and BBVA. Vial y Palma worked on the other side. The firm also represented arrangers Salomon Smith Barney, Deutsche Bank and Santander Investment on energy company Enersis’ \$2 billion capital increase, the largest ever in Chile, in March 2003. The recapitalization was launched by Enersis two years earlier to try and restructure its debt and avoid having it downgraded by the ratings agencies. Ochogavia led the team advising the banks. He is also known for his mergers and acquisitions work, having advised Starbucks on its joint venture with Chile’s Grain Red to launch a chain of coffee shops in Chile.

Key contact partner

José María Eyzaguirre

Leading lawyers

Ricardo Claro
José María Eyzaguirre
Rodrigo Ochagavia

Cruzat Ortúzar & Mackenna/Baker & McKenzie

International firm Baker & McKenzie is Cruzat Ortúzar & Mackenna in Chile – all the firm’s partners are also partners of Baker & McKenzie. The firm has grown rapidly in recent years but has yet to become one of the country’s leading firms, recommended only in M&A and insolvency and restructuring work. Clients, however, are effusive, calling

the firm “excellent” and describing it as “extremely helpful for corporate work”.

The firm advised Golden Rose International on its acquisition of the Guanaco mine, which processes 50,000 tons of gold ore a year, from Compañía Minera Kinam Guanaco and Kinam de Chile Limitada. Philippi Yrarrázaval Pulido y Brunner advised the vendor. Cruzat also advised the Hyatt Corporation on the buyout of the Hyatt Santiago hotel, worked on the acquisition of 50% of Papeles Industriales by SCA Hygiene Products, acted on the acquisition of ownership in Andueza & Principal Creditos Hipotecarios, one of the leading mortgage lenders in Chile, and worked on the privatization of ports in El Salvador – the granting of the contract for the master concession of the Port of Acajutla.

Key contact partners

León Larrain
Antonio Ortúzar

Guerrero Olivos Novoa y Errazuriz

Guerrero dominated the Chilean market in the sixties, with several “super partners” that held or had held positions in government and the central bank. Though the “sophisticated and professional” legal advice provided by those lawyers is still around today, some commentators argue that the firm is not the powerhouse it once was.

Still, several clients recommend the firm enthusiastically, calling it “well regarded” and recommending lawyers Roberto Guerrero Valenzuela and Jose Miguel Hernandez. Carlos Olivos, who is an ex-member of Sullivan & Cromwell in New York and was general counsel at the central bank of Chile, is also recommended.

The firm’s banking clients include Banco de Chile, Banco Santander, Scotiabank Banco de Crédito e Inversiones and Credit Suisse First Boston among others, while examples of recent deals are a syndicated loan to Molibdenos y Metales and structured loans to Consorcio Aciducto and Pesquera Lota Protein Limitada. And in capital markets over the last year the firm has worked on an offer of bonds backed by mortgaged loans originated by Banco Santander and a placement of local bonds by Forum Servicios Financieros.

Guerrero’s mergers and acquisitions record is impressive, based on deals such as the \$1.3 billion acquisition of Lavis Putula by Anglo-American and Mantos Blancos in 2002, and Santander’s \$250 million sale of two insurance companies to MetLife. It also worked on HQI Chile’s acquisition of Gas Atacama for \$110 million, Anglo-American’s \$1.3 billion purchase of La Disputada from Exxon Minerals and advised Enercies, the largest energy company in Chile, on the sale of its distribution lines for \$200 million.

More recently the firm worked on the acquisition by Heineken of 50% of Compañía Cervecerías Unidas, Chile’s largest brewer, the sale of Empresa Eléctrica del Río Maipo, a Chilean electric distribution company, by Enersis

and the acquisition by HQI Transelec Chile of electricity transmission assets from Compañía Eléctrica Tarapacá and GasAtacama Generación Limitada.

Key contact partners

Jorge Delpiano
Roberto Guerrero Valenzuela
Carlos Olivos

Leading lawyers

Roberto Guerrero Valenzuela
Jose Miguel Hernandez
Carlos Olivos

Morales Noguera Valdivieso & Besa

Much of the recent project finance work in Chile has centred around wrapped bonds used to finance concessions on road and airport projects, with monoline insurers guaranteeing the financing and, as such, winning it a AAA rating from the ratings agencies. Morales’ standing as project finance advisors is reflected in the fact that it has shared most of this work with the two top-tier project finance firms, Claro y Cia and Carey y Cia. Morales has advised on five out of the seven toll-road concessions so far in Chile and worked on the concession of Antofagasta airport in the north of the country.

Other deals in recent years have included acting as Chilean counsel to Dutch food retailer Koninklijke Ahold on its multinational tender offer for shares in Chilean retailer Santa Isabel (the team led by partner Guillermo Morales) and also working on Chilean wire and cable manufacturer Madeco’s debt restructuring. The deal involved deals with 14 different bank creditors and was valued at \$120 million. The restructuring followed a failed share issue by Madeco, after which the company had to return stock to subscribers. Partner Diego Noguera was the firm’s principal lawyer on the deal.

Key contact partner

Eugenio Besa

Leading lawyer

Guillermo Morales

Philippi Yrarrázaval Pulido y Brunner

Philippi Yrarrázaval is a market leader for tax work in Chile, but it is also among the best law firms for banking, capital markets, insolvency and mergers and acquisitions work.

Capital markets deals the firm has been involved with include energy company Enersis’ \$2 billion capital increase, the largest ever in Chile, in March 2003. The recapitalization was launched by Enersis in 2001 to try to avoid having its debt downgraded by the ratings agencies. The firm also worked on the merger of Santander and Banco Santiago, a

deal named by competitors as one of the most significant of the year.

Mergers and acquisitions work includes advising Canadian gas company Methanex on its \$275 million investment into the expansion of its methanol facility in Punta Arenas, Chile and advising state-owned copper mining company Corporación Nacional del Cobre (Codelco) on its joint acquisition, with Belgian company Tractebel of Edelnor, of a Chilean power generating company with financial liabilities of \$340 million. The deal took place after Edelnor had successfully reorganized its business through the US Chapter 11 insolvency procedure.

The firm's leading lawyers are Alberto Pulido, who is highly sought after for his banking and capital markets advice, Marcelo Armas, a well-regarded banking lawyer, Juan Francisco Gutierrez, who is recommended for capital markets transactions, and Juan Pablo Roman, regarded as one of Chile's best insolvency lawyers.

Key contact partner

Marcelo Armas

Leading lawyers

Marcelo Armas

Juan Francisco Gutierrez

Alberto Pulido

Juan Pablo Roman

Other notable firms

Alliende Villarroel Lecaros & Eguiguren has been involved with several high profile deals in the project finance, insolvency and mergers and acquisitions spheres. The best example of its project finance work is the Electroandina power supply project, of insolvency is the restructuring of forestry company Bosque and of M&A is retailing merger of Sodimac and Falabella. All this is impressive considering that the firm is essentially a small, boutique operation. **Urenda Rencoret Orrego y Dörr** has a leading lawyer in Pablo Bauer and has done a lot of work for Minería Escondida, the largest private copper mine in Chile. **Larrain y Asociados** is a small but "highly prestigious" firm that gets more praise from its clients than almost any other firm outside the top tiers.