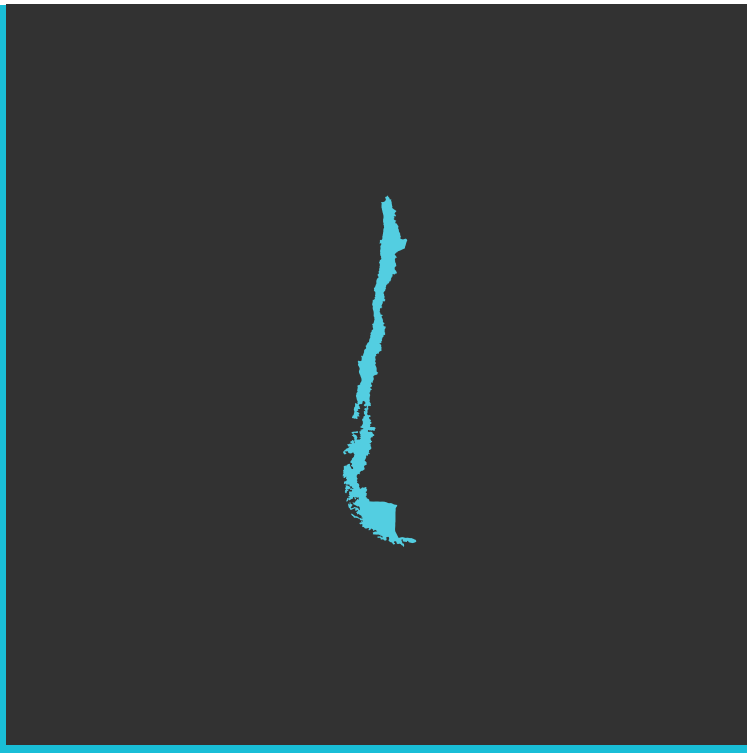
Country Guide
Chile



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DOING BUSINESS IN CHILE

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I. CHILE AT A GLANCE

I.1 INTRODUCTION TO THE COUNTRY

Geography and demographics

Chile is an independent country located in the southern tip of South America, bordering Peru and Bolivia to the north and Argentina to the east. Extending for 4,270 kilometers, it is surrounded by the Pacific Ocean to the west and the Andes mountains to the east, reaching a maximum width of 445 kilometers and a minimum of 90 kilometers.

Its situation and length provide the country with a large variety of landscapes, climates and natural resources, from one of the driest places on Earth in the north, the Atacama Desert, to temperate rainforests and some of the largest ice fields on the planet in the south. Chile also controls certain islands in the Pacific Ocean, including Easter Island, and has a claim over an area of 1,250,000 square kilometers in Antarctica.

According to the 2017 census, Chile has a population of 17,574,003 inhabitants, 40 percent of which live in the capital, Santiago. The estimates for 2024 are closing in 20 million.

Although a unitary and centralized country, Chile is administratively divided into 15 regions and a Metropolitan Region.

Government and politics

Chile is a democratic republic, independent from Spanish rule since the early 19th century, and has had a history of relative political and economic stability. Between 1973 and 1989, after the *coup d'état* that toppled the Allende government, Chile was under military rule. In 1988, a popular referendum decided to put an end to military rule and to return to the democratic election of presidents and members of Congress.

The main legal text is the Political Constitution of the Republic[1], which provides for and regulates the main rights and guaranties pertaining to all persons in Chile, and the main duties and functions of the branches of the State and other specific agencies of constitutional rank. The Constitution sits at the top of the hierarchy of laws, which is completed by laws, regulations, decrees, ordinances and technical norms, all of which must abide by, and cannot infringe, on the provisions of the Constitution. Certain international treaties are afforded constitutional rank and have priority over other bodies of law.

The Chilean State is formed by three independent branches, the executive branch, headed by the president, the legislative branch, and the judicial branch.

Executive branch. Chile is ruled by a president, who is the head of government and head of State, directly elected by popular vote every four years, without possibility of reelection. The executive branch is completed by the ministers, all of whom are appointed and removed by the will of the president. The executive branch is in charge of the foreign relations of the country and its defense, and it has sole initiative in certain matters of law to be brought before Congress (e.g., matters related to budget and financing of the State, the creation of new taxes, the political division of the country, etc.).

[1] The current Constitution was originally drafted and approved by referendum in 1980, under military rule. It has been reformed on several occasions, with the most extensive reform being approved in 2005. However, the main principles of the Constitution remain the same.

Legislative branch. The legislative branch is formed by a bi-cameral congress, with a Senate composed of 50 members, who last eight years and can be reelected up to twice, and a Chamber of Deputies composed of 155 members, who last four years and can be reelected up to twice. All members of Congress are democratically elected by popular vote in their respective geographical circumscriptions or districts.

Judicial branch. The judicial branch is formed by the courts, at the top of which sits the Supreme Court, which is a national court with seat in Santiago. The other two levels are formed by the Courts of Appeals and the courts of first instance, which are distributed by geographic scope. Certain matters, such as criminal, labor and environmental disputes have special first instance courts, but they are still subject to review by the Courts of Appeal and the Supreme Court within the scope of their competence according to the Constitution and the law. Also, certain State agencies, such as the Chilean Internal Revenue Service (*Servicio de Impuestos Internos*) and the Superintendencies have the power to resolve claims brought before them in first instance, with their decisions being subject to direct review by the higher courts.

Note that in Chile judicial decisions of the higher courts do not create binding precedents and are only applicable and enforceable on the parties to the relevant dispute.

Arbitration proceedings are permitted, except in public policy matters such as criminal or labor law. Arbitral awards may be enforced by ordinary courts. Compulsory arbitration is provided for certain matters, such as conflicts between a company's partners or shareholders.

Constitutional Court. The Constitution provides for the existence of a Constitutional Court, whose main role is to review and verify that **(i)** the bills of law brought into Congress are not contrary to the provisions of the Constitution and **(ii)** the application of a law to a specific judicial dispute does not infringe the Constitution. The Constitutional Court only acts upon request, from members of Congress or from one of the parties to a dispute, respectively. The Constitutional Court, by special quorum, may decide that a certain legal precept brought to its attention is unconstitutional for all purposes.

Other agencies. Other relevant agencies of the State are the General Comptroller of the Republic, who is in charge of controlling the legality and lawfulness of the acts of the State, and the Central Bank, in charge of the monetary policies of the country, which is an autonomous organism led by a board of five members appointed by the president and ratified by the Senate.

Constitutional developments

In October 2019, Chile faced an unprecedented social and political crisis, which began with demonstrations to oppose the raise in the tariffs of the Santiago subway system and then extended and expanded to a period of daily protests and sometimes violent riots, amid demands for a radical change of the country's economic and political system. This prompted the government and the political parties to hold discussions aimed at reaching an agreement on the manner to respond to those demands. The process culminated in an agreement signed on November 15 of that year by the government and all political actors represented in Congress (other than the Communist Party), which main focus was to outline the steps to draft and approve a new Constitution.

Thus, on October 25, 2020, the Chilean people, by a public referendum, approved the drafting of a new Constitution by a convention that would be publicly elected for that purpose (the elections for the convention were held in May 2021). The proposal for a new Constitution drafted by the convention was submitted to a referendum on September 4, 2022. The proposal was rejected by 61.89 percent of the votes.

As a result of the rejection of the convention's proposal, a new agreement was reached on December 12, 2022, by most political parties and movements in the country, which was dubbed an

"Agreement for Chile" with a new process to draft and approve the new Constitution. This new agreement provided (i) certain basic institutional foundations that the new Constitution had to maintain and respect, including that Chile is a democratic republic and a unitary decentralized State; the separation of powers between the three branches of the State; the autonomy of certain agencies, such as the Central Bank; and the constitutional protection of certain rights, including property rights; and (ii) that the new Constitution was to be drafted by three bodies: a Commission of Experts (appointed by Congress), a Constitutional Council (elected by popular vote on May 7, 2023), and a Technical Admissibility Committee (appointed by Congress).

On December 17, 2023, the new proposed Constitution was put to a public referendum and again rejected by 55.76 percent of the votes.

Economy

Chile's geographic diversity offers a rich and varied distribution of natural resources which form the backbone of the country's economy. Mining, agriculture, winemaking, fishing and forestry are among the main productive and exporting sectors in the country.

In **mining**, Chile is the first producer and exporter of copper in the world (both ore and refined), holding the largest known reserve of that mineral. Extraction, production and exportation of copper is carried out to a large extent by the State-owned copper company, *Corporación Nacional del Cobre* or Codelco, but there is also an active participation of foreign mining firms in such activities. Other relevant participants in the Chilean mining industry are lithium, of which it holds the largest reserves in the world, molybdenum, with the second largest reserve in the world after China, iodine, second only to Japan, cobalt and silver.

In **agriculture**, Chile is among the top exporters of fresh and dry fruits worldwide, being the number one exporter of cherries, dried apples, fresh grapes and plums, and consistently among the top five in the exports of avocados, blueberries, hazelnuts, peaches and raisins. As part of the agricultural industry, the Chilean **winemaking** business has found a particular success, profiting from the right mixture of soil, sunlight, temperature and humidity conditions. Chilean wines are exported to more than 80 countries and are regularly awarded with prizes from the top international publications of the sector.

Due to its extensive coastline, Chile has turned into a **fishing and fish-farming** powerhouse, being among the top exporters of salmon, crab, shellfish and fish meal in the world. The country's strengths and competitive advantages lie in the rich fisheries extant within its 200-mile economic exclusion zone.

Forestry is Chile's second largest exporting industry due to its large areas destined to forestation, which mainly correspond to plantations of radiate pine, eucalyptus, poplars and other kinds of pine. Apart of the logging companies, the Chilean forestry industry includes lumber mills, particleboard manufacturers, construction suppliers, furniture makers, and pulp and paper mills. All of these products are sold in more than 100 countries.

I.2 PRESENTATION OF INFORMATION

In this document, references to "US$" are to United States dollars, references to "CLP" are to Chilean pesos, references to "UF" are to *Unidades de Fomento*, references to "UTM" are to *Unidades Tributarias Mensuales* and references to "UTA" are to *Unidades Tributarias Anuales*.

The UF is an indexed unit of value, which is adjusted daily to reflect the previous month's inflation (determined in accordance with the variation of the Consumer Price Index, as determined by the Chilean National Institute of Statistics). As of September 30, 2024, the value of the UF is equivalent to approximately US$42.3.

The UTM and UTA are units determined by law and continually updated, which serve as measures or reference points for tax purposes. The UTM is the monthly unit, and the UTA is the annual unit. As of September 2024, the value of a UTM and a UTA is equivalent to approximately US$74 and US$888, respectively.

When converting Chilean peso figures into United States dollar figures we will use the *dólar observado* rate, which is calculated by taking into account the previous business day's transactions in the formal foreign exchange market and published by the Central Bank. As of September 30, 2024, the equivalent value of one United States dollar is CLP 896.25.

II. INVESTING IN CHILE

II.1 FOREIGN EXCHANGE AND FOREIGN INVESTMENT

Foreign Exchange

Under the law governing the Central Bank of Chile (the "Central Bank Act"), any person may freely enter into foreign exchange transactions. Foreign exchange transactions are defined under the Central Bank Act as any purchase and sale of foreign currency and, generally, any act or agreement that creates, amends or terminates an obligation payable in any foreign currency, regardless of whether there are any actual transfers or remittances from or to Chile. For these purposes, "foreign currency" includes bills and coins from foreign countries, whichever their denomination or characteristics, bills of exchange, checks, letters of credit, payment orders, promissory notes, money withdrawals, and any other document evidencing obligations in such currency, and gold.

However, under the Central Bank Act, the Central Bank is empowered to require certain foreign exchange transactions to be reported to it and/or to be carried out in the "formal foreign exchange market". The formal foreign exchange market is exclusively composed of the banks established in Chile and the exchange entities, stockbrokers and broker-dealers authorized for such purposes by the Central Bank. The Central Bank Act also allows the Central Bank to impose certain conditions on foreign exchange transactions, such as the obligation to return and convert foreign currency, impose a mandatory deposit or *encaje* and others, for a period of time not to exceed one year, but which may be indefinitely renewed at the end of such period for successive one-year periods. As of the date of this document, no restriction other than making certain transactions in the formal foreign exchange market and some reporting obligations are currently in force.

Foreign Investment

Foreign investments may be brought into Chile under two regimes: **(i)** the regime of Chapter XIV of the Compendium of Foreign Exchange Regulations of the Central Bank (the "Compendium"), and **(ii)** the direct foreign investment scheme set forth in the Direct Foreign Investment Act (the "DFI Act").

Under the Central Bank's regime, foreign investors (with investments exceeding US$10,000) are only required to report their investments following the rules in the Compendium. Investments must be settled through the formal exchange market, unless the transactions occur exclusively abroad, in which case only reporting is required. Access to the formal exchange market, however, will be subject to the regulations enacted by the Central Bank from time to time, including the restrictions imposed by the Central Bank Act.

The DFI Act was enacted in June 2015 and became effective in January 2016[2]. This law created a new regime applicable to "direct foreign investment", i.e., the transfer to Chile of foreign capitals or assets, owned or controlled by a foreign investor, for an amount equal to or higher than US$5 million or their equivalent in other currencies, through freely convertible foreign currency, physical

[2] Prior to January 2016, foreign investment could be subject to Chapter XIV of the Compendium or the regime under Decree Law No. 600, of 1974 ("DL600"). DL600 provided for the execution of a foreign investment contract between the investor and the State of Chile, which set forth the rights and privileges pertaining to the foreign investor, which could not be unilaterally altered by the Chilean State. DL600 also provided an option for the investor to benefit from an invariable income tax regime (invariability that had become less attractive for most investors in the final years of the DL600 because of the lowering of corporate tax burdens) and from certain special devices designed to encourage project financing. Foreign investment contracts executed prior to January 1, 2016, continue in effect, subject to the same rights and rules. Also, the DFI Act allowed foreign investors to submit requests for entering into a foreign investment contract during a term of four years following January 1, 2016, benefitting from an invariable tax regime at a rate of 44.45 percent.

assets of any kind, reinvestment of profits, capitalization of credits, technology in all its forms which is susceptible of being capitalized, or credits associated to foreign investment coming from a related company. It will also be considered a direct foreign investment the one that, within the amount previously mentioned, is transferred to the country, and is materialized through the acquisition or participation on a company's equity or the capital of the receiving entity of the investment, organized in Chile according to its laws, and which directly or indirectly gives to the investor control of at least 10 percent of the voting stock of the company, or any equivalent percentage in the participation of the company's capital if it is not a stock company, or in the equity of the relevant enterprise.

Foreign investors shall have the right to remit abroad the transferred capital and the net profits their investments generate, once their tax obligations are fulfilled according to Chilean legislation. It also grants access to the formal exchange market in order to liquidate the currencies constitutive of their investments, or to obtain the necessary currencies to remit the invested capital or net profits obtained from the direct foreign investment. The foreign exchange transactions carried out in the context of the foreign investment are subject to the regulations enacted by the Central Bank from time to time.

The DFI Act guarantees the foreign investor that it will be subject to the same legal framework as a national investor, without the possibility of any kind of arbitrary discrimination, neither directly nor indirectly. It also exempts the foreign investor from paying value added tax on importation of goods into Chile, subject to certain requirements and procedures set forth in the Value Added Tax Act.

To qualify for this direct foreign investment regime and benefit from the rights indicated above, the foreign investor must obtain a certificate from the Agency for the Promotion of Foreign Investment.

II.2 INVESTMENT VEHICLES

Introduction

Chilean laws provide for the creation of different types of entities endowed with legal personhood, including corporations, stock companies, limited liability companies, partnerships (limited and unlimited), profit-sharing associations and non-profit organizations.

In practice, for business and investment purposes, the following vehicle structures are used:

- ***Limited liability companies*** (*sociedades de responsabilidad limitada* or "SRL"), which require at least two partners, are somewhat rigid in its management, and require the written agreement of all partners for any amendment to the bylaws and other material decisions. SRLs are commonly used for structures where rigidity is an asset and changes over time are either unlikely or discouraged, e.g. wholly owned holding companies for investments in an operating target company, family-owned entities, or where a minority partner manages the entity and desires to protect that structure.
- ***Corporations*** (*sociedades anónimas* or "SA"), which can be private or public, require at least two shareholders, and are managed by a two-tier structure of board of directors and shareholders' meeting (plus a committee in certain cases) based on majority voting rules. SAs used to be the main vehicle for investment at the operating level before the introduction of the SpA structure but are still preferred in cases where its less flexible management structure offers a greater degree of certainty over time and, more particularly, where the listing of the company is sought or expected (only SAs can go public). Public SAs are subject to the supervision of, and to the rules issued by, the Commission for the Financial Market ("CMF")[3].

[3] Public SAs are those that voluntarily or by legal requirement register their shares in the Securities Registry managed by the CMF. Companies which have had more than 2,000 shareholders (or such other number

- ***Stock companies*** (*sociedades por acciones* or "SpA") have become the main investment vehicle in Chile, both at the holding and operating levels, since their creation in 2007. They can be created by one or more shareholders, offer great flexibility in their management structure, and provide more room to regulate matters regarding capital increases, preferred shares, shareholder resolutions and others[4].

Formation

All common investment vehicles must be formed by the execution of a Chilean public deed or, alternatively in the case of an SpA, of a notarized private deed, and are subject to formalities of registration in the Registry of Commerce of their place of organization and publication in the Official Gazette. Amendments to their bylaws, as well as mergers, divisions, conversions and dissolution, are subject to similar requirements.

Management and Supervision

SRLs may be managed by one or more of the partners, or by one or more individuals, acting directly, through their representatives or through specially appointed attorneys-in-fact. Although less frequent, it is also possible to establish a board of directors subject to the rules as to numbers, composition and decision-making set forth in the bylaws. Amendments to the bylaws, mergers, divisions, conversions, dissolution (other than as a result of expiration of their statutory term) and transfers of equity rights require the written approval of all partners.

SAs are managed by a **board of directors** composed of three or more members (five or more members for public SAs), elected by the shareholders' meeting. Directors can be Chilean or foreign, can have alternates, and may be shareholders or representatives thereof. In public SAs over a specified net worth and ownership concentration, the election of at least one independent director is mandatory and the formation of a supervisory directors' committee is required. The board controls the overall management and administration of the company, including the appointment of the general manager and the granting of powers to represent the company before third parties. Resolutions are passed by the majority of the directors in attendance, unless the bylaws (or a shareholders' agreement, enforceable only between the shareholders[5]) provide otherwise.

The top supervisory body of an SA is the **shareholders' meeting**. Ordinary meetings take place once a year with the main goal of approving the financials of the previous year, appoint auditors or account inspectors, decide upon the distribution of profits and, when required, renew the board. Extraordinary meetings may be held any time the needs of the company so require and are mandatory for certain relevant decisions such as amendments to the bylaws, mergers, divisions, creation of guaranties in favor of third parties and dissolution. Resolutions are passed by the absolute majority of the issued voting shares in attendance at the meeting, except for amendments to the by-laws that require absolute majority of all issued voting shares, certain material decisions that require two thirds of all issued voting shares (or of the affected series of shares, if applicable), and the decision to distribute less than 30 percent of net profits in a public SA that requires unanimity of the issued voting shares.

SpAs may be managed by one or more partners, one or more individuals, or a board of directors, or a combination of the foregoing, in each case appointed or elected, and with the functioning and powers, as provided in the bylaws. Rules governing the management of private SAs apply to the board of an SpA in absence of specific regulation in the bylaws. Shareholder decisions may be

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determined by the CMF by regulation) registered in their shareholders' registry for 12 consecutive months must register their shares in the Securities Registry.

[4] When not expressly stated or excepted, rules for private SAs apply to SpAs. The bylaws of an SpA may expressly exclude the application of any such rule.

[5] Shareholders' agreements may alter the management rules of an SA or SpA and provide for qualified quorum matters at the board and shareholders' meeting level but may not lower the qualified quorums provided in the applicable law.

made by resolution of the sole shareholder, when applicable, or by the shareholders' meeting with the quorums set forth in the bylaws (or otherwise as applicable to the private SAs).

Directors' Liability

Directors are mandated to act in the best interests of the company, regardless of the shareholder(s) who appointed them. In this sense, directors must (i) diligently comply with the provisions of the company's bylaws and the applicable regulations (business judgment rule applies within the framework of the board's fiduciary duties to the company as a whole), and (ii) refrain from creating conflicts of interest with the company (see *Related Party Transactions* below).

Directors' main responsibilities include:

- Refraining from approving any act or contract that would conflict with the bylaws or the applicable regulations.
- Establishing mechanisms and procedures to properly control and supervise the day-to-day management of the company.
- Requesting information and additional documentation when material issues are raised, or may be reasonably presumed, in the exercise of their supervisory functions.
- Keeping information on the company and its businesses in strict confidentiality, except when disclosure is required by law or the CMF.
- In public SAs, providing the public and the CMF with truthful and updated information regarding the condition of the company determined by the law and/or the CMF.

Related Party Transactions

As a general rule, directors must refrain from using their position to obtain undue advantages or benefit from commercial opportunities of which they become aware as a result of their position, for themselves or their related persons. The approval of related transactions in SAs are subject to the following rules and procedures:

- **Private SAs and SpAs** (unless the bylaws provide otherwise):
  - Material transactions[6] in which a director has a direct or indirect interest[7] must be approved by the board (without the interested director's vote) and be at arm's length conditions. No board approval is required for transactions approved by the shareholders' meeting with the affirmative vote of two thirds of the issued voting shares.
  - Transactions between affiliated companies (parent and subsidiary, companies under the same controller) must be at arm's length conditions and their respective administrators are personally responsible for damages caused by transactions not complying with such conditions.
- **Public SAs**: Transactions involving directors, managers, officers or liquidators of public SAs, directly or indirectly (see footnote 7), those that held any such position within the last 18 months, affiliated companies to the SA, and others qualified as related transaction in the bylaws or by the directors' committee, shall **(i)** contribute to the company's interest, **(ii)** be at arm's length conditions, and **(iii)** be approved by the majority of the board (without

[6] Transactions are deemed "material" if the amounts involved in the relevant act or contract exceed 1% of the company's net worth, provided that amount is higher than the equivalent to UF 2,000 (approximately equivalent to US$84,000), and in any case when it is higher than UF 20,000 (approximately equivalent to US$840,000). Related transactions within a consecutive 12-month period are considered as a single transaction for these purposes.

[7] Interest is deemed to exist when any of the following persons intervenes in the relevant act or contract: **(i)** the spouse or relatives to the second degree of the director, **(ii)** companies in which he or she is also a director or owns 10% or more of the capital, **(iii)** companies in which any of (i) or (ii) own 10% or more of the capital, and **(iv)** the controller of the company, or its affiliates, if the director had not been elected without its votes.

the votes of the interested members) or, if the majority of the board is barred from voting, by the unanimity of the non-interested members and the shareholders' meeting with the affirmative vote of two thirds of the issued voting shares (with a prior independent review of the transaction and its consequences for the company).

Shareholder Rights and Protections

Normally, shareholders' voting rights are unlimited, and the relevant shareholder can exercise them at will, subject to **(i)** general good faith principles, and **(ii)** the duty to exercise its corporate rights considering those of the corporation and of the other shareholders[8]. Minority shareholders may bring claims against decisions which are so arbitrary and harmful that they might be considered passed by the majority shareholders with the main or sole intent of damaging the corporation or the minority shareholders.

Additionally, in certain matters (conversion, merger, transfer of substantial part of the company's assets, guaranties in favor of third parties, creation of preferences, delisting, etc.) dissenting shareholders have a withdrawal or appraisal right, pursuant to which they are entitled to tender their shares to the corporation (at book value or average floating price, as applicable).

A special withdrawal or appraisal right is also provided to minority shareholders where a controller acquires more than 95% of the shares in a public SA. In this case, if any of the minority shareholders does not exercise such right, and the bylaws so provided prior to the acquisition, the controller may force such minority shareholders to sell their shares to the controller, provided that the latter had acquired the shares in a public tender offer (see *Public Tenders* below) for all shares in the company (or in the relevant series) and at least 15 percent of such shares were acquired in the relevant tender process.

Disclosure Rules

Other than those matters that require execution of a notarial deed and registration and publication formalities, there are no special public disclosure rules for SRLs, SpAs and private SAs. Only transfers of equity rights in SRLs are necessarily public, since they must be evidenced in a notarial deed, and registered and published, in each case including the names of the relevant sellers and buyers.

Public SAs are subject to several disclosure rules under the Chilean Corporations Act, its Regulations and the rules and guidelines issued by the CMF. These disclosure rules include publication of certain corporate information in newspapers and on their institutional website, and making information available to the public, to the stock exchanges and to the CMF.

For the mere fact of being registered in the Securities Registry of the CMF[9], a public SA will be required to disclose any "essential fact" (*hecho esencial*) that may be relevant to its business or considered of interest to the market. These essential facts are sent to the CMF and the stock exchanges where the company lists its securities and are made available to the public through the CMF's website. The board of directors of the disclosing entity, with the affirmative vote of three quarters of its members, may determine that a specific fact should be subject to reserve.

Share transactions involving persons holding 10 percent or more of a company's capital (or that reach or exceed such threshold through the transaction) must be reported to the CMF, indicating if

[8] Also, certain limited matters require the unanimity of the voting shares, such as the decision to not distribute dividends or distribute less than 30% of the net profits in public SAs, to pay dividends or liquidation proceeds in kind (or optionally in cash or in kind), or to appraise contributions in kind without a prior expert review.

[9] All entities seeking to issue equity or debt and offer it to the public must register in the Securities Registry of the CMF. Certain special purpose non-issuers may also be required by law to follow the disclosure rules of the CMF.

the transaction is made as a passive investment or is aimed at controlling the target (see also *Public Tenders* in Chapter II.3).

II.3 MERGERS AND ACQUISITIONS

Transfers of Shares and Equity Rights

In **SRLs**, equity rights may be transferred only with the authorization of the other partner(s). The transfer must be evidenced by means of a notarial deed, an excerpt of which must be registered in the relevant commerce registry and published in the Official Gazette. In practice, all partners, and the transferor and transferee, all execute the same deed.

In **SAs** and **SpAs**, subject to legal or statutory pre-emptive rights and to any restrictions contained in shareholders' agreements, shares can be freely transferred. Transfers of shares may be evidenced by notarial deed or by private deed before two witnesses (including by standard form transfers where the parties only fill out the number of transferred shares, the price per share and the identification of parties and witnesses). Companies are required to register these transfers in their shareholders' registries, provided they comply with the formal requirements.

As to pre-emptive rights, in **SAs**, any newly issued payable shares must be offered at least once in preference to the existing shareholders. In **SpAs**, the default rule is that there are no pre-emptive rights, but in practice most bylaws set forth preferences for the existing shareholders along the lines of those applicable to SAs.

Note that transfers of equity rights or shares may also be subject to notification or approval requirements before antitrust authorities (see Chapter VIII.1), tender requirements in public SAs (see *Public Tenders* below), and/or special authorizations depending on the type of entity (see Chapter III.1).

M&A Transactions

For high-priced and sophisticated transactions, it is standard practice in Chile to use U.S.-style share (or equity rights) purchase agreements. Escrows and earn-outs; representations and warranties; interim conduct of business covenants; term and amount limitations of liabilities (with baskets, caps and deductibles); are all common in M&A transactions in Chile. Standard limitations in Chile[10] include 10-30 percent of total transaction value as cap (except for gross negligence and willful misconduct; breach of covenants; and falseness of representations on title and capacity), and 12-24 months as to term (except for falseness of representations on title, tax and sometimes environmental matters, where the legal statute of limitation, if longer, prevails).

In general, M&A transactions in Chile are subject to Chilean law and arbitration in Chile. There are, however, transactions involving foreign entities in which the governing law is foreign, and jurisdiction is given to foreign courts or arbitration rules (New York, London, Madrid, Singapore; ICC rules). See, for further information Chapter X.

Upon closing of the transaction, **(i)** in **SRLs**, a public deed of transfer must be executed, and **(ii)** in **SAs**, a standard form transfer of shares is executed, the share certificates (if physical) and corporate books (if a whole or controlling acquisition) are delivered to the acquirer, resignation and release letters from directors are delivered to the company, and the transfer is annotated in the shareholders' registry. In **SpAs**, the rules of private SAs apply *mutatis mutandis* depending on the management structure.

[10] Note that the differences with U.S. provisions of purchase agreements include, among others: (i) penalties are accepted and enforceable under Chilean law and there is no need for "LDs not a penalty" language, and (ii) consequential and punitive damages are not applicable in Chile.

Mergers and Divisions

Mergers between entities may occur by absorption or by creation of a new entity. Mergers by absorption will occur when one entity is absorbed by another, without creating a new company, and the shareholders or partners of the absorbed entity receive shares or equity rights in the absorbing entity. An "improper merger" occurs by the mere fact of acquiring all equity rights in an SRL or all shares in an SA (acquisition of all shares in an SpA will not cause the absorption of the latter, unless its bylaws provide otherwise, and will require a decision from the corporate bodies to carry out the merger), in which case no exchange of shares or equity rights takes place. The legal formalities regarding the absorbed entity or entities must be complied with to complete the merger.

Mergers by creation require the approval of the relevant corporate bodies of all entities involved, and compliance with the formalities for dissolution of each of the disappearing entities (but no liquidation procedure will be required).

In all mergers, all entities involved in a merger by creation must approve the balance sheets of the entities to be merged and the expert report(s) on the value of the merged entities and the rate of exchange for the equity rights or shares, as well as the bylaws of the new merged entity. In private SAs, if all shareholders and partners of the merged entities approve the merger, no expert report is required. In SpAs, the need for expert reports may be expressly excluded in the bylaws.

Divisions also require the preparation and approval of a balance sheet of the existing entity and of an expert report identifying all accounting items and assets of the same and their distribution between or among the new entities post-division, and the approval of the bylaws for such new entities. All partners and shareholders must retain the same participation they had in the divided entity in each of the entities resulting from the division, unless they expressly authorize otherwise.

In **SRLs**, mergers by creation (or absorption if the absorbing entity is an SRL) and divisions require a notarial deed executed by all partners, an excerpt of which must be registered and published. In **SAs** and **SpAs** with more than one shareholder, mergers by creation (or absorption if the absorbing entity is the SA or SpA) and divisions require the approval of the shareholders' meeting with two thirds of the issued voting shares[11], the minutes of which must be evidenced by means of a notarial deed (or notarized private deed in an SpA) and its excerpt registered and published. In **SpAs** with one shareholder, a written resolution of the sole shareholder by notarial deed or notarized private deed will suffice, subject to registration and publication as above.

Public Tenders

Public tenders for the acquisition of shares (*ofertas públicas de adquisición de acciones* or "OPA") in a **public SA** (or all shares in a specific series of shares) may be carried out at will or when required by the law. OPAs are mandatory in the following cases:

- For acquisitions that allow a person to take control[12] of the company.
- When the controller has reached control over two thirds of the total issued voting shares of the company (or of the relevant series).
- When a person intends to acquire control of a company that in turn controls another company the shares of which are publicly traded, provided the latter represents 75 percent

[11] Shareholders who voted against the merger or division may withdraw from the company (in SA or in SpAs if the latter's bylaws so provide). See *Shareholder Rights and Protections* in Chapter II.2.

[12] The Chilean Securities Market Act defines as "controller" of a company such person or group of persons bound by a joint action agreement who, directly or through other individuals or entities, participates in the company's ownership and has power to (i) ensure the majority of the votes in shareholders' agreements and elect the majority of directors in corporations, or the majority of votes in partners' meetings and appoint the manager or representative or a majority of them in other types of entities, or (ii) exercise a decisive influence in the company's management.

or more of the consolidated net assets of the former, in which case a prior OPA must be addressed to the shareholders of the subsidiary for an amount not lower than the percentage necessary to acquire control thereof.

- When a shareholder has acquired control of a company, for any acquisition equal or higher than three percent of the latter's total issued shares (except in a stock exchange), in which case the controller must launch an OPA for a price not lower than such paid in the takeover transaction.

An OPA will not be required for **(i)** transactions exempted of such obligation by the CMF, provided they do not exceed five percent of the total issued shares of the company and they are carried out in a stock exchange, **(ii)** acquisitions of shares in a primary offering pursuant to a capital increase, **(iii)** acquisitions of shares sold by the controller, provided these are publicly traded, the price is paid in cash and is not substantially higher than the market price[13], **(iv)** acquisitions as a result of a merger, **(v)** shares acquired by inheritance, and **(vi)** shares acquired in sales mandated by law or a court.

The offeror must publish a notice launching the OPA and make a prospectus with its terms and conditions available to all interested parties. Each of the directors of the target company must provide a written opinion of the convenience of the offer for the shareholders, also available to the public. The offer must be open for at least 20 days and not more than 30 days from the notice, extendable once for not more than 15 additional days.

Competitive offers may be launched, provided their initial notice is published at least 10 days in advance of the expiration of the then-current OPA.

II.4 CAPITAL MARKETS

Registration

A company that wants to offer its shares to the public must be organized as a public SA and register the company and its shares in the Securities Registry of the CMF. Registration requires the submission of corporate and financial information on the company, and a sworn statement on the truthfulness of the same. Once the shares have been registered, they must also be registered in a Chilean stock exchange[14]. Continuous information requirements, including disclosure of "essential facts", become mandatory with the registration (see *Disclosure* in Chapter II.2).

Equity Offerings

Primary offerings require the approval of a capital increase in the company. Once all formalities for the capital increase have been complied with, the issuer must register the new shares in the Securities Registry, having provided a prospectus for the offer and certain updated information to the CMF. Once the new shares have been registered, the same information is provided to the stock exchanges and to the relevant brokers.

After registration, the options to subscribe new shares must be offered preferentially to the shareholders of the company according to the general rules (see *Transfers of Shares* in Chapter II.2).
Once the preemptive right period has expired, and not all shares have been subscribed by the current shareholders, the issuer may place the unsubscribed shares in one or more stock

[13] Market price will be the weighted average of the transactions of the offered shares in the relevant stock Exchange, between the ninetieth exchange business day and the thirtieth exchange business day prior to the date in which the acquisition must take place. A price will be deemed substantially higher than the market price when it exceeds the percentage determined by the CMF (currently fixed at 10 percent).
[14] Chile has two stock exchanges, the Santiago Stock Exchange (*Bolsa de Comercio de Santiago*) and the Electronic Stock Exchange (*Bolsa Electrónica de Chile, Bolsa de Valores*).

exchanges. Such shares may be placed outside of a stock exchange for a period of 180 days from their registration.

The first public offering of shares of a company after its voluntary registration in the Securities Registry must cover at least 10 percent of the total issued shares.

Debt Offerings

Public offering of debt securities in Chile for terms longer than one year must be made by the issuance of notes (*bonos*) by companies registered in the Securities Registry.

The terms and characteristics of the debt offering are set forth in a note issuance agreement between the issuer and the representative of the noteholders. Note issuances may be for a fixed amount or as a line, in this latter case to be issued within the maximum term set forth in the agreement. In line issuances, the issuer and the representative must execute a complementary deed setting forth the terms and characteristics of each placement.

The notes must be registered in the Securities Registry, by submitting certain corporate and financial information regarding the issuer and the issuance, including a copy of the issuance agreement and a prospectus for the offering. For each issuance under a line, the issuer must submit the relevant updated information and a copy of the complementary deed. Among the information to be provided in each opportunity, the issuer must submit two risk rating certificates for the notes.

Offshore Offerings

Chilean companies registered in the Securities Registry may offer shares and debt in foreign markets, subject to providing to the CMF the same information that such issuers are required to submit to the relevant foreign regulators.

II.5 REORGANIZATION AND INSOLVENCY

The Reorganization and Liquidation Act (the "Insolvency Act") governs the procedures applicable to insolvent entities and individuals. The proceedings for entities are summarized below.

Reorganization Procedure

The purpose of this proceeding is to reorganize and restructure an insolvent entity's assets and liabilities by means of an agreement with its creditors.

Financial Protection

Once the court resolves the commencement of the reorganization procedure, the insolvent entity will benefit from a special financial protection (*protección financiera concursal*) for a period of 30 days, extendable for up to 60 additional days. During this protection period, **(i)** it is forbidden to declare the insolvent entity's liquidation or to file liquidation, foreclosure, or restitution proceedings against it, and any such proceeding and the relevant statute of limitation will be suspended, **(ii)** the term of all contracts entered by the insolvent entity shall not be altered, and such contracts may not be terminated or accelerated, or any guaranty enforced against the debtor, **(iii)** if the insolvent entity appears in a public registry as a subcontractor or supplier of a service, it may not be discriminated by the authority with its deletion or forbiddance to participate in public tenders, as long as it has complied so far with its related obligations, **(iv)** the insolvent entity's management will be under the supervision of an observer (*veedor*), **(v)** the insolvent entity is unable to create security interests over its assets or to alienate them, except within its ordinary course of business, **(vi)** the insolvent entity will not be able to amend its bylaws, articles of association or power of attorney structure, and

(vii) any transfer of shares in order to be registered in the insolvent entity's register will require the observer's authorization, except in the case of public SAs.

Reorganization Proposal

In the reorganization resolution the court will order the insolvent entity to publish a reorganization agreement proposal. The insolvent entity may propose any measure to restructure its liabilities and assets, including proposing different agreements to its secured and non-secured creditors or even propose one or more alternatives to a specific category of creditors. The only limitation established by the Insolvency Act is that the agreement proposal and its conditions or modalities must be the same for all creditors of the same category. If approved, compliance with the reorganization agreement will be supervised by the observer for a period of at least one year.

The proposal shall be voted in a creditors' meeting and its approval requires the debtor's consent and the affirmative vote of the creditors representing two thirds of the total debt with right to vote attending the meeting corresponding to the relevant category. Once the agreement has been approved and not been challenged by one of the creditors for grounds set forth in the law (or any such challenges have been dismissed by the court), the debtor and all creditors of the relevant category (whether they voted or not) will be bound by it, except for secured creditors who did not attend the meeting.

If the agreement's proposal is rejected by the creditors, the court will immediately pronounce a liquidation resolution, unless creditors representing at least two thirds of the total credits of the debtor agree in allowing the latter to submit a new proposal.

Any of the creditors affected by the debtor's lack of performance or conduct that has aggravated its poor state of business is entitled to file a lawsuit against it. However, the law allows the debtor to comply in a specific time frame in order to avoid the consequences of the breach.

If the court declares that there was a breach or that the agreement was void, once the sentence is final and subject to no further appeal, it will pronounce a liquidation resolution.

Out of Court or Simplified Reorganization Agreement

Any insolvent entity can enter into a simplified reorganization agreement with its creditors and submit it to the competent court for its approval. Once the simplified reorganization agreement is submitted to the court, it will pronounce a simplified reorganization resolution. Its effects are more limited than the reorganization resolution described above.

The signature of two or more creditors representing at least three quarters of the total credits of a category is required for the approval of a simplified reorganization agreement. It will also require a prior positive report from an observer regarding the probability of compliance by the debtor and a comparison with how much the creditors would receive if the insolvent entity was liquidated instead.

Liquidation Proceedings

The Insolvency Act distinguishes between a voluntary and a compulsory liquidation proceeding. The compulsory proceeding may be requested by a creditor in certain cases and even declared by the court *ex-oficio* under certain circumstances. Voluntary liquidation is requested by the debtor subject to the requirements provided by the law.

In each case, the resulting liquidation resolution will produce the following effects: **(i)** the insolvent entity is immediately inhibited to manage its current assets, and a liquidator will be appointed to take charge of them, except for the assets acquired by the debtor pursuant to non-gratuitous title after the resolution, **(ii)** the liquidation resolution irrevocably determines the rights of all creditors as of the date it was issued, **(iii)** all debts become due and payable for the sole purpose of enabling

the creditors to intervene in the liquidation proceeding and receive the dividends up to the current value of their respective credits, **(iv)** any set-off of reciprocal obligations between the insolvent entity and the creditors which would not have operated by virtue of law prior to the resolution is forbidden, except for related liabilities derived from the same agreement or negotiation, **(v)** all pending civil cases against the insolvent entity before any court shall join to the liquidation proceeding, except for those contemplated by law (e.g. compulsory arbitral proceedings), **(vi)** all injunctions and seizures ordered prior to the resolution will become immediately void, and **(vii)** the right of all creditors to individually foreclose the entity's assets is suspended, except for secured creditors with respect to the foreclosure of the relevant collateral (subject to the requirement of guaranteeing their contribution to the payment of certain preferred credits in case the other assets are insufficient to cover them).

Acts and Contracts prior to Proceeding

The Insolvency Act provides that, subject to certain conditions, all acts, agreements or payments that had been entered into or performed within a time frame prior to commencement of a reorganization or liquidation proceeding and which jeopardize the debtor's estate, may be challenged with the aim of its unenforceability being declared. The relevant lawsuits may be filed by any of the creditors or, under certain circumstances, by the liquidator or the observer within one year counted from the reorganization or liquidation resolution.

Conditions for this challenge action depend on the nature of the acts, agreements or payments which may be subject to an objective (i.e., without defenses such as good faith and lack of knowledge being available) or subjective (i.e., admitting such defenses) regime.

The following acts are subject to the objective regime, as long as, they were executed within one year previous to the commencement of the insolvency proceedings: **(i)** all anticipated payments, whichever manner they were executed, **(ii)** all payments of a matured debt made in a manner different from the original terms of the contract, **(iii)** all mortgages and pledges created to secure previously existing obligations, and **(iv)** acts and agreements for no consideration. Also, all amendments to the by-laws of the debtor in liquidation that have meant a decrease of the debtor's equity, executed within the six months prior to commencement of an insolvency procedure, are also subject to this regime.

On the other hand, any other acts or contracts that had been entered into, performed or executed within two years before the reorganization or liquidation proceeding was initiated, may be declared unenforceable against the debtor's creditors in case the plaintiff proves the fulfillment of the following requirements: **(i)** knowledge of the counterparty of the poor state of the debtor's business, and **(ii)** that the act or contract has jeopardized the creditors or altered their equal position in the insolvency proceedings. The Insolvency Act considers that an act or contract which was not entered into arm's length conditions causes damages to the creditors.

III. FINANCE AND TRADE

III.1 BANKING

The Chilean Banking Act of 1997 (the "Banking Act"), which has been amended multiple times throughout the years, serves as the core regulation that governs banks in Chile. The Banking Act provides that no individual or legal entity not specially authorized by law may **(i)** engage in the business reserved by law to banks and, particularly, in the business of receiving or soliciting money or other repayable funds from the public on a regular basis, whether in the form of deposits, loans or in any other manner; or **(ii)** engage, for its own account or for the account of other persons, in the business of money brokerage or in the intermediation or brokerage of credits evidenced by securities, commercial papers or any other type of debt instruments.

The Banking Act prohibits any advertisement, publicity, mailing, press or other media release on this matter. Furthermore, the Banking Act presumes that an individual or legal entity has violated its provisions in this regard whenever it has an office or any premises, a website or any other technological platform or means by which, in any manner, the public is invited or solicited to bring in money at any title (whether as deposits or other repayable funds whatsoever), or whenever any publicity is made therefor. Any violation to the foregoing constitutes a criminal offence punishable with imprisonment.

The Banking Act specifies all those operations and activities in which local banks may lawfully engage. It sets out an exhaustive list of such operations and activities including, among others, deposit-taking and acceptance of other repayable funds from the public; issuance of bonds or debentures; lending (in its various forms, including discount of commercial papers and issuance of mortgage bonds); money brokerage; intermediation or brokerage of commercial papers and debt instruments; issuance of letters of credit and performance bonds; money collection, payment and transmission services; issuance and administration of means of payment (*e.g.*, bankers drafts, travelers checks, credit, debit and payment cards, etc.); issuance of guaranties; trading in money market instruments, foreign exchange, financial futures and options, exchange and interest instruments; acquisition, sale and trading in debt or fixed income transferable instruments and provision of underwriting services in connection with the issuance and placement of such securities, and acting as placement agent and underwriter in connection with offerings of newly issued shares of public corporations. It also determines the kind of assets that banks are allowed to acquire and hold; in this regard, the most important limitation is the prohibition for banks to acquire and hold equity securities or equity investments, unless in very few qualified exceptions (*e.g.*, for acting as underwriters or permanent investments in certain special purpose subsidiaries).

Banks are also authorized by law to grant certain fiduciary services to their clients, including, among others, to act as general or special attorneys-in-fact for the administration of assets of third parties; as administrators of assets that have been bequeathed or passed on as inheritance subject to the condition that they be administered by a bank; and as administrators of fiduciary property when such administration has been stipulated in the act of constitution of the fiduciary property.

The CMF may authorize **foreign banks** to establish representation offices in Chile to act as business agents for their foreign parents. But in no case, may these offices engage in the activities indicated above except for promoting the credit products and services offered by their parents, in the conditions set forth by the CMF.

Additionally, a **foreign financial institution** may organize or acquire a bank in Chile or organize a branch in Chile to the extent **(i)** it is subject to an adequate surveillance in its jurisdiction of incorporation; **(ii)** it has been previously authorized by the relevant authorities of its jurisdiction of incorporation; **(iii)** there exist adequate channels for the exchange of information between Chilean authorities and the relevant authorities of the jurisdiction of incorporation of the foreign financial institution; and **(iv)** it obtains the CMF's approval.

In case of foreign investment companies that desire to organize or acquire a bank in Chile or to organize a branch in Chile, the Banking Act has different rules depending on whether the investment company is organized in a jurisdiction that applies the regulations of the Basel Committee or not. If the investment company is organized in a jurisdiction which does not apply the regulations of the Basel Committee, the same may organize or acquire a bank in Chile or organize a branch in Chile to the extent it ensures the CMF it shall comply with the same requirements described in the preceding paragraph, should such investment company have or thereafter acquire a significant equity ownership in a bank of its jurisdiction of incorporation or elsewhere. If the investment company is organized in a jurisdiction which applies the regulations of the Basel Committee, such institution may organize or acquire a bank in Chile or organize a branch in Chile to the extent it undertakes to deliver to the CMF the information issued by the surveillance authorities of its jurisdiction of incorporation or, if no such information exists, information issued by independent auditors of recognized international standing.

Ownership Restrictions

The Banking Act states that no person or company may acquire, directly or indirectly, shares of a bank that, solely or together with shares previously owned, represent more than 10 percent of the capital stock of the bank without the prior authorization of the CMF, which may only be withheld in case such person or company does not comply with the requirements set forth by the Banking Act to be a founding shareholder of a bank.

The Banking Act also sets forth certain restrictions in respect of certain transactions that may affect the ownership of a bank (*e.g.*, the merger of two banks), applicable when the relevant transaction would result in the acquiring bank or the resulting group of banks qualifying as of **systematic significance** for the Chilean banking system. According to the Banking Act, the CMF shall define, with the prior approval of the Council of the Central Bank of Chile, the factors and methodologies that determine such qualification, including, size, market share, relationship with other financial institutions, degree of substitution in the offering of financial services, etc.[15]

The Banking Act further provides that the individuals or legal entities which, individually or together with other people, are considered controllers of a bank under Article 97 of the Chilean Securities Act, and which individually own more than 10 percent of its shares shall provide the CMF reliable information on their financial situation as requested by the CMF.

Minimum Capital and Capital Adequacy Requirements

Under the Banking Act, a bank must have a minimum paid-in capital and reserves of UF 800,000 (approximately equivalent to US$33.6 million).

According to the Banking Act, each bank should have an effective net worth of at least eight percent of its risk-weighted assets, net of required reserves. Effective net worth is defined as the aggregate of:

- a bank's paid-in capital and reserves;
- its bonds issued with no fixed term, and preferred shares regulated in the Banking Act that have been placed and valued at the issuing price; up to a third of its paid-in capital. The sum of the paid-in capital, the bonds with no fixed term and preferred shares shall not be less than six percent of the risk-weighted assets, net of required reserves;
- its subordinated bonds, considered at the issuing price (but decreasing 20 percent for each year during the period commencing six years prior to maturity), but not exceeding 50 percent of its Net Capital Base (as defined below); and

[15] Currently, the following banks qualify as of systematic significance for the Chilean banking system, as informed by the CMF: Banco de Chile, Banco de Crédito e Inversiones, Banco del Estado de Chile, Banco Santander-Chile, Banco Itaú Chile (formerly Itaú Corpbanca) and Scotiabank Chile.

- its voluntary reserves, up to 1.25 percent of credit risk weighted assets net of required reserves, as per the Banking Act standard methodology or 0.625 percent if a different methodology is used, as permitted by the law.

Banks should also have *capital básico adicional*, or additional Net Capital Base, of at least 2.5 percent of its risk-weighted assets, net of required reserves. Net Capital Base is defined as a bank's paid-in capital and reserves and is similar to Tier 1 capital.

The calculation of risk-weighted assets is based on a standardized methodology aimed at covering relevant risks of banking institutions, including credit, market and operational risk and are set forth by the CMF with agreement of the Council of the Central Bank of Chile. The CMF may also authorize banks to use different methodologies, in the terms and conditions set forth by the same.

Reserve Requirements and Deposit Insurance

Deposits in local currency are subject to a reserve requirement of nine percent for all demand deposits and obligations a bank has acquired in its financial business that are payable on demand, and 3.6 percent for time deposits and any repayable funds of a term up to one year, any time deposit of any term, judicially ordained deposits, and certain other obligations. The Central Bank of Chile has statutory authority to increase these percentages up to 40 percent for demand deposits and up to 20 percent for time deposits, to implement monetary policy.

According to the Banking Act and the regulations issued by the CMF, Chilean banks must hold 100 percent of the amount of all demand deposits and obligations a bank has acquired in its financial business that are payable on demand, except for obligations with other banks, whenever the aggregate sums owed thereunder exceed 2.5 times such bank's effective net worth. In case of insolvency of a bank, demand obligations are paid in full.

The State of Chile guarantees up to 100 percent of the principal amount of certain time deposits held by individuals. The State's guarantee covers those obligations with a maximum value of UF 200 per individual (approximately equivalent to US$8,460) for each calendar year, with respect to applicable time deposits held by such person at any one Chilean bank, and with a maximum value of UF 400 (approximately equivalent to US$16,920) with respect to the total banking obligations for the same period.

Confidentiality

The Banking Act provides that deposits and other repayable funds of any type whatsoever received or taken by banks are subject to strict banking secrecy and no information or data in connection therewith may be disclosed or furnished to any person except the depositor or customer itself, its agents or representatives or such other persons expressly authorized to access or receive such data by the customer or such agents or representatives. Since 2022, there is also an exception in connection with the banks' obligation to report information regarding checking accounts, time deposits, demand deposits and saving accounts. Contravention constitutes a criminal offence punished with imprisonment.

It further provides that all other banking transactions are subject to "reserve", which is a form of confidentiality of lesser degree. However, these other banking transactions may be disclosed by the banking institutions to any third parties showing a legitimate interest thereon, provided that there is no reason to believe that knowledge of the same by such third parties may result in pecuniary damage to the customer. Note that the limitation does not apply in case the CMF is required to deliver such information to the *Unidad de Análisis Financiero* (Financial Analysis Unit)[16]. Detailed

[16] The *Unidad para el Análisis Financiero* (Financial Analysis Unit), created pursuant Law No. 19,913, is an independent government body created with the purpose of preventing the utilization of the financing system and other economic sectors to commit financial crimes.

disclosure of these other banking transactions may be made to professional firms engaged in the evaluation of the relevant bank, but such firms are also subject to the same confidentiality duty.

Chilean Courts may order the disclosure or audit of specific transactions directly related to the pertinent trial facts, about deposits or other repayable funds of any type carried out by persons being a party to, or being charged or indicted at, the relevant civil or criminal proceedings. Chilean Courts may also order the disclosure or audit of specified transactions in the course of a civil or criminal action directly related therewith.

III.2 INSURANCE

The Chilean Insurance Act (the "Insurance Act") is the core regulation of insurance and reinsurance companies and the insurance business. Pursuant to the Insurance Act, the insurance business may be carried out in Chile only by corporations organized in the country for the sole and specific purpose of existing either as a life insurance company or as a general insurance company, along with those other complementary activities authorized by the CMF. Therefore, with the sole exceptions indicated below, foreign insurance companies are prevented from marketing insurance of any kind in Chile. Insurance companies are forbidden from insuring both life and general risks simultaneously (note that credit risk may only be offered by special purpose companies of the general insurance group), and need to be organized with, and maintain at all times, a minimum capital of UF 90,000 (approximately equivalent to US$3.8 million).

Despite the above, any individual or legal entity residing or domiciled in Chile may freely contract any kind of insurance policy abroad, except for certain mandatory insurance, which shall be contracted with national insurance companies.

Foreign insurance companies may not offer, sell, contract, or otherwise market insurance policies in Chile, whether directly or through local or foreign intermediaries, brokers, or distributors except for insurance for international maritime transportation, commercial air transportation, merchandise in international transit, satellites and the cargo transported in them.

Foreign insurance companies may establish in Chile branches and obtain the relevant license from the CMF, subject to compliance with certain conditions.

Insurance companies are subject to debt-to-equity ratios set by law, as well as to investment limits per instruments and issuers. The CMF has authority to regulate these matters in detail.

Reinsurance

Foreign reinsurance companies are authorized to operate in Chile, provided they are rated at least BBB or its equivalent by two risk rating agencies of international prestige; and they appoint an attorney-in-fact in Chile with sufficient attributions as set forth in the law, which designation shall not be necessary if the reinsurance is hired through one of the reinsurance brokers registered with the CMF, who shall be deemed as the reinsurer's legal representative.

Foreign reinsurance brokers or intermediaries registered in a special ledger kept by the CMF may engage also in the intermediation of reinsurance business in Chile.

Reinsurance premiums or contributions payable abroad are subject to a two percent withholding income tax provided that certain requirements are met.

The reinsurance business may be carried out in Chile also by **(i)** insurance companies organized in Chile, subject to the general restriction that they may reinsure only those types of risks in which they are authorized to insure, and **(ii)** corporations organized in Chile for the sole and specific purpose of engaging in the reinsurance business regarding life or general insurance, or both. Domestic

reinsurance companies must maintain at all times a minimum capital of UF 120,000 (approximately equivalent to US$5 million).

If any individual or legal entity engages in the insurance business or its intermediation in Chile infringing the above-mentioned rules, such infringement is punishable with imprisonment.

Ownership Restrictions

The Insurance Act sets forth the requirements that the founding shareholders of an insurance company need to comply, which vary depending on the type of insurance company (life or non-life) and include minimum net worth and absence of inabilities. Once incorporated and existing, insurance companies must inform the CMF of any change in shareholding entailing that one shareholder reaches a participation of 10 percent or greater in the equity of the insurance company. Although this is an obligation of the insurance company, while the CMF has not received evidence that the relevant requirements are complied with, the relevant shareholders are prevented from exercising their voting rights.

III.3 PENSION FUNDS

Chile's social security system is currently based on two basic principles: **(i)** individual capitalization by each member of the system; and **(ii)** management of the funds by private companies called pension fund managers (*Administradoras de Fondos de Pensiones* or "AFPs"), freely selected by each member.

Members of the System

Each person who becomes an employee (*i.e.*, a person who begins working under subordination and dependence of someone else) automatically becomes a member of the social security system. Since 2018, independent workers are also obliged to become affiliated to the system and make contributions (previously, they had the right to voluntarily become members of the system). An AFP may not reject an application made in compliance with the law.

Contributions and individual capitalization

Each member who has not turned 65 years of age in the case of men or 60 years of age in the case of women has to make mandatory contributions to the AFP selected by him/her, equivalent to 10 percent of his/her monthly salary or income plus an additional amount determined by the AFP as a percentage of the monthly salary or income to cover the administrative costs of the AFP and the insurance premium payable by the AFP to obtain disability and survivorship insurance for each of its members. Each member may also make additional voluntary contributions, which are afforded tax benefits.

Mandatory contributions shall be paid within the first ten business days of the month following the one for which payment is being made. As to employees the mandatory contribution is withheld and paid by the member's employer, while independent workers have to make them on their own.

Upon receiving the funds from each member, the AFP shall deposit the same in the individual account it has opened for such member with the fund that such member has selected or is deemed to have selected. These funds are capitalized in such account and earn the yield of the investments made by such AFP. At the end of the member's active life, these amounts are paid to the member or his/her beneficiaries in the form of a pension as explained in *Benefits* below.

AFPs[17]

Organization. AFPs are corporations whose exclusive purpose is to manage pension funds and to grant and manage the services and benefits stipulated in Decree Law No. 3,500 (the "Pension Funds Act"). The AFPs collect the social security contributions, deposit them in the personal account of each member and invest the resources in a wide, but very regulated, range of investment opportunities in Chile and abroad in order to be able to provide the corresponding benefits at a later date. Only AFPs can carry out these operations, and acting as such without being organized and approved as an AFP is a criminal offence.

The organization of an AFP, any amendment to its by-laws and its dissolution have to be approved by the Superintendence of Pensions (*Superintendencia de Pensiones* or the "SdP"). The acquisition of a material equity stake in an AFP (*i.e.*, more than 10 percent) also requires authorization from the SdP.

The board of directors of an AFP must be comprised of at least five members, two of whom must be autonomous, *i.e.*, have no link with the AFP, the companies conforming its business conglomerate, its controller or any of their respective main officers.

Minimum capital, agencies and advertisement. The minimum capital required for an AFP commences at UF 5,000 (approximately equivalent to US$211,000) and increases gradually with the number of members up to UF 20,000 (approximately equivalent to US$844,000) for an AFP with 10,000 or more members. If at any point in time the capital falls below such threshold, the AFP shall increase the capital within six months, or otherwise the SdP shall revoke its license, and the AFP shall be dissolved.

***Ownership restrictions*.** The Pension Funds Act sets forth the requirements that the founding shareholders of an AFP need to comply and include minimum net worth and absence of inabilities. Once incorporated and existing, changes in ownership must be authorized by the SdP. While the Pension Funds Act does not set forth the threshold at which such authorization is required, the SdP has interpreted, my means of an administrative ruling that such authorization is required for purposes of acquiring shares representing 10 percent or more of the relevant AFP's capital. The applicant will have to provide evidence to the SdP that all requirements applicable for founding shareholders are complied with.

***Funds*.** Each AFP manages at least four different funds (called B, C, D and E) and may have a fifth fund (called A). The main difference between each of these funds is the risk to which the investment portfolio of each of these funds is exposed. For instance, while Fund A could have up to 80 percent of its investment portfolio in equity securities, Fund E may have up to five percent of equity securities in its investment portfolio.

The assets of each of these funds are independent of the AFP's net worth or of the assets of the other funds managed by the AFP. In other words, the resources accumulated in each fund are owned by the members of such fund (*i.e.*, the persons affiliated to the system who have chosen to allocate their contributions to such fund). Members are free to determine the fund which they prefer to allocate their contributions (and to change it), subject to certain restrictions. The AFP shall keep separate accounting for it and each of its funds.

Under the Pension Funds Act, each AFP is responsible for ensuring that every month each of the pension funds administered by it achieves a real annual yield for the past 36 months equal to or higher than the thresholds established using as a benchmark the average real annual yield of all the

[17] In November 2022, the government submitted a Bill of Law, currently under discussion in the Chilean Congress, that aims at (a) increasing the Universal Guaranteed Pension (PGU), to be funded with public resources through tax reform; (b) providing a new social security pension, financed by employers; and (c) reducing fees and improving the profitability of the individual capitalization component.

funds of the same type in the system minus certain basis points and/or a percentage of the absolute value of such average yield. If an AFP fails to meet the minimum yield for any of its funds it shall supplement the shortfall.

Regulation of investments. Investments of pension funds are heavily regulated in the Pension Funds Act and in rules and regulations enacted by the SdP and the Central Bank.

There are laws and regulations governing the type of instruments which an AFP may acquire with each of the funds it manages; requirement that certain instruments be approved by the Risk Rating Commission (*Comisión Clasificadora de Riesgo*; the minimum credit rating of certain instruments; diversification requirements and investment limits per type of instrument and groups of instruments for each of the funds managed by an AFP; diversification requirements regarding investments in Chile and abroad, issuers and instruments; and the markets in which those instruments shall be acquired and other matters relating these investments, both onshore and offshore.

The law provides for an investment regime (*Régimen de Inversión*) established and periodically updated by the SdP with the assistance of the Technical Investment Council (*Consejo Técnico de Inversiones*), which, among other things, **(i)** determines the characteristics, conditions and criteria that certain instruments must comply with to be acquired by AFPs with the resources of the pension funds; **(ii)** establishes and regulates the maximum (and minimum in certain cases) limits of investments of pension funds, per type of instrument, issuer, risk rating or otherwise; **(iii)** regulates indirect investments of the pension funds; **(iv)** establishes investment limits different than those set forth by the Pension Funds Act for the 12 first months of operation of an AFP; and **(v)** establishes mechanisms and terms to eliminate excesses of investment and cover investment shortfalls.

Fees charged by the AFPs. Each AFP may freely establish the fees that it shall charge to its members, provided that such fees shall be uniform for all its members, determined as a percentage of the balance of the funds managed, and certain services cannot be subject to a fee (for instance, in connection with the individual capitalization account the AFP may only charge for periodic deposits, but not for transfer of balance to another AFP).

Benefits. Members of the system who fulfill the legal age requirement, *i.e.*, 65 years of age for men and 60 years of age for women, may opt for one of the following retirement alternatives, provided that they comply with the relevant requirements, further provided that members are not required to retire upon reaching the legal age:

- *Immediate life annuity*: Members enter into a life annuity contract with a life insurance company, pursuant to which, the relevant member transfers the funds in their individual capitalization account to the insurance company, in exchange for the latter's commitment to pay a fixed monthly income in UF for the member's life and, at the time of their death, must provide survivor's pensions to their beneficiaries, in the terms set forth in the Pension Funds Act.
- *Temporary income with deferred life annuity*: Members choose to transfer part of the funds in their individual capitalization account to a life insurance company in exchange for a monthly annuity as from a future date determined in the life annuity contract. In addition, the member maintains sufficient balance in their capitalization account to receive a monthly annuity from the AFP for the entire period prior to the commencement of the life annuity contract.
- *Programmed withdrawal*: Members choose to keep the funds in their individual account in the AFP or transfer them to the AFP of their choice and make monthly withdrawals from the same. These withdrawals are expressed in UF and are calculated every year according to the balance of the individual account and the life expectancy of the member and their family group.
- *Programmed withdrawal with immediate life annuity*: Members choose to keep a percentage of their funds in their account in an AFP and thus obtain the payment of a programmed withdrawal pension. With the other part of their fund, they take out a life

annuity which is paid simultaneously with the programmed withdrawal, receiving the relevant member two pension amounts.

Note that the Pension Funds Act allows for early retirement to the extent the member complies with certain capitalization requirements.

In furtherance of the foregoing, members of the system may be entitled to the following benefits to the extent that they fulfill the requirements set forth in the Pension Funds Act and in the applicable rules and regulations: **(i)** disability pensions for total or partial disability, which are financed by AFPs through disability and survivorship insurance; **(ii)** survivorship pensions which are awarded to surviving beneficiaries upon the death of the member (spouse, offspring or parents, depending on the case); **(iii)** retirement and disability pensions under a solidarity regime for certain qualifying individuals who have no right to pensions under other regimes or systems; and **(iv)** other benefits in case of death.

In the case of members who have opted for the programmed withdrawal or temporary income with deferred life annuity during the temporary income period, if he/she dies without leaving beneficiaries for a survivorship pension, the balance remaining in the member's individual capitalization account shall go to increase the total estate of the deceased, constituting inheritance.

Bidding Process. The SdP shall make public bids to grant the management of individual capitalization accounts, every 24 months. The bid shall include the management of accounts of all persons affiliated with the pension system within the 24 months following the six-months anniversary of the relevant grant. All existing AFPs, as well as any other national or foreign entities which have a provisional authorization from the SdP, shall be entitled to participate in each bid.

The bid shall be granted to the entity that offers the lowest commission for the deposit of contributions. Any offered commission must be lower than the lowest commission currently available in the market.
All persons assigned to the successful bidder shall remain affiliated therewith for the period established in the bidding conditions which may not exceed 24 months from their date of affiliation, except in the event of certain defaults by the AFP.

Role of the State. In this system, the role of the State is limited to issuing the required regulations, ensuring compliance with those regulations and guaranteeing certain minimum benefits.

The authority of the SdP is extremely broad and covers basically every aspect of the AFP and its activities, from authorizing its formation to declaring its liquidation.

The State also **(i)** finances the pensions under the solidarity regime; and **(ii)** guarantees certain benefits (a) upon bankruptcy of an AFP or an insurance company, and (b) upon an AFP failing to meet the minimum yield required by law and supplementing the shortfall as outlined above.

III.4 INVESTMENT AND MUTUAL FUNDS

Until 2014, mutual funds and investment funds were subject to separate legal regimes. Law 20,712 (the *Ley Única de Fondos* or "LUF"), enacted on January 7, 2014, as amended, unified the rules applicable to all types of funds. This law is also the first legal regulation of portfolio management business.

The LUF defines a fund as a separate pool of assets (*patrimonio de afectación*) (*i.e.*, not a legal entity) formed by contributions made by participants, exclusively intended for investment in the securities and assets permitted by the law. The management of a fund is the responsibility of fund manager (*Administradora General de Fondos* or "Manager"). Contributions are evidenced in participations or quotas.

Under the LUF, funds can be either redeemable or non-redeemable. Redeemable funds are those that permanently allow participants to redeem their quotas in whole, paying in less than 180 days. All other funds are considered non-redeemable. Redeemable funds that pay redemptions in up to ten days as from the redemption request are called "mutual funds". All other funds are called "investment funds".

After one year from its creation, a fund must have a minimum net worth of UF 10,000 (approximately equivalent to US$420,000) and at least 50 participants, unless there is an institutional investor among them, in which case the second requirement shall not apply. In addition, no participant other than institutional investors may concentrate quotas representing more than 35 percent of the total net worth of a fund, either individually or jointly with affiliates.

Funds Managers

Managers are special purpose corporations authorized, regulated and supervised by the CMF and responsible for managing the resources of a fund for the account and risk of the participants. They must:

- be organized as corporations with the exclusive purpose of managing investment funds and other ancillary activities permitted by the CMF, which organization must be authorized by the CMF;
- have a paid-in capital of at least UF 10,000 (approximately equivalent to US$420,000);
- include in their name the phrase "Administradora General de Fondos";
- permanently keep at least one fund under their management; and
- keep at all times a guarantee (as cash, a bank bond or insurance policy) in benefit of each fund under management, for the higher amount between UF 10,000 (approximately equivalent to US$420,000) and a percentage over the fund's average daily net worth corresponding to the quarter prior to the relevant update.

Managers are entitled to receive a commission deducted from the fund.

Managers are authorized to act on behalf of the investment fund. Managers, their directors, officers or other related persons are responsible for acting with the due care in pursuing the purposes set forth by the internal regulations of the fund, in terms of returns and security of the investments, and are liable for the damages caused to the funds due to their negligence and/or willful misconduct.

Managers, their directors, officers or other related person, may not acquire, lease or take in usufruct, directly or through other individuals or entities, securities or assets owned by, or lend money to, or grant guaranties in favor of, the funds they manage, nor transfer or lease their own securities or assets to, or receive loans from, or benefit from guaranties granted in their favor by, said funds.

Funds may hold own shares up to the limit set forth in the relevant fund's internal regulation, provided that no fund may hold more than five percent of the fund's net worth. Any excess shall be disposed of within 90 days from the acquisition causing the excess.

Internal Regulations

Each fund is governed by its own internal regulations (the "Internal Regulations"), which set forth the rights, obligations and policies applicable to the Manager, the fund and its participants. Prior to commercialization of the fund, its Internal Regulations shall be deposited with the CMF, who holds a Public Registry of Internal Regulations Deposit.

The Internal Regulations shall include, among other things, an investment policy, a liquidity policy, an indebtedness policy, a diversification policy, a voting policy and an expenses policy.

In addition, in case a Manager manages more than one fund, then it shall deposit with the CMF a General Funds Regulation, determining the allocation of the management expenses among the funds, aggregated investment limits, conflicts of interest, benefits for the participant of the funds who redeems participations for investing them immediately in another fund managed by the same Manager, and other matters.

Investments

The LUF and its regulations issued by the CMF contain rules regarding the investments that may be carried out by the Manager with the fund's resources, including **(i)** which type of instruments and securities may be acquired by the fund, **(ii)** limits and restrictions on those investments, **(iii)** markets where the investments can be done, eligible counterparties and custody, **(iv)** valuation of those investments, and **(v)** treatment of investment excesses.

The assets and securities acquired by the fund may not be subject to encumbrances or prohibitions of any kind, except with the purpose of securing the fund's own obligations or, subject to approval by the participants meeting, obligations undertaken by companies in which the fund participates.

III.5 FINTECH

Law No. 21,521 (the "Fintech Act"), published on January 4, 2023, which became partially effective on February 3, 2023, introduced for the first time, a general regulatory framework for technology based financial services and other activities that will become regulated upon its full implementation.

Fintech Financial Services

The Fintech Act regulates the following activities and services (the "Fintech Financial Services"):

- *Crowdfunding platforms*: physical or virtual place through which those who have investment projects or financing needs communicate, offer or promote those projects or needs, or their characteristics, and contact or obtain contact information of those who have available resources or the intention to participate in or satisfy those projects or needs; to facilitate the materialization of the financing operation.
- *Alternative transaction systems*: physical or virtual place that allows its participants to quote, offer or trade financial instruments or publicly offered securities, and that is not authorized to act as a stock or commodities exchange.
- *Credit advice*: the provision of evaluation services or recommendations to third parties regarding the capacity or probability of payment of natural and legal persons or entities, or their identity, for the purpose of obtaining, modifying or renegotiating a loan or financing.
- *Investment advice*: the provision of evaluation services or recommendations to third parties regarding the convenience of making certain investments or operations in publicly offered securities, financial instruments or investment projects.
- *Custody of financial instruments*: to hold in its own name on behalf of third parties, or in the name of third parties, financial instruments, money or currencies deriving from flows or from the disposal of financial instruments held in custody, or that have been delivered by them for the acquisition of financial instruments or to guarantee transactions with such instruments.
- *Intermediation of financial instruments*: service by virtue of which activities of purchase or sale of financial instruments are carried out for third parties, in any of the following ways: acquiring or disposing of financial instruments for its own account, with the prior intention of selling or buying those same instruments to the third party or acquiring or selling financial instruments on behalf of or for said third party.
- *Routing of orders*: service of channeling orders received from third parties for the purchase or sale of publicly offered securities or financial instruments to alternative transaction systems, securities intermediaries, or commodity exchange brokers.

On January 2024, the CMF issued General Regulation No. 502, which sets forth the regulatory framework for the Fintech Financial Services. Pursuant to this regulation, the professional provision of any Fintech Financial Service requires compliance with certain requirements, including registration in the "Registry of Providers of Financial Services" kept by the CMF, authorization to provide the relevant service(s), and compliance with ongoing requirements. Note, however, that while the regulation is already effective, providers of Fintech Financial Services (other than investment advice) that were already providing the relevant service by February 3, 2024, have until February 3, 2025, to apply for registration and authorization.

All these services (and the relevant provider) shall be subject to surveillance by the CMF. Also, providers of alternative transaction systems, custody and intermediation of financial instruments will be subject to the surveillance of the Financial Analysis Unit.

Foreign providers of Fintech Financial Services are required to set forth a domicile in Chile.

Open Finance System

The Fintech Act also sets forth the framework for the creation of a new "Open Finance System" (the "OFS"), which primary objective is to promote competition, innovation, and inclusivity within the financial system. The OFS will become effective on July 3, 2026, in the terms set forth by the CMF in General Regulation No. 514, issued on July 3, 2024.

The OFS, comprising an array of remote and automated access interfaces, enables specific financial market participants to securely access information from consenting financial customers. Moreover, it mandates other entities to furnish this information to the system as required. The OFS relies solely on data subject´s consent as the only legal basis for processing personal data, consent which is also obtained via automated remote access interfaces. The system will facilitate direct interconnection and communication among participating institutions, subject to security standards and compliance with the regulations set forth in the law and those that will be established by the CMF. Participants of the system will be bound to principles of proportionality, quality, transparency, information to clients, data security and privacy, non-discrimination (technological neutrality), and interoperability. The OFS will encompass institutions that qualify as information providers, information-based service providers, account providers, and payment initiation service providers, with provisions for efficient and secure data access, sharing, and exchange. The participation and operation of the OFS will be guided by the regulatory framework and principles set by the CMF and the CMF shall be in charge of surveilling compliance with the obligations imposed by the OFS.

Cryptoassets

The Fintech Act is also the first regulatory body to define cryptoassets as digital representations of units of value, goods or services, other than money, that can be transferred, stored or exchanged by digital means.

Although it does not set forth a comprehensive framework regulating cryptoassets, these became regulated in connection with the Fintech Financial Services. Furthermore, digital representations of value, whose value is directly determinable and backed-up by money, may be considered money for certain purposes, subject to such representations complying with the minimum standards and conditions regarding security, reliability, acceptability, acceptability, use, massiveness, among others, that the Central Bank of Chile establishes by general rule.

III.6 INTERNATIONAL TRADE

Export/Import Regulations

The Central Bank Act provides that any merchandise can be freely exported from or imported into Chile, with the only condition being that all of the applicable laws and regulations in force as of the

date of the relevant transaction are duly complied with. No mandatory cash deposit requirements may be imposed by any authority as a prerequisite to perform any of them, nor can quotas or limitations of other class or nature be established in connection therewith. Also, no import or export licenses are required.

Nevertheless, the President of the Republic, by means of an Executive Decree issued through the Ministry of Finance, may prohibit the exportation or importation of goods to or from countries that have established restrictions on merchandise coming in or going out of Chile. In addition, certain regulatory restrictions may be imposed upon the import of certain goods, such as items hazardous for health or consisting in weapons, cattle, vegetables, pornography, etc.

As a general rule and absent any free trade or commercial agreement applicable thereto (see *International commerce treaties* below), imports of new products are subject to customs duties and VAT as further explained in Chapter V. In addition, some "luxury" goods are subject to higher taxes in the form of VAT.

Exports are not subject to any custom duties or taxes; instead, Chilean law provides certain incentives which will be analyzed in *Export incentives* below.

Procedure and Valuation

The National Customs Service (*Servicio Nacional de Aduanas*) requires all importers and exporters to submit in advance certain documents named entry statement (*declaración de ingreso*) and exit statement (*declaración única de salida*), respectively. Some of these documents must evidence the relevant invoice and detail applicable information regarding the concerned transaction, inter alia, information regarding the types of goods imported/exported and their value, their country of origin, classification on schedule of customs duties, place of acquisition, port of embarkation or destination, as the case may be, etc. Once these documents are received and approved by customs' authorities, the import or the export will be deemed accepted and registered as such.

If the value of the imported merchandise does not exceed US$1,000 or of the exported merchandise does not exceed US$2,000, the interested party may directly submit the documentation required by law to the relevant customs office. If the merchandise exceeds the respective maximum value, the interested party must hire a customs agent (*agente de aduana*), who will be in charge of submitting the relevant documents and following the clearance procedure.

The customs value of a merchandise shall be determined in accordance with the applicable international standards in the matter, particularly, in compliance with the rules of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (the "Customs Valuation Code"). Based on these principles, the acceptable customs value for determining customs duties and taxes on import shall be the "transaction value", that is, the price actually paid or payable for the relevant good, including insurance, freight and similar expenses incurred until the place or location where the import into Chile is made.

Among the various rules set forth in the Customs Valuation Code for defining an acceptable "transaction value" there is one requisite which relies on the buyer and seller to be independent from each other; provided that the transaction value may be still accepted for customs purposes if such relationship had not influenced or did not affect the price.

If the local customs authorities determine that the valuation rules contained in the Customs Valuation Code (including that buyer and seller are independent entities, except where their relationship has not influenced or affected the price) have not been complied with, such authorities may reject the relevant transaction value as the basis for assessing the customs duties and may re-assess such value.

Chilean law also provides for (i) the authority of the Central Bank to verify that the value of imported or exported goods is consistent with their current value in the international market, (ii) the ability of the President of the Republic to impose ad valorem surcharges over certain merchandise in specific circumstances[18] and upon previous recommendation by a special commission, for a period of one year renewable for another year; and (iii) the ability of the President of the Republic to impose compensation duties and anti-dumpling measures regarding those imports that may cause serious present or imminent damage to national production, when low prices are a consequence of artificial circumstances existing in the original market.

Export Incentives

Chilean legislation provides for several incentives on exports, including:

- A **simplified drawback** system which benefits, with certain exceptions, minor non-traditional exports. Generally, the simplified regime applies to exported goods which contain at least 50 percent of imported raw materials. The drawback is equivalent to three percent of the FOB value of the exported goods, excluding certain commissions and expenses.
- The regular **customs duties drawback**, under which any exporter shall be entitled to obtain the drawback of the duties and other customs charges previously paid in connection with raw material, elements partially produced or spare parts imported by the exporter or third parties, provided that, such items have been incorporated or consumed in the manufacture of the exported good.
- A **deferred payment regime** which provides an incentive on imports regarding certain goods qualified as destined to the production of other goods or services, which capacity of production does not disappear with the first use and can survive for at least three years, and which have been included in a special decree. Maximum deferment is seven years from the entry of the imported good into Chile, provided that goods imported under this regime cannot be sold or leased until the customs duties have been fully paid or the buyer or lessor assumes the obligation to pay for the outstanding balance. Even though this incentive was established in reference to imports, it has ultimately turned into a benefit for the export industry, since Chilean products can be manufactured with those imported capital goods and then exported to international markets on a competitive basis.
- A **fiscal credit** available for purchasers who acquire capital goods (first transference) locally manufactured (in the country) for an amount equivalent to 73 percent of the customs duties currently in effect and calculated on the net price of the invoice. The payment of the referred fiscal credit is subject to the same rules and modalities contemplated for the customs duties deferred payment regime, including deferred payment of the credit up to seven years. As a consequence, this policy has turned into an incentive for national production in general, including exportations.
- Documents evidencing a credit facility that is to be used in the finance of an export may be exempted from **stamp tax**. The specific documents that benefit for the exemption are determined by the Commission for the Financial Market and, in any case, exporters must comply with the rules issued by the Chilean Internal Revenue Service aimed at avoiding abuses of this benefit.
- The National Customs Director may allow the **temporary admission** of certain goods to be kept and stored at specific premises and facilities. This benefit may apply to finished goods, or to raw materials, parts, pieces or elements, provided they are brought into the country to be manufactured, elaborated, integrated, assembled, transformed, refined, repaired, maintained, improved or subjected to similar processes, and then re-exported within the term of two years from entry (renewable for one year). If the goods (or some of

[18] Circumstances indicated in Article XIX of the General Agreement on Tariffs and Trade and in the World Trade Organization Agreement on Surcharges (mainly, increase in the imports in such an amount and conditions that causes or threaten to cause damage to national production).

them) are not exported within that term, the National Customs Service may authorize their importation, triggering the applicable duties and taxes.

International Commerce Treaties

Chile has entered into **free trade agreements** currently in force with Australia, Brazil, Canada, Central America (Costa Rica, El Salvador, Honduras, Guatemala and Nicaragua), China, Colombia, the European Free Trade Association, Hong Kong, Malaysia, Mexico, Panama, Peru, South Korea, Thailand, Turkey, United States, Uruguay and Vietnam. A partial free trade agreement has been signed with India.

Also, Chile has entered into **economic association agreements** with the European Union, Japan, P4 (formed by Brunei, Chile, New Zealand and Singapore) and the United Kingdom; a **commercial protocol** with the Alliance for the Pacific (formed by Chile, Colombia, Mexico and Peru); **commercial agreements** with Argentina and Paraguay; **economic complementation agreements** with Bolivia, Cuba, Mercosur and Venezuela; **economic integration agreements** with Ecuador and Indonesia; and a **digital economy association agreement** with New Zealand and Singapore.

Chile is part of the **Comprehensive and Progressive Agreement for Trans-Pacific Partnership** together with Australia, Brunei, Canada, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam

Investment protection and promotion agreements have been signed with Austria, Belgium-Luxembourg, Costa Rica, Croatia, Cuba, Czechia, Denmark, El Salvador, Finland, France, Germany, Greece, Guatemala, Honduras, Hong Kong, Iceland, Italy, Malaysia, Nicaragua, Norway, Panama, Paraguay, Philippines, Poland, Portugal, Romania, Spain, Sweden, Switzerland, Ukraine, the United Kingdom, Uruguay and Venezuela.

As of the date of this report, Chile is negotiating an economic integration agreement with the United Arab Emirates and a partial scope agreement with Trinidad and Tobago.

IV. PRIVATE LAW

IV.1 CONTRACT

Conditions

All contracts, under Chilean law, must comply with certain conditions of existence, absent which there will be no contract as such, and certain conditions of validity, absent which no contract will be valid or binding.

All contracts must comply with the following **conditions of existence**: **(i)** the parties must have expressed, explicitly or tacitly, their mutual consent to the execution of the contract; **(ii)** the contract must have an object, i.e., it has to create rights in favor of, and impose obligations on, the parties; **(iii)** the contract must have a cause, i.e. a reason for its execution; and **(iv)** for certain types of contracts, the parties are obliged to comply with the formalities required by the law.

All contracts must comply with the following **conditions of validity**: **(i)** the consent of the parties must have been expressed without mistake or misrepresentation (*error*), duress (*fuerza*), or fraud or willful misconduct (*dolo*); **(ii)** the parties must have the legal capacity to execute the contract; **(iii)** the object must be lawful; and **(iv)** the cause must be real and lawful.

The non-compliance with any of the conditions of existence and validity of a contract may lead to the declaration of its non-existence or its annulment. In certain cases, the omission of formalities of publicity provided by the law may generate the unenforceability (*inoponibilidad*) of the terms of the contract against the compliant party. Chilean law, in general, protects the rights of third parties who may, in good faith, be affected by the stipulations of annullable or unenforceable contracts.

Annulment

The annulment of a contract may be due to the lack of the requirements set forth by the law for its execution in accordance with the nature of the contract itself (*nulidad absoluta*), such as when a contract has an unlawful object or cause, in which case the vice or defect cannot be cured except for a lapse of time of ten years.

Additionally, a contract may be annulled due to the lack of the requirements set forth by the law for its execution in accordance with the nature or state of the contracting parties (*nulidad relativa*), such as when the consent has been expressed with mistake, under duress or influenced by the willful misconduct of the other party, in which case the vice or defect cannot be cured except for a lapse of time of four years or the ratification of the terms of the contract by the affected party.

Contractual Liability

According to the specific provisions of the Civil Code and to what has been clarified by Chilean authors, contractual liability will arise only if all the following conditions have been strictly satisfied:

- Existence of a valid and binding contract between two or more parties. The contract must be a “valid” and “binding” agreement, i.e., must comply with all the legal conditions for its existence and validity under Chilean law (see *Conditions* above). Otherwise – that is, should an agreement not exist or should that agreement not be valid or binding – any remedy to the damage would have to be pursued and sought in tort liability.
- Negligent or intentional breach of contract by one of the parties (the “Debtor”). This condition involves two requisites: first, there must be a breach of contract and/or an imperfect or late performance of the same to generate liability; and second, the mere breach of a contract is not sufficient (as a general rule, there is no strict liability under

Chilean law), and it must be attributable to the negligence or willful misconduct of the Debtor[19]. The breach of a contract is presumed to have been due to the negligence of the Debtor, and he/she is obliged to prove either **(i)** to have acted diligently according to the kind of diligence applicable to the type of contract executed between the parties or **(ii)** that it was impossible for him/her to comply with his/her obligations due to an Act of God (*caso fortuito*) or force majeure[20]. Except for express provision of the law, willful misconduct is never presumed but must always be proven by the claimant.

- Damage or harm caused to the compliant and suing party (the "Creditor"). The Creditor must have suffered damage in order to be entitled to request compensation. The Civil Code provides that unless the law has limited the indemnification of damages to actual damages or the parties have otherwise agreed, the compensation shall include the actual damages (*daño emergente*) and the loss of profits (*lucro cesante*) that derive from the breach of contract or the imperfect or late performance of the same. It further provides that if the Debtor has not acted with willful misconduct, he/she will only be held liable for the damages that were foreseen or could have been foreseen at the time the contract was executed; but if he/she acted with willful misconduct, he/she will be responsible for all the damages that were a direct and immediate consequence of not having performed the obligation or of having performed it untimely. It is important to note that the parties to a contract may modify these rules, except for condoning in advance any willful misconduct (or gross negligence) of the other party.
- The damage or harm must have directly and immediately arisen out of the breach of contract. Hence, indirect or consequential damages, that is, those that do not have a cause-and-to effect relationship with the action or omission of the author, or those in which the link is remote, are not susceptible of being indemnified in accordance with Chilean law. Moral damages are rarely granted in cases of contractual liability.
- The Creditor must have performed or be willing to perform its obligations under the contract. No contracting party is entitled to request damages from the other whilst the former has not performed his/her own obligations under a contract or is at least willing to perform.

Construction of Contracts

Under Chilean law, all contracts must be executed and performed in **good faith**. Therefore, all contracts must be interpreted or construed in good faith, both by the parties and by the judge, should a conflict arise between said parties. Consequently, contracts are considered to contain all such clauses that according to the law and/or custom derive from the same or that arise from the nature of the specific obligation, even when the contracting parties have not so provided (unless such clauses are expressly removed by the parties from the provisions of the contract). Furthermore, should the parties remain silent with respect to such clauses as to the nature of a contract, Chilean law presumes the contracting parties intended to incorporate these clauses into the agreement.

The Civil Code provides, as general rule of construction, that if the intent of the parties is clearly known and understood, this intention should prevail over the literal meaning of the words within a contract.

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[19] The Civil Code distinguishes three kinds of negligence: (i) gross negligence (*culpa grave*), which for civil law purposes is equated to willful misconduct and subject to the same rules applicable to the latter, (ii) simple negligence (*culpa leve*), and (iii) slight negligence (*culpa levísima*). Absent an agreement of the parties stating the degree of care that each of them has to bear, or a specific provision of law, the Debtor will only be liable for gross negligence in those contracts that, by its own nature, are only useful for the creditor; for simple negligence in those contracts that are mutually benefiting for the parties; and for slight negligence in those contracts which are only in his/her own benefit.

[20] In general, for an Act of God or force majeure to be successfully invoked (i) the fact claimed as such must not be imputable to the Debtor, (ii) the fact must be unpredictable, and (iii) the fact must be irresistible, i.e., it should be absolutely and completely impossible to comply with the obligation.

IV.2 REAL ESTATE AND CONSTRUCTION

Land Rights

In Chile, any person, local or foreign (except as indicated in *Foreign ownership* below), can freely acquire all kinds of real estate provided the legal requirements established for these purposes are fulfilled.

Real property may be acquired by means of a public deed, succession upon death or adverse possession, which requires the lapse of 10 continuous years of peaceful tenancy. All these acts must be registered in the property registry of the competent Real Estate Registrar. The transfer of the ownership of real estate will be materialized by the registration of the relevant title in the property registry of the competent Real Estate Registrar. The same prevention applies for the transfer of the rights of usufruct or use constituted over real estate, habitation or census and mortgage that may affect real estates.

There is **no centralized property registration system in Chile**, with the registrars being distributed by geographic areas. Therefore, a single real estate may be registered in the registries of more than one Real Estate Registrar if the land covers more than one jurisdictional territory. The real estate registry system in Chile is public and, therefore, anyone can have access to it and request copies and/or certificates of the registrations made therein, paying the associated costs.

Each Real Estate Registrar is comprised by the following **registries**: **(i)** the **property registry**: transfer of ownership as well as property acquisition by statute of limitations must be registered in this registry; **(ii)** the **mortgages and encumbrances registry**: mortgages, easements, usufructs, rights of use and habitation and all encumbrances of similar nature shall be registered in this registry; **(iii)** the **prohibitions and interdictions registry**: all the prohibitions that may affect a property must be registered, such as prohibitions to sell, dispose or encumber, among others; and **(iv)** the **litigation registry**: lawsuits that may affect a property must be recorded in this registry.

The possession and ownership of real estate may be limited or restricted by certain special laws and regulations. Among others, rules on national monuments and archaeological discoveries; on properties located in the southernmost areas of the country; and on properties belonging to native populations, may affect the rights of third parties to acquire real estate, or the conditions under which such real estate is acquired, or its ownership exercised.

Foreign Ownership

In general, there is no governmental permission required for foreign investors to acquire real estate in Chile. However, nationals of bordering countries (including entities whose main offices are located in a bordering country, or which 40 percent or more of their capital belongs to nationals of a bordering country, or which effective control is in the hands of nationals of any such country) are prevented from acquiring the ownership of, or other *in rem* rights in, or holding in possession or tenancy, real estate totally or partially located in the zones of the national territory which the authority has declared as "national border land".

In the event of a national of a bordering country acquiring *mortis causa* any national border land, such individual or entity must transfer the relevant real estate to an eligible acquirer within one year from the death of the original owner. If the affected person or entity does not comply with the referred obligation, the State will be entitled to expropriate the relevant real estate.

The President of the Republic, on grounds of national interest, may release certain nationals of bordering countries from the aforementioned prohibition, on a case-by-case basis, authorizing them

to acquire or transfer the ownership of, or other *in rem* rights in, or the possession or tenancy of one or more determined real estate located in national border lands.

Furthermore, the lands belonging to the State located up to 10 kilometers from the national border may only be acquired, leased or received under any other title, by Chilean individuals or entities. Same rule shall apply with respect to those lands belonging to the State located up to five kilometers from the seacoast, measured from the line of the highest tides. However, in the latter case, foreigners with domicile in Chile may acquire, receive in lease or obtain under any other title the aforementioned lands upon prior favorable report of the Navy Under-Secretariat of the National Defense Ministry (*Subsecretaría de Marina del Ministerio de Defensa Nacional*).

There are no additional restrictions imposed on ownership of real estate by foreign investors. Note, however, that foreign investment in real estate, as any other foreign investment in Chile, must be performed through one of the foreign investment alternatives available in Chile (see Chapter II.1 above).

Titles

When evaluating the development of a project in Chile title over the relevant real estate is key. If the land is owned by the project developer, no agreement nor additional actions will be needed to obtain rights over it, and the owner will be entitled to build, erect or install any facilities, and carry out any lawful activity, in such land subject to compliance with the regulations applicable to the relevant activity.

On the contrary, if the land is owned by a third party, it will be necessary to obtain rights over the real estate in order to be able to develop the project. The type of agreement that should be negotiated will depend on whether the property is privately owned or belongs to the State.

Land control over such areas shall be secured mainly through lease agreements, usufruct agreements and/or easements in case of private real estates, and land concession authorizations (*concesiones de uso oneroso*), lease agreements and/or easements, in case of properties that belong to the State.

Lease agreements. The formalities with which lease agreements are granted determine the level of protection the lessee has in case of a transfer of the real estate by the lessor. This is because lease agreements only create personal rights. In this sense, if they are granted by means of a public deed, they may be enforced against third party purchasers of the real estate. If they are further registered before the Real Estate Registrar (possible only if granted by public deed), they may be enforced also against future mortgage-backed creditors (i.e., mortgages registered after the registration of the lease agreement), which means it is also binding on any acquirer of the real estate as a result of a foreclosure procedure on the lessor. If they are granted by means of a private instrument, they may not be registered before the Real Estate Registrar and thus may not be enforced against third party purchasers.

Usufruct agreements. This type of agreement shall be executed by means of a public deed and registered in the competent registry of mortgages and encumbrances. Once negotiated, a usufruct agreement enables the usufructuary to use and enjoy (*usar y gozar*) the property, while the landowner keeps the bare ownership (*nuda propiedad*), which allows it to sell and dispose of the property. Any future purchaser of the real estate shall be bound to honor the usufruct agreement. The term of a usufruct agreement may not exceed 30 years in case the usufructuary is a legal entity.

Easements. Easements are liens imposed on a property for the benefit of another property of a different owner. There are natural and legal easements and those that can be agreed voluntarily, provided that they do not go against public order or otherwise infringe the law. Easements must be created by means of a public deed and can also be acquired by a judge's ruling in the cases

provided by law. Except for natural easements, they are subject to the payment of a compensation in favor of the servient estate (although sometimes they can be free of charge). Although there is no obligation to register the easements in the respective mortgages and encumbrances registry, it is recommended to do so for purposes of publicity and its enforceability against third parties.

Land concession authorization (*concesión de uso oneroso*). Through this type of agreement, the relevant authority (the Ministry of National Properties or *Ministerio de Bienes Nacionales*) grants a special right to use and enjoy (*uso y goce*) a property of fiscal domain, with a pre-established objective, for a determined period of time, which that may not exceed 50 years, and against payment of an annual fee. Land concession authorizations can be granted **(i)** through public or private bidding processes, in both cases of a national or international scope, or **(ii)** directly in qualified cases. Applicants which are foreign persons or entities will be required to incorporate a Chilean entity to execute the relevant concession agreement. The agreement, to be executed by public deed, must be registered in the respective mortgages and encumbrances registry. The concession can be revoked or terminated due to, among other reasons, breach of the concessionaire's obligations or the occurrence of any event or circumstance that would make it impossible to continue using the property for the purposes of the concession.

Construction

Construction regulation. In Chile, the real estate construction legal framework is mainly governed by the General Urbanism and Constructions Act (*Ley General de Urbanismo y Construcciones* or "LGUC"), the General Ordinance of the LGUC (*Ordenanza General de la Ley General de Urbanismo y Construcciones*) and the technical norms issued by the Chilean Ministry of Housing and Planning (*Ministerio de Vivienda y Urbanismo*). Additionally, there are different territorial and urban planning instruments and regulations issued at the regional and local level, providing for urban development guidelines, zoning criteria, land uses, permitted and prohibited activities, etc.

Permitting. In order to carry out the construction of any building or facility, it is necessary to procure certain permits and authorizations and comply with certain steps and principles. In general, a construction permit or authorization from the relevant Municipal Works Bureau (*Dirección de Obras Municipales*) is required for the construction, reconstruction, repair, alteration, expansion and demolition of buildings, facilities and urbanization works of any nature, and their use and occupation will be subject to the final approval of the same authority. Such construction projects must also comply with the construction regulation mentioned in the previous paragraph and the specific town planning regulations of the relevant municipality.

Also, the building or project may be subject to **(i)** the environmental assessment process (see Chapter VII below) and/or **(ii)** the permits and authorizations granted by other sectorial authorities (e.g., the authorization of the Hydraulic Works Bureau of the General Water Bureau for certain works located in or near waterways), and having previously obtained the relevant environmental or sectorial permits will be a pre-requisite for obtaining the construction permit or the final approval from the DOM, as applicable.

The LGUC expressly states that any work governed by its rules must be designed and executed by professional architects, civil engineers, construction engineers and civil constructors, who must be legally authorized to exercise their respective professions in Chile. Such authorized professionals must sign all plans, technical specifications, and other technical documents of any prospective or final project, together with the owner. The authorized professionals submitting the documents for approval in any stage are responsible for delivering all necessary documentation and for making the adjustments required by the DOM.

Construction contracts. Other than the laws and regulations mentioned in the previous section, Chilean law does not regulate in detail construction agreements, which are therefore subject to the free negotiation and agreement between the relevant parties.

EPC-style agreements are commonly used for large projects in Chile, including design, engineering and commissioning in the scope of the contractor. Standard form contracts (FIDIC, NEC, etc.), although occasionally used, are not the preferred formats for projects in Chile.

Permitting is normally allocated to the contractor, with a few exceptions such as land rights and the main environmental permit for the project. Liquidated damages are usually stipulated for delay and performance shortfall, in a range of five to 15 percent of the contract price (if subject to Chilean law, these damages are treated as penalty clauses).

Most construction contracts for large scale projects are either subject to Chilean law or, especially if financed through a project finance deal including foreign banks, New York law. If subject to Chilean law, disputes are submitted to arbitration in Chile.

Warranties are normally expressly regulated in the contract, to the express exclusion of any other warranty, and (other than specific product or equipment warranties) are limited to a warranty period of 12 to 24 months. If such exclusion of other warranties is not expressly stated, and the contract is subject to Chilean law, note that article 2003 of the Civil Code will apply, and the owner will be entitled to pursue the contractor if the work collapses or threatens collapse for defects in the construction or the materials used by the contractor, or for ground conditions that the contractor knew or should have known, within five years from delivery (i.e. from provisional acceptance or substantial completion).

Total liability for contractors ranges from 10 to 100 percent of the contract price, and the applicable percentage will determine the scope of the exceptions to such limit. Contractors will secure their obligations through bank bonds or, in a recent development in the market, first demand insurance policies, covering normally between 10 and 20 percent of the contract price.

IV.3 DISTRIBUTION, AGENCY AND FRANCHISING

Distribution, agency and franchising arrangements, as a method of doing business both nationally and internationally, and particularly as an efficient way of distributing and marketing products and services, are an old and well-known practice in Chile.

These types of agreements are not recognized as a specific contractual type under the laws and regulations currently in force. Therefore, they are governed by the existing general principles of contract contained in the Civil and Commercial Codes. Consequently, there are no signing formalities, filing or registration requirements that must be complied with respect to the Agreement.

In addition, these types of agreements are subject to the regulations related to competition and to consumer protection (see Chapters VIII.1 and VIII.5 below).

Also, note that the Unfair Competition Act qualifies certain actions as “unfair competition”, including (i) the confusion of one’s own products, services and activities with those of other person or entity, taking advantage of this person’s or entity’s reputation; (ii) the use or broadcasting of false or incorrect signs, deeds or statements about products or services and their quality, advantages and characteristics; (iii) the use or broadcasting of false or incorrect information and statements about third party products, services or activities seeking to demean or cause disrepute to such third party’s businesses; (iv) any comparison between products and services based on false or unverified information; and (v) any conduct inducing suppliers, clients or contractors to breach their obligations with competitors. Any such action may be subject to an order of cessation and removal, and to compensation of damages in favor of the affected party.

V. TAXATION

V.1 INTRODUCTION

As a general rule, individuals or entities domiciled or resident in Chile, regardless of their nationality, are subject to income tax on their worldwide income.

For purposes of Chilean Law, an individual is considered a Chilean resident if such individual has remained in Chile, continuously or not, for more than 183 days in any given 12-month period. An individual is domiciled in Chile if such individual resides in the country with the purpose of staying in Chile (such purpose to be evidenced by circumstances such as the acceptance of employment within Chile or the relocation for the individual's family to Chile).

Foreign individuals or entities not domiciled or resident in Chile are subject to Chilean taxes over their Chilean source income. Income is deemed to be of Chilean source when it derives from assets located in Chile (e.g., real estate, personal property, shares issued by a Chilean corporation, etc.) or activities carried out in Chile, regardless of where the remuneration is paid and who pays it.

V.2 TAXATION OF INDIVIDUALS AND ENTITIES DOMICILED OR RESIDENT IN CHILE

Individuals

The general rule is that the taxpayer is the one responsible for determining the amount of taxes due. However, there are some situations in which it is the Chilean Internal Revenue Service (*Servicio de Impuestos Internos*, or the "IRS") itself that undertakes such procedure, and in other occasions the law or even a judge is responsible for doing so.

Individuals are required to pay an **Overall Income Tax** on their worldwide income. The Overall Income Tax is a progressive tax with rates ranging from 0 percent to 40 percent. In connection with the distributed profits that individuals receive from entities domiciled in Chile, individuals are allowed to fully or partially credit the First Category Tax paid by the corresponding entity, if any, against the Overall Income Tax.[21]

Individuals also pay a **Second Category Tax** on their dependent work-related income, with rates ranging from 0 percent to 40 percent, which must be withheld by the employer. The amount of this tax is calculated based on an individual's dependent work-related monthly earnings minus social security contributions. Individuals whose income comes solely from dependent work are not subject to Overall Income Tax. Individuals subject to both Second Category Tax and Overall Income Tax are allowed to use the former as a tax credit against the latter.

Foreign individuals resident in Chile, on the other hand, are subject to taxes in Chile only on their Chilean source income during the first three years of residence. At the end of this period, foreigners may apply for an extension of such term. After the original three-year period, or its extension, has elapsed, foreigners resident in Chile are subject to taxes in Chile on their worldwide income, the same as local residents.

[21] According to the Chilean Income Tax Law, taxpayers who are subject to the Overall Income Tax at the maximum rate (i.e., 40 percent) are entitled to a special credit against his/her tax liability so that the tax burden in Chile does not exceed 44.45 percent.

Entities

Corporate income tax. Most companies are required to pay First Category Tax on their annual accrued income at a rate of 27 percent[22].

Corporations, stock companies, limited liability companies, limited liability individual enterprises, individual companies subject to First Category Tax on a complete-accounting basis and branches must pay taxes on their net taxable income (calculated on the basis of the accrual method of accounting, as a general rule).

In this respect, there are certain matters that may be highlighted:

- in general, there are no restrictions on the carrying forward of tax losses. However, certain limitations may apply to acquisitions that result in the change of ownership of Chilean companies with tax losses (except for related-party acquisitions);
- assets and liabilities are adjusted to reflect changes in Chilean inflation;
- under certain conditions, imported or new tangible assets may be depreciated by one-third of their normal economic life;[23]
- dividends or profits from other Chilean companies are exempt from First Category Tax; and
- a tax credit may be granted with respect to foreign taxes paid on certain types of foreign source income.

Capital gains.

General Rule. As a general rule, capital gains obtained as a result of the sale or disposition of certain assets or property (such as immovable property, movable property, shares or equity rights, etc.) are subject to taxes under the Chilean Income Tax Act. Note that pursuant to the Chilean Income Tax Act, shares of a corporation or the equity rights of a limited liability company incorporated in Chile are deemed assets located in Chile.

Capital gains obtained by taxpayers not qualifying as individuals (*personas naturales*), shall become subject to First Category Tax that must be declared and paid by the seller. Upon payment or distribution of such gains to Chilean resident individuals, they shall be subject to Overall Income Tax.

On the other hand, if such gains are remitted or distributed abroad to non-resident individuals or entities, a 35 percent Withholding Tax (*Impuesto Adicional* or "WHT") shall be levied. Please note,

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[22] All taxpayers required to file taxes in connection with their effective income shall be governed by one of the following two taxation systems:
Partially Integrated System ("PIS"): Company owners, whether subject to Overall Income Tax or Withholding Tax ("WHT"), shall pay taxes on profits for any reason withdrawn by them or remitted or distributed to them from their company. Under the PIS, and at the corporate level, the First Category Tax shall be paid at a rate equal to 27 percent, and only 65 percent of it may be creditable against final taxes when profits are withdrawn or distributed from the company to its partners or shareholders. However, taxpayers residing in a jurisdiction with which Chile has signed a double taxation treaty may fully credit the First Category Tax against the WHT to be applied, as described in Chapter V.3 below.
Small and Medium-Sized Enterprises System ("SME System"): In general, under the SME System, and at the corporate level, the First Category Tax shall be paid at a rate equal to 25 percent (this rate has been reduced to 12.5% for commercial year 2024), fully creditable against final taxes when profits are withdrawn or distributed from the company to its partners or shareholders. As a general rule, SMEs consist of companies with average annual revenues below UF 75,000 (approximately equivalent to US$3.17 million) over the prior three years.

[23] Under certain conditions, taxpayers with average annual revenues below UF 100,000 (approximately equivalent to US$4.2 million) may depreciate imported or new tangible assets by one-tenth of their normal economic life.

however, that in both cases the First Category Tax already paid may be fully or partially credited against the tax payable upon distribution, as the case may be.

In general terms, gains are defined as any amounts exceeding the original price at which the assets or property concerned were purchased, adjusted by local inflation.

The IRS has the authority to conduct an appraisal of the assets or property being sold, whenever the price agreed upon by the parties is not within prevailing market prices.

Shares purchased prior to 1984. Gains resulting from the sale of shares purchased prior to January 31, 1984, are exempt from taxes as long as the seller or taxpayer is not customarily engaged in the purchase and sale of securities and the sale is not performed between related parties.

Shares of public corporations that are significantly traded on stock exchanges. Gains recognized in the sale of shares of common stock that are publicly traded and have a high presence in the stock exchange, are subject to a 10 percent capital gains tax in Chile, provided certain conditions are met. However, capital gains obtained by institutional investors, whether domiciled in Chile or abroad, are not subject to taxation, provided certain conditions are met.

V.3 TAXATION OF INDIVIDUALS AND ENTITIES NOT DOMICILED OR RESIDENT IN CHILE

Individuals and entities not domiciled or resident in Chile are not subject to Chilean taxes, except for income of Chilean source. As described above, the general rule is that an income is considered to be of Chilean source when it arises out of goods located in Chile or activities carried out in Chile. Individuals and entities not domiciled or resident in Chile are taxed on their Chilean source income with WHT.

If a foreign individual or entity not domiciled or resident in Chile has an agency, branch or other permanent establishment in Chile, then such agency, branch or permanent establishment would be subject to Chilean taxes (see *Agencies, Branches or other Permanent Establishments in Chile* below).

With respect to the profits distributed to individuals or entities not domiciled or resident in Chile, under the PIS, only 65 percent of the First Category Tax paid at the corporate level may be creditable against final taxes when profits are withdrawn or distributed from the company to its foreign partners or shareholders. However, regarding WHT taxpayers residing in a jurisdiction with which Chile has a double taxation treaty currently in force, the First Category Tax will be fully creditable against the WHT to be applied. WHT taxpayers residing in a jurisdiction with which Chile has signed a double taxation treaty which is not yet in force may also fully credit the First Category Tax against the WHT to be applied, until December 31, 2026. Therefore, such taxpayers shall be subject to an effective rate equal to 35 percent, whereas those in a situation different from that described shall pay an effective rate of 44.45 percent.

Withholding Tax

In general terms, individuals and entities domiciled or resident in Chile making payments to individuals or entities not domiciled or resident in Chile, qualifying as Chilean source income under the Chilean Income Tax Act, are required to withhold the applicable WHT and declare and pay such tax to the Chilean General Treasury within the first 12 days of the month following the withholding (or until the twentieth day of the month following the withholding for taxpayers who file their corresponding tax returns via the IRS's internet platform and are authorized as issuers of electronic tax documents).

WHT and the rate thereof shall be determined on a case-by-case basis, as it depends on the type of payment, the characteristics of the payer and/or the payee, among other factors. As a general

rule, however, the rate of the WHT is 35 percent, but there are multiple exceptions. Certain particular cases are as follows:

- Royalties: royalty payments to individuals or entities with no domicile or residence in Chile are usually subject to WHT at a rate of 30 percent as a single income tax.
- Software: Any amounts paid or credited to individuals or entities with no domicile or residence in Chile for the use of computer programs is subject to WHT at a rate of 15 percent. However, the applicable rate is 30 percent when the individuals or entities with no domicile or residence in Chile that are beneficiaries of the payments are incorporated, domiciled or are resident in a jurisdiction qualifying as a preferential tax regime. Please note that computer programs qualified as "Standard" are exempted from WHT.[24]
- Fees for copyrights and edition rights: Payment of fees for copyright and edition rights to individuals or entities with no domicile or residence in Chile are subject to WHT at a rate of 15 percent as a single tax.
- Interests on loans, deposits or the like: Interest payments to individuals or entities with no domicile or residence in Chile are usually subject to WHT at a rate of 35 percent. However, if certain conditions are met the rate is reduced to four percent. For instance, the rate is four percent with respect to interest paid on:

  a. deposits denominated in foreign currency payable on demand or time deposits;
  b. loans granted by international or foreign banks, foreign financial institutions, foreign insurance companies and foreign pension funds;
  c. deferred purchase price of goods imported under the system of deferred payments;
  d. bonds or debentures issued in foreign currency by companies established in Chile;
  e. bonds or debentures issued in foreign currency by the Republic of Chile or the Central Bank of Chile; and
  f. the instruments referred to in a, d and e above issued or denominated in Chilean pesos.

  It should be noted that the Chilean legislation contemplates Thin Capitalization Rules. These rules sanction the related indebtedness, as defined by the Chilean Income Tax Law, when there is an excess of indebtedness. For these purposes, excessive indebtedness is deemed to exist when the total annual indebtedness of the taxpayer with entities in Chile or abroad, whether related or not, exceeds three times the taxpayer's own tax equity at the end of the respective year. If the above ratio is exceeded, interest on the related debt shall be subject to a 35 percent tax, in the proportion that exceeds the 3:1 ratio mentioned above.

- Services rendered in Chile: Payments to individuals or entities with no domicile or residence in Chile for services rendered in Chile are usually subject to WHT at a rate of 35 percent, unless the services are paid to foreign individuals for scientific, cultural or sport activities, in which case the rate is 20 percent.
- Services rendered abroad: Payments to individuals or entities with no domicile or residence in Chile for services rendered abroad are usually subject to WHT at a rate of 35 percent as a single tax. Also, remunerations paid for engineering or technical works, or professional or technical services that a person or entity which is knowledgeable of a science or technique provides through an advice, report or plan, whether rendered in Chile or abroad, is levied with WHT at a rate of 15 percent. However, this rate rises to 20 percent when the creditor or beneficiary of the remuneration is established, domiciled or

[24] Standard computer programs are those in which the rights being transferred are limited to those necessary to allow its use, and not its commercial exploitation, reproduction or modification or any other purpose other than to enable its use.

resident in any of the countries considered as "preferential tax regimes" according to the Chilean Income Tax Act.

- Insurance premiums on goods and property permanently located in Chile: Insurance premiums paid to entities not established in Chile are subject to WHT at a rate of 22 percent as a single tax. Certain insurance premiums are exempted from WHT.
- Reinsurance premiums on goods and property permanently located in Chile: Reinsurance premiums paid to entities not established in Chile are subject to WHT at a rate of two percent as a single tax.

Agencies, Branches or other Permanent Establishments in Chile

In accordance with Article 2 No.12 of the Chilean Income Tax Act, a permanent establishment is a place that is used for the permanent or habitual performance of all or part of the business, line of business or activity of a person or entity without domicile or residence in Chile, whether or not used exclusively for this purpose, such as offices, agencies, facilities, construction projects and branches. A permanent establishment shall also be deemed to exist when a person or entity without domicile or residence in Chile carries out activities in the country represented by an agent and in the exercise of such activities the agent habitually concludes contracts in the ordinary course of business, plays a principal role leading to their conclusion, or negotiates essential elements thereof without their modification by the person or entity without domicile or residence in Chile.

An agency, branch or permanent establishment is subject to First Category Tax levied over the income (whether or not Chilean-sourced) attributable to said agency, branch or permanent establishment.

Amounts remitted or distributed abroad are subject to WHT as explained above.

V.4 OTHER TAXES

Value Added Tax

A 19 percent Value Added Tax ("VAT") is levied, in broad terms and among others, on the price of:

- sales and other contracts whereby moveable or immovable property is transferred, provided such transactions are deemed customary for the seller (it is generally assumed that a transaction is customary for a given entity if it is within its actual line of business);
- services rendered, unless expressly exempted[25]; and
- other transactions deemed by the law as sales or services, such as imports and "digital services"[26] rendered by persons with domicile or residence abroad.

As a general rule, the seller or service provider is liable for declaring and paying the VAT. The amount of such tax, however, is added to the price of the goods or services.

Exceptionally, when the seller is not domiciled in Chile or when it is for any reason difficult for the IRS to control and enforce seller's compliance with its tax obligations, the buyer is liable for declaring and paying VAT.

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[25] Noteworthy exemptions include services provided by individuals, independently or through an employment contract, ambulatory health services, education, and passenger transportation services, among others.

[26] According to Article 8, letter n) of the VAT Law, VAT is also applicable to the following services, insofar they are provided abroad: (1) the intermediation of services provided in Chile, regardless of their legal nature, or of sales made in Chile or abroad, provided that the latter give rise to an import; (2) the supply or delivery of digital content for entertainment, such as videos, music, games or any other analogous content, through downloading, streaming or other technological means, including for these purposes, texts, magazines, newspapers and books; (3) the provision of software, storage services, computing platforms or infrastructure; and (4) advertising, regardless of the support or means through which it is delivered, materialized or executed.

Non-resident service providers are also liable for declaring and paying VAT if the Chilean beneficiary is not a VAT taxpayer.

Custom Duties

Imports of goods into Chile are generally subject to a six percent customs duty, levied on the CIF value of the imported goods. However, used goods are generally subject to a three percent surcharge over the applicable customs duty.

On the other hand, the import of capital goods included in a List of Capital Goods published by the Ministry of Finance[27] is exempt from customs duties, provided that all procedures and requirements set forth by Chilean Customs are complied with[28].

Notwithstanding the foregoing, reduced *ad valorem* rates apply, in some cases down to 0 percent, as a result of the provisions of free trade agreements and other commercial agreements entered into by Chile[29].

Additionally, imports of goods into Chile are generally subject to 19 percent VAT. VAT is levied on the CIF value of the goods imported, increased by the amount payable as customs duties.

The VAT Act contains a VAT exemption on the import of capital goods[30] carried out by investors destined to the development, exploration, or exploitation in Chile of investment projects in areas such as mining, manufacturing, forestry, energy, infrastructure, telecommunications, research and development, medicine, science, among others, provided that the investment is equal or greater than US$5,000,000[31].

Municipal License

The carrying out of lucrative activities in an office space involves the payment of a municipal license, the value of which is calculated on the basis of the paid-up capital of newly-incorporated companies, their adjusted tax equity following the year of their incorporation, or the taxpayer's adjusted tax equity of its branch in Chile, as the case may be. Municipalities may set the annual rate ranging from 0.25 percent to 0.5 percent, but the amount of the license may not be less than 1 UTM (approximately equivalent to US$74) or more than 8,000 UTM (approximately equivalent to US$592,000).

Stamp Tax

Unless an exception is applicable, a stamp tax is levied on documents containing a money credit agreement or "*credit operations*" (e.g., foreign and domestic loans, whether or not evidenced by promissory notes; bonds; notes; the deferred purchase price of goods imported under the system of deferred payments, etc.).

The stamp tax is equal to 0.066 percent of the principal of the loan for each month or fraction thereof between the granting of the same and its maturity, with a ceiling of 0.8 percent of the capital thereof. Instruments and documents payable on-demand or issued at sight, as well as documents evidencing credit operations with no specified maturity term are subject to a 0.332 percent of the principal of the loan.

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[27] Exempt Decree No. 399 of 2017, modified by Exempt Decree No. 29 of 2021, both issued by the Ministry of Finance.
[28] Law No. 20,269, published in the Official Gazette in June 27,2008; in accordance with Laws No.18,634 and No. 18,637
[29] See Chapter III.3.
[30] As defined in Supreme Decree No. 991 of 2020, issued by the Ministry of Finance.
[31] Article 12, letter B, No. 10 of the VAT Act.

Exceptions may be available depending on the identity of the borrower or the purpose of the loans but are quite rare.

As an exception, if the lender is a foreign person, the Chilean debtor would be responsible for paying the stamp tax. If that Chilean debtor is under the obligation of declaring its effective income pursuant to full accounting records, the stamp tax must be paid during the month following to that the document is issued.

Contribution for Regional Development

Taxpayers subject to First Category Tax based on effective income determined on full accounting records must pay, for a single time, a contribution for regional development on investment projects that are executed in Chile and copulatively comply with the following requirements:

(i) that the project entails the acquisition, construction or importation of physical fixed assets for a total value equal to or greater than US$10,000,000; and

(ii) that the project requires its submission to the environmental impact assessment system in accordance with the provisions of Article 10 of Law No. 19,300 on general environmental bases, and its regulations.
Projects intended exclusively for health, educational, scientific, research and development, and housing and office construction activities, are exempt from this contribution.

The contribution has a rate of 1%, applied on the acquisition value of all the physical fixed assets comprising the same investment project, but only in excess of US$10,000,000.

The contribution must be declared and paid in April of the year following its accrual, together with the annual income tax return (Form N°22).

The contribution is accrued only once. However, its payment can be divided into five annual and successive installments, at the option of the taxpayer.

V.4 TRANSFER PRICING

The rules regarding transfer pricing set forth in the Chilean Income Tax Act are aimed at enabling the IRS to make well-founded objections, i.e., using information that, according to logical reasoning, analysis and agreement, makes it possible to assign a different value to the transfer and to the amounts collected or paid among related companies in case any of such companies are incorporated abroad.

The concept of transfer pricing includes those charged for the purchase of goods, services rendered, technology transfer, as well as the temporary granting of the use or possession of patents and trademarks.

The referred rules on transfer pricing apply, among other cases, if a company incorporated abroad participates directly or indirectly in the management, control or capital of a company incorporated in Chile, or vice versa. Such rules also apply if the same persons participate directly or indirectly in the management, control or capital of a company incorporated in Chile and a company incorporated abroad.

For the above purposes, the competent regional office of the IRS may make well-founded objections against the prices charged between parties that are related in the terms described in the preceding paragraph, if such prices differ from normal market prices among non-related entities.

V.5 CONTROLLED FOREIGN COMPANY RULES

In accordance with the Chilean Controlled Foreign Company Rules, Chilean resident taxpayers will be required to pay taxes on "*passive income*" (such as dividends, royalties, interests, etc.) obtained by foreign entities controlled, either directly or indirectly, by such Chilean residents, regardless of its actual remittance to the country.

This type of regulations are essentially anti-avoidance rules that are designed to prevent Chilean companies or individuals from artificially moving their profits abroad to countries with low or no taxation at all, reducing or deferring Chilean taxation.

V.6 GENERAL ANTI-AVOIDANCE RULES

The Chilean General Anti-Avoidance Rule ("GAAR") allows the IRS to review transactions for potential tax avoidance.

The GAAR identifies two main cases of tax avoidance: (i) abuse of legal forms and (ii) simulation.

If the IRS contests a legal act or transaction through the application of the GAAR, the form of the transaction is disregarded, and the taxable events are deemed to occur in accordance with their economic substance, provided that the tax differences assessed to the taxpayer exceed 250 UTM. Such a contest currently involves the qualification of tax avoidance by a Tax Court, as required by the Director of the IRS.

V.7 DOUBLE TAXATION TREATIES

The double taxation treaties entered into by Chile may affect some of the rules set forth above. The income tax treaties for the avoidance of double taxation currently in force are those with Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Colombia, Czechia, Croatia, Denmark, Ecuador, France, India, Ireland, Italy, Japan, Korea, Malaysia, Mexico, Netherlands, Norway, New Zealand, Paraguay, Peru, Poland, Portugal, Russia, South Africa, South Korea, Spain, Sweden, Switzerland, Thailand, the United Arab Emirates, the United Kingdom, the United States, and Uruguay.

VI. LABOR AND IMMIGRATION

VI.1 LABOR MATTERS

Introduction

In general, the Chilean Labor Code (the "Labor Code") governs individual employment agreements and legal benefits for employees, trade unions and collective bargaining agreements, subcontracting and supply of personnel, as well as the special labor jurisdiction and legal procedure applicable to judicial actions.

Employment Agreements

Employment agreements are governed by the Labor Code. The Labor Code defines the employment agreement as a contract by which the employer and the employee are reciprocally committed: the employee to render personal services under dependence and subordination to the employer, and the employer, in turn, to pay a certain remuneration to the employee for the services thus rendered. Whenever such a relationship exists de facto between two persons, the Labor Code assumes that an employment agreement exists between them, even if no written evidence of such agreement can be produced.

The employment agreement must be set forth in writing within a period of 15 days from the first day in which the employee starts to work (although in some special cases the period is five days) and must contemplate, at least, such matters as: place and date of execution of the employment agreement; name of employer; name, nationality and birth date of the employee, as well as the date of initiation of work; description of the nature of the services and place or city where the services must be rendered; amount of the salary or remuneration agreed, and payment system; length and distribution of daily working hours, except when the employer has a shift system in place, in which case its own internal regulations shall apply; and the term of the employment agreement.

If no written contract is produced within the referred fifteen-day term, or five-day term, as the case may be, the employer could be punished with a fine of one to five UTM (approximately equivalent to US$74 to US$370). If the employee refuses to sign, the employer can send the written contract to the *Inspección del Trabajo* (the government agency in charge of labor compliance). If the employee maintains his refusal to sign, he can be fired without compensation, unless he provides evidence that the written contract does not reflect the conditions in which he was hired. If the written contract is not signed in the referred 15-day term, or five-day term, as the case may be, and the employer does not exercise its right to send it to the *Inspección del Trabajo*, then the law presumes that the stipulations of the agreement are those alleged by the employee. In the latter case, the employer shall bear the burden to prove otherwise.

Nationality of Employees

In case of companies with more than 25 employees, at least 85 percent of the employees hired by any employer must be Chilean, such percentage must be calculated as a fraction of their total labor force in Chile. This restriction, however, does not apply to foreign technical experts and, therefore, such category of foreign employees is excluded from the percentage mentioned above. For these purposes, those foreigners whose spouse or children are of Chilean nationality (or who are a widow or widower of a Chilean citizen) are considered Chileans. Similarly, foreigners with residence in Chile for more than five years are also considered Chileans for the purpose of this special rule.

Remunerations

In the Labor Code, remuneration is understood to be any payment of money or in kind that the employee receives from his employer pursuant to an employment agreement. The following items,

among others, are considered remuneration: salary in cash, payment for overtime, commissions over sales or purchases, or over such operations which the employer performs with the employee's collaboration, participation bonuses or a proportion of profits; and voluntary bonuses. Employees must be paid for any overtime worked with a 50 percent premium over the regular salary.

The monthly amount of remuneration must be equal to or higher than the minimum monthly salary, that currently is stated at CLP 500,000 (approximately equivalent to US$557). Part time work must be remunerated proportionately.

Employers who are obliged to keep accounting books and which obtain profits or net returns in their businesses, have the obligation to pay annual bonuses (*gratificación*) to their employees.

The Labor Code offers to the employer the option of paying the annual bonus as a proportion of the net returns obtained in its business (a proportion that must be equal to or higher than 30 percent of the net returns obtained in its business) or, alternatively, paying to the employee 25 percent of the total annual remuneration of such employee. In this last case, however, the bonus is capped at 4.75 minimum monthly salaries (approximately US$2,645), unless the employer and the employee have agreed to a higher amount. As a matter of fact, this last alternative has become widespread practice in the labor market.

Remunerations are to be paid as stated in the employment agreement in local currency, though a part may be paid with items, and for periods not exceeding one month.

The employer must deduct from the remuneration any taxes, social security and health insurance contributions, unemployment insurance, trade union payments according to current legislation on the subject, mortgage payments due for purchase of housing units and any contributions to pension funds or public institutions, depending on the circumstance.

As a general rule, regular working hours shall not exceed 44 hours per week, distributed in no less than five days and no more than six days, from Monday through Saturday. Furthermore, a regular working day cannot exceed ten hours, and shall include a lunch break of at least 30 minutes, which shall not be considered when calculating the hours worked. The working schedule is in a reduction process, so starting in April 2026 and 2028, the working schedule will be 42 and 40 hours weekly, respectively.

An employee who has worked for at least one year for the same employer shall have 15 working days (without considering, for these purposes, Saturday as a working day) as paid vacations. In other words, for each year worked with the same employer, an employee can take a 21 calendar days-vacation period.

Termination

In Chile, employment agreements can only be terminated in the cases and manner provided by the Labor Code. The grounds for termination provided by the Labor Code are:

a. mutual agreement;
b. resignation of the employee, with at least 30 days in advance notice;
c. death of the employee;
d. expiration of the term of the employment agreement;
e. conclusion or completion of the work or service that gave origin to the employment agreement;
f. force majeure or acts of God;
g. expiration, in cases specifically indicated by law and referring to faults incurred by the employee or by the employer in the performance of their respective duties;

h. needs of the business, such as those required for the rationalization or modernization of systems, fall in productivity, changes in market conditions or the national economy that make the dismissal of one or more employees necessary; and
i. unilateral termination by the employer of employees who are entitled with the authority to represent their employer, such as managers, assistant managers, agents or attorneys-in-fact and, in general, employees who enjoy the exclusive confidence of the employer.

Generally, if the grounds for termination are those described in letters a to g of the preceding paragraph, the employee has no right to severance payment. However, if the employee does not agree with the ground on which termination was based, he can file a suit for improper dismissal before a labor court. The employer has the burden to prove that the ground for termination existed. If the employee succeeds in the claim, the employee shall be entitled to the severance payment explained below, increased between 30 and 100 percent, depending on the grounds wrongly invoked by the employer.

If the employment agreement is terminated pursuant to letters h or i of the paragraph above, and the employment relationship lasted without interruption for at least one year, the employee shall be entitled to a severance payment equal to 30 days of remuneration per year of service (or fraction in excess of six months), if rendered without interruption to the same employer which is terminating the employment agreement. This severance payment has a limit of 330 days of remuneration. The maximum limit does not apply, however, to employees hired before August 14, 1981.

If the employment relationship terminates for any of the causes stated in letters h and i above, regardless of the duration of the employment relationship, the employer shall give the employee a thirty-day advance notice before material separation. Notice is not required, however, when the employer pays an indemnity in cash equivalent to the last monthly remuneration.

Severance payment is calculated on the basis of the last monthly remuneration, which for these purposes has a legal ceiling of UF 90 (approximately equivalent to US$3,780) even though parties may agree on a higher severance payment.

Please note that the aforementioned rules set forth the minimum rights an employee is entitled to upon discharge. The parties may agree, individually or collectively, on better severance benefits.

Employment agreements of union leaders and pregnant women cannot be terminated, except with the approval of a court. Moreover, courts can only approve the termination of an employment agreement in these cases if the relevant contract's term has expired if the required services have been completed or if the relevant employee has incurred in certain specific unlawful conducts.

Upon termination of an employment agreement there are other payments that may correspond, whichever the cause for termination. Such payments are the proportional vacations and the legal annual bonus, payments that may or may not apply depending on each case.

VI.2 SOCIAL SECURITY AND INSURANCE

Pension

Each employee shall save 10 percent of its monthly remuneration not exceeding UF 84.3 (approximately equivalent to US$3,566) in an individual account administered by a pension fund, to finance its retirement plan (men at 65, women at 60 years old). The employer shall withhold such 10 percent from the employee's monthly remuneration and deposit it in the respective pension fund to be credited in its personal capitalization account. An additional percentage is also withheld to pay for disability and life insurance and the commissions of the relevant pension fund manager. This amount varies. Currently, the portion of insurance is at 1.49 percent, and it is borne by the employer. Commissions vary depending on the manager and are currently at around 1.5 percent.

Health Insurance Contributions

The employer shall also withhold seven percent of the employee's monthly remuneration not exceeding UF 84.3 (approximately equivalent to US$3,566) to finance a private or state health insurance plan. The employer shall withhold such seven percent from the employee's monthly remuneration and pay it to the respective health care provider.

Unemployment Insurance

During the first 11 years of employment, the employer shall withhold 0.6 percent of the employee's monthly remuneration not exceeding UF 122.6 (approximately equivalent to US$5,186) to fund an individual unemployment account, from which withdrawals may be made by the beneficiary as unemployment benefits. The employer (and not the employee) shall contribute with 2.4 percent of the monthly remuneration of the respective employees, not exceeding UF 122.6 (approximately equivalent to US$5,186), to the same unemployment insurance system.

Insurance against Work Accidents

The employer (and not the employee) shall pay a compulsory insurance against work accidents and occupational diseases. The premium equals 0.95 percent of the taxable remuneration –UF 81.2 (approximately equivalent to US$3,435)– of each employee. Nonetheless, this percentage may be higher in the case of companies or activities involved in abnormal degrees of risk and danger.

VI.3 UNIONS AND COLLECTIVE BARGAINING

Conditions for Union Formation

To establish a union in a company that has more than 50 workers, a minimum of 25 workers that represent at least 10 percent of the total number of the company's employees is required. If the company has 50 or less workers a union may be established with only 8 workers. Nevertheless, and regardless of the percentage that the workers may represent, a union can be established with 250 or more workers of the same company.

Anti-union Practices

Considering that the right to establish or join a union belongs to the workers, the employer cannot force its employees to establish or join a particular union. It would be an unfair labor practice for a company to interfere in the election of a union to represent its workers.

A company may not engage in any activity to restrain, limit or coerce its employees in the exercise of their self-organization rights.

Since membership or non-membership cannot be imposed as a condition of employment, a company may not engage in any discrimination on account of membership or participation in union activities nor interfere, restrain or coerce any employee to join or withdraw membership from any labor organization.

Management

Unions are managed by a board of directors which has a different number of representatives according to the number of union members. For instance, for a union that has between 25 and 249 members, the board of directors shall be composed of 3 representatives, one of which shall be appointed president, one secretary and the last one treasurer.

Collective Bargaining

The scope of the bargaining unit is defined in the law and is generally restricted to a company and its unions (including transitory associations of workers for the purpose of bargaining). Only through mutual agreement among the parties may collective bargaining embrace more than one company and unions belonging to different employers.

The right to collective bargaining is granted in the Constitution and the labor statutes. The following workers are, however, excluded from this right: **(i) w**orkers who have powers of representation of the employer and who are endowed with general administrative powers, such as managers and sub-managers, and **(ii) i**n micro and small enterprises, personnel in positions of trust who hold senior management positions. Additionally, micro, small and medium-sized enterprises may excuse themselves from collective bargaining with workers subject to apprenticeship contracts.

The collective bargaining starts with the submission of a project or draft of a collective agreement by one or more unions, or bargaining groups of the same company. Any union of a company, plant or facility may submit a collective agreement project. Bargaining groups not organized as a union may also present collective agreement projects provided that such a group meets the numbers and percentages required for the establishment of a union.

All the negotiations between an employer and its different unions or bargaining groups shall take place at the same time, unless it is otherwise agreed by the parties. The unions may, at their option, either jointly present a common collective agreement project or present one or more projects embracing one or more unions or bargaining groups.

The Labor Code expressly sets the limits within which collective bargaining must take place, as well as the matters subject to collective bargaining. In this regard, there are considered to be matters of collective bargaining those referring to wages and other monetary and fringe benefits, and in general, common conditions of employment. Those matters that restrict or limit the employer's authority to organize, direct and manage its business and those matters not related to the company cannot be subject to collective bargaining.

In general, the length of bargaining cannot exceed 45 days. At the end of this forty-five-day term, workers have two options: **(i)** carry on the negotiations with the agreement of the employer; or **(ii)** vote on whether to reject or accept the last employer's proposal or go to strike.

If the employer believes that it will be unlikely to reach an agreement, it shall make a final proposal within certain term before the expiration of the forty-five-day term. Provided this final proposal is timely made and containing identical provisions to those contained in the collective bargaining agreement in force, adjusted by the CPI between the last adjustment and the date of termination of the agreement and a minimum annual adjustment according to the variation of the CPI for the period of the agreement, since the signing of the agreement. workers may exercise the right to return to work individually as of the sixteenth day after the strike begins. If it does not contain the aforementioned requirements, the individual reinstatement may take place as from the thirtieth day after the strike has begun.

Once the strike has been approved and made effective, the employer may temporarily close all or part of its operations ("lockout"). However, the lockout can only be declared by the employer when the strike affects more than 50 percent of the total number of employees of the company or plant; or if the strike causes the paralyzing of imperative activities for the employer's operations regardless of the percentage of workers on strike.

The company may not interfere with or force the employees to accept the employer's last proposal.

VI.4 SUBCONTRACTING AND SUPPLY OF TEMPORARY PERSONNEL

Subcontracting

The Labor Code defines subcontracting work as that performed by an employee for an employer called contractor or subcontractor, who in turn is entrusted with performing certain works or rendering certain services at its own risk, using its own employees, for a third party who is the owner of the work or premises, called principal company. Sporadic works or services are expressly excluded.

On subcontracting, the Labor Code provides that the principal company is jointly and severally liable for labor and social security obligations of the subcontractor *vis-à-vis* its employees unless the principal company takes certain steps to ascertain that such employees' obligations are complied with. For this reason, the principal company is legally allowed to request the subcontractor information on its employees and even withhold payments to the subcontractor to pay the subcontractor's employees. Generally, when these steps are taken the principal company becomes only severally liable.

Supply of Personnel

On the supply of temporary personnel, the Labor Code requires, among other things, that it be carried out only by certain single-purpose registered companies and in the cases indicated in the law, which are:

a. the suspension of the employment agreement of one or more employees, due to sickness, maternity leave or vacations;
b. extraordinary events, such organization of seminars, conferences, and others of similar nature;
c. new and specific projects, such as the construction of new installations, the expansion of existing ones or expansion to new markets;
d. the period of initiation of activities of a new company;
e. extraordinary or occasional increases, periodic or not, of activity of a certain sector or establishment; or
f. jobs that are urgent and cannot be postponed, such as repairs in installations.

The supply of personnel can only be made for terms of up to 90 days in the case of letters b and e above; 180 days in the case of letters c and d above; and the amount of the suspension in the case of letter a. The law does not specifically provide a term for letter f, but it should be the amount need to make the repair.

The breach of this law will result in **(i)** in fines for the supplied company and/or **(ii)** in the supplied personnel being deemed employees of the supplied company for all legal purposes. The latter is the most important effect of the law. It means that temporary employees who are employed for a longer period of time than indicated or in cases beyond those set forth above will be entitled to claim statutory rights of employees.

VI.5 IMMIGRATION

Chilean immigration laws provide that all foreigners coming into the country must obtain a visa from the competent authority.

Tourist visas allow foreigners to perform minor business activities, such as participating in meetings. Also, tourist could ask for a special permit to allow them to work in Chile for up to 90 days.

In general, there is just one kind of resident visa available for businesspeople:

Temporary-resident visa for foreigners who carry out remunerative legal activities. Temporary-resident visas are granted to foreigners with family links, labor or business interests in Chile; or to foreigners whose residency in Chile may qualify as useful or advantageous for the country (typically, businessmen coming into Chile for business purposes for a period longer than 90 days). Foreigners holding this type of visa may undertake all kinds of lawful activities within Chile. Temporary-resident visas are granted for up to a two-year period, renewable at the end thereof for another period of up to two years. However, at the end of the first term, a permanent-residence visa should be requested (it is advisable) by the interested party in order to be able to remain resident in Chile.

In order to obtain a temporary-resident visa, the following conditions must be considered:

- The institution, individual or company acting as employer must have domicile in Chile.
- Visa must be applied for by the foreigner form his/her country of residence and prior to entering Chile.
- The foreign employee shall enter into an employment agreement with the relevant institution, individual or company. This employment agreement must be executed by the employer (or a lawful representative of the employer) before a notary public. On the other side, the employee must execute the employment agreement before the Chilean Consul sitting in the city where the same is executed. Once executed, it shall then be apostilled by the Chilean Consul.
- In the case of technicians or other specialized professionals, their capacity shall be evidenced with a true and accurate copy of their university titles, which shall also be legalized with the Chilean Consul and then with the Ministry of Foreign Affairs in Santiago or being apostilled. Otherwise, evidence of their capacity shall be submitted to the authorities by means of special working certificates or other supporting documentation.
- That the employee's profession, activity, or services are indispensable or necessary for the development of Chile. Please note that for these purposes (even though unusual) a written report may be requested by the authorities from the relevant professional or technical local association or any other local authorities.
- That the profession, activity or services that the foreign employee will perform in Chile are not dangerous or otherwise perilous for the national security.
- The employment agreement's terms and conditions regarding the services shall be within standard labor and social security practices.

With regard to the procedure, such may be carried out before the Ministry of Foreign Affairs, through an online form provided by the Migration National Service. Please note that it is not possible to apply for the visa from inside of Chile.

All visas are processed by the Migration National Service. Once the visa is approved, the foreigner has a 90-day term, after the granting thereof, to enter the country. Nonetheless, the term of the relevant visa will start only upon actual entrance into Chile.

Finally, it is important to underline that family members of the foreign businessperson will be granted the same visa obtained thereby, having them the possibility to render remunerated activities.

VII. ENVIRONMENT AND NATURAL RESOURCES

VII.1 ENVIRONMENTAL REGULATION

Governing Rules and Relevant Authorities

The main rules of the Chilean environmental legislation are contained in the following regulations:

- Article 19 No. 8 of the Chilean Constitution, which guarantees to all persons the right to live in a pollution-free environment.
- Law No. 19,300 (the "Environmental Act"), which established a general framework to guarantee the referred constitutional right, the protection of the environment, the preservation of nature and the conservation of environmental heritage. It also regulates environmental management instruments such as the Environmental Impact Assessment System ("EIAS") for projects or activities capable of causing environmental impact in any of their phases.
- Supreme Decree No. 40/12 (the "EIAS Regulation"), which regulates the operation of the EIAS.
- Law No. 20,417, which, among other matters, created the Chilean Environmental Superintendence (the "Environmental Superintendence" or "SMA").
- Law No. 20,600, which creates and regulates the Environmental Courts.

The Environmental Act created the Ministry of the Environment, authority responsible for assisting the President of Chile in the design and implementation of the environmental policies, plans and programs and responsible for the national environmental protection. It also created the Environmental Assessment Service (the "SEA"), a sectorial authority in charge of the assessment of every project that, according to the Environmental Act, must be environmentally assessed prior to its execution through the EIAS.

The Environmental Superintendence is the authority responsible for implementing, organising and coordinating the monitoring and control of Environmental Qualification Resolutions ("RCAs"), Prevention and Decontamination Plans, Environmental Quality Standards and Emission Norms, Management Plans, and any other environmental instrument established by law and, in general, to oversee the fulfillment of the obligations established in the EIAS. Notwithstanding the foregoing, there are other public services with surveillance attributions in environmental matters that shall exercise their attributions only in connection with matters and instruments not subject to the jurisdiction of the SMA. As an oversight authority, it is entitled to inspect facilities and initiate sanctioning proceedings that could result in the imposition of sanctions that range from fines up to approximately US$9 million per breach, closure of facilities and revocation of the environmental qualification resolution.

The Environmental Courts are special courts with jurisdiction over environmental matters. Its main competences are to rule claims filed against the RCA, to rule environmental damage claims and claims filed against the resolutions of the SMA imposing sanctions. Their decisions on these competences are appealable before the Supreme Court.

Regarding the regulatory framework, the Environmental Act is complemented by several other statutory provisions, such as: Supreme Decree No. 38/13, which enacts the Regulations for the Issuance of Environmental Quality Standards and Emission Norms; Supreme Decree No. 29/12, which enacts the Regulations on the Classification of Wildlife Species According to Their Conservation Status; Law No. 20,283, the Native Forestry Law; Supreme Decree No. 148/04, regulating Hazardous Waste Management; Supreme Decree No. 13/11, regulating Emission Standards for Thermoelectric Power Plants; Supreme Decree No. 38/12, which establishes Noise Emission Standards; Supreme Decree No. 28/13, regulating Emissions Standards for Copper Smelters and Arsenic Emitting Sources; Supreme Decree No. 1/23 which establishes a Standard

for the Emission of Artificial Luminosity Generated by Outdoor Lighting[32]; Law No. 20,920, establishing the Producer's Extended Responsibility; Law No. 21,455, the Framework Law On Climate Change; Law No. 21,600, which establishes the Biodiversity and Protected Areas Service and the National System of Protected Areas; Law No. 21,595, the Law on Economic Crimes; and the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean ("Escazú Agreement").

Finally, other public services related to environmental matters include: the Health Authority; the National Mining and Geology Service (SERNAGEOMIN); the Agricultural and Livestock Service (SAG); the Superintendency of Sanitary Services (SISS); the National Forest Corporation (CONAF); the General Water Bureau (DGA); the National Monuments Council (CMN); the General Directorate of Maritime Territory and Merchant Marine (Directemar); and the Biodiversity and Protected Areas Service (SBAP).

Environmental Impact Assessment System

General considerations. The basic principle of the EIAS is that projects or activities that may have an environmental impact in any of their phases can only be executed or modified upon assessment of their environmental impact in accordance with the provisions set forth in the Environmental Act and the EIAS Regulations.

In general, Article 10 of the Environmental Act provides a list of activities that are subject to the EIAS, which is specified in the EIAS Regulation. Among others, this list includes energy generating centrals in excess of three megawatts; ports, sailing ways, shipyards and maritime terminals; industrial or real estate projects that are to be located in zones declared as latent or saturated; mining projects under certain characteristics; oil, gas, mining and other kinds of pipelines; industrial facilities, such as metallurgical, chemical, textile, producers of building materials, metallic and tanning equipment and products, of industrial size; production, storage, transportation, disposal or recycling, on a regular basis, of toxic, explosive, radioactive, flammable, corrosive or reactive substances; and certain sanitary projects.

Depending on the effects, characteristics or circumstances of the concerned project or activity, the petitioner shall submit to the authority an Environmental Impact Statement (a "DIA") or an Environmental Impact Study (an "EIA") regarding the environmental impact that the relevant project or activity shall have. Therefore, if the environmental impact caused creates or presents at least one of the effects, characteristics or circumstances mentioned in Article 11 of the Environmental Act (i.e., risk to the population's health; significant adverse effects on the quantity and quality of the renewable natural resources, including ground, water and air; resettlement of human communities; alteration of areas belonging to the cultural patrimony) the petitioner shall submit an EIA. In all other cases, the petitioner shall submit a DIA.

It is important to note that an environmental assessed project must be carried out as approved and any change must be either informed to the environmental authority or submitted to the EIAS if the change is considered as a "material amendment" according to the definition given by the EIAS Regulation. In case of doubt, a Pertinence Letter (*Carta de Pertinencia*) may be submitted to the environmental authority, this is, a formal query by which a petitioner requests a formal opinion on whether the execution or amendment of a project must be submitted to the EIAS.

Finally, in case of a project or activity amendment, the environmental assessment must be pursued over such amendment (not over the existing project or activity); however, the environmental assessment shall consider the combined effects of the amendment and the not previously assessed existing project or activity.

[32] Supreme Decree No. 1/23 replaces Supreme Decree No. 43/13 and comes into force on October 19, 2024.

Environmental Assessment Procedure

The environmental assessment is an administrative procedure in which multiple sectorial authorities with environmental faculties participate. As was explained above, this procedure begins with the submission of a DIA or an EIA, depending on the effects of the project. An EIA is a detailed, ample and comprehensive report while a DIA is a sworn affidavit. Both documents must contain the information described in the Environmental Act and the backgrounds necessary to represents to the authority that the proposed project or activity complies with the applicable environmental laws and regulations.

In both cases, the relevant authorities may request additions, rectifications or extensions to the contents of the DIA or EIA, requirements with which the petitioner shall comply within a term given by the authority. The environmental authority has 120 business days (which may be extended up to 180 business days under qualified circumstances) to issue a decision regarding an EIA and 60 business days (which may be extended up to 90 business days under qualified circumstances) for a DIA Notwithstanding the aforementioned, these terms may be longer if the project title holder suspends the environmental assessment. The process concludes with the issuance, by the corresponding authority after a due analysis, of the RCA.

Once obtained the RCA, specific authorisation or permit must be sought before each corresponding authority regarding specifics characteristics of the projects or activities. The terms to obtain said authorisations or permits may vary due to the particularities of each individual permit and the time frames of the corresponding authority. The RCA may provide, when applicable, conditions or environmental requirements that must be complied with in order to execute the project or the activity and those necessary in order to obtain the permits that according to the law have to be issued by the corresponding governmental entities.

The petitioner can appeal the resolution that rejects a DIA or an EIA or establishes conditions and requirements to the project or activity before the Executive Director or before a committee of ministers, respectively. The resolution of the Executive Director and of the committee of ministers may be appealed before the Environmental Courts.

The RCA will expire when a period of more than five years elapsed prior to beginning the execution of the project or activity. Notwithstanding the rejection of a DIA or an EIA, the petitioner is entitled to file a new DIA or EIA for the same project or activity.

Participation of Community

The Environmental Act contemplates the community's participation ("PAC") in the environmental impact assessment procedure. In case of an EIA, the community's participation is mandatory, this is, does not need to be requested, allowing any person or legal entity to submit objections to the same.

On the contrary, in a DIA, the community's participation must be requested when the following requirements are fulfilled (even though pursuant to the Escazú Agreement, community participation is broadly granted): **(i)** the DIA refers to projects that generate environmental burdens to communities located in the surroundings of the project or in the area where its effects occur; and **(ii)** be required in written by at least two citizen organizations organized as legal entities or ten people directly affected.

The community participation process for an EIA begins after the publication of the extract of the EIA and last for 60 days, while for a DIA, it begins after the publication of the extract of the Resolution that opens the PAC and last for 20 days.

If once the community participation process is finished, the project is subject to additions, rectifications or extensions that affect substantially the environmental impacts of the project, a new

community's participation period will be opened and will last 30 days in case of an EIA and 10 days (extendable for additional five days) for a DIA.

The community observations to an EIA or a DIA will be part of the environmental impact assessment procedure, and the relevant authority must duly consider such objections when explaining the rationale for its decision. If these objections are not properly addressed, claimants may appeal before the committee of ministers or the Executive Director, as the case may be. During this review process, the effects of the decision being challenged are not suspended.

Finally, each EIA or DIA shall include a description of the project's participatory monitoring on which the community may be involved during the construction and operation of the project.

Participation of Indigenous Communities

The Indigenous Consultation Process is a participation mechanism based on dialogue that must exist between the State and Indigenous Communities, according to the obligation imposed by Convention 169 of the International Labor Organization ("ILO 169").

For purposes of complying with the contents of ILO 169, Chile enacted the Supreme Decree No. 66/2014, of the Social Development Ministry, which established the regulations governing the procedure for indigenous consultation following the provisions of the ILO 169. Among other matters, this norm establishes requirements and conditions that must be complied within the community participation stage during the environmental impact assessment procedure when indigenous communities and tribal people are involved.

The purpose of this process is to reach an agreement or obtain consensus regarding the proposed measures - administrative or legislative, which includes for example, the RCA. This supposes the design of a process that allows to provide information to the Indigenous Communities about the projects that may affect them directly, so that they, through their representative institutions, adequate procedures and according to their sociocultural characteristics, assume, in an instance of internal deliberation, a position regarding the consulted project.

According to the EIAS Regulation, an indigenous consultation process must be carried out regarding those projects submitted to the EIAS through an EIA, when they generate or have the effects, characteristics or circumstances provided for in articles 7, 8 and 10 of the EIAS Regulation, which are:

- If the project or activity generates resettlement of human communities or significant alteration of the life systems and customs of human groups (article 7).
- If the project or activity is located in or near protected populations, resources and areas, priority conservation sites, wetlands and glaciers, likely to be affected, as well as the environmental value of the territory in which it is intended to locate (...) Protected populations shall be understood as indigenous peoples, regardless of their form of organization (article 8).
- If the project or activity generates or presents alteration of monuments, sites with anthropological, archaeological, historical value and, in general, those belonging to cultural heritage, considering among other aspects, (...) the magnitude in which constructions, places or sites are modified or permanently deteriorated which, due to their constructive characteristics, their antiquity, their scientific value, their historical context or their uniqueness, belong to cultural heritage, including indigenous cultural heritage, and (…) the affectation of places where habitual manifestations of the culture or folklore of some community or human group are carried out, derived from the proximity and nature of the parts, works and/or actions of the project or activity, especially considering those referring to indigenous peoples (article 10).

Environmental Liability

The Environmental Act punishes negligent and willful actions that cause environmental damages. In general, indemnification shall only apply in cases when a "cause and effect" relation between such violation and the damage has been proven. However, the liability of the causer of the environmental damage is legally presumed when the environmental laws, regulations or norms have been violated.

If an environmental damage is caused (such damage being defined as "any significant loss, decrease, detriment or impairment caused to the environment or to one or more of its components"), an *acción ambiental* or "environmental action" may be filed before the Environmental Courts -with the sole purpose of obtaining the restoration of the damaged environment- by **(i)** the individuals and entities which have suffered the damage; **(ii)** by the municipalities, for the situations occurred in their territories, and/or **(iii)** by the State. This environmental action is notwithstanding the possibility to file -if applicable- the damages indemnification action according to general Chilean Civil Code rules, after the environmental damage has been declared by decision of the Environmental Courts.

Additionally, Law No. 21,595 on economic crimes created a new criminal statute applicable to individuals and companies, aimed at preventing the commission of offenses characterized as economic. It achieves this by raising the existing standards regarding corporate compliance, including the legal obligations of their board members and managers. This law regulates several environmental crimes among which the environmental damage is a relevant situation.[33]

Also, anyone who believes that his or her constitutional right to live in an unpolluted environment has been unlawfully affected may file a constitutional action (*recurso de protección*), to ensure the immediate protection of his or her constitutional right.

Climate Change

In Chile, the Climate Change Framework Act (Law No. 21.455) entered into force in year 2022. This law establishes various instruments and prerogatives for the authorities to prevent climate change, by adopting several plans and measures in order to reduce air emissions and greenhouse effect related gases. In addition, this law sets year 2050 as the goal for transforming Chile in a carbon neutral country.

The Climate Change Framework Act also establishes objectives for the mitigation of CO_2 emissions in the country, the creation of a national institution for the protection against climate change, means for the management of climate change in the long, medium and short term and an information system for citizens in matters of climate change.

[33] Some noteworthy environmental crimes established by Law No. 21,595 include: (i) evading environmental assessment while conducting certain polluting activities, such as discharging pollutants into water or soil or releasing polluting substances into the air; (ii) engaging in one of the polluting actions mentioned in the previous provision while having the proper authorization but violating an RCA or environmental regulation. To be held liable for this offense, the offender must have received sanctions at least twice within the 10 years before committing the environmental crime, for infractions categorized as serious or very serious (as defined by the Environmental Superintendence Act) within the same facilities; (iii) extracting water with proper authorization but in violation of usage and distribution rules when the water authority has issued an official declaration safeguarding this resource (due to water scarcity in a specific location, e.g., "*zona de prohibición*"); (iv) disposing, depositing, or releasing pollutants, extracting water or soil in a way that seriously affects certain environmental components mentioned in the provision or significantly harms wetlands by dumping solids into them; (v) causing significant harm to the environmental components of protected areas; (vi) engaging in activities that seriously affect glaciers without the required environmental authorization or due to non-compliance; (vii) willfully providing false information (a) during an environmental assessment to wrongly obtain an environmental authorization or (b) to the Environmental Superintendence to demonstrate compliance with environmental obligations; (viii) willfully dividing projects or activities to evade an environmental assessment or be assessed under more favorable and lenient conditions.

In addition, the impacts that a project under environmental assessment may have on the various elements that influence climate change (native forest, water, natural resources, greenhouse gas emissions and climate forcers, etc.), shall be included among the background information to be assessed in the EIAS.

Furthermore, Chile has ratified several treaties and conventions addressing climate change, such as the United Nations Framework Convention of Climate Change (1994), the Kyoto Protocol (2002) and the Paris Agreement (2017), obliging our country to comply with the international standards set in this matter. In this regard, Chile's ratification was deposited in the UN and, therefore we join to the countries that have set an expiration date for fossil fuels, since to implement the agreement, it is necessary that the net greenhouse gas emissions to be zero in the second half of the century. Our commitment to the UN was decoupling our growth from emissions, so that by 2030 the country's emissions are between 30 to 45 percent less, with respect to our GDP.

VII.2 MINING

Introduction

The Chilean Constitution sets forth the fundamental provisions of State ownership of all mines as follows: "*The State has the absolute, exclusive, inalienable and imprescriptible ownership of all mines*, [...] *notwithstanding the ownership by individuals or entities of the surface land in which they may be situated*." This is also provided in the Chilean Mining Code (the "Mining Code"), and in the Chilean Mining Concessions Act (the "Mining Concessions Act").

The Mining Concessions Act adds that "*metallic and non-metallic mineral substances are subject to concession, with the exception of liquid or gaseous hydrocarbons, lithium, and deposits in territorial waters*."

Authors and scholars are basically in agreement that the provisions contained in the Constitution, in the Mining Concessions Act and in the Mining Code set forth the system which, while contemplating State ownership (*dominium directum*) of all mines, establishes the principle that the purpose of State ownership is principally to assign or grant concessions as original title (*dominium utile*) in favor of the discoverer of the mine.

This means that a mining investor is not, technically speaking, the owner of the mine or of the mineral deposit, but rather is the owner of a concession or right *in rem*, which enables the investor to exploit the deposit, to acquire title to the ores which have been mined, and to sell them at his/her discretion. Therefore, the mining investor is in fact the owner of a non-tangible or incorporated asset, the mining concession, which exists by virtue of a judicial judgment, and which is treated as the equivalent of immovable property.

Mining Legislation

Introduction. The Mining Concessions Act provides that any person whatsoever, individuals or companies, nationals or foreigners, may request and obtain exploration or exploitation mining concessions over grantable ores, provided that the legal procedures therefor are duly complied with. No discrimination is made in this regard between nationals and foreigners.

Pursuant to the Mining Concessions Act, a mining concession represents a real and immovable right different and independent from ownership of the surface land, even if it belongs to one and the same owner; enforceable against the State and any other person; transferable and transmissible; subject to mortgage and other *in rem* rights and, in general, to any act or contract.

Mining concessions are granted by a judicial decision rendered by a competent court of justice in the context of a non-litigious proceeding filed with such court, the purpose of which is to identify,

define and create the concession. No administrative agency of the government whatsoever is directly involved in the procedure whereby a mining concession is created, except for the National Geological and Mining Bureau (*"*SERNAGEOMIN*"*), which has only a technical advisory role in such procedure.

The territorial extension of a mining concession consists of a solid shape, the surface of which is a horizontal parallelogram of right angles, and the depth of which is indefinite within the vertical planes that bound it. Both the length and width of the parallelogram shall have a North-South orientation based on U.T.M. coordinates, according to the Mining Code Regulations.

Mining concessions. The mining concessions can be either for exploration or exploitation.

Neither the Mining Concessions Act nor the Mining Code defines the mining exploration and exploitation concessions. Legal scholars have defined exploration concession as a real and immovable right of limited duration, which grants its holder -in its territorial extension- the exclusive rights of investigating the existence of grantable mineral substances and of requesting one or more mining exploitation concessions. The term of an exploration concession is four years from the date of the court's decision. Such term may be extended, subject to the fulfillment of certain conditions, for another four years.[34]

Legal scholars have defined exploitation concession as a real and immovable right of indefinite duration, which grants its holder –in its territorial extension– the exclusive rights of investigating the existence of grantable mineral substances, extracting such grantable mining substances and becoming the owner of such substances at the time of their extraction. The term of an exploitation concession is indefinite.

As was mentioned, both, exploration and exploitation mining concessions are granted by means of a judicial ruling granted in non-litigious proceeding. The constitution process must be followed, fulfilling all the requirements and the deadlines imposed to carry out the corresponding procedural in order to avoid any nullity or expiration vice that may affect the mining concession.

Is important to notice that the concessional system considers a registration regime at the relevant Mining Register which aims to publicize the Mining Concession within the territory, so that everyone knows its mutations and current status. Likewise, the concessional system considers the obligation to report the geological information obtained from the mining exploration works, which will be of public access.

Mining Duties. The holder of a mining concession, whether for exploration or exploitation, must pay annually, in advance, a royalty in order to maintain the ownership over such concession. Such royalty is designated as *patente minera* (the "Mining Duties").

Whereas for the exploration concession the amount of the Mining Duties is equivalent to 3/50th of a UTM (approximately equivalent to US$1.11) for each complete hectare. The Mining Duties related to exploitation mining concessions which are not being exploited and no works have been initiated vary depending on how many years have elapsed since the mining concession was granted, increasing every five years. The amount of these Mining Duties starts generally, from 4/10th of a UTM (approximately equivalent to US$32.8) for each complete hectare. For those exploitation mining concessions being exploited, the Mining Duties is equivalent to 1/10th of a UTM (approximately equivalent to US$7.4) for each complete hectare.

[34] In order to obtain this extension, within the first six months of the last year of its concession, the holder must submit to the SERNAGEOMIN a report with all the geological information obtained in the exploration works that have been carried out during the term of its concession. Alternatively, the holder may submit to the SERNAGEOMIN the documentation that proves the obtention of an Environmental Authorization regarding to its mining project during the concession term, or the admission of its exploration project to environmental assessment.

If the concessionaire does not pay the Mining Duties within the term established by the Mining Code (March of each year), the mining concession will be auctioned through a judicial process of public auction, which must be carried out following the requirements established by law.

Mining Tax. Law No. 21,591 (the "Royalty Act") establishes a specific tax on mining activities (the "Mining Tax"), levied on mining companies (excluding small-scale mining companies and miners), according to their volume of sales and the type of minerals extracted. Currently, the Mining Tax comprises:

Ad-valorem component. A one percent ad-valorem component applicable only to mining companies whose annual sales are higher than the equivalent value of 50,000 metric tons of fine copper ("MTFC"). The value of MTFC shall be determined according to the London Metal Exchange Grade A copper cash quotation, which shall be published by the Chilean Copper Commission. In case a company determines a negative "Adjusted Mining Operational Taxable Income" ("RIOMA")[35], the ad-valorem component would be reduced in such negative RIOMA value.

Mining margin component. For those mining companies whose average annual sales in the preceding last six periods derivates from copper on more than 50 percent (including sales made to related parties), and that its production exceeds 50,000 MTFC, a progressive tax rate from eight percent up to 26 percent will apply depending on its Mining Operative Margin ("MOM")[36], as follows:

Mining Operative Margin	**Maximum Effective Tax Rate**
Equal to or lower than 20	8%
Higher than 20 but lower than 45	12%
Higher than 45 but lower than 60	26%

Mining companies that do not comply with the aforementioned requirements, will be subject to a progressive Mining Tax that would depend in the volume of sales or on the MOM, in each case, as follows:

(i) Mining companies with annual sales equal to or less than the equivalent of 12,000 MTFC: exempted from the Mining Tax.

(ii) Mining companies with annual sales equal to or less than the equivalent of 50,000 MTFC, but greater than the equivalent of 12,000 MTFC: will be subject to a progressive tax rate from 0.4 percent up to 4.4 percent depending on the sales volume as follows:

[35] Adjusted Taxable Mining Operating Income (*Renta Imponible Operacional Minera Ajustada*) is the taxpayers' taxable income (*Renta Líquida Imponible*) determined in accordance with articles 29 to 33 of the Chilean Income Tax Act, and duly adjusted in accordance with article No. 6 of the Royalty Act. In general terms, as the value obtained after deducting from annual sales those costs and expenses associated to sales that would qualify as deductible costs and expenses under the general rules of the Income Tax Act. However, certain expenses that are normally accepted as tax expenses are explicitly excluded from the calculation of the Mining Tax (e.g., interests, accumulated losses, accelerated depreciation (regular depreciation is admitted, though) and amortization for startup expenses for a period exceeding six years).

[36] Operating Margin Component is the result of dividing the RIOMA by the taxpayer's mining operating income, multiplied by 100.

Equivalent Value of the Mining Company's Annual Sales	**Marginal Tax Rate**
Regarding that portion between 12,001 and 15,000 MTFC	0,40%
Regarding that portion between 15,001 and 20,000 MTFC	0,90%
Regarding that portion between 20,001 and 25,000 MTFC	1,40%
Regarding that portion between 25,001 and 30,000 MTFC	1,90%
Regarding that portion between 30,001 and 35,000 MTFC	2,40%
Regarding that portion between 35,001 and 40,000 MTFC	2,90%
Regarding that portion in excess of 40,001 MTFC	4,40%

(iii) mining companies with annual sales higher than the equivalent of than 50,000 MTFC: will be subject to a progressive tax rate from five percent up to 14 percent depending on the MOM, as follows:

Mining Company's MOM	**Marginal Tax Rate**
Equal to or lower than 35	5%
Higher than 35 but lower than 40	8%
Higher than 40 but lower than 45	10,50%
Higher than 45 but lower than 50	13%
Higher than 50 but lower than 55	15,50%
Higher than 55 but lower than 60	18%
Higher than 60 but lower than 65	21%
Higher than 65 but lower than 70	24%
Higher than 70 but lower than 75	27,50%
Higher than 75 but lower than 80	31%
Higher than 80 but lower than 85	34,50%
Higher than 85	14%

Other relevant aspects of the Mining Tax. The Royalty Act establishes a maximum tax rate of (i) 45.5 percent over the RIOMA for companies that produce up to 80,000 yearly metric tons; and (ii) 46.5 percent for mining companies above 80,000 yearly metric tons. This limit considers the Mining Tax and income taxes, that is corporate income tax and potential shareholder's final taxation on dividends distribution. If the aggregate of these taxes exceeds the burden cap, the Mining Tax shall be reduced correspondingly.

Another feature introduced by the amendment to the Mining Tax is the Mandatory Provisional Monthly Payments ("PPM"), that taxpayers must contribute towards the annual royalty, which is filed and paid in April following the end of each commercial year. PPMs are determined as a percentage

of the taxpayer's gross monthly income (received or accrued) from the sale of mining products. This percentage is influenced by changes in the ratio between the royalty paid in the previous year and the PPMs made in the current year, which can increase or decrease the PPM amount. If this comparison cannot be made, the PPM is fixed at 0.3 percent. Additionally, PPM rates are adjusted quarterly based on fluctuations in copper prices, following a methodology outlined in the bill.

Finally, pursuant to the Royalty Act, projects for which foreign investment was brought into Chile under DL 600 (see Chapter II.1 *Foreign Exchange and Foreign Investment*), which provide that for investments of amounts of no less than US$50 million, the Mining Tax would be invariable for a period of 15 years, such foreign investments would be exempt from new mining taxes. Moreover, for the same period of time the Mining Tax may not be applied in less favorable terms, as to rate and calculation mechanism. In these cases, the current Royalty Act establishes a tax invariability, which means that taxpayers with tax invariability will be governed by the provisions in force as of January 1, 2022, for the time between the entry into force of the Mining Royalty and the date on which the tax invariability ends, notwithstanding of being able to avail themselves of this new law on the understanding that such invariability has been waived.

Mining easements. The owners of mining concessions are entitled to request rights of way or easements over surface land and/or over mining concessions owned by third parties, for the purpose of facilitating mineral exploration and exploitation of their mining concessions. This right includes easements for mining facilities and plants, tailing deposits, power and communications facilities, pipelines, roads, etc.

Mining easements may be constituted by an agreement between the parties (the owner of the mining concession and the owner of the surface land or another mining concession) or be forced by the judge by means of a final ruling, as a result of a mining easement action filed by a mining concession's owner before the competent Civil Court. A mining easement -if granted- shall also consider the right of the surface landowner and other parties with rights over the area covered by the mining easement, to be compensated for *"all the damages caused".*

Easements in favor of mining concessions are essentially temporary, notwithstanding, may be requested at any time -with no limit- as long as it is with the purpose of allowing the comfortable and convenient exploitation or exploration of the attempted mining project. They may not be used in purposes other than those for which they were created and shall cease when they are no longer in use or when the mining concession which holds the relevant easement, cease to be exploited or to exist. Easements may be expanded or restricted according to the development of the work connected therewith.

Finally, it is important to notice that mining easements may be granted provisionally, that is, before a final judgment is issued in the easement constitution trial. In this case, the court must determine the sum to be paid by the mining concession holder who is seeking the constitution of the mining easement in favor of the holder of the affected mining concession or the owner of the surface land. Eventually, whomever could be affected, could file an opposition to the constitution of a mining easement, but nothing assures that his opposition will prevent the subsequent constitution of the requested mining easement; rather, it will be decided by the competent court.

Companies that operate mining business activities. In addition to the different types of companies contemplated by the Chilean Law, the Mining Code provides for the existence of two specific company types available for the mining industry, the "legal" and the "contractual" mining companies.

The first, the "legal" mining company (s*ociedad legal minera)*, is designed to provide less sophisticated mining businesses with a simple mandatory company structure. By the mere fact that two or more persons or entities jointly register an interest or claim the constitution of a mining

concessions, a separate legal entity is thereby automatically incorporated. The Mining Code provides for a comprehensive body of rules for its governance, shareholders' rights and duties, among others, that are essentially the company's by-laws.

The second type, the "contractual" mining company (*sociedad contractual minera*), is intended to allow for a more sophisticated corporate structure. The Mining Code states that venturers willing to perform mining activities (the statutory language specifically describes the purpose of these companies in terms of "*exploration* […] *exploitation* […] *processing* [the mine's] *minerals*" and excludes any mention to mere investments in mining interests) may agree on a corporate structure based in the fundamental characteristics of the "legal" mining company.

Mining mining activities regulation. Supreme Decree No. 132/04, Mining Safety Regulation, sets forth the general regulatory framework that rules the mining worksites of the National Mining Extractive Industry with the main aim of protecting (i) the life and integrity of the individuals engaged in the mining industry and of those who, subject to specific and defined circumstances, are related thereto; and (ii) the facilities and infrastructure that make mining worksites and, therefore, the continuity of their processes, possible.

Supreme Decree No. 248/07, which approves the Regulation for the Approval of Tailings Dams Design, Construction, Operation, and Closure Projects. It is aimed at establishing provisions regarding the procedures for the approval of tailings dams' projects and the requirements applicable to the design, construction, operation, and closure of tailings dams and annexed works so that the safety of individuals and their property is guaranteed.

Finally, Law No. 20,551 regulates the shutdown of mining worksites and facilities. It establishes that every mining company must file a shutdown plan before the SERNAGEOMIN for its approval. In the case of mining projects with an RCA, the shutdown plan must be drafted in accordance with the RCA. It also provides that the shutdown plan is a sectorial permit and, as such, all of its environmental aspects must be filed, evaluated and approved during the environmental assessment of the mining project.

Mining activities in certain restricted areas. As a general principle, any person is entitled to freely prospect (*catar*) and excavate (*cavar*) in open land owned by any person with mining purposes. In all other cases, a written authorization shall be obtained from the owner, the possessor or the holder of the concerned land, as the case may be, or from the relevant governor or mayor when the State or a municipality, respectively, is the owner of the land concerned.

Whenever such authorization to prospect and excavate is denied or the exercise thereof hindered, an action may be brought in court requesting the competent judge to resolve.

Notwithstanding the above, mining works (*labores mineras*) (i) are forbidden in virgin region reserves, national parks and natural monuments; and (ii) can only be executed upon special authorizations issued by the competent authority in certain restricted areas –including but not limited to cities or towns, shores and military premises.

VII.3 WATER

Introduction

Water rights are mainly governed by the Chilean Water Code of 1981, as amended (the "Water Code").

The Water Code firstly classifies waters in land (*aguas terrestres*), maritime (*aguas marítimas*) and river (*aguas fluviales*). The provisions of the Water Code do not apply to maritime waters. Furthermore, land waters are classified in surface waters (*aguas superficiales*), i.e., such waters

that are naturally within sight of persons, and underground waters (*aguas subterráneas*), i.e., such waters that are hidden underneath the ground and have not been extracted.

According to the Water Code, land waters are national property reserved for the public use (*bienes nacionales de uso público*), i.e., land waters cannot be subject to private property, they are owned by the Nation as a whole and their use pertains to all its inhabitants.

Water Rights

Notwithstanding the public character of land waters, all persons are entitled to obtain an in rem right over such waters in compliance with the legal requirements (*derecho de aprovechamiento de aguas*). Water rights are originally granted by means of a Resolution of the Chilean General Waters Bureau, upon request of the interested party. Water rights do not grant ownership over the relevant waters, but only the right to use and exploit them. On the other hand, the holder of a water right is the owner of said right and may use, exploit and dispose of the same (including, among others, by means of sale, lease, mortgage or contribution to companies) in accordance with the law.

Pursuant to an amendment to the Water Code introduced in 2022, water rights granted after it came into force will be treated as water concessions with a term limited to 30 years from their granting, subject to renewal. Also, water rights granted after the aforementioned amendment may be terminated if they are not used by its holder (for a five-year period in the case of consumptive water rights, and a 10-year period for non-consumptive water rights).

Classifications

Water rights can be **(i)** consumptive or non-consumptive, **(ii)** of permanent or potential exercise, and **(iii)** of continuous, discontinuous or alternate exercise:

- ***Consumptive***: entitle the right-holder to consume the water without limitations in any activity. ***Non-consumptive***: entitle the right-holder to use the water without consuming them and compel him/her to return the water in the manner established by the relevant administrative act that created the right. The extraction and restitution of water must be carried out in a manner that does not harm the right of third parties granted over the same waters.
- ***Permanent exercise***: water rights that are granted with such title in non-exhausted sources. This type of right enables the holder to use water in the required amount, unless the source does not carry enough water to satisfy all granted rights, in which case the river flow shall be distributed in proportional quotas. ***Potential exercise***: any water right not granted as permanent. It only enables the holder to use the water in times where the main flow has a surplus, after the permanent exercise rights have been satisfied. Their exercise is subordinated to the preferential exercise of the rights of the same kind previously granted.
- ***Continuous exercise***: water rights that allow uninterrupted use of the water during 24 hours per day. Absent any reference in the administrative act that grants the water right, its exercise shall be deemed to be continuous. ***Discontinuous exercise***: water rights that only allow use of the water during certain periods. ***Alternate exercise***: water rights in which the use is distributed among two or more persons in successive turns.

Water Tax

Holders of water rights must pay an annual tax proportional to the amount of water not used from the relevant flows. For this purpose, the Chilean General Waters Bureau annually issues a list of all the water rights subject to this annual tax.

VII.4 OIL AND GAS

Introduction

In Chile, the ownership of hydrocarbon (liquid or gaseous) deposits is restricted to the State of Chile by the Constitution, which reserves for it the "*absolute, exclusive and inalienable*" ownership of hydrocarbon deposits, pointing out that the exploration and exploitation of these deposits can only be carried out either directly by the State through its companies (mainly the *Empresa Nacional del Petróleo* or "ENAP"), by means of administrative concessions or by special operation contracts ("SOCs").

In addition, Chilean law provides that ownership of the surface land does not convey rights over the minerals found under its surface. Mineral substances and hydrocarbons can only be exploited -in the case of hydrocarbons- either by an administrative concession or by a special contract with the state, and in both cases special taxes or royalty's payments apply. Subsurface mineral rights do not generate rights over the surface land other than to impose legal easements and rights of way.

As explained above, oil and gas reservoirs belong to the State of Chile. Apart from ENAP activities, the government participates in the oil and gas sector by means of exploration and production activities, mainly by the execution of SCOs, signed between the local or foreign investor and the Chilean State in order to carry out exploration and production in specific oil or gas fields. The investor gets retribution in money or in kind (hydrocarbons), subject to common taxation, and may, with prior government authorization, export the hydrocarbon it has received in payment. The state has the right of purchase in return, paying the contractor a price predefined in the SCO.

Apart from the exclusive right to explore and exploit hydrocarbons within the conceded area, a system of benefits, exemptions and exceptions is established for those private sector contractors who sign these types of contracts.

In addition, as mentioned above, the rights and easements established in the Mining Code in favor of mining research, exploration and exploitation also apply to the contractors. Finally, the system authorizes the expropriation of all those plots of land which the President of Chile may consider necessary for the exploration and exploitation of hydrocarbon deposits carried out by SCO contractors.

As a general rule, it can be stated that the oil and gas activity in Chile is not banned at any place, but some regulations make it physically or economically unfeasible because of the severe restrictions or high costs involved in complying with them.

Applicable Regulation

Liquid hydrocarbon import, transportation, storage and marketing is subject to a number of specific technical regulations regarding safety, quality and other matters, including Supreme Decree No. 108/14 (Safety Regulations for Liquefied Petroleum Gas Storage, Transportation and Distribution Facilities and Associated Operations) issued by the Ministry of Energy, Supreme Decrees (issued by the Ministry of Economy) No. 160/09 (Safety Code for Facilities and Production and Refining Operations, Transportation, Storage, Distribution And Supply of Liquid Fuels) and No. 310/84 (Safety Code for Rail Transportation of Liquid Fuels); and the Decree having Force of Law No. 1/79 (DFL No. 1), issued by the Mining Ministry, that provides that any importer of liquid fuels must be previously registered in a register kept for such purpose by the Superintendence of Electricity and Fuels (SEC).

In addition, hydrocarbon marine terminals can only be installed with a maritime concession granted by the Ministry of Defense, in accordance with Decree having Force of Law No. 340/60 on maritime concessions and Decree No. 9/18 the Ministry of National Defense.

Related Governmental Authorities

On the hydrocarbons exploration and exploitation activities several authorities are involved with different powers and obligations, as explained below.

Firstly, as stated above there is ENAP. ENAP is a state-owned company, regulated by its Organic Act, Law No. 9,618, which grants ENAP the right to explore and exploit hydrocarbon fields without an administrative concession or a CEO. Additionally, the law acknowledges to ENAP certain legal prerogatives in order to impose easements or right of way to third private parties. Law No. 9,618 also authorizes ENAP to develop its legal purposes, directly or through other companies in which it may participate.

Other authorities involved in the process are the Ministry of Energy and the National Commission of Energy (*Comisión Naconal de Energía*, or "CNE"), which are the main entities in charge of the issuance of policies and regulations for the oil and gas sector, while the supervision of compliance with such regulations are within the responsibilities of the Superintendence of Electricity and Fuels (*Superintendencia de Electricidad y Combustibles*, or "SEC").

The Ministry of Energy has the responsibility of developing and coordinating the plans, policies and regulations for the proper operation of the energy sector, supervising its performance and advising the government in all matters related to energy. Furthermore, this Ministry coordinates the different entities related to energy in Chile, including those in connection with oil, gas and refined products.

According to its Organic Law (DL No. 2,224/78), the CNE is a technical entity in charge of analyzing price, tariff and technical regulations for the companies dealing with energy production, generation, transportation and distribution, in order to have the most secure, reliable and efficient energy system. It is an independent agency, which reports to the Ministry of Energy.

The SEC Organic Law (Law No. 18,410 and Law No. 19,613) states that such entity oversees the compliance with all regulations related to generation, production, storage, transportation and distribution of all fuels, gas and electricity. The SEC has the authority to impose fines and, if necessary, to take over the administration of deficient services, at the expense of the concessionaire, when applicable.

On the other hand, the Ministry of Environment and the Environmental Superintendence are the entities responsible for environmental matters (with respect to all activities including oil). Other relevant authority is the Ministry of Defense, considering that a significant part of the hydrocarbon deposits is located offshore. Thus, the Ministry of Defense, through its maritime undersecretary, is the authority responsible for all matters related with maritime concessions (in relation to maritime oil and gas facilities).

VIII. REGULATION

VIII.1 COMPETITION LAW

The Chilean competition system's backbone is set out in Decree Law No. 211 (the "Chilean Competition Act"). Broadly speaking, it regulates anticompetitive practices, the powers of competition law authorities, and procedural matters for administrative investigations and judicial proceedings. The main purpose of the Chilean Competition Act is to promote and defend free competition in the markets. All affronts to competition in economic activities will be corrected, prohibited and repressed in the manner and with the sanctions established in the Chilean Competition Act.

The main authorities involved in competition law matters in Chile are the Competition Agency (*Fiscalía Nacional Económica* or "FNE"), the Competition Court (*Tribunal de Defensa de la Libre Competencia* or "TDLC") and the Supreme Court.

Anticompetitive Practices

Pursuant to the Chilean Competition Act, whoever executes or enters into, individually or collectively, any deed, practice or agreement that impedes, restricts or thwarts competition, or tends to produce such effects, will be sanctioned as provided therein (see *Sanctions Regime* below). The following deeds, practices, or agreements, among others, will be deemed to impede, restrict or thwart competition, or to tend to produce such effects:

- **Agreements or concerted practices** involving competitors, and which consist in fixing sale or purchase prices, limiting output, assignment of market zones or quotas, affecting the outcome of tender processes, as well as agreements or concerted practices that, conferring market power to the competitors, consist of the determination of marketing terms and conditions, or the exclusion of current or potential competitors.
- **Abuse of a dominant market position** by an economic agent or a group thereof, fixing purchase or sale prices, tying the sale products, assigning market zones or quotas, or imposing other similar forms of abuse.
- **Predatory pricing or unfair competition** practices deployed to obtain, maintain or increase a dominant position.
- **Interlocking**, that is, the **simultaneous participation** of an individual as a **relevant executive or director** in two or more **competing firms**, provided that the annual income of the aforementioned firms' respective business groups exceeds UF 100,000 (approximately equivalent to US$4.2 million) from sales, services, and other activities of their line of business during the last calendar year. However, this infringement will only be deemed to have occurred if such simultaneous participation is still ongoing after a term of 90 calendar days has elapsed, calculated as from the end of the calendar year when the threshold has been surpassed.

Other infringements relate specifically to the merger control procedure (mainly procedural and substantive **gun jumping** violations).

Authorities

FNE. The FNE's main role is to **investigate and prosecute** anticompetitive behavior. In addition, the FNE acts as the main authority in charge of **merger control review**. The FNE also possesses additional powers to, for example, review and grant leniency applications in collusion cases, conduct market studies, and propose regulatory amendments to the executive branch in order to enhance or preserve competition.

The FNE's investigations may commence *ex-officio* or following a complaint by any party with legitimate interest. The FNE has an ample toolkit to investigate anticompetitive conduct. Its general powers include issuing requests for information to market players or public entities, as well as summoning executives to depositions. Non-compliance could lead to sanctions both administrative and criminal in nature.

An investigation by the FNE could conclude through **(i)** dismissal; **(ii)** a settlement or consent decree between the FNE and the parties under investigation (which would require subsequent TDLC approval); or **(iii)** the FNE taking action before the TDLC, of either contentious or non-contentious nature (e.g., a complaint or a consultation, respectively).

TDLC. The TDLC's main role is to adjudicate on competition law matters. This includes hearing contentious cases on anticompetitive behavior, several ad hoc non-contentious faculties, and to rule on damages stemming from competition law infringements.

Claims regarding anticompetitive behavior are adjudicated by TDLC through a **contentious procedure**, which applies indistinctly to unilateral conduct or collusion infringements. The FNE or individuals and companies with a legitimate interest have standing to initiate these proceedings.

The TDLC may also **(i)** hear **non-contentious cases**, such as consultations on whether certain current or future acts or agreements comply with competition law (excluding acts or agreements that are subject to mandatory merger control by the FNE), or proceedings to mandate general instructions that must be complied with by private parties in order to safeguard competition in a certain market; **(ii)** rule on **damages claims**, including class actions, following a prior judgement by the TDLC of anticompetitive behavior through a contentious procedure; and **(iii)** perform **judicial review** of decisions by the FNE in the context of the merger control regime (*recurso de revision especial*).

Supreme Court. The court reviews the TDLC's decisions, mainly through a recourse known as *recurso de reclamación*. The Supreme Court has interpreted its competence under said recourse as broad in scope. Because of this, it is common for the Supreme Court to review both points of law and the merits of the case.

Sanctions Regime

The Chilean Competition Act provides that the TDLC and/or the Supreme Court can impose significant sanctions and penalties for anticompetitive practices. These include:

- **Fines**. Up to a maximum of either: **(i)** 30 percent of the defendant's revenue from the product line involved in the alleged infringement, during the period in which said infringement took place; or **(ii)** double the economic benefit obtained as a consequence of the alleged infringement. If neither alternative can be applied to a specific case, the TDLC and/or the Supreme Court can impose fines up to **(iii)** 60,000 UTA (approximately equivalent to US$55 million). Fines may be imposed on corporate entities and on individuals who intervened in the infringement.
- **Injunctions**. Including the termination of acts, systems or agreements that infringe competition law, as well as the dissolution of corporate entities that have participated in anticompetitive behavior.
- **Prohibition** to participate in public tenders or enter into agreements with the Chilean State. This additional penalty may only be applied in cartel infringements and for a maximum of five years.
- In case of a breach of the filing duty under the mandatory merger control procedure, the TDLC may impose a fine of up to 20 UTA (approximately equivalent to US$17,760) for each day of delay, as from the day on which the concentration is consummated.
- In the case of a cartel infringements, the Chilean Competition Act also considers **criminal prosecution** for individuals (natural persons).

Merger Control Regime

The Chilean competition merger control regime considers both a pre-closing and a post-closing filing process.

Pre-closing system. The filing must be made before closing the transaction. Accordingly, a transaction caught by this system is barred from closing until a final decision has been reached by the Chilean competition authorities.

- *Triggering elements*. There are two essential conditions that when simultaneously met trigger a mandatory pre-closing merger control filing before the FNE:
  - The transaction must be considered a "**concentration**", i.e., any event, action or agreement, or a combination of them, which causes two or more economic agents not belonging to the same business group and previously independent from one another, to cease to be independent with regard to any part of their business, including through mergers, acquisitions of decisive influence over an existing economic agent, associations intended to create new undertakings (e.g., a full function joint venture), and acquisitions of assets; and
  - The concerned undertakings' **turnover** must meet the following simultaneous thresholds[37]: **(i)** a joint turnover in Chile –generated during the year preceding the closing of the transaction– equal to or higher than UF 2,500,000 (approximately equivalent to US$105 million), and **(ii)** an individual turnover in Chile –generated during the year preceding the closing of the transaction– of at least two of the undertakings concerned in the concentration equal to or higher than UF 450,000 (approximately equivalent to US$19 million). The calculation of the thresholds will look at the **net sales** in Chile of the relevant undertaking on the year preceding the closing of the transaction and, in general, will consider the turnover obtained by the concerned undertakings at a business group level. Concentrations that do not reach or exceed the thresholds referred above may still be investigated by the FNE, in which case, the FNE has one year from the closing of the relevant concentration to launch the investigation. Also, concentrations that do not reach or exceed the thresholds referred above, could be voluntarily filed (pre-closing) before the FNE.
- *Procedure*. The pre-closing system can be summarized as follows:
  - **Filing** before the FNE. The FNE has 10 business days to assess whether the filing is complete. If the FNE declares the filing as incomplete, the parties have 10 business days to supplement the filing, after which the FNE will again have 10 business days to decide whether the filing is complete or incomplete. This process could be repeated more than once until the filing is deemed complete or withdrawn by the notifying parties. If the FNE declares the filing as complete, phase 1 starts (see below).
  - FNE's **investigation**. In potentially two phases: **(i)** phase 1 (up to 30 business days), involving a market investigation by the FNE, and which can finish with an unconditional approval, an approval subject to remedies offered by the parties, or the decision to move to phase 2 if it concludes that the transaction may substantially lessen competition, and, where applicable, **(ii)** phase 2 (up to 90 business days), in which third parties (such as customers and competitors) will be able to actively participate in the process, and which can finish with an unconditional approval, an approval subject to remedies offered by the parties, or a ban on the transaction if it concludes that it can substantially lessen competition.
  - Review by the TDLC (see *Authorities – TDLC* above).
  - Review by the Supreme Court (see *Authorities – Supreme Court* above).

[37] Pursuant to the FNE's Guidelines on the Calculation of Thresholds, the conversion rate must be revised yearly.

Post-closing system. The Chilean Competition Act establishes a post-closing reporting obligation for investments of more than 10 percent in a **competitor**.

- *Triggering elements*. There are three conditions that when simultaneously met, trigger a mandatory post-closing notification in Chile:
  - The acquiring firm and the target firm must be **competitors** (for these purposes, the acquiring firm includes its business group, and the target firm includes the entities over which, directly or indirectly, it owns more than 10%).
  - The investment by the acquiring firm, or an entity belonging to its business group, represents more than **10 percent** of a direct or indirect stake in the competing company's equity, considering both directly held interests as well as third-party managed holdings.
  - The parties' turnover surpasses the following thresholds: **(i)** the acquiring firm and its business group's turnover is higher than UF 100,000 (approximately equivalent to US$4.2 million) in the last calendar year, and **(ii)** the target's turnover (considering the entities directly or indirectly controlled by it) is higher than UF 100,000 (approximately equivalent to US$4.2 million) in the last calendar year.
- *Procedure*. Acquisitions that meet these requirements must be reported to the FNE within **60 days** from the date the transaction is completed. There is no waiting period under the Chilean post-closing reporting regime. If the FNE decides to open an investigation, such inquiry does not follow a standard procedure (e.g., there is no 'phase 1' or 'phase 2') nor it involves fixed deadlines.

Statutes of Limitation

In general, actions contemplated by the Chilean Competition Act are subject to a statute of limitation of **three years** from the execution of the infringing conduct, term which is interrupted by a lawsuit filed before the TDLC by the FNE or a third party. In the case of cartels or concerted practices among competitors, the statute of limitation is of **five years** and this term will only commence once the effects of the questionable conduct have disappeared.

Civil actions for damages expire in four years from the relevant conduct (as a general rule) or four years from the final ruling of the TDLC or Supreme Court that punishes the violation to the Chilean Competition Act (if such ruling exists).

Leniency Program

The Chilean Competition Act considers a leniency program pursuant to which individuals or companies involved in cartel violation might receive full or partial immunity from certain sanctions. Up to two applicants may receive leniency benefits, subject to compliance with certain requirements. The first applicant may be granted full immunity from fines, the dissolution of corporations, and criminal prosecution, while the second applicant may receive partial immunity from fines and criminal prosecution.

VIII.2 INTELLECTUAL PROPERTY

Introduction

Intellectual Property in Chile possess explicit constitutional recognition and is mainly regulated in two major legislative bodies and their complimentary regulation: the Chilean Industrial Property Act (the "Industrial Property Act") and the Chilean Intellectual Property Act (the "Copyright Act"). As a result of the name given to the second Act, in Chile, intellectual property is both understood as copyrights or *derechos de autor*, a specific branch of the intellectual property rights, as well as the genre which also includes industrial property rights. Because of this, it is common to find in

contracts an explicit mention to both industrial and intellectual property rights as opposed to a mere reference to intellectual property rights.

Along with the mentioned legislative bodies and related regulation, Chile is also a member of several international treaties like the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, the Madrid Protocol, Agreement on Trade-Related Aspects of Intellectual Property Rights and the Berne Convention for the Protection of Literary and Artistic Works, among others. Chile is also a party to several bilateral free trade agreements, including those with U.S.A., the European Union, Canada, Australia and China.

Industrial Property

The Industrial Property Act covers all usual industrial property rights that can be obtained, including trademarks, patents, utility models, designs, drawings, layout designs, geographical indications, designations of origin and trade secrets. It also provides basic default rules for determining ownership in case of developments made by workers or for hire.

Trademarks, patents, utility models, designs, drawings, layout designs, geographical indications and designations of origin as industrial property rights are all prosecuted before and granted by the National Institute of Industrial Property ("INAPI"), an administrative body in charge of registrations, renewals (for trademarks) and keeping public record of the industrial property rights. Trade secrets, nonetheless, are unregistrable.

Prosecution times vary depending on the type of industrial property right pursued, with trademark registrations achievable within a year from filing and patents registrations taking four to five years on average.

Registered trademarks are protected for ten years counted from the date of registration. Trademark registrations are renewable for additional periods of ten years. Neither registration nor renewal depend on actual use of the mark.

Registered patents are protected for twenty years counted from the date of filing of the application and are not renewable. They are subject to payment of annuities.

Registered utility models are protected for ten years as from the date of filing of the application and are not renewable. They are subject to payment of annuities.

Registered industrial drawings and designs are protected for fifteen years as from the date of filing of the application and are not renewable. They are subject to payment of annuities.

It is not a validity requirement for assignments or licenses of industrial property rights to be recorded before INAPI. However, if the corresponding assignment or license is not recorded, it shall not be enforceable against third parties.

The Industrial Property Act provides both criminal and civil remedies in case of infringement, including pre-set mechanisms for determining the amount of damages in case of infringement. Infringement lawsuits, nonetheless, are lengthy and reviewed by unspecialized civil judges, unlike opposition or cancellation cases, which are reviewed by INAPI, and can be then reviewed by a specialized court, the Industrial Property Court. It is unlikely to be able to suspend an infringement procedure based on a cancellation procedure held before a different entity. Pre-trial motions, injunctions and border measures may be available in case of infringement but are quite infrequent.

A few additional relevant aspects are:

- It is not required to have a legal presence in the country in order to register industrial property rights, however, appointing a local representative with a Chilean address is mandatory.
- Parallel imports are allowed.
- Lack of corresponding marking prevents the owner from pursuing criminal actions for industrial property infringement (with civil actions still being available).
- Most of the known types of trademarks are allowed for registration, including 3D marks, holographic marks, sound marks, smell marks, pattern marks, and others.
- There are both absolute (*e.g.*, generic or descriptive marks) and relative (e.g. prior similar mark for the same products) grounds for refusal.
- INAPI, *ex officio*, may refuse a trademark based on both absolute or relative grounds, even if the owner of the allegedly similar trademark does not file an opposition or if the corresponding coexistence agreement is presented.
- It is possible to file oppositions against trademark applications based on similarity and likeliness of confusion with other trademark, even if the second trademark is not registered in Chile, as long as fame and notoriety of such trademark in the country of origin is proven for the same products or services.
- Both certification and collective marks, on the one hand, and geographical indications and designations of origin, on the other hand, are available as a mechanism of protection for these particular marks used by many different entities.
- The statute of limitations of five years does not apply for cancelling trademarks registered in bad faith.
- Neither use or an intent to use declaration are needed for filing and registering a trademark, however, a trademark may be subject to cancellation if a party claims lack of use after the first five years that follow the registration (or renewal for the trademarks registered before May 9, 2022).
- Owners of prior unregistered and used trademarks in Chile may file oppositions or cancellation actions against similar trademark applications or registrations, as applicable.
- Actual use may support an application for a generic or descriptive mark that could otherwise be rejected, provided that such use has allowed the mark to acquire distinctiveness within the Chilean market.
- The three minimal requirements for patenting are the usual ones: worldwide novelty, inventive step, and industrial application.
- Divisional patent applications are available.
- Plant varieties shall only have the protection provided for in the Chilean Rights of Breeders of New Plant Varieties Act, but not under the Industrial Property Act.
- Discoveries, economic, financial, commercial, or business systems, methods, plans or principles and methods for diagnostics and for the surgical or therapeutic treatment of the human or animal body, among others, are notable exceptions for patenting.
- A new simple deposit system is available for industrial designs and drawings, although it does not provide the possibility of asserting rights, it will not allow third parties to register (due to lack of novelty) and may be activated later on in order to pursue regular registration.
- Foreign geographical indications and designations of origin can be registered under certain requirements.

Copyrights

The Copyright Act establishes that the rights of an author in an original or derivative work are recognized upon the independent creation of the work. No additional action by the author is necessary. Copyright notice and copyright registration are thus not mandatory but are advisable since both raise a presumption of ownership of the rights. To register a copyrighted work, a tangible copy of such work must be filed with the Intellectual Property Department (the "DDI").

Copyrights licenses are not subject to formalities, but should define the term, scope and territory of the license, along with specifying if it is free or paid, exclusive or non-exclusive.

The Constitution and the Copyright Act recognize and protect not only the economic or pecuniary *derechos de autor* or copyright, but also the author's moral rights. These rights include the right of attribution and the right to claim authorship of a work; the right regarding the work's integrity as to avoid disrespect or unapproved adulteration; the right to keep the work unpublished; the right to authorize a third party to complete an unfinished work; and, finally, the right to maintain the work's anonymity or to maintain a pseudonymous identity during the term of the copyright protection. These rights cannot be licensed, assigned or waived.

The duration of the copyright is the author's life, plus seventy years. The copyright on collaborative works lasts for seventy years after the last co-author died. In the case of anonymous works, the duration is seventy years from the date of their first publication. Software companies also count the 70-year duration of their copyright on the software written by their hired programmers from the date of the software's first publication. The copyright of performing artists lasts for seventy years from the first publication of their performances as well. A copyright cannot be renewed.

Both criminal and civil actions are available in case of infringement.

A few additional relevant aspects are:

- Software is subject to copyright regulation.
- The transfer of copyrights is subject to formalities, including a mandatory registration of the transfer before the DDI.
- Reverse engineering of computer software for the sole purpose of achieving compatibility with other computer programs, or for research and development is allowed. However, information thus acquired cannot be used to produce or commercialize similar software or for other conducts that may constitute copyright infringement.

Domain Names

In Chile, Internet domain names may be registered within the country-code top-level domain ".CL" managed by NIC Chile, the local network information center. NIC Chile acts both as domain name registrar and domain name registry operator.

No formal domestic trademark rights are acquired upon registration. There are no restrictions regarding the number of domain names that an individual may register, nor are there restrictions concerning the registration of generic expressions.

It is not possible to publicly search ".CL" domain names owned by a certain person.

Domain names can be registered and renewed for any number of years between one and 10 years, as the owner may choose. The longer the term of protection, the higher the registration or renewal fee, as applicable.

Even though there are no use restrictions, the lack of use of a domain name may, under certain conditions, be considered evidence of having obtained registration in bad faith or even for wrongful purposes.

NIC Chile has a local alternative dispute resolution system similar to, but somewhat broader than, the Uniform Dispute Resolution Policy ("UDRP") system. In dealing with domain name disputes, the "first come, first served" principle is altered when industrial property rights are invoked, and no strong counterarguments exist. NIC Chile's system is broader than the UDRP because both registered and unregistered marks can potentially be relevant when deciding the matter.

VIII.3 CONSUMER PROTECTION

Regulatory Background

The main rules on consumers' rights protection are contained in the Chilean Consumer Protection Act, No. 19.496 (the "Consumer Protection Act").

The Consumer Protection Act sets forth the rights and obligations of suppliers and consumers, governs their relationship, describes infringements to consumers' rights and establishes procedures to pursue remedies and/or fines. This Act applies to a wide range of everyday situations and introduces a regulation that not only diverts from the Civil and Commercial Codes, but which is moreover applied within regulated markets, such as banking, telecommunications, insurance, etc. The provisions of the Consumer Protection Act (as well as consumer contracts are to be construed in favor of the consumer.

Consumer's Rights

The Consumer Protection Act establishes several basic rights for consumers, as well as various infringements which relate to them. Consumers cannot waive these rights.

First, consumers have the **right to a free decision** regarding goods and services, which brings along a detailed regulation regarding boilerplate contracts that includes a "blacklist" of unfair terms and a general unfairness provision.

Consumers also have the **right to a timely and truthful information**, which is why the Consumer Protection Act includes mandatory disclosing duties, which are particularly detailed regarding financial products and services. The right to a truthful information is also related to general provisions regarding advertisement, as well as to the duty of suppliers to abide by the terms under which goods or services were offered.

Moreover, consumers have the **right not to be arbitrarily discriminated**, which means that suppliers cannot deny without justification either the sale of goods or the services included in its business line under the offered conditions.

The Consumer Protection Act also lays down the **right to safe consumption**, which relates to a series of detailed provisions on product liability and product safety, including administrative and judicial recalls.

Finally, consumers have the **right to claim damages** in case they suffer harm, which covers both pecuniary and non-pecuniary losses. Damages can be claimed either through individual or collective actions (see below). The Consumer Protection Act does not establish a specific time limitation for damages claims, and thus the general statute of limitations provisions applies.

In addition to damages, consumers may also seek various remedies based on the breach of the legal warranty, including the repair of a product, its replacement or the refund of the price paid. Rights under the legal warranty can be brought within three months after the delivery of the goods, and can be exercised indistinctively against the manufacturer, the importer or the seller. More favorable terms provided for in conventional warranties prevail over the legal warranty.

Fines and other Administrative Sanctions

Recent amendments have considerably increased the **fines** which derive from infringements to the Consumer Protection Act. The default rule is that an infringement can lead to a fine up to roughly US$18,000, which are imposed by Communal Courts. However, there are specific provisions imposing higher fines, such as the following:

- Overbooking of public shows or means of transport: up to US$135,000 approximately.

- Advertisement infringements: up to US$60,000 approximately in case of misleading advertisement regarding certain essential aspects described in the statute; up to US$135,000 approximately if the misleading elements concern the health or safety of the population or the environment.
- Suspension of a service: up to US$45,000 approximately in case of unjustified suspension; up to US$90,000 approximately regarding utilities.
- Failure to comply with warning duties regarding hazardous products: up to US$135,000 approximately.

In case of collective actions (see below) the fines are imposed by Civil Courts. The court can impose **one fine for each affected consumer**, if the infringement, due to its nature, affects each of them. This will not apply when the supplier has effectively repaired all harm caused to consumers. Moreover, the fine can under no circumstances be higher than 30 percent of the sales pertaining to the product or service related to the infringement or than twice the economic profit obtained because of the infringement. In any case, the fine cannot exceed US$34 million approx.

In order to determine the amount of the fines, courts may consider certain **aggravating circumstances**, which include recidivism within the last two years, causing serious patrimonial damage to consumers, gravely harming consumers at a physical or phycological level –or even their dignity– among others. The court may consider **mitigating circumstances** as well, such as preventively repairing the damage caused, self-reporting, substantial collaboration during the investigation or trial, or not having been previously condemned for the same conduct in the last three years.

Besides monetary fines, suppliers may be subject to **other legal consequences**, such as the declaration of unfair clauses as null and void or the recall of hazardous products.

Fines are imposed on a negligence-based system. Claims pursuing administrative sanctions must be brought within two years of the infringement.

Public and Private Enforcement

The national agency in charge of the public enforcement of consumer law in Chile is the **National Consumer Service** (*Servicio Nacional del Consumidor*¸ "SERNAC"), a government agency which is present in each region in Chile. SERNAC has broad attributions that include (among others): (i) monitoring the supplier's duties towards consumers –which may even seizing evidence on-premise investigations–; (ii) the administrative interpretation of the statutes on consumer protection; (iii) filing subpoenas on the supplier's legal representatives or employees; (iv) conducting tests on products offered to consumers; (v) act as a plaintiff in judicial claims against suppliers; and (vi) conduct the Voluntary Collective Procedure (see below) in order to reach an agreement which affects a specific class of consumers.

Besides SERNAC, the Consumer Protection Act also regulates **Consumer Associations**, non-profit organizations founded to promote consumer rights and educate consumers. Consumer Associations can carry out individual mediations between consumers and suppliers. Consumer Associations may also represent consumers in judicial procedures (either individual or class actions), as well as take part in Voluntary Collective Procedures. As a result, suppliers may have to deal with SERNAC *and* with Consumer Associations, either alternatively or simultaneously.

Finally, **consumers themselves** may seek the enforcement of the Consumer Protection Act by pursuing fines and/or remedies (usually damages), either through individual or through collective actions. In the latter case, a minimum of 50 consumers must take part in the collective action.

Class Actions

While consumers may individually seek administrative sanctions or remedies from a supplier at Communal Courts, during the last decade class actions before Civil Courts have become increasingly common when there is a large group of affected consumers. Chilean class actions operate on an opt-out basis and, since the number of consumers which opt-out is usually negligible, plaintiffs normally have effective representation over the entire class.

Recent amendments have aimed at favoring plaintiffs' position in class actions. The class certification stage, which was originally designed to exclude unfounded claims, has been radically simplified. Regarding **monetary fines**, courts can impose one fine per affected consumer in certain cases, with a ceiling of approximately US$34 million (see above).

Concerning **damages**, the plaintiff may claim damages even in favor of an undetermined group of consumers. Consumers will be awarded an identical sum if they experienced an identical form of harm, and the court may divide them into groups and subgroups in order to award different sums.

Plaintiffs may seek not only the pecuniary loss suffered by consumers, but even non-pecuniary losses in case consumers may have been physically or psychologically harmed or have suffered harm to their dignity.

Recent amendments have moreover introduced punitive damages –which led to a 25% increase of the reparation– in case the judge verifies certain aggravating circumstances. Another recent innovation is the compensation in favour of consumers who have suffered the suspension of utility services (e.g., water supply, telecommunication services, etc.).

In case suppliers are condemned, the general rule is that consumers must judicially appear and prove their condition as members of the class in order to receive their awards. In case suppliers have the information to identify affected consumers, they may be condemned to directly compensate them, dispensing consumers from having to come forward to claim their awards.

Consumers have a second op-out window to individually sue for damages in case of a condemnatory decision against the supplier. This op-out right arguably also applies in cases of class-wide settlements.

Parties may seek a **settlement** within a class action procedure, which must be approved by the court as long as it is not against the law or discriminatory. The order approving a settlement is equivalent to a final judgment on the merits for all legal purposes. As a result of recent amendments, the judicial approval of a settlement does not necessarily hinder the subsequent application of a fine. Accordingly, the court may continue with the proceedings for the purpose of determining the defendant's administrative liability and imposing a fine.

Voluntary Collective Procedures

Recent amendments created the so called Voluntary Collective Procedures as an alternative to class actions, in order to reach an out-of-court agreement which gives a swift and complete response to the needs of consumers. Taking part in these procedures hinders the possibility of filing a class action against the supplier, but a Voluntary Collective Procedures cannot take place if a class action has already been filed. Moreover, the Voluntary Collective Procedures does not involve any form of administrative sanction, nor acknowledging any liability or wrongdoing.

Voluntary Collective Procedures may only be conducted by SERNAC, although Consumer Associations may take part as well, and affected consumers may provide observations to the agreement reached by the parties involved. The procedure is conducted by a separate department within SERNAC, in order to avoid that the information provided may be subsequently used against the supplier in a class action.

This procedure cannot last longer than six months, during which the statute of limitation is suspended. If an agreement is reached, it must be judicially approved. Just as in class actions, consumers may opt-out once the agreement is authorized.

VIII.4 DATA PROTECTION

Data Protection Framework

The Chilean Political Constitution guarantees the right to the protection of personal data (Article 19 No. 4). Under the Chilean Data Privacy Act ("DPA"), which governs the processing of personal data and databases, the processing of personal data ("*any information related to specific or identifiable individuals*") must be authorized by law or expressly in writing by the owner of the relevant information (i.e., the natural person or *data subject*). The data subject must be duly informed as to the purpose for which his/her personal data is collected and about the potential disclosure of such data to the public. The international transfer of personal data is not restricted neither regulated as a special type of personal data processing, so the regular restrictions of any data processing apply to it.

Consumer Protection Framework

Effective December 24, 2021, any infringement of personal data protection provisions within the framework of consumer relations is considered an infringement of the Consumer Protection Act (see Chapter VIII.3 above). By this legal amendment the SERNAC has been granted surveillance and enforcement attributions with regard to consumers' data protection rights. Further, consumers have the right to seek enforcement of their data protection rights pursuant to the procedures set forth in the Consumer Protection Act.

Unsolicited commercial or marketing communications. The Consumer Protection Act allows companies to send marketing communications to consumers, but individuals have the right to request that they stop doing so. In the case of advertising emails, the email must indicate the matter or subject on which it deals, the identity of the sender and contain a valid address to which the recipient can request the suspension of communications. shipments, which will be prohibited from then on. On the other hand, the DPA provides that the data subject may request the deletion or blocking of his/her data when the data is used for commercial communications and the data subject does not wish to continue appearing in the respective register or database.

Use of cookies on websites or digital platforms of retail services. The Consumer Protection Act establishes the consumer's right to a "truthful and timely information on the goods and services offered" and every person´s right to be informed, in cases of "collection of personal data through surveys, market studies or public opinion polls or other similar instruments" about the obligatoriness to respond and "the purpose for which the information is being requested". Based on the mentioned two provisions, SERNAC has issued several actions against companies in the e-commerce retail industry, requesting to comply with the above obligations through the publication of a proper Privacy Policy and Cookies Policy. SERNAC is increasingly monitoring this compliance with privacy regulations in e-commerce websites and digital platforms.

Voluntary procedure for the protection of collective interests (collective mediation) and subsequent class-action lawsuit in cases of security breaches. SERNAC is actively seeking compensations in cases of consumers that have been affected by security breaches, such as disclosure of personal information, interruption of computer services, limiting users to carry out their transactions, and others that may cause damages. The proceeding can only begin if no class actions have been filed related to the same facts and, once the proceeding has commenced, no class actions can be filed concerning the same facts until the voluntary proceeding ends. This proceeding can be initiated by SERNAC or through a complaint from a consumer association.

Cybercrime Framework

Law 21,459 on Cybercrime, published on June 20, 2022, established new rules on cybercrime offences, and amended several regulations in order to adapt them to the Budapest Convention on Cybercrime standards. The law included a new list of offenses to the catalog of criminal liability of corporations or legal entities. This implies that companies must review and update their crime prevention models, identifying the processes in which there is a risk of committing a cybercrime in their interest or for their benefit, establishing the corresponding protocols, rules, or procedures.

Commission for the Financial Market ("CMF")

This public regulator (see Chapter II above) has issued several orders on cybersecurity requirements for banks and financial institutions under its surveillance, including regulations on the outsourcing of data processing services providers. Main provisions seek to raise security standards and obtain accurate and fast information about security breaches. Some examples: **(i)** obligation of banks and financial institutions to report cybersecurity incidents to CMF, including a 30-minute term to report the first information about any incident; **(ii)** handling of cybersecurity incidents by banks or financial institutions are considered a relevant factor to determine their evaluation and classification as financial institutions; **(iii)** permanent monitoring of operational risk; investments in technology.

Cybersecurity Act

Enacted on April 8, 2024, Law 21,663 on Cybersecurity introduces principles, objectives and definitions that will affect the activities and operations of the entities bound by its provisions, particularly in cybersecurity matters. It creates a new organizational and institutional structure, whose salient feature is the establishment of the National Cybersecurity Agency (ANCI), which will be empowered to sanction the entities subject to the Cybersecurity Act who fail to comply with the duties set forth therein. The entry into force of the Cybersecurity Act is subject to the issuance of a decree by the President of the Republic. The decree must be issued within a year from the publication of the Act. In any case, the Act will enter into force no earlier than six months after the publication of the presidential decree.

Open Banking in Fintech Act

The Fintech Act introduces an Open Finance System consisting of a series of remote and automated access interfaces. These interfaces enable designated financial market participants to access the information of financial customers. The sole legal basis for processing personal data of customers is their explicit consent. For further information, please see Chapter III.5.

New Data Privacy Act

On August 26, 2024, the Chilean Congress approved an amendment to the DPA which, for all purposes, creates a new personal data protection framework, bringing Chile into a standard similar to that of the European Union in these matters. These amendments will come into effect two years from its publication in the Official Gazette. Below are the most relevant aspects of this new regulation.:

- *Key legal definitions:*
  - *Personal data:* Any information linked or referred to an identified or identifiable natural person. A person is considered identifiable if the person's identity can be determined, directly or indirectly, particularly through one or more identifiers such as name, ID number, or analysis of elements related to physical, physiological, genetic, psychological, economic, cultural, or social identity.
  - *Sensitive personal data:* Personal data that refers to the physical or moral characteristics of individuals, or to facts or circumstances of private life or intimacy, revealing ethnic or racial origin, political, union, or guild affiliation,

socioeconomic status, ideological or philosophical convictions, religious beliefs, health data, human biological profile data, biometric data, and information related to sexual life, sexual orientation, and gender identity of a natural person.

- *Data controller:* Any natural or legal person, public or private, who determines the purposes and means of personal data processing, regardless of whether the data is processed directly by the person or through a third-party agent or data processor.
- *Data processor:* The natural or legal person who processes personal data on behalf of the data controller. It is the third-party agent who acts and processes personal data according to the instructions of the data controller.

- *Legal bases for personal data processing:* The general rule is that the processing of personal data will be lawful when the data subject provides consent. This consent must be freely given, informed, and specific regarding its purpose and must be expressed prior to processing in a clear manner (a verbal or written statement, or expressed through an equivalent electronic means, or through an affirmative act that clearly indicates the data subject's intention). Additional legal bases permit the processing of personal data without the data subject's consent, such as when processing is necessary for: (i) entering into or executing a contract between the data subject and the data controller or for pre-contractual measures adopted at the request of the data subject; (ii) satisfying the legitimate interests of the data controller or a third party, provided that in the latter case the rights and freedoms of the data subject are not affected; (iii) complying with a legal obligation or as provided by law; (vi) for the formulation, exercise, or defense of a right before the courts of justice or public bodies; and (vii) relating to data concerning obligations of an economic, financial, banking or commercial nature and carried out in accordance with the rules of this new act, including data relating to the socio-economic situation of the data subject. Additionally, the law incorporates an additional catalog of legal bases that allow the processing of sensitive data without the data subject's consent, in relation to public interest, order, security, and health. The data controller must always have the means to demonstrate the lawfulness of the data processing.
- *Data subject rights:* The new law includes non-waivable rights for data subjects that can be enforced against the data controller: (i) access; (ii) rectification; (iii) erasure; (iv) objection; (v) blocking; and (vi) data portability. The latter involves requesting and obtaining a copy of personal data in a structured, generic, and commonly used electronic format that can be operated by different systems and being able to communicate or transfer it to another data controller when the requirements established by law are met.
- *Data protection agency:* A new supervisory authority for personal data protection is created, a decentralized entity with sanctioning powers.
- *Processing of personal data by a data processor:* The legal relationship between the data controller and data processor is regulated, requiring a formal contract between the two that must establish the scope of the mandate, its duration, the purpose of the processing, and the type of personal data processed, among other considerations established by law (data processing agreement).
- *Transfer of personal data:* The transfer of personal data must be carried out with the consent of the data subject and for the fulfillment of the purposes for which the data subject has authorized the processing. Personal data may also be transferred when the transfer is necessary for the performance or execution of a contract to which the data subject is a party; when there is a legitimate interest of the transferring or receiving party (as provided by law), or when required by law. The law regulates the formalities of the transfer agreement, which must at least be in writing and specify the data being transferred and the intended purposes of the processing.
- *International Transfer of Personal Data:* The international transfer of personal data is deemed lawful only under certain circumstances, such as when the transfer: (i) is made to a person, entity, or public or private organization subject to the legal system of a country that provides adequate levels of personal data protection in accordance with the provisions of the law; (ii) is covered by contractual clauses, binding corporate rules, or other legal instruments signed between the data controller who makes the transfer and the

data controller or data processor receiving it, and in them adequate guarantees are established as provided by law; (iii) is between parties that have adopted a binding and certified compliance or self-regulation model according to the applicable law for each of them; (iv) is expressly authorized by the data subject; (v) pertains to specific banking, financial, or stock market transfers carried out in accordance with the laws regulating these transfers; (vi) is made by a natural or legal person, public or private, expressly authorized by law for a specific purpose; and (vii) is necessary for the conclusion or performance of a contract between the data subject and the data controller, or for pre-contractual measures taken at the request of the data subject.

- *Retention of personal data:* Personal data may only be retained for as long as necessary to fulfill the purposes of processing. Once those purposes have been achieved, the data must be erased or anonymized.
- *Security obligations and notification of security breaches:* The new law imposes significant and strict security obligations on both the data controller and data processor, considering the nature of the data, the current state of technology, implementation costs, the nature, scope, context, and purposes of processing, the likelihood of risks occurring, etc. Failure to adopt security measures may be considered an aggravating circumstance in cases of violations. The data controller must promptly inform the agency of any security breach that results in the destruction, leakage, loss, or unlawful alteration of personal data, or unauthorized access to such data. In the event of security breaches involving sensitive data the data controller must also notify the data subject.
- *Severe penalties depending on the nature of the violation/breach*. Minor violation: fines up to the higher of approximately US$5,000; Serious violation: fines up to the higher of approximately US$710,000; Very serious violation: fines up to the higher of approximately US$1,420,000. In the event of repeated offenses, the agency may increase the fine up to three times. Repetition of serious offenses by large companies may be sanctioned with a fine of up to two percent of annual revenue from sales and services. The fine for repetition of very serious offenses by large companies may reach up to four percent of annual revenue from sales and services.

IX. REGULATED MARKETS

IX.1 ENERGY

Electricity Industry Overview

Electricity industry in Chile is mainly regulated by the General Law of Electricity Services (the "Electricity Law"). The goal of the Electricity Law is to provide incentives to maximize efficiency and provide a simplified regulatory scheme and tariff-setting process that limits the discretionary role of the government by establishing objective criteria for setting prices. The expected result is an economically efficient allocation of resources. The regulatory system is designed to provide a competitive rate of return on investment to stimulate private investment, while ensuring the availability of electricity service to all who request it.

The main electricity system in Chile is the National Electric System ("SEN"), which was created through the interconnection, in November 2017, of the formerly known Central Interconnected System or SIC and the Northern Interconnected System or SING, which supplies electricity to over 98.5% of the national population, with a length of 3,100 kilometers. Additionally, there are a few medium and small electricity systems in the regions of Los Lagos, Aysen and Magallanes and one small system on Easter Island, none of which have an aggregate capacity higher than 110 MW.

Business Segments

The Chilean electricity industry is divided into three business segments: generation, transmission and distribution. In general terms, generation is subject to market competition, while transmission and distribution, given their natural monopoly character, are subject to price regulation. Final customers may be regulated or unregulated depending on their demand. Only unregulated customers may freely choose a provider and freely agree the energy price. Regulated customers are forced to contract with distribution companies and pay them a tariff defined by the Ministry of Energy.

The generation segment is comprised of companies that own generating plants, whose energy is transmitted and distributed to final customers. Generation companies produce electricity and sell their production at the spot market price, mainly, as explained in *Electricity Market Remunerations* below. No concession or particular approval is required to engage in electricity generation (except for the development and operation of geothermal generation facilities, which do require a concession).

The transmission segment is comprised of a combination of lines, substations and equipment for the transmission of electricity from generators' production points to the centers of consumption or distribution. In Chile, transmission is defined as the conveying of electricity over lines or substations with a voltage or tension higher than 23 kV. The transmission system is divided into the main following segments: **(i)** the National Transmission System, the high voltage backbone of the whole system, which supplies energy to the entire electricity demand and permits the connection with other transmission systems; **(ii)** the Zonal Transmission Systems, which supply energy to regulated customers; and **(iii)** the Dedicated Transmission Systems, through which unregulated customers receive energy and generators inject the energy produced into the grid. National and Zonal Transmission Systems are considered as a public service.

Additionally, Law No. 20,936 created two other transmission segments: **(iv)** the Development Zones Systems, destined for areas with resources or conditions of high potential for the production of electricity using a single transmission, which is of general public interest and economically efficient; and **(v)** the International Systems, destined for exportation or importation of electricity.

The Chilean electricity legal and regulatory framework does not require an electricity concession to build and operate transmission facilities. However, in case it is difficult to process and obtain rights

to use or occupy third-party land affected by the transmission facility's layout, transmission companies may request and obtain electric concession that grant the possibility of enforcing those easements in exchange for proper compensation to the owners of the affected land.

The distribution segment is defined for regulatory purposes as the electricity supplied to end customers at a voltage not higher than 23 kV. Distribution companies operate under a public utility concession regime, with service obligations and regulated tariffs for supplying regulated customers. In Chile, only generation and distribution companies may commercialize energy.

Concessions are required to engage in electricity distribution. Concessions granted to distribution companies give them a monopoly in their respective concession area, according to which regulated customers are forced to contract with the respective concessionary company, paying a prefixed tariff. The distribution segment is also considered as a public service.

Final Costumers

Final customers are classified according to their capacity, as follows: (i) unregulated customers with connected capacity of over 5,000 kW; (ii) regulated customers with connected capacity up to 500 kW; and (iii) customers that choose either a regulated tariff or an unregulated regime for a minimum period of four years, available to customers whose connected capacity falls in the range of 500 kW to 5,000 kW.

Vertical Integration Prohibitions and Restrictions

Finally, vertical integration in the electricity market is limited by: **(i)** a *prohibition* according to which companies that own or operate assets of the National Transmission System must not participate directly or indirectly in the power generation or power distribution business, and **(ii)** a *restriction* by virtue of which the individual participation of generation companies, distribution companies or unregulated customers must not exceed **eight percent** of the initial value of the investment of the National Transmission System, and the joint participation of generation companies, distribution companies and unregulated customers must not exceed **40 percent** of the initial value of the investment of the National Transmission System.

Electricity Market Remunerations

Generation segment. All generation companies can sell their energy through the regulated market (called "spot market"), or/and through power purchase agreements with distribution companies for their regulated customers, unregulated customers and other generation companies. In the spot market generation companies receive remunerations for the energy they sell through such market and the energy power availability, in accordance with the *balances* made by the National Electrical Coordinator (the "Coordinator").

Regarding the sale of energy, the Coordinator dispatches plants in order of their respective variable cost of production, starting with the lowest-cost plants, such that electricity is supplied at the lowest available cost, and ending in the less expensive cost plants which allow to satisfy the hourly demand of energy. The last unit of energy dispatched marks the *marginal cost*. The electric system remunerates all the energy generators that dispatch energy at the marginal cost, so that the amount each generator earns consists in the difference between the marginal cost and its variable cost. Exceptionally, small generation projects that have power surpluses equal to or lower than 9.0 MW and inject their energy through facilities of a distribution company ("PMGD") or through facilities of a transmission company ("PMG") may choose to sell their produced energy at the "stabilized price" rather than at the spot price, which currently is equivalent to the short-term node price (*precio de nudo de corto plazo*). Additionally, PMGD and PMG projects operate independently, deciding for itself whether and how much energy to inject into the grid, but following the instructions of the relevant distribution company and the Coordinator. Nevertheless, PMGD and PMG regulation is currently in process of being modified, in order to change the calculation of the "stabilized prices".

With respect to the power availability, generation companies are remunerated according to their availability to provide energy to the system in the peak hours. As a consequence of that, non-conventional renewable energy plants (e.g., photovoltaic and wind plants) are not remunerated as the conventional plants (e.g., diesel, coal or gas), as the latter are usually available at night, unlike the former.

The return rate on power availability is 10 percent. Chilean Government has undertaken to review this return rate and to lower it, in order to discourage conventional plants (diesel, coal or gas based) and generate flexibility and incentives to accelerate the incorporation of non-conventional renewable energy.

On the other hand, generation companies can commercialize energy through contracts with (a) distribution companies for their regulated customers and unregulated customers, (b) directly with unregulated customers, and (c) other generation companies. All contracts executed between generation and distribution companies for the supply of regulated customers after 2005 must be the result of open, competitive and transparent auction processes. If the energy is sold not for the supply of regulated customers, the relevant contracts may be freely negotiated.

Transmission segment. Remuneration for the transmission segment depends on the different transmission systems. National and Zonal Transmission Systems are subject to open access obligations and a regulated remuneration mechanism based on the amounts invested by the owner in building them and the costs incurred in their maintenance, which are determined by the Ministry of Energy and paid entirely by final customers (whether regulated or unregulated customers). Dedicated Systems are also subject to open access obligations but limited to their corresponding technical capacity. With some exceptions, the Dedicated Systems' revenues come entirely from the tolling agreements freely agreed between the owner and the users (generation companies and unregulated customers).

Distribution segment. The tariff structure for the distribution segment is based on the generation and transmission tariffs, plus an "added value" which is based on the concept of a distribution "model company", that has an efficient investment and management policy, allowing it to provide electricity supply service in a specific area, at the lowest possible cost. Every four years, the added value is calculated an updated for this company, with an update rate between six and eight percent, in order to ensure the segment's profitability.

IX.2 TELECOMMUNICATIONS

Applicable Rules and Authorities

Telecommunications are governed mainly by the Chilean General Telecommunications Act (the "Telecom Act"), as well as certain other legislation on specific media –television broadcasting, for instance, is mostly subject to a separate law– and on particular aspects or activities involving tele-communications. Various decrees issued by the Chilean Ministry of Transportation and Telecom-munications and some other governmental agencies also apply.

Telecommunications are defined in the Telecom Act as the transmission, broadcast or reception of signs, signals, text, images, sounds and information of any kind by physical, radioelectric, optical or other electromagnetic means. All residents of Chile shall have access to telecommunications.

The radioelectric spectrum is a public good, owned by the Nation as a whole. Its use and exploitation are available on equal terms to all who are eligible but must first be obtained from the State through concessions, permits or licenses, which are usually granted by the Undersecretariat of Telecommunications (*Subsecretaría de Telecomunicaciones,* "Subtel").

Services

Under the Telecom Act, telecommunication services are categorized as follows:

- services that require for their installation, operation and exploitation a concession granted by Subtel, namely: radio broadcasting and other free reception and transmission telecommunications services; *public services*, to satisfy the telecommunications needs of the population in general, including Internet service providers (ISPs); *intermediate services*, which are transmission and switching services offered by third parties to other telecommunication service providers and long-distance telephone services provided to end-users;
- services that require for their installation, operation and exploitation a concession granted by the National Television Council, namely, broadcast television services;
- services that require for their installation, operation and exploitation a simpler permit granted by Subtel: so-called *limited services*, to satisfy the telecommunications needs of specific companies, entities and persons; and amateur telecommunications services; and
- services that only require a license granted by Subtel: these are limited services using experimental stations, as well as limited services using stations that operate with local or community bands.

Telecommunications Concessions

Key aspects.

- Concessions may only be granted to legal entities organized and domiciled in Chile, regardless of their capital structure. Hence, foreign companies are eligible via their Chilean partners or subsidiaries. In addition, the key officers and managers of certain concession holders must be Chilean nationals.
- Concessions for public and intermediate services last for 30 years and are renewable, whereas concessions for radio broadcasting and broadcast television services last for 25 and 20 years, respectively, at the end of which the current holder shall have a preferential right to opt for its renewal.
- To enable access for all users to all public services, concession holders must establish and accept interconnection with other concession holders, in accordance with technical requirements set forth by Subtel.
- Concession holders for public services are required to provide telecommunication services to all persons who request it within their concession area (and to persons outside such area or any other concessioned area, subject to these persons bearing the cost of the required connection or reinforcement works)
- Concession holders for public services and third parties may provide complementary services using public networks –i.e., additional services rendered by means of equipment connected to such networks– without requiring governmental consent, provided that applicable technical conditions are complied with.

Amendments and transfers. All concessions may be amended except for their essential elements determined by the Telecom Act, which include the type of service and the concession period.

Prior approval from the relevant authority is required for the transfer, assignment, or lease, or for granting a right of use, under any title, of a concession or permit. The authority cannot deny such approval without justified cause. In the case of radio broadcasting concessions, approval for any of the aforesaid acts or transactions cannot be sought before two years have elapsed from the official commencement of the service.

Antitrust requirements. The Chilean Freedom of Opinion and Information Act provides for certain obligations that must be complied with by “social communications media”. Social communications media are defined as those that by any means or instruments are capable of transmitting, broad-

casting, disseminating or propagating, in a stable and periodical manner, texts, sounds or images addressed to the public.

Any change in the ownership or control of social communications media must be reported to the antitrust authority and in the case of media that hold a telecommunications concession, the change will not be valid unless previously approved by such authority, which for that purpose will submit a report regarding the transaction's impact on the relevant market. If the authority identifies any risk, it will communicate the issue to the Antitrust Court (see Chapter VIII.1 for more information).

IX.3 PUBLIC CONCESSIONS AND ACQUISITIONS

Public Works Concessions[38]

A public works concession is a contract entered into between a private party and the Ministry of Public Works (*Ministerio de Obras Públicas* or "MOP"), previously adjudicated in a public tender process. Pursuant to that contract, the private party undertakes to execute, maintain and/or repair a public work or facility, in exchange for exploiting such work or facility and obtain the agreed fees or tolls, within the term and in accordance with the conditions set forth by the applicable laws and regulations.

The concessionaire is subject to a dual legal regime, *i.e.*, public law in what concerns its functions according to the concession agreement, and also private law as to its economic rights and obligations *vis-à-vis* third parties. Therefore, in general, the private party may enter into any lawful transactions with third parties without the MOP's prior authorization.

The applicable laws and regulations, and the tender documents, set forth all rights and obligations of the parties, and the relevant terms and conditions for each concession. Consequently, bidders, and ultimately the awarded concessionaire, have little room to request amendments or changes to those terms and conditions.
During the construction stage, the concessionaire builds the works at its entire risk and must pay for all costs and expenses required to finish them, including for any that may arise from force majeure or acts of God (unless the tender documents provide otherwise).

If the concession is terminated due to a material breach of the concessionaire's obligations, the concessionaire and its affiliates will be barred from participating in any future public tender for a period of five years.

The MOP has the authority to interpret the agreement, supervise its performance, demand guaranties and insurance, impose sanctions in cases of breach, amend the agreement unilaterally, or terminate it for public interest reasons. Protection for the concessionaire include the right to file claims against the interpretation or supervision decisions of the MOP before a Technical Panel and/or the standing Arbitral Commission, and the right to be compensated in the event of unilateral amendments or termination for public interest reasons.

Contracts for the Provision of Supplies and Services

In general, contracts with State agencies, either to supply goods or to provide services, must be executed following a public tender process in accordance with the applicable laws. The laws and regulations determine in which cases such contracts must be awarded through public tender, or alternatively through framework agreements, private tenders, or direct dealings.

Firstly, the relevant State agency must review the list of framework agreements to determine whether the required supply or service is included in a current adjudicated agreement. If no

[38] Chilean laws provide for other types of works subject to the concession mechanism. Notably, the Ministry of Transport and Telecommunications can open public tender processes for public transportation services.

framework agreement exists, then a public tender process must be launched. Only in exceptional circumstances expressly set forth by the applicable laws, a private tender process or a direct negotiation with a single provider may be carried out.

As with public concessions, the terms and conditions are unilaterally determined by the public party, and there is little room for the bidders or private counterparties to request amendments or adjustments to those terms and conditions.

The private party will normally be required to provide securities (usually Chilean bank bonds) to guarantee the seriousness of its offer, the due and timely performance of the contract and, if applicable, 100 percent of any advance payment made by the State agency.

X. ENFORCEMENT OF FOREIGN JUDGMENTS

Procedure

The recognition and enforcement of a final and conclusive decision rendered by a competent foreign court or arbitral tribunal is subject to the prior approval by the Chilean Supreme Court pursuant to the procedure established by law (*exequatur*). The procedure to obtain such leave encompasses the following steps:

- Filing of a request for the enforcement of the decision before the Supreme Court, attaching a copy of the decision (translated by an official translator, if applicable).
- if the matter is a contentious one, service of process on the party against whom enforcement is sought. A term of usually 15 days is granted to such party in order to object the enforcement.
- Delivery of the court records to the *Fiscal*[39] so that he/she provides the Supreme Court with his/her opinion regarding the request.
- Rendering of a decision by the Supreme Court granting or denying such enforcement.

If granted, enforcement of the recognized decision will be carried out by the ordinary first instance court which would have to be competent to decide on the matter had it been originally litigated in Chile.

Substantive Requirements

To decide whether a foreign judgment may be enforced in Chile, the Supreme Court must follow the following criteria:

- apply any existing international convention on enforcement of awards entered into between Chile and the State where the decision was rendered;
- in absence of a treaty, apply the principle of reciprocity and grant enforcement unless there is evidence that the relevant State does not enforce decisions issued by Chilean courts; and
- if neither of the preceding criteria apply, grant enforcement of the foreign court decision provided that:
  - such decision is not contrary to Chilean public policy;
  - it does not conflict with the jurisdiction of Chilean courts;
  - the party against whom enforcement is sought was given due notice of the claim and provided with adequate opportunities of defence; and
  - the decision is final and binding pursuant to the rules of the State where it was issued.

With regard to the enforcement of final arbitral awards, please note that Chile is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Indeed, Chile ratified the Convention with no reservations. Furthermore, Chile adopted in 2004 the UNCITRAL Model Law on International Commercial Arbitration.

[39] An officer of the court in charge of defending the public interest in certain matters heard before the Supreme Court.

XI. COMPLIANCE

XI.1 WHITE-COLLAR CRIMES

Novel legal framework

On August 17, 2023, the new Chilean Economic Crimes Act (the "ECA") entered into force for individuals. Its new rules on criminal liability of legal entities will come into effect on September 1st, 2024.

The ECA established a new criminal sentencing system—with tougher penalties than the ordinary system—, which will be only applicable to what the ECA considers "economic crimes". It also created new criminal offenses (most notably, environmental crimes) and modified other offenses already punishable under Chilean criminal law. Additionally, the ECA significantly modified certain provisions of the Criminal Liability of Legal Entities Act.

The ECA contains a list of about 230 criminal offenses that are deemed to be normally committed by executives or employees of a company, or in favor of a company. Thus, the ECA covers crimes established in the Securities Act (e.g., submission of false information, insider trading, etc.), the Corporations Act (e.g., abusive agreement by the board, submission of false information to public authorities or third parties, etc.), the Banking Act, the Competition Act (e.g., collusion), the Criminal Code (e.g., illicit related-party transactions, fraudulent management, embezzlement, bribery, new environmental crimes, etc.), the Tax Code, the Customs Ordinance (e.g., smuggling), among others. Given certain conditions, these offenses are no longer punished according to the ordinary sentencing scheme of Chilean criminal law; rather, they are subject to the novel legal framework set forth by the ECA.

The determination of a prison sentence under the general rules of Chilean criminal law normally depends on three factors: **(i)** the abstract range of prison-time established by the law for each crime, **(ii)** the concurrence of mitigating and aggravating circumstances, and **(iii)** the possibility of applying for parole or probation. The fundamental aim of the ECA is that individuals who commit an economic crime effectively serve a prison term—even if it is the offender's first conviction—and pay a considerably large fine. Hence, the ECA contains special sentencing rules which are applicable only to those who are convicted for an offense that qualifies as an economic crime. These special rules only recognize unique mitigating and aggravating circumstances that make it harder for the court not to apply the prison-time established in the law. Additionally, the ECA's rules limit the application of parole or probation. The new system makes the granting of parole or probation highly unlikely for someone who has participated in an economic crime while holding a superior position within a business or corporation.

Regarding fines, the ECA introduced a day-rate system. The number of applicable penalty-days depends on the applicable prison sentence for each crime. In other words, the number of penalty-days is directly proportional to the term of the prison sentence. In turn, the value of one penalty-day is calculated based on the average income of the offender. The combination of both factors amounts to potential fines that range from US$ 36 to US$ 43.5 million (approx.).

In addition, pursuant to the ECA, every economic crime shall always entail day-rates fines, and certain prohibitions and confiscations. The ECA established prohibitions from three to ten years, and they include the prohibition to hold public office or managerial positions in any company, and the prohibition to enter into agreements/contracts with Governmental entities.

The ECA also regulates the confiscation of economic assets equivalent to the profits obtained through the crime or as a reward for the commission of the crime. This consequence is applicable to economic crimes every time there are goods of illegal origin, even if there is no conviction or if the accused is finally acquitted. Indeed, the ECA allows for the confiscation—without prior conviction—of profits obtained through an economic crime when:

(iv) The case is temporarily dismissed due to the absence of the defendant.
(v) The defendant is acquitted because the court is not able to reach the beyond-a-reasonable-doubt threshold for a conviction.
(vi) The case is dismissed, or the defendant is acquitted because of exonerating circumstances that do not exclude the unlawfulness of the conduct.
(vii) The case is dismissed, or the defendant is acquitted because of the concurrence of a circumstance that extinguishes his/her criminal liability or because of occurrence of an event that terminates such liability.

This confiscation "without prior conviction" may also affect people who did not participate in the offense but who acquired the crime's profits gratuitously, who acquired them knowingly, or who obtained the profits through the commission of the offense and the participants acted in his/her interest. If the crime's profits are transferred to a legal entity as contribution of property, then such legal entity will also be subject to this sort of confiscation.

The confiscation of profits is not, strictly speaking, a novelty of the ECA because it was introduced by Law No. 21,577 two months before the enactment of the ECA. This law added to the general rules of the Criminal Code a new section that establishes the following: "every criminal conviction shall include the confiscation of profits arising from the offense whenever those profits in fact exist. The confiscation of profits deprives a person of assets whose value corresponds to the amount of the proceeds obtained through the offense, or for or by committing it."

XI.2 CRIMINAL LIABILITY OF LEGAL ENTITIES

Conditions for criminal liability

Since 2009, legal entities may be criminally prosecuted and convicted under Chilean law, pursuant to the Criminal Liability of Legal Entities Act. For such an entity to be responsible for a crime, the following conditions must be satisfied:

- the offense must be one of the crimes specifically listed by the Act,
- the offense must be committed by certain members of the entity, and
- the offense must be a consequence of the entity's failure to comply with its supervision duties (i.e., improper implementation of its crime prevention guidelines).

The criminal liability of legal entities is autonomous from the liability of the individuals whose illicit behavior triggers the former. This entails that the legal entity can be convicted even if it is not possible to establish the involvement or participation of specific individuals, as long as the crime necessarily occurred within the scope of functions and powers of the entity's relevant members.

The Act currently recognizes approximately 20 offenses which may trigger a legal entity's criminal liability. Some of the most relevant of those are the crimes of bribery, money laundering, handling of stolen goods, funding of terrorist activities, and fraudulent management.

Applicable penalties

As of July 2024, legal entities may be subject to the following penalties, once convicted for an applicable crime:

- dissolution or cancellation of the legal entity,
- prohibition to enter into agreements/contracts with Governmental entities,
- loss of fiscal benefits or privation of the chance of receiving those benefits,
- fines, and
- confiscation of assets.

Crime prevention manual or guidelines

One of the key elements of the criminal liability of legal entities is the so-called crime prevention model or guidelines (*modelo de prevención de delitos*), which companies must develop and apply to their organizational structures. Entities are exempt from criminal liability if they can show that, before the date of the crime, they had duly established and implemented suitable organizational guidelines to prevent the occurrence of criminal offenses within the entity's structure.

For those guidelines to have the exemption effect stated above, they must at least include the following items:

- the nomination of a compliance officer, with functional autonomy from the company's management,
- the allocation of resources and powers to the compliance officer for an adequate exercise of his/her functions, and
- the establishment of a crime prevention system, which identifies the entity's activities that involve risks of criminal behavior, defines specific protocols for those activities aimed at preventing the occurrence of those crimes, and considers reporting procedures and internal penalties, among other aspects.

The compliance officer, alongside the entity's management, must make sure the guidelines are effectively applied, correct any of its weak points, and update it according to any changes of the relevant circumstances.

The fulfillment of the aforementioned conditions for suitable crime prevention guidelines can be certified by auditing companies registered at the Commission for the Financial Market. However, compliance with those legal criteria is not an automatic guarantee against criminal liability. Chilean courts have interpreted that those conditions are a minimum, but further actions are necessary. Companies should be able to show that their guidelines are actually applied by the corresponding officers and known and followed in concrete ways by the entity's members at large.

The impact of the ECA

The ECA considerably modified the current law of criminal liability of legal entities. These changes will be enforceable starting on September 1st, 2024.

In this regard, some of the key aspects to note are the following:

- The ECA expands the list of criminal offenses that can trigger the entity's criminal liability. All offenses covered by the ECA will be added, so the list of relevant crimes for legal entities will increase from approximately 20 to around 240 offenses.
- The new law broadens the legal entity's relationships with individuals (who commit the underlying crime) that can trigger criminal liability for legal entities. Legal entities will be criminally liable for conducts of **(i)** those who hold an office, perform a function, or hold a position within the legal entity; **(ii)** those who manage the legal entity's affairs with third parties, either with or without representation; and **(iii)** those who are (a) related in one of the two previous ways with a second legal entity that, in turn, (b.1.) provides services managing the first legal entity's affairs with third parties, either with or without representation, or (b.2.) lacks any operational autonomy from the first legal entity, existing between those entities ownership or participation relationships (for example, a subsidiary whose decisions are made *de facto* directly by the parent company)..
- The ECA considers the appointment of a monitor or supervisor to the legal entity as a new possible penalty or even as a protective order that may be adopted during the investigation stage of the criminal procedure. The court-nominated monitor or supervisor will be able to give mandatory instructions to the legal entity.
- The law will no longer require that the crime be committed in favor of the legal entity for it to be criminally responsible. The legal entity will only be exempt from this responsibility

when the crime is committed exclusively against it. This means that a corporation could even be criminally liable for an offense committed to its own detriment by someone within the organization, as long as the offense also affects a third party.

- There will be a special day-rate system of fines for legal entities. The potentially applicable fines will range from US$ 725 to US$ 145 million (approx.).

XI.3 ANTI-MONEY LAUNDERING

Crime of money laundering

Chilean criminal law penalizes two forms of money laundering. One of those forms is by concealment and the other by contact. The first form (money laundering by concealment) is the most common type. It consists of concealing or whitewashing the illegal origin of goods or the goods themselves. In contrast, money laundering by contact refers to the mere acquisition or possession, with a profit motive, of goods of illegal origin. In both cases, an individual may be punished even if he/she ignored, with "inexcusable negligence", the origin of the goods.

The illegal origin of the goods must be found in actions or conducts that are encompassed by one of the specific criminal offenses listed by article 27 of Law No. 19,913. For example, some of those offenses are drug trafficking, terrorist actions, fraud, bribery, embezzlement, illegal associations, kidnapping, fraudulent attainment of tax returns or state benefits, among others. For the purposes of a money laundering conviction, it is sufficient that the relevant goods to come from certain "facts" that match the objective description of one of the offenses included in article 27, even if there is no criminal conviction for those original facts.

In principle, the crime of money laundering may be punished by a prison term of 5-10 years. However, the actual time to serve cannot exceed the maximum prison term assigned by the law to the "crime of origin."

Governmental oversight and reporting obligations

The same law that regulates the crime of money laundering (Law No. 19,913) created the Financial Analysis Unit (*Unidad de Análisis Financiero* or *UAF*), a governmental agency whose aim is to prevent the instrumentalization of the financial system or other economic activities for money laundering or for the financial support of terrorism. The UAF receives information relating to "suspicious transactions", that is, any transaction that, according to the normal course of the relevant economic activity, seems unusual or apparently lacks an economic or legal basis. If the UAF finds indications or signs that point to a potential case of money laundering or financial support of terrorism, the UAF must send the relevant information to the Criminal Prosecutor (*Ministerio Público*). Likewise, the Criminal Prosecutor can request information to the UAF during the investigation of a case involving those offenses.

In turn, Law No. 19,913 also established reporting obligations for several governmental and private institutions, which must send the relevant information to the UAF every time they come across any suspicious transaction. The UAF is responsible for specifying to each of those institutions what they should regard as suspicious transactions in their own activities. Some of those institutions are the following: public services of the central government, municipalities, decentralized governmental agencies, state-owned companies, banks, factoring companies, leasing companies, asset-management companies, money-exchange businesses, credit card issuers, assets and securities transport companies, stock-exchange companies, insurance companies, casinos, pension-funds management companies and real estate brokers.

Non-compliance with the reporting obligations may be punished by fines of up to US$ 200,000 (approx.) and up to US$ 600,000 (approx.) in case of recidivism within a year. If a legal entity infringes its obligation, the fine may also be imposed on its directors or representatives who were involved in the entity's non-compliance.