CUATRECASAS

# Doing business in Chile

2022 Edition

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These guidelines provide general information to investors intending to operate in Chile. They include legal issues that may require advice.

They must not be considered a detailed and complete analysis of Chilean law. They must not be interpreted as legal advice from Cuatrecasas.

These guidelines were drafted based on the information available on June 1, 2022.

Cuatrecasas has no obligation and assumes no liability with regard to updating this information.

# Content

# Introduction

These guidelines provide an overview of key legal aspects for foreign investors interested in investing in Chile. They are not intended as detailed guidelines but rather to address practical issues to help investors planning to start investment projects in Chile.

Cuatrecasas is a law firm that advises on all areas of business law through a multidisciplinary, diverse and highly qualified team of more than 1,200 lawyers and 26 nationalities.

We have a network of 27 offices in 13 countries and our firm is well established in Spain and Portugal, where we are present in the main cities, and Latin America, where we have over 20 years of experience and a team of 125 professionals who operate from our offices in Chile, Colombia, Mexico and Peru. We have a sectoral approach and focus on all types of business. With extensive knowledge and experience, we offer our clients the most sophisticated advice, covering ongoing and transactional matters.

We are committed to an integrated approach to client service, combining collective knowledge with innovation and state-of-the-art technology. We promote an innovation culture applied to the legal activity, which combines training, procedures and technological resources to enhance efficiency.

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# 1 Corporate

*Prior authorization to carry out foreign investments is not required, except in certain strategic sectors*

## 1.1. Foreign investment

Law 20848 of 2016 establishes the framework for direct foreign investment in Chile, creating the Foreign Investment Promotion Agency (also operating under the name Invest Chile), which is the legal continuation of the former Foreign Investment Committee, in accordance with OECD guidelines.

Prior authorization to carry out foreign investments is not required, except in certain strategic sectors, such as hydrocarbons exploration and exploitation and nuclear energy production.

For the first three years after the foreign investor enters Chile, foreign persons domiciled in Chile or that become residents are only taxed on income obtained from Chilean sources[1].

A general principle of non-discrimination and the right to equal treatment also apply for citizens and foreign investors, with the following exceptions: real estate and land at the border, fishing and aquaculture, maritime cabotage, telecommunications and broadcasting, natural atomic materials and nuclear energy, hydrocarbons, lithium and deposits in national waters, and television.

## 1.2. Key foreign investment concepts

Direct foreign investment means transferring to Chile capital and assets owned or controlled by a foreign investor for an amount equal to or greater than USD 5,000,000, or the equivalent in freely convertible foreign currency, physical assets in all their forms and conditions, profit reinvestment, loan capitalization, all types of technology that can be capitalized, and loans associated with foreign investments from related companies.

Direct foreign investment is also any investment within the above amount that is transferred to the country and takes the form of direct or indirect acquisition or interest in the equity of a company, or in the capital of the recipient company incorporated under Chilean law, that grants control of at least 10% of the voting rights, or an equivalent percentage in share capital if it is not a joint-stock company, or in the company assets.

1. The Internal Revenue Service can extend this period in certain cases.

## 1.3. Foreign investor rights

A foreign investor is any individual or legal person incorporated abroad that is not a resident or is domiciled in Chile and that transfers capital in the terms described above.

A foreign investor may request a certificate from the Foreign Investment Promotion Agency, which must be issued within 15 days, and whose sole purpose is to enable access to the system applicable to direct foreign investments.

This certificate grants the following rights:

- The right to send abroad the transferred capital and the net profits from the investments after meeting all tax obligations under domestic regulations;
- The right to access the formal exchange market to settle the currencies in which the investment is denominated and to obtain the necessary foreign currency to send abroad the invested capital or the net profits from the investment after meeting all tax obligations under domestic regulations;
- The right to exemption from sales and service tax on importing capital goods, provided the importation meets the requirements and is subject to the procedures established in domestic regulations; and

- The right to non-discrimination, whether direct or indirect, while remaining subject to the common legal system applicable to domestic investors.

## 1.4. Validity of contracts entered into under the provisions of DL 600

Foreign investors that have a foreign investment contract in force with the Republic of Chile under the umbrella of Decree-Law 600 will fully retain the rights and obligations set out in that contract, provided that they entered into it prior to January 1, 2016.

## 1.5. Central Bank Foreign Investment Income Registration System

Foreign capital entering the country from loans, deposits, investments or capital contributions originating abroad and exceeding USD 10,000, or the equivalent in other currencies, must be reported to the Central Bank of Chile through commercial banks. This registry system is regulated in Chapter XIV of the International Exchange Standards of the Central Bank of Chile. If the above transactions are carried out without foreign currencies entering the country, it is the foreign investor or the recipient of the investment that must report them directly to the Central Bank.

## 1.6. Organizational structures in Chile

The following are the most common organizational structures in Chile:

1. **Individual Limited Liability Company (EIRL):** Although not a corporate structure, this is a type of organization regulated by Law 19587 of 2003, consisting of a single individual creating a legal person by means of a public deed to operate in his or her name but keeping personal assets separate from company assets, so that personal liability is limited to the capital contributed to the company, while the company is liable with all of its assets.

   The name of the company must include that of the founder or a created name that refers to the corporate purpose and be accompanied by the phrase *Empresa Individual de Responsabilidad Limitada* ("Individual Limited

Liability Company") or the acronym "E.I.R.L." All kinds of civil and commercial transactions can be carried out through an EIRL, except those reserved by law for public limited liability companies. An EIRL is managed by its owner or by a general manager appointed by the owner.

2. **Limited Liability Company (SRL):** This type of company is governed by Law 3918 and, on a supplementary basis, by the Commercial Code and the Civil Code. The SRL is a partnership whose partners are financially liable up to the amount of their respective contributions, unless they have agreed to a greater liability when established.

   An SRL requires a minimum of two partners and can have up to a maximum of 50. The partners can be domestic or foreign individuals or legal persons. They are free to decide on the corporate purpose, the form of management and the supervision of the company.

   The company's business name can include the name of one or more partners or a reference to its corporate purpose but always accompanied by the word "Limited," without which the partners will be jointly and severally liable.

   There are no minimum capital requirements for incorporating or operating an SRL. Capital can be paid in cash, assets and even through work or services contributed by the partners.

   As it is a partnership, all changes to the bylaws and transfers of corporate rights must be unanimously approved by all partners.

   An SRL is incorporated through a public deed, and a copy of it must be filed with the *Registro de Comercio del Conservador de Bienes Raíces* ("Commercial Registry of the Asset Registrar") with jurisdiction over the location of the company's registered office and published in the Official Gazette within 60 days.

3. **Public Limited Liability Companies (SA):** This type of company, governed by Law 18046, is incorporated through a public deed defining its shareholders, capital, purpose, term, form of management and the manner of distributing profits, among other items. A copy of the document must be published in the Official Gazette and registered with the Commercial Registry of the Asset Registrar with jurisdiction over the company's registered office, within 60 days of its incorporation.

   An SA requires a minimum of two shareholders, which can be domestic or foreign individuals or legal persons.

   Its capital is divided into shares created through contributions from shareholders, who are liable only up to the amount of their respective contributions. Capital must be subscribed and paid in within three years from incorporation; otherwise, it be automatically reduced to the amount actually subscribed and paid in.

   There are no minimum capital requirements for incorporating or operating a public limited liability company. The share capital can be paid in cash or through other assets, in which case they must be appraised by the shareholders. Issuing shares as compensation for a shareholder's personal work or services is not allowed.

   These types of companies are managed by a board of directors consisting of at least three members whose positions are essentially revocable, and decisions are adopted by majority vote. Directors can only be individuals, whether domestic or foreign.

   The name may include the name of one or more shareholders or a created name, followed by the letters S.A.

   Selling shares does not require authorization from the other shareholders, except if they enter into a shareholders' agreement restricting these transfers.

   The following types of SAs can be incorporated:

   - **Open:** Its shares are traded on the Stock Exchange and, by law or voluntarily, they must register their shares with

the Securities Registry of the Financial Market Commission (CMF), which is the controlling regulator.

- **Closed:** Its shares are not traded on the Stock Exchange.

4. **Stock company (SpA):** This type of company is a combination of a public limited liability company (SA) and a limited liability company (SRL) and is governed by its bylaws, the provisions of articles 424 *et seq*. of the Commercial Code and, on a supplementary basis, the rules for closed public limited liability companies. This corporate form allows more regulatory flexibility, which is why it has become the most popular in recent years.

   A SpA can be incorporated by a public deed or by one or more persons through a private agreement, in which case their signatures must be certified by a notary public. A copy of the incorporation deed must be published in the Official Gazette and filed with the Commercial Registry of the Asset Registrar with jurisdiction over the location of the company's registered office within one month.

   A SpA can be incorporated with a single shareholder, which can be a domestic or foreign individual or legal person. Capital is divided into shares, and shareholders are liable only up to the amount of their respective contributions. This capital must be subscribed and paid in within five years from incorporation; otherwise, it will be reduced to that actually subscribed and paid in.

   There are no minimum capital requirements for incorporating or operating a SpA. Capital can be paid in cash or through contributing other assets, in which case they must be appraised by the shareholders. Issuing shares as compensation for a shareholder's work or services is not prohibited.

   The shareholders establish the manner of management, by one or more managers or a board of directors, in the bylaws, and they can be domestic or foreign individuals or legal persons. If the SpA is managed by a board of directors, its members can only be domestic or foreign individuals.

   Selling shares does not require authorization from the rest of the shareholders, except if they enter into an agreement restricting these transfers.

5. **Foreign companies' agencies in Chile:** A foreign company can establish an agency in Chile without incorporating a formal company. The Companies Act provides legal recognition to a

*The Stock Company (SpA) allows more regulatory flexibility, and it has become the most popular in recent years*

foreign company so that it can operate in Chile without acquiring a formal legal personality.

The agent or legal representative of the foreign company that has been appointed in Chile must formally execute the following documents before a notary public at the location of the intended domicile in Chile:

- proof that the company is legally incorporated under the laws of the country of origin and a certificate of the company's existence;
- certified copy of the foreign company's current bylaws; and
- a general power-of-attorney granted by the foreign company to the agent who is to represent it in Chile, specifying the legal status of the foreign principal. It must clearly and accurately state that the agent will act in Chile under the foreign company's direct responsibility. This agent will have broad powers to carry out operations on its behalf, as well as all ordinary and special powers required by law.

*A foreign company can establish an "Agency in Chile" to operate without acquiring a formal legal personality*

To be valid public instruments in Chile, these documents must originate from the country in which the foreign company was incorporated, translated into Spanish and certified or bearing an apostille, as appropriate.

At the time the foreign corporate documents are notarized, the representative of the agency or branch must sign a public document before the same notary public, making all legally required statements so that, on the company's behalf and with sufficient powers, the company *Agencia en Chile* can be created. The legally required statements are:

- a declaration that the foreign company is aware of the Chilean legislation and regulations that will govern the agency and its operations, contracts and obligations in Chile;
- a declaration that the company's assets are subject to the laws of Chile, especially with respect to fulfilling any obligations arising in Chile;
- a declaration that the company is required to maintain easily realizable assets in Chile to fulfill any obligations arising in Chile;
- the address of the main agency, which will be considered the main branch in Chile, although other domestic branches may be opened in other cities.

Subsequently, and within 60 days, a copy of the public deed of incorporation must be filed with the commercial registry and published in the Official Gazette.


45.6 %
42.5 %
35.7 %
32.9 %
30.2 %
28.5 %

# 2 Taxes

## 2.1. Income tax

### Background

Chilean law provides for a broad concept of income, comprising all earnings that constitute gains or profit yielded from an asset or activity, and all the profits and capital gains received or earned, regardless of their nature, source or designation.

Under the Chilean Income Tax Act ("LIR"), all natural persons and entities domiciled or resident in Chile are taxed on their worldwide income, whether national or foreign-source income.

Generally, non-resident persons or entities are only taxed on their Chilean-source income. However, all income arising from foreign companies' activities in Chile or abroad will be taxed in Chile if these companies' profit can be attributable to agencies, branches or other permanent establishments in Chile. The only income attributable to the permanent establishment will be the income deriving from activities carried out by the permanent establishment or from assets allocated to or used by it.

Foreign natural persons that end up being domiciled or resident in Chile will only be taxed on Chilean-source income for the first three years in the country, although this period may be extended.

### Domicile and tax residency in Chile

Any person residing in Chile with the actual or apparent intention of remaining in the country will be considered domiciled in Chile.

Any person that spends more than 183 days in Chile during a 12-month period will qualify as a tax resident in Chile.

Any companies incorporated in Chile will be considered tax residents in Chile.

### Chilean and foreign-source income

Income will qualify as Chilean-source income if it derives from assets located in Chile or activities carried out in the country, regardless of the taxpayer's domicile or residence.

The LIR includes specific provisions on the sources of income, under which (i) royalties, brand use fees and other similar payments arising from the use or exploitation of industrial or intellectual property in Chile will be considered Chilean-source income; (ii) the shares of public

limited companies (SAs) incorporated in the country will be considered located in Chile, like bonds and other public or private debt securities issued in Chile by taxpayers domiciled, resident or established in the country; (iii) as for credits, bonds and other debt instruments, the source of interest will be the debtor's domicile or the parent company's registered office or headquarters if these instruments have been entered into or issued through a permanent establishment abroad.

For the purpose of Chilean tax legislation, all income other than Chilean-source income will qualify as foreign-source income.

**Difference between received and earned income**

Chilean tax law defines earned income as earnings to which taxpayers have title or a right, regardless if any payments are due, and to which they hold a claim.

In contrast, received income means the earnings that have been actually received by the taxpayer. The fulfillment of an obligation or claim through means other than payment will also be considered received income.

Income taxes in Chile are classified as follows:

1. **Category taxes**

   - **First category income tax ("IDPC"):** In Chile, "corporate tax" is a 25% or 27% tax (depending on the taxpayer's regime and regardless of its structure) on income generated by companies from industry, trade, mining, real estate and other activities that involve the use of capital, also including any other capital gains, regardless of their source, nature or designation.

   - **Integrated system and regimes:** Corporate tax effectively paid is creditable against the final taxes payable by company owners, partners or shareholders. There are three regimes for applying the final taxes to corporate income.

**General regime 14(A)**

This is the generally applicable regime, covering the income from companies required to file a corporate tax return for their effective income calculated on a full accounting.

Under this regime, companies are taxed at a 27% rate on their taxable income, which will be annually assessed (as of December 31 of each tax year) as follows:

- All earnings deriving from assets and activities subject to the first category tax are added to the gross income;
- Then, direct expenses are deducted;
- Then, the expenses incurred to generate taxable income are deducted;
- Several additions and deductions must be performed to account for price-level restatement;
- Finally, Chilean tax legislation provides for certain adjustments.

In late April of every tax year, taxpayers must file their tax returns and pay the corporate tax.

The corporate tax paid at company level is creditable against the final tax on any withdrawals or distributions made to partners or shareholders. However, partners and shareholders must repay 35% of the first category tax credit effectively paid, their tax burden (tax rate) being capped at 44.45% considering corporate tax and final taxes.

If the partner or shareholder receiving these distributions or dividends is a tax resident in a country that has a double taxation agreement ("DTA") with Chile or, until 2026, in a country with which Chile entered into a DTA before January 1, 2020, even if the DTA is not in force (e.g., United States or United Arab Emirates), **there is no repayment obligation, and all the corporate tax paid can be credited against the withholding tax on these remittances.** So, the maximum tax burden will be 35%. See a summary below:

| ITEM | With DTA | | Without DTA | |
|---|---|---|---|---|
| Taxable income | | 100 | | 100 |
| IDPC | 27% | 27 | 27% | 27 |
| Dividend paid to the shareholder | | 73 | | 73 |
| Increased tax base | | 100 | | 100 |
| Additional tax | 35% | 35 | 35% | 35 |
| IDPC tax credit | 100% | 27 | 100% | 27 |
| Additional tax | | 8 | | 8 |
| Repayable tax credit | 0% | 0 | 35% | 9.45 |
| Additional tax due | | 8 | | 17.45 |
| Effective tax rate | | 35% | | 44.45% |
| **Net remittance received by the shareholder** | | **65** | | **55.55** |

### Integrated regime for SMEs

Applicable to SMEs with an initial capital not exceeding approximately EUR 3 million and average income below EUR 2.7 million. In this case, their income (i.e., their earnings minus deductible expenses) will be taxed at a 25% rate, and SMEs will not be required to repay the first category tax credit.

### Transparency regime for SMEs

Companies eligible for the transparency regime for SMEs may choose not to be subject to the corporate tax and pay final taxes at partner or shareholder level.

**Relevant rules for companies under the general regime 14(A)**

- **Interim monthly payments:** Taxpayers must make interim monthly payments ("IMPs") on account of the corporate tax payable in April of the following tax year. IMPs are calculated based on the taxpayer's gross income, and they are adjusted annually according to the IDPC effectively paid in the previous year. During the taxpayer's first year of activity, IMPs are equal to 1% of gross income. Any taxpayers that have incurred tax losses during a year will be entitled to suspend the IMPs that were payable during the first quarter of the next year.
- **Deductible expenses:** Any expenses necessary for generating income incurred by the company in the course of its business are deductible from gross income as long as they meet the requirements set out in the Chilean tax legislation:
  - They must be related to the company's ordinary course of business.
  - They must be necessary for generating income or have the potential to generate income.
  - They must not have been previously deducted as a cost.
  - They must have been effectively incurred, whether they have already been paid or remain due in the relevant tax year.
  - They must be appropriately certified in an authoritative manner.

**Relevant expenses**

**i. Interest:** The interest paid or accrued on the amounts due during the relevant tax year can be deducted from taxable income. However, indexation and interest payments made on loans directly or indirectly allocated to purchase, maintain or exploit assets that do not generate income subject to IDPC will not be deductible.

The LIR expressly defines as tax-deductible any interest and financial expenses on loans used to acquire corporate rights, shares, bonds and, generally, any movable assets.
However, the interest paid to related parties abroad will only be deductible if (i) the interest has been paid, transferred to an account or made available to the creditor; and (ii) the withholding tax on these transactions has been paid.

**ii. Losses:** Material losses affecting the company will be allowed as deductible expenses. Losses from previous tax years are deductible. For every tax year, these losses must be carried forward to the following tax year until they are completely written off.

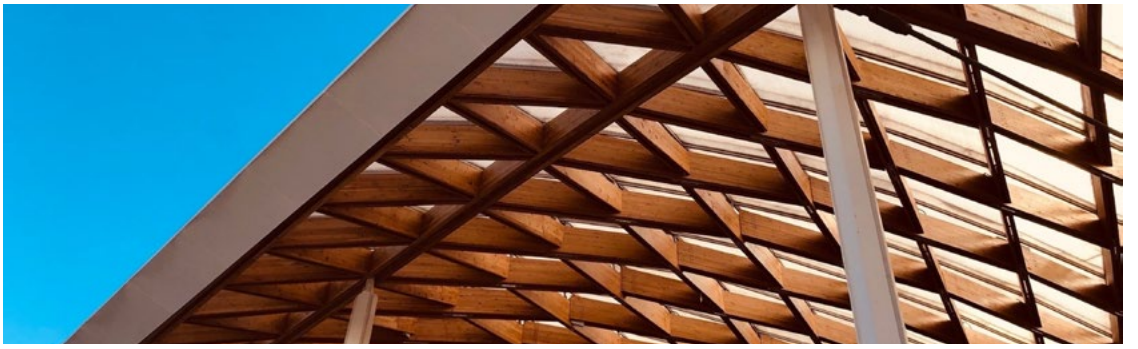
As a result of the amendments to the LIR under Law 21,210 of 2020, from 2024, taxpayers will not be able to use tax losses recorded by a company against withdrawals or dividends received from Chilean companies in which they hold stakes.

The application of this provision is phased out so, in 2022, the use of these losses is capped at either 70% of the losses or 70% of the dividends received, whichever is lower. In 2023, the cap will be either 50% of the losses or 50% of the dividends received throughout the year, whichever is lower.

This cap does not prevent taxpayers from using corporate losses against income generated from their own transactions during the year or in future tax years.

Also, losses cannot be used against income generated in subsequent tax years if there is a change of ownership (i.e., a new shareholder acquires, whether directly or indirectly, on its own or through related parties, 50% or more of the shares or rights at a loss) and the company, at the time of the change of ownership or within 12 months before or after the change of ownership, (i) has modified or broadened the scope of its business activities; (ii) lacks the necessary capital goods or assets for carrying out its business activities; or (iii) generates income only through its stakes in other companies. This rule does not apply if the change of ownership involves related parties.

Tax authorities' supervisory and inspection powers over the use of tax losses are not subject to the general statute of limitations (three or six years).



Therefore, to include these losses as deductible expenses, taxpayers must have all supporting documents certifying the source of these losses.

**iii. Depreciation:**

- **Normal depreciation:** An annual depreciation rate on fixed assets is tax-deductible. The depreciation rate is equal to the asset's net book value divided by its useful life according to a table prepared by the Chilean Internal Revenue Service ("SII"). The result will be the annual tax-deductible depreciation rate.
- **Accelerated depreciation:** Chilean law provides accelerated depreciation benefits related to the purchase of new fixed assets or imported goods. The calculation is the same except the asset's useful life is reduced to one third. Those assets whose useful life does not exceed three years are not subject to accelerated depreciation.

  Taxpayers can use the accelerated depreciation method at any time for each specific asset. Also, taxpayers may switch to the normal depreciation method whether or not the accelerated depreciation method has been applied from the beginning of the asset's useful life.

  If the accelerated depreciation method stops being used for a specific asset, it cannot be used again for that asset.

- **Instant depreciation:** Taxpayers with an average annual income not exceeding 100,000 inflation-indexed units or Unidades de Fomento ("UF")–approximately EUR 3.5 million–during the three tax years prior to the use of the relevant good, whether new or used assets, can benefit from instant depreciation, considering an asset's useful life of one tenth of the useful life provided by the SII regional authorities, expressed in years, dropping any resulting decimals. In any case, the resulting useful life must not be lower than one year. If the company has not existed for at least three tax years, the average income will be calculated considering the tax years for which the company has been effectively in existence.

  Additionally, under a transitional provision introduced in Law 21,210, taxpayers that file an IDPC tax return for their effective income calculated on a full accounting basis and purchase new or imported fixed assets between June 1, 2020 and December 31, 2022 may depreciate these assets instantly and fully in the same tax year they purchased the goods, which will be valued at 1 peso.

  When the above depreciation method applies, for the purpose of article 14(A) LIR, only the normal depreciation for the asset's entire useful life will be considered. The difference between the instant depreciation and the normal depreciation in the relevant tax year is only tax-deductible for the purposes of the IDPC. This difference must be recorded in the Record for the difference between normal and accelerated depreciation ("DDAN").

- **Depreciation of intangible assets:** Also, taxpayers that file an IDPC tax return for their effective income and purchase intangible assets for the company's or business' operation or development between June 1,

2020 and December 31, 2022, may depreciate these assets instantly and fully in the same tax year they purchased the goods, which will be valued at 1 peso. Only the following intangible assets can benefit from this instant depreciation regime: (i) Industrial property rights protected under Law 19,039; (ii) Intellectual property rights protected under Law 17,336; (iii) A new plant variety protected under Law 19,342.

Therefore, this depreciation regime will not apply to goodwill generated by the increased value of the investment in shares or corporate rights.

- **Application for the determination of certain assets' useful life**: Taxpayers may file an application, also submitting a technical report, requesting the SII to determine the special useful life of assets with specific characteristics considering the parameters provided by the relevant tax authority in its guidelines.

**iv. Organizational and start-up costs:** These are the expenses incurred in starting a business. According to the SII, organizational and start-up costs account for payments that despite meeting the cumulative tax deductibility requirements under the LIR, due to their nature and amount cannot be considered exclusively necessary for generating the income in a single tax year. Therefore, they can be deducted on a pro-rata basis.

Under the LIR, these expenses can be deducted within six consecutive tax years, starting from the time when (i) these expenses are generated; or (ii) the company starts generating income from its core business activity if (ii) is later than (i).

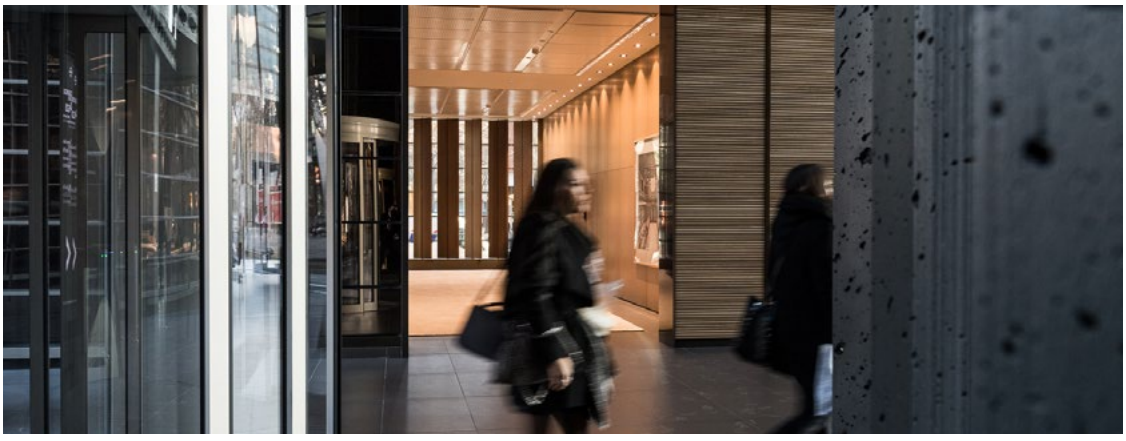
**Rejected expenses**

Any in-kind or cash withdrawals that do not meet the tax deductibility requirements are considered rejected expenses and subject to a special tax regime.

In general, non-deductible expenses qualifying as in-kind or cash withdrawals, whether (i) they directly or indirectly benefit related parties or the company owners; or (ii) whose nature or effective withdrawal cannot be certified, are subject to a single 40% tax payable by the company making the payments ("General treatment"). Also, this General treatment applies to possible differences determined by the SII under the applicable transfer pricing rules or valuation standards.

If these in-kind or cash withdrawals are for the benefit of shareholders or foreign partners of the company making the payment, these shareholders or foreign partners will be taxed for the rejected expense at a 35% rate, increased by 10% of the expense. Therefore, the overall tax burden on the rejected expense is up to 45% ("Special treatment").

The Special treatment applies to (i) loans granted by companies to foreign partners or shareholders (subject to additional tax) as long as the SII determines, substantiating its decision, that



the loan is a concealed withdrawal, remittance or distribution on account of amounts subject to additional tax; (ii) the profit obtained from using company's assets, with or without title, that is not necessary to generate income; (iii) company's assets delivered to secure partners' or shareholders' obligations, whether direct or indirect, as long as these securities are used for fully or partially fulfilling these obligations. The Special treatment also applies if the withdrawal, payment, loan or security is granted for the benefit of members of the same corporate group (not shareholders or partners of the Chilean company), as long as the SII determines that the beneficial owner of the loan is the Chilean company's partner or shareholder.

**Other relevant considerations**

**The obligation to keep tax records for corporate income:** For controlling income and other earnings, and in order to (i) keep a detailed record of any tax-exempt amounts at the time of withdrawing or distributing them; and (ii) determine in which cases these withdrawals are taxable and the applicable tax credit, companies must keep the following tax records:

- RAI: Record of income subject to global complementary tax or additional tax (the final taxes).
- DDAN: Difference between normal and accelerated depreciation.
- REX: Record of tax-exempt income and earnings not qualifying as income.
- SAC: Accumulated credit balance.

**Authorization for doing the bookkeeping, filing tax returns and paying taxes in foreign currency:** Chilean companies must keep their tax accounting records in Spanish and in Chilean pesos. However, if they meet certain requirements, companies can request the SII's authorization to keep their tax accounting books in foreign currency (USD, EUR and Canadian dollars).

If the SII grants this authorization, taxpayers are not required to record every year the taxable gains or losses to account for exchange rate variations. Otherwise, they must record it at year end.

If the SII authorizes bookkeeping in foreign currency, companies can also request the SII's authorization to file their returns and pay their taxes in foreign currency.

**Single second category tax**

This tax is payable monthly at a progressive rate with a top marginal rate of 40% on the income received by employees (i.e., workers subject to an employment contract) whose monthly gross salary exceeds approximately USD 860. Employers must withhold this tax monthly. The tax is applied to taxable income, having deducted pension, invalidity and health benefits.

**Independent second category tax**

Income (i) from liberal professions or any other for-profit activities not comprised in the first category or subject to Single Second Category Tax; (ii) obtained by brokers that are natural persons and whose income derive exclusively from their professional activity or services, without using any capital; and (iii) obtained by partnerships exclusively providing professional services and advice **will be subject to global complementary tax or additional tax (final taxes), depending on whether the taxpayer is domiciled or resident in Chile.**

Note that partnerships exclusively providing professional services and advice may file their tax returns subject to the IDPC rules. If they choose this option, they are not allowed to go back to the second category tax system.

Self-employed workers that issue invoices (*boletas de honorarios)* for their professional services are subject to a 12.25% withholding rate for social security benefits in 2022. This withholding rate will progressively increase up to 17% in 2028.

**2. Final taxes**

**Global complementary tax:** This tax is payable annually at a progressive rate with a top marginal rate of 40% on the income of natural persons domiciled or resident in Chile for tax purposes.

As mentioned above, if a natural person resident in Chile receives dividends or distributions from companies subject to the general regime 14(A), the effectively paid corporate tax can be credited

against the global complementary tax. However, taxpayers must repay 35% of the paid corporate tax. The effective tax burden (tax rate) is capped at 44.45% considering corporate and global complementary tax.

**Additional tax:** This tax is applied to (i) Chilean-source income obtained by persons or entities that are neither domiciled nor tax residents in Chile; and (ii) certain payments made from Chile to specific persons. Unlike the global complementary tax, this is a withholding tax. So, whoever pays the income subject to this tax must file the returns, withhold and pay the relevant tax amount. Also, this additional tax is generally applied to the gross payment or remittance, with no deductions.

Whoever pays the taxable income must file the tax return and pay the tax within 12 days from the month following the month on which the taxable amounts are paid, remitted, distributed or made available to the non-tax resident recipient.

The general rate is 35%, but there are reduced rates and exemptions. Also, the DTAs entered into by Chile can provide for tax reductions or exemptions on certain payments.

**Royalties and license fees for the use or the right of use of intellectual property:** As a rule, they are subject to a 30% withholding tax. The rate goes down to 15% regarding royalties paid for certain types of technology and for software payments made to a recipient that is not resident in a jurisdiction of none or low taxation.

Standard payments for the use of computer programs, i.e., payments that only transfer the rights necessary to use the programs and not for their commercial exploitation, reproduction or modification for any purpose other than enabling the use of the program, are exempt from additional tax.

**Payments for services provided abroad:** Generally, they are subject to a 35% withholding tax.

Payments for technical assistance or services, as well as payments for engineering and professional services provided in Chile or abroad are subject to a 15% withholding tax. The rate is 20% for payments made to a person resident in a jurisdiction with a preferential tax regime.

Certain services provided abroad are exempt from the withholding tax (e.g., commercial commission services, international telecommunication services, freight services or product sampling and analysis).

Under a DTA, payments for services are generally considered business profits (art. 7 "Business profits") and are not taxed in Chile as long as the service provider does not have a permanent establishment in the territory to which it can attribute the income. As for the DTAs with Brazil, Colombia and Argentina, payments for technical services are subject to the same tax treatment as royalty payments.

**Digital services:** If the payments are made by natural persons not subject to VAT, they will be exempt from additional tax.

**Specific considerations regarding transactions with related companies**

**Transfer pricing:** Article 41(E) LIR sets out the transfer pricing rules applicable to cross border related party transactions.

Chilean law on transfer pricing is mostly in line with the OECD guidelines. Chilean rules are

based on the arm's length principle or principle of fair market value, under which cross border transactions between related parties must be at normal market prices, values or yields, i.e., they should correspond to those agreed or established between non-related independent parties in similar transactions.

Transfer pricing rules provide for the following methods: (i) Comparable Uncontrolled Price Method; (ii) Resale Price Method; (iii) Cost Plus Method; (iv) Profit Split Method, and (v) Transactional Net Margin Method. Taxpayers are responsible for using the most appropriate method. If none of these methods can be applied due to specific circumstances, taxpayers may use other methods duly giving reasons.

If the SII considers that the taxpayer has not proven that the transactions complied with the transfer pricing rules, it will determine the arm's length value for these transactions. If the SII finds a difference applying the relevant transfer pricing rules, the resulting amount will be subject to a **single 40% tax** payable by the Chilean company under the General treatment of the rejected expense regime. Also, any taxpayers that fail to timely submit the supporting documents requested by the SII will pay a fine equal to 5% of the aforesaid resulting difference.

Taxpayers carrying out transactions with related parties abroad must annually submit a transfer pricing sworn statement or affidavit.

**Expense deduction in related party transactions:** According to the LIR, any amounts provided in article 59 LIR (e.g., royalties, interest or service remuneration) arising from acts or contracts with parties directly or indirectly related to the local entity, and carried out in line with transfer pricing rules, are only deductible in the year in which the payment is made.

These amounts will only be deductible if (i) the general deductibility requirements are met; and (ii) the applicable additional tax has been filed and paid, unless the law or a DTA provides that these amounts are exempt from, or not subject to, additional tax.

**Thin Capitalization Rules:** Under article 41(F) LIR, interest, commissions, services and any other standard charges or financial expenses on loans, debt securities and other transactions and contracts entered into by related parties abroad (i) subject to additional tax at a rate lower than 35%; or (ii) not subject to additional tax, and (iii) constituting excess indebtedness at year end, will be subject to a single 35% tax payable by the debtor (the "excess of indebtedness tax"). The additional tax previously withheld on the amounts subject to the thin capitalization rules can be credited against the excess of indebtedness tax. The excess of indebtedness tax is applied to taxpayers domiciled or resident in Chile, and it is levied on interest and the aforesaid expenses paid to related parties during the tax year.

For these purposes, tax authorities will consider that there is "excess of indebtedness" if the taxpayer's 3:1 debt-to-equity ratio is exceeded at the end of the year in which the interest payments and other items provided in the new thin capitalization rules are due. Excess of indebtedness is calculated separately for each entity.

For the purpose of calculating "excess of indebtedness," "equity" means the company's equity for tax purposes or *Capital Propio Tributario* (i.e., the assets, rights and obligations at tax value) as of January 1 of the year in which the debt was incurred, adjusted by the contributions or withdrawals made during the year, and considering the ownership period. Any contributions directly or indirectly financed with related party debt should be deducted from equity.

The annual debt-to-equity ratio ("annual D/E") includes related party and non-related party debt, both from Chile and foreign countries, which must be considered based on how long the company held the debt during the tax year.

**Tax base of the excess of indebtedness tax:** If the company's annual D/E exceeds a 3:1 ratio, the tax base of the excess of indebtedness tax will be calculated by dividing (i) the company's annual D/E minus three times its equity; by (ii) the said D/E, multiplying the result by 100.

The resulting percentage is applied to the addition of interest and the remaining items subject to the thin capitalization rules paid during the relevant tax year to related parties abroad that (i) have been subject to a 4% additional tax; or (ii) to additional tax at a rate below 35% or not subject to this tax under a tax deduction or tax relief provided by the applicable law or a DTA. The tax base of the excess of indebtedness tax cannot exceed the overall sum of interest and remaining items paid during the relevant tax year.

The previously withheld additional tax on the amounts subject to these thin capitalization rules can be fully or partially credited against the excess of indebtedness tax.

Exceptionally, and as long as certain requirements are met, the excess of indebtedness tax will not be applied to project financing in Chile.

## 2.2. Capital gains tax

Generally, capital gains obtained by taxpayers are considered ordinary income, i.e., subject to IDPC and final taxes.

However, if certain requirements are met, there are specific capital gains that qualify as non-taxable income. Note that article 17(8) LIR, which provides a special tax treatment for capital gains, only applies to (i) natural persons, not to companies, other legal persons or assets allocated to individual businesses; and (ii) if the transactions are not between related parties under the terms of the said article and article 8(17) of the Chilean Tax Code.

- **Capital gains (i.e., the increased value) obtained from the transfer of shares and corporate rights not provided in article 107 LIR (shares and rights of non-listed companies)** qualify as taxable income.

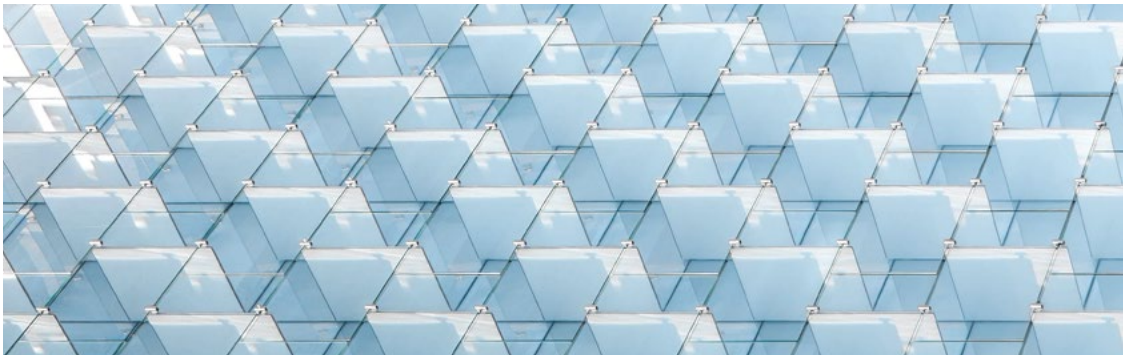
**If the seller pays IDPC on a full accounting basis,** it will be subject to IDPC and final taxes. Since the adoption of Law 20780, the gains withheld in the company are not included in the acquisition cost.

**If the seller does not pay IDPC on a full accounting basis, there is a distinction depending on whether the transfer is to a related or a non-related party:**
If the shares or rights are transferred to a non-related party, the gain or increased value is subject to final taxes upon receipt.

Taxpayers subject to global complementary tax (i.e., natural persons domiciled or resident in Chile) can be taxed at the time when the capital gains are generated, "distributing" these gains (i.e., the increased value) over the time period during which the seller held the shares or the rights. This time period cannot exceed 10 years.

To determine the gain (i.e., the increase in value), losses from the transfer of the shares or rights must be offset.

If the gain or increase in value does not exceed 10 Annual Tax Units (UTAs), i.e., approximately EUR 7,800, the gain will not qualify as taxable income and thus will be tax exempt.



If the shares or rights are transferred to a related party, the gain or increased value is subject to final taxes in the tax year in which the gain is received or earned. It cannot be distributed on a pro-rata basis over the previous tax years, and the INR cannot be applied to any gains not exceeding 10 UTAs.

**If the seller is not domiciled or resident in Chile,** the gain will be subject to the general taxation regime, subject to IDPC and additional tax, deducting the IDPC tax credit.

- **Gains for the transfer of securities listed in article 107 LIR:** To promote greater stock market depth and liquidity, until August 2022, capital gains from the sale of certain securities will qualify as non-taxable income, regardless whether the recipients are natural or legal persons and whether these securities are sold to a related party.

  The securities whose increased value or transfer gains is subject to this special rule are the following: (i) shares of open public limited companies ("SAAs"); (ii) investment fund units; and (iii) mutual fund units.

  **Shares of SAAs:** in order for the transfer gains to qualify as non-taxable income, these shares must belong to listed companies incorporated in Chile. The transfer of these shares must be (i) in the stock market; (ii) through an initial public offering; or (iii) through a contribution of securities under article 109 LIR.

  **Law 21,420, published on February 4, 2022, modified the tax treatment provided in article 107. It established a single income tax on the gains obtained from the transfer of the aforesaid assets, at a 10% rate.**

  The securities purchaser, broker or dealer acting on behalf of a seller that is not domiciled or resident in Chile must withhold the tax upon payment of the transfer price, whether this price is remitted, transferred to an account or made available to the seller. If the securities purchaser, broker or dealer lacks sufficient information to determine the gain or increased value, there will be an interim withholding of 1% of the overall transfer price, with no deductions.

  The withholding agents must file and pay the tax before day 12 of the month following the month of payment.

  For determining the gain subject to the single tax, taxpayers domiciled or resident in Chile can consider as the acquisition value either (i) the official closing price of the relevant securities as of December 31 of the year of acquisition, first considering the securities with the earliest acquisition date; or (ii) the acquisition value or the gain subject to the LIR general rules. However, taxpayers not domiciled or non-resident in Chile can only use option (ii) to determine the gain or increased value subject to the single tax.

  After the said tax has been filed and paid, the income tax obligation is considered fulfilled, so the gains may be recorded in the REX and withdrawn subject to the general rules on income allocation.

  As for institutional investors, whether residents in Chile or abroad, the gains obtained from the transfer of the securities listed in article 107 LIR will not qualify as income.

  The above provisions come into force within six months from the first day of the month in which they are published in the Official Gazette, and they will apply to transfers or sales from that date. Since they were published on February 4, 2022, they will apply to any transfers carried out from September 1, 2022.

- **Indirect sales:** The indirect sale of underlying assets located in Chile is subject to a 35% additional tax. Therefore, the income obtained by a seller not domiciled and non-resident in Chile from the transfer of a foreign company's shares will be taxed in Chile in any of the following cases:

- When (i) the transfer involves at least 10% of the shares or units of the foreign company holding a direct or indirect shareholding interest in a Chilean company (including all the transfers made during a 12-month period not only by the seller but also by other companies within the corporate group); and (ii) 20% of that transfer's market value derives from Chilean underlying assets, considering their current market value.

- When (i) the transfer involves at least 10% of the assets or other securities of the foreign company holding a direct or indirect shareholding interest in a Chilean company (including all the transfers made during a 12-month period not only by the selling company but also by any of the companies within the corporate group); and (ii) the Chilean underlying assets' market value is at least 210,000 UTAs (approximately EUR 165 million); or

- When the shares or other instruments being sold belong to entities domiciled or incorporated in a tax haven or in a jurisdiction with a preferential tax regime, unless the seller certifies that there is no significant shareholding interest by Chilean taxpayers in that entity and that the shareholders are tax residents in countries not considered tax havens or without a preferential tax regime.

The taxation of indirect sales does not apply if the transfer is made within the context of a corporate restructuring transaction and there is no taxable increased value or gain according to the mechanisms provided by the rules on indirect sales.

## 2.3. Value Added Tax (VAT)

VAT is payable monthly. The tax rate is 19%, and it is levied on all regular sales of movable and immovable goods and on certain services used or provided in Chile.

Currently, VAT is only levied on the services listed in article 20(3) and (4) LIR, including commercial and industrial activities or activities of commission agents with an established office. These activities do not include consulting, counseling or professional services, which are not subject to VAT.

Under Law 21,240 of 2021, this provision is modified, removing the specific reference to this article of the LIR from January 1, 2023. The scope of application of VAT is thus extended to all types of services except for those expressly exempt from the tax.

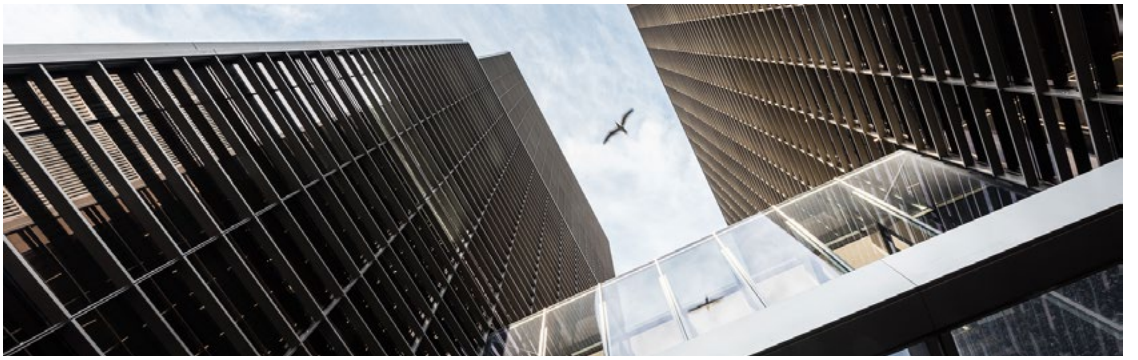
VAT is specifically levied on (i) imports, when VAT is payable when the import is legally concluded, regardless whether the taxpayer is a recurring taxpayer, and regardless the import involves capital goods or realizable assets; and (ii) the assignment or temporary licensing of brands, invention patents, industrial procedures or formulas or other similar payments. Also, the sales of exported goods are VAT-exempt.

Input VAT gives taxpayers tax credit claim ("tax credit") equal to the amount of tax charged in the invoices for the acquisition of goods, the use of services or, if appropriate, the VAT paid on imports, insofar as the taxpayer enters into transactions subject to VAT.

When taxpayers make a sale or provide a service subject to VAT, the output VAT is a tax liability ("tax debt") that can be credited against the outstanding tax credit over the relevant tax period.

When output VAT (tax debt) exceeds input VAT (tax credit) during the relevant tax period, the difference is the tax amount that must be filed and paid by the taxpayer for that period. However, when the tax credit exceeds the tax debt in the relevant period, the outstanding amount can be allocated to the following tax periods until it is fully used.

**Early VAT refund for the acquisition of fixed assets:** Article 27 bis of the Chilean VAT Act provides a mechanism for recovering the tax credit accrued by VAT taxpayers that allows for



either (i) offsetting the outstanding amount against any taxes that are due; or (ii) claim a cash refund.

The application of this mechanism is subject to the following requirements: (i) taxpayers must have an outstanding tax credit; (ii) this amount must arise from the acquisition of movable or immovable assets acquired to be part of the taxpayers' fixed assets or from services intended to make up for the cost value of the taxpayers' fixed assets; and (iii) the outstanding tax credit must have been accrued for at least two consecutive months.

Note that the refunded amounts under this mechanism must be repaid to the tax authorities if the taxpayer that requested the refund subsequently carries out activities not subject to VAT.

**VAT on digital services:** Taxpayers not domiciled or resident in Chile that provide digital services to be received in the country by natural or legal persons not subject to VAT will be subject to this tax.

The following services will be subject to VAT:

- Intermediation for services provided in Chile, regardless of their nature, or intermediation for sales made in Chile or abroad, as long as the sales made abroad give rise to an import.
- The supply or delivery of digital entertainment content, e.g., videos, music, games or similar content, by means of downloading, streaming or other technology, including texts, magazines, newspapers and books.
- The provision of software, storage or computer platforms or infrastructure.
- Advertising, regardless of the mechanism through which it is delivered or created.

**Simplified VAT filing and payment regime for foreign taxpayers:** Any taxpayers providing the above services can register in a simplified tax regime for non-resident VAT taxpayers. They can register online through a portal made available to taxpayers by the SII. Registered taxpayers will receive an identification number that is not equivalent to the Chilean tax identification number.

Registered taxpayers can choose between one or three-month tax periods, but they must file the tax return and pay the tax within 20 days from the end of the relevant period. Also, they can pay the tax from a foreign country via bank transfer. The payment can be in USD, EUR or Chilean pesos.

**Tax withholding for taxpayers not subject to VAT:** If taxpayers providing the above digital services do not pay the VAT on their services, they can be included in a list prepared by the SII annually, which entails the obligation for entities like banks of charging VAT on the price of their services, withholding the tax, and depositing it with tax authorities.

## 2.4. Stamp duty ("ITE")

The ITE Act applies to bills of exchange, promissory notes, ordinary or documentary credit (loans) and any other documents recording a "money lending transaction." Note that "money

lending transactions" are any transactions under which a party delivers or agrees to deliver an amount of money to the counterparty, who agrees to repay it later.

The ITE rate is 0.066%, applied to the amount of the transaction for every month or fraction of a month between issuance and maturity of the document. The rate is capped at 0.8%. Demand instruments and those without a maturity date are subject to a 0.332% rate.

As for documents issued abroad, ITE is payable when the transactions are notarized or registered in Chile. So, money lending transactions entered into abroad will be subject to ITE even if there is no document recording the transaction as long as these transactions are registered and accounted for in Chile.

## 2.5. Municipal tax

Under the Chilean Municipal Income Act, the municipal tax applies to anyone starting a business or commercial activity in a municipality. Each municipality (town council) sets the tax rate, which ranges between 0.0025 and 0.005 of the taxpayer's tax equity (i.e., assets minus liabilities, both at tax value). This amount cannot be below 1 monthly tax unit (UTM), approximately EUR 64, or exceed 8,000 UTMs (approximately EUR 510,000).

The amount set by the municipality is the amount of municipal tax for a 12-month period, from July 1 of the tax filing year and June 30 of the following year. This amount is payable in cash or in two equal installments. If the taxpayer becomes incorporated after December 31, it will have to pay 50% of the municipal tax.

At municipal level, for determining tax equity, taxpayers may deduct any amounts invested in other businesses or companies subject to municipal tax, which must be evidenced through a certificate issued by the relevant municipality or municipalities in which these businesses or companies have been incorporated and operate.

## 2.6. Territorial tax

The territorial or real estate tax is levied on the ownership of real estate at a rate that ranges between 1% and 1.4%. It is payable annually by the owner of the property and applied to the value of the relevant real estate. This tax is payable in four installments over the year, and the tax amount is indexed to inflation on a half-yearly basis.

The value for tax purposes is often lower than the real estate's market value. However, the value for tax purposes must be reviewed every five years, and the new values for urban or rural property apply simultaneously in Chile. Also, the value for tax purposes is indexed to inflation every six months.

## 2.7. General anti-avoidance rule ("GAAR")

The Chilean Tax Reform Act established a new general anti-avoidance rule ("GAAR"), granting the SII extensive powers to assess and tax certain transactions or schemes qualifying as tax avoidance structures.

The GAAR's purpose is to ensure compliance with tax regulations. To that end, the SII uses its enforcement powers to ensure the correct tax payment in case the transactions entered into by taxpayers (whether individually or together) amount to:

i. abuse of law or abuse of legal forms, i.e., fully or partially circumventing the behavior provided in the law, reducing the applicable tax base or delaying the enforceability of the tax obligation through acts or transactions that individually or together have no significant legal or financial results or effects for taxpayers or third parties, other than the strictly tax-related purposes;

ii. concealment, i.e., acts and transactions aimed at concealing a taxable event or the elements giving rise to a tax obligation, a tax payment or the date on which a tax obligation arises.

Abuse of law or tax concealment must be declared or found by a tax court subject to a procedure governed by the Tax Code.

## 2.8. Statute of limitations

The Chilean Tax Code provides that the SII may determine a tax assessment, review tax returns and collect taxes within three years from the tax filing deadline (April 30) and within 36 months for taxes that are payable monthly.

These limitation periods are extended to six years for income tax and 72 months for taxes payable monthly if the tax returns have not been filed or these returns have been considered purposefully false or misleading.

## 2.9. SII's monitoring and inspection powers

Tax authorities have a broad scope of power to review tax returns, books, accounting records, inventory records, invoices and other taxpayers' supporting documents in order to ensure compliance with tax obligations. Tax authorities are also empowered to review the books, documents and records of withholding agents.

## 2.10. Penalties

Chilean law provides penalties for underpayment or non-payment of taxes. These penalties are established as a lump sum or calculated as a percentage of the unpaid taxes. Regarding penalties calculated as a percentage of the unpaid tax, these must be previously indexed to inflation.

The penalties for failing to file a tax return or filing late are equal to 10% of the unpaid taxes as long as the delay does not exceed 5 months. After this time period, the penalty increases by 2% per month or fraction of a month. These penalties cannot exceed 30% of the unpaid tax.

Incomplete or incorrect tax returns, failure to include balance sheets or supporting documents, or the incomplete submission of these documents resulting in an underpayment of tax (unless the taxpayer proves that it acted with due diligence) carries a penalty that ranges between 5% and 20% of the underpayment.

Tax fraud is subject to a penalty ranging between 50% and 300% of the unpaid tax, and it can even lead to imprisonment. Taxpayers that fraudulently obtain tax returns or reimbursements could be sentenced to imprisonment for terms ranging between three years and one day and 15 years, or to payment of a fine ranging between 100% and 400% of the unlawful tax refund.

## 2.11. Double taxation agreements

Chile has concluded many DTAs, which remain in force, mostly based on the on the OECD Model Convention, promoting cooperation between the tax authorities of the contracting parties in order to avoid double taxation.

# 3

# Labor and employment

*Labor relations between employers and employees are regulated by the Labor Code and supplementary laws*

## 3.1. General hiring characteristics

Labor relations between employers and employees are regulated by the Labor Code and supplementary laws.

An individual employment contract is consensual and mutually binding between the employer and the employee. The latter is required to provide personal services under the supervision of, and subordinate to, the employer, who is required to pay a specific amount for those services.

An employment contract must include, at least, the following information:

- Place and date of the contract;
- Identification of the parties, indicating nationality and dates of birth and the remuneration payable to the employee;
- The nature of the services and the place where they are to be provided;
- Amount, manner and frequency of the agreed remuneration;
- Duration and distribution of the working day; and
- Term of the contract.

### 3.1.1. Types of employment contracts

Based on their term and duration:

- **Fixed-term:** An employment contract for a specified term that cannot exceed one year. If the employee is a manager or holds a professional qualification issued by a national higher education institution certified by public authorities, the term of the employment contract cannot exceed two years. This provision allows the parties to agree on a single extension of the fixed-term employment contract, either for the same term or a different one. If so, the duration of the contract, considering its original term and the extension, must not exceed the maximum period provided under applicable law, i.e., one or two years. Fixed-term contracts become indefinite when:
    a. The employer knowingly allows an employee to continue providing services after the agreed termination date;
    b. after one extension if the contract exceeds the maximum periods provided by law, or after a second extension; and

c. The employee is presumed to have been hired indefinitely, having provided discontinuous services for the same employer under more than two fixed-term contracts for 12 months or more, within a total of 15 months.

- **Indefinite:** An employment contract with an indefinite term, without establishing a termination date for the employment relationship.
- **Specific job or task:** An employment contract under which an employee agrees to carry out specific and defined material or intellectual work, with specified start and end dates, and which remains in force only during that time.

### 3.1.2. Special contracts and main features

**Apprenticeship contract**

- Specific length and conditions
- Knowledge and skills relating to a qualified trade taught
- Only available to those under 21 years of age
- Expressly indicating the plan to be followed by the apprentice
- Two years maximum duration

**Agricultural worker contract**

- Land cultivation work and agricultural activities
- Employer cannot be part of a derivative agricultural commercial or industrial company
- Agricultural workers who cannot work because of weather conditions are entitled to full monetary and in-kind remuneration, provided they have not missed work the previous day without justification.
- Pay can be monetary or in kind, but under no circumstances may more than 50% be in-kind payment.

**Maritime or sea worker contract**

- For the professions, trades and occupations aboard ships or naval vessels
- Workers must hold a certificate and a license or registration granted by the competent authority

**Temporary port worker contract**

- Stevedoring and other tasks typical of port activities on board ships and naval vessels and in port areas
- Basic port operations safety course required

**Arts and entertainment worker contract**

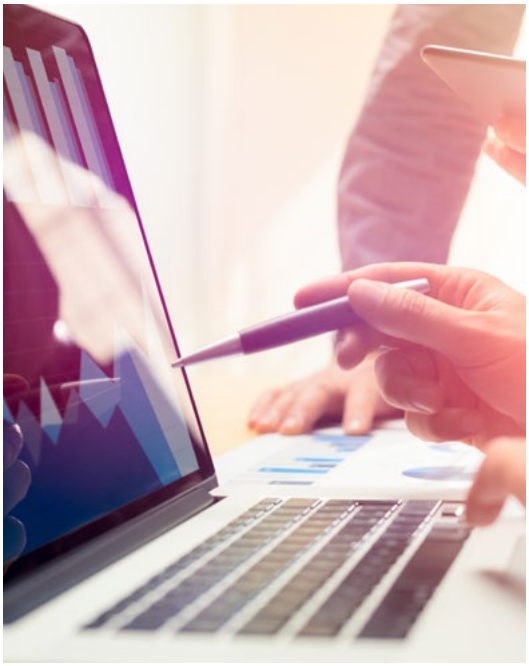
- Specific term, either a fixed term or for one or more events, jobs, seasons or projects
- Exempt from mandatory rest on Sundays and holidays

**Private home worker contract**

- Continuous engagement for typical home cleaning and household work
- Applicable to private household drivers

**Temporary worker contract**

- Seasonal agricultural workers are all those who carry out temporary or seasonal tasks involving land cultivation, derivative agricultural commercial or industrial activities, sawmills and logging plants and other related activities.
- Must be executed in four copies
- Employer must provide workers with adequate, sanitary accommodation according



to the characteristics of the area, the climate conditions and other conditions typical of the seasonal task, unless workers can have access to their homes or to adequate, sanitary accommodation that, given the distance and means of communication, allows them to carry out their tasks.

**Sports contract**

- Between employers and professional football players and those who perform related activities
- Renewal must have the express and written consent of the employee each time and be for a minimum of six months

**Commercial passenger and cargo aircraft flight and cabin crew contract**

- Monthly work schedule cannot exceed 160 hours.
- Ordinary day schedule cannot exceed 12 continuous hours.

## 3.2. Possibility of subcontracting

### 3.2.1. Requirements

Subcontracting is subject to the following requirements :

- An employment contract between an employee and an employer, i.e., a contractor or subcontractor, that is responsible for executing works or services, at its own risk and with its own employees, on behalf of a third party.
- That third party, whether an individual or legal person, is the principal company and the owner of the work, company or task for which the contracted work or service is performed.
- A non-labor contractual agreement between the principal company and the contractor under which the contractor is required to perform work or provide services for the principal company.
- The work or the services must be carried out by the contractor's employees.
- The services provided must be habitually continuous, i.e., permanent or regular, not sporadic.

If these requirements are not met, the principal company may be fined.

### 3.2.2. Principal company liability

**Joint and several liability:** The principal company and the contractor will be jointly and severally liable for employee-related labor and social security obligations that apply to contractors and subcontractors, where appropriate, including any legal severance pay at the end of the employment relationship.

**Subsidiary:** The principal company or the contractor, as applicable, will be secondarily liable for employee-related labor and social security obligations that apply to contractors and subcontractors when:

- The principal company or the contractor effectively comply with the right to information regarding the sum and compliance with employee labor and social security obligations and, if compliance is not demonstrated, exercise the retention right; and
- The principal company or the contractor have been notified by the labor authorities of a breach of employee labor and social security obligations, as appropriate, and have effectively applied the retention right.

## 3.3. Legal benefits

**Minimum wage**

All workers are entitled to a minimum wage. From May 1, 2022, the gross monthly minimum wage will be USD 440, and from August 1, 2022, it will be USD 460. Finally, if the accumulated inflation rate exceeds 7% by December 2022, the gross monthly minimum wage will be USD 475 from January 2023.

**Legal bonuses**

The law provides that a bonus is an annual benefit and must be paid to employees every year in April, provided the company has made a profit.

For the employer to be required to pay the legal bonus, it must meet all the following requirements simultaneously:

- It is a mining, industrial, commercial, agricultural or any other establishment, or a cooperative.
- The establishment or company pursues a profit, i.e., for-profit companies, except cooperatives.
- It keeps accounting records.
- It obtains net profits (earnings) in the year, i.e., the profit (based on income tax paid) minus 10% of the value of equity, excluding any deduction of losses from prior financial years.

**Vacations**

Employees with more than one year of service are entitled to an annual paid vacation of 15 business days.
The vacation time will be granted preferably in the spring or summer, taking into consideration the needs of the service concerned.

The vacation must be continuous, but the excess over ten business days may be broken up by mutual agreement.

The vacation time may also be accumulated by agreement of the parties but only for up to two consecutive periods.

**45 hours per week**

Currently, the ordinary working schedule is established by the Labor Code for all employees, with some exceptions. The maximum work schedule is 45 hours per week, which may not be distributed over more than six days or less than five, and in no case may it exceed 10 hours per day.

However, establishing a 40-hour working week is one of the Chilean government's main commitments. To implement this initiative, a technical board has been in place since June 13, 2022, holding public consultations to gather proposals and comments on the reduction of the working week. A draft bill based on the conclusions obtained during this process will be presented in Congress, in addition to the information gathered throughout the lawmaking process of the draft bill currently being discussed in the lower chamber of the Chilean Congress (Cámara de Diputados).

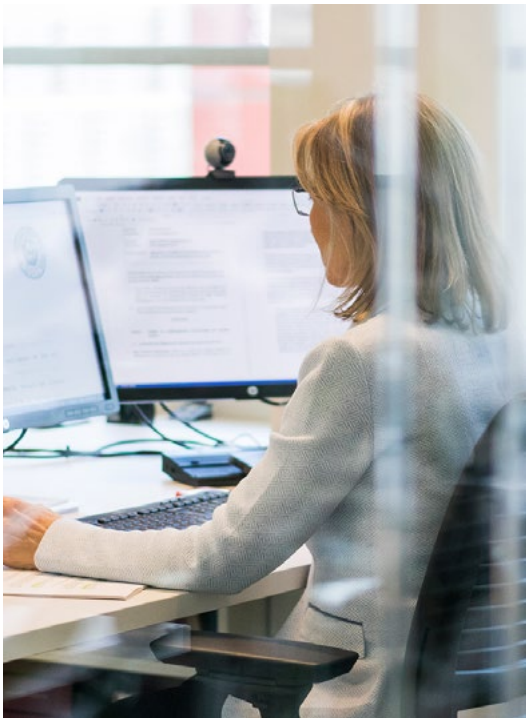
**Overtime**

Daily overtime is limited to two hours, and the weekly maximum is 12 hours, provided the weekly work schedule can be distributed over a maximum of six business days (6 days x 2 overtime hours = 12 overtime hours per week). The labor authorities have established a maximum of seven hours of work plus 30 minutes of overtime on Saturdays. The overtime worked from Monday to Friday must be added to these 30 minutes so that it will not exceed the weekly limit of 12 overtime hours.

To calculate overtime payment for an employee hired for a 45-hour working week and receiving a monthly salary, the salary must be divided by 30 and then multiplied times 28, dividing the result by 180 to obtain the value of a regular work hour.

**Unemployment insurance**

The Unemployment Fund Administrator (AFC) provides insurance that protects all employees with an indefinite, fixed-term contract and those with a per-job or service contract, if these jobs are governed by the Labor Code.



Every employee enrolled with the AFC has an individual unemployment account to which the employer must contribute 3% of the taxable monthly wages paid to the employee. This contribution is mandatory in different percentages by the employee and the employer, depending on the type of contract.

**Remote work**

The law that regulates remote work and teleworking entered into force on April 1, 2020. Employment contracts governed by this law must include the following:

- Express indication that the parties have agreed to remote work or teleworking, specifying whether it will be full-time or part-time work and, in the latter case, the formula for combining office work and remote work or teleworking;
- The place or places where the services will be rendered, unless the parties have agreed that the employee can freely choose that location, which must be identified;
- The term of the remote work or teleworking agreement can be indefinite or for a specified time;
- The supervision or control mechanisms that the employer will use with respect to the services agreed with the employee;
- The agreement that the remote employee will be able to distribute working hours as needed, or that the employee is excluded from the limitation of working hours; and
- The time of disconnection from work.

**COVID insurance**

Mandatory individual insurance for private sector employees with contracts subject to the Labor Code and who are performing all or part of their work at a worksite.

The purpose of this insurance is to finance or reimburse the costs of the employee's hospitalization and rehabilitation associated to COVID-19, as well as compensation in case of natural death of the insured.

## 3.4. Social security contributions

The employer must deduct from the employee's gross salary:

- 10% for pension contribution;
- 7% for health care coverage; and
- 1.53% for Disability and Survival Insurance (SIS), which covers employees in case of disability or death.

## 3.5. Termination of the work contract

### 3.5.1. Grounds

The grounds for termination of an employment contract are set out in articles 159, 160 and 161 of the Labor Code and are as follows:

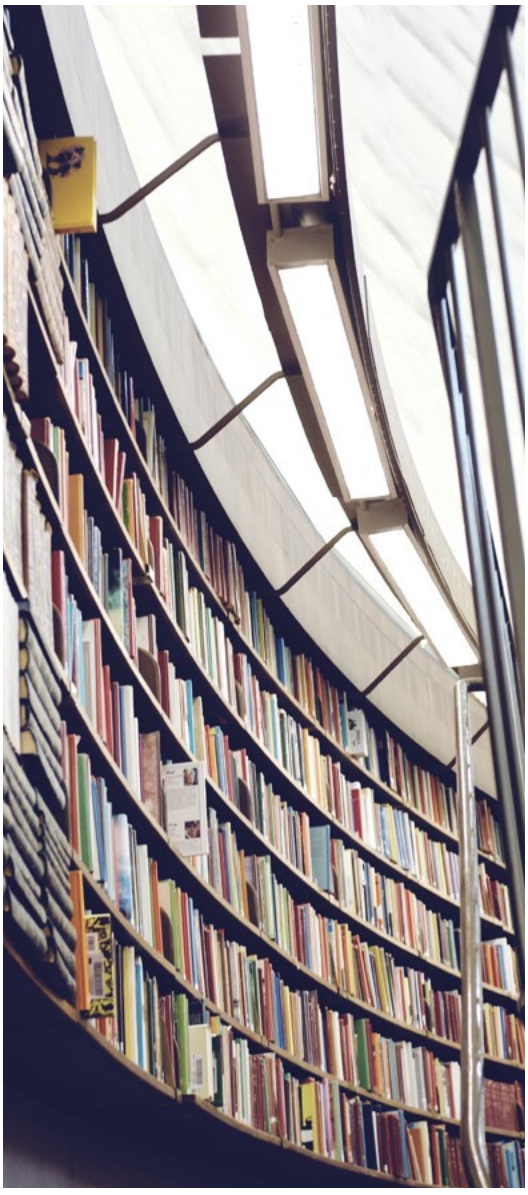
**Grounds under article 159:**

- Mutual agreement of the parties
- Resignation of the employee
- Death of the employee
- Expiration of the term agreed in the contract
- Conclusion of the work or service that gave rise to the contract

- Act of God or force majeure

**Grounds under article 160:**

- Any case of duly verified serious misconduct, as indicated below:
  - Lack of probity on the part of employees when performing their duties
  - Sexual harassment
  - Any action taken by the employee against the employer or any employee working at the same company



  - Insults to the employer
  - Immoral behavior affecting the company
- Negotiations that the employee carries out during the course of business that have been prohibited by the employer in writing in the employment contract.
- Employee's failure to appear at work without just cause for two days in a row, two Mondays in a month or three days during the same period of time. Similarly, any unjustified absence or absence without prior notice from the employee who is responsible for an activity, task or machine when abandonment or stoppage results in serious disturbance of work efficiency.
- Abandonment of the job by the employee, i.e.,:
  - the employee's untimely and unjustified departure from the worksite during working hours, without permission from the employer or its representative; or
  - refusal to work without just cause on the tasks agreed in the contract.
- Reckless acts, omissions or recklessness that affect the safety or operation of the establishment, the safety or the activity of employees or their health.
- Material damage intentionally caused to facilities, machinery, tools, equipment, products or merchandise.
- Serious breach of the obligations imposed by the contract.

**Grounds under article 161:**

- Needs of the company, establishment or service such as those arising from streamlining and modernization, declines in productivity, and changes in market or economic conditions that make it necessary to dismiss one or more employees.
- Employer eviction.

**Grounds under article 161 bis:**

- Total or partial disability is not just cause for termination of an employment contract. Employees dismissed for this reason will be

entitled to the compensation established in paragraph one or two of article 163 of the Labor Code, as appropriate, with the increase indicated in article 168 b) of the same law.

### 3.5.2. Compensation system for termination of an employment contract:

As a rule, when an employment contract is terminated, any amounts owed due to termination must be paid as determined in the final settlement document (*finiquito*).

Some of those payments at the end of the employment relationship include:

- **Outstanding remuneration:** for the days worked in the month in which the contract ends, if any.
- **Accrued holidays:** compensation for the time between the hiring date or the date of the last work anniversary and the employment end date.

- **Length of service indemnity:** compensation if the contract has been in force for one year or more and has ended due to any of the causes set out under article 161 of the Labor Code, i.e., the needs of the company, establishment or service, or employer eviction.
- **Indemnity *in lieu* of notice:** compensation if the dismissal took place for any reason set out under article 161 without at least a 30-day notice to the employee.

# 4

# Data protection

*The LPD establishes certain obligations regarding the use of personal data and, in general, requires that the processing of personal data take place with consent of the owner or a legal authorization*

## 4.1. Legal framework

Article 19(4) of the Political Constitution of the Republic of Chile guarantees "respect and protection of private life and honor of a person and his or her family, as well as the protection of personal data." Also, the Chilean Constitution provides that the processing and protection of these data will be subject to the law. Law 19,628 on Protection of Private Life (the "LPD"), in addition to other special regulations, regulates the processing of personal data in registries and databases by public or private entities, establishing obligations regarding the use and collection of personal data, rights of data owners, responsibility for breaching the law, and certain special regulations applicable to data of economic, financial, banking or commercial nature and to the processing of data by public entities.

In general, the LPD requires that the processing of personal data take place with consent of the owner or a legal authorization. There is no public control authority in this area, except that granted to the Transparency Board with regard to public administration bodies.

A bill that substantially modifies the regulatory framework of the LPD is currently before Congress, and among other novelties, it establishes (i) new rights for data owners, (ii) new legal ways of data processing

*The LPD requires, among other obligations, consent from the owner, use of the data exclusively for the purpose for which it was collected and registration of databases with a public registry*

and (iii) an authority responsible for ensuring data protection. It also regulates the international transfer of personal data and breach prevention models.

## 4.2. Main obligations

The main obligations covered by the LPD are as follows:

- Express, written and informed consent from the owner must be obtained for the processing of personal data, with certain exceptions such as the processing of publicly available data.
- Use of the data exclusively for the purpose for which they were collected and the removal, modification or blocking of data as appropriate.
- Due diligence when in possession of the data, establishing liability for any damages caused.
- Confidentiality of personal data.
- Guarantee for exercising the rights (a) to information or access, (b) to modification or correction, (c) to cancellation or elimination and (d) to blocking data.
- Registration of databases with a public registry run by the Civil and Identification Registry in the case of public bodies.

# 5 Public procurement

*The ways of contracting with the State are framework agreements, public tenders and, exceptionally, private tenders and direct awards*

## 5.1. Legal framework and forms of public procurement

Law 19886 of 2003 on Administrative Contracts for the Supply and Provision of Services and their Regulations (Decree 250 of 2004) sets out the rules that govern the State's contracting for the supply of goods and services. This without prejudice to other public bodies of specific sectors that regulate, for example, contracts for concessions of public works and their execution.

There are different ways of contracting with the State: framework agreements, public tenders, private tenders and direct awards. In general, State agencies use framework agreements, regularly tendered and awarded by the Directorate of Public Procurement and Contracting, regardless of the amount of the contract, which can be found in a catalog of framework agreements published by the Directorate on the Transactional Platform. When this public procurement mechanism does not apply, a public tender is held. Private tenders and direct awards are held exceptionally in certain circumstances, e.g., if there are no bidders. As a rule, to formally acquire goods and services for a certain amount, a contract must be signed.

*Domestic and foreign individuals and legal persons that have not been barred from contracting with State agencies can be entered into the official electronic registry of State contractors*

## 5.2. National Providers Registry

ChileCompra is responsible for an official electronic registry of State contractors. All domestic and foreign individuals and legal persons that have not been barred from contracting with State agencies can be entered into that Registry, whose purpose is registering and accrediting past activities, hiring history, legal and financial situation, technical suitability, as well as any situation precluding entering into contracts with the State.

## 5.3. Transactional Platform for State Procurement - Public Market

ChileCompra manages a transactional platform (www.mercadopublico.cl), in which public entities carry out the process of acquiring and contracting for the supply of goods, services and works. They must use this platform to price, tender, contract, award, request dispatches and, in general, carry out all their processes for acquiring and contracting for goods, services and works.

## 5.4. Public Procurement Court

The Public Procurement Court ("PPC") has jurisdiction over the appeals against unlawful or arbitrary acts or omissions during public tender procedures involving public bodies subject to Law 19986. These

appeals can be filed against any unlawful or arbitrary acts or omissions carried out between (i) the adoption of the terms and conditions of tender; and (ii) the award of the contract. Any person with a vested interest in the procedure is entitled to file the appeal. The final judgment delivered by the PPC can be challenged before the Court of Appeals of Santiago.

# 6

# Conflict resolution: Arbitration

*The use of arbitration has increased significantly in Chile in recent decades. The Chilean Law on International Commercial Arbitration is based on the United Nations Commission on International Trade Law model. Chile is a member of the New York Convention, the Panama Convention and the ICSID Convention*

The use of arbitration as a method of conflict resolution has increased significantly in Chile in recent decades, and that increase has been boosted since 2004 with the enactment of Law 19971 on International Commercial Arbitration (LACI) based on the United Nations Commission on International Trade Law (UNCITRAL) model.

## 6.1. Domestic and international arbitration

Chilean law recognizes domestic and international arbitration and regulates them through a dual system, i.e., they are governed by different regulatory bodies.

Domestic arbitration is regulated by the Organic Code of Courts (articles 222 to 243) and the Code of Civil Procedure (articles 628 to 644).

International arbitration is regulated by the LACI, although other international regulatory bodies of which Chile is a member may influence the regulation of arbitration. Such is the case of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards and the Inter-American Convention on Arbitration International Commercial, also known as the Panama Convention.

Chile is a member of the 1965 Convention on the Settlement of Investment Disputes (ICSID Convention); therefore, under certain conditions, ICSID arbitration can be applied with foreign investors.

Under the LACI, arbitration is international if:

- The parties to an arbitration agreement are established in different States when the agreement is reached;
- One of the following places is located outside the State in which the parties have their establishments:
  - The place of arbitration, if it has been determined in the arbitration agreement or under the arbitration agreement; or
  - The place of fulfillment of a substantial part of the obligations of the commercial relationship or the place with which the object of the dispute has a closer relationship; or
- The parties have expressly agreed that the matter that is the subject of the arbitration agreement involves more than one State.

The LACI expressly recognizes the autonomous will of the parties, allowing them to classify a particular arbitration process as international.

## 6.2. *Ad hoc* and institutional arbitration

Arbitration can be institutional or *ad hoc*. Institutional arbitration is handled by an institution that provides support to both parties and the arbitrators during the course of the arbitration.

In this case, arbitration is governed by the regulations of the arbitration entity selected by the parties in the arbitration agreement.

In ad hoc arbitration, the parties choose not to go to an arbitration institution and leave the procedure mainly in the hands of the arbitration court.

They may (i) select an arbitration rule developed for non-administered arbitration, e.g., the Arbitration Rules of the United Nations Commission on International Trade Law ("UNCITRAL") or (ii) create their own.

In Chile, the main arbitration institutions are the Arbitration and Mediation Center of the Santiago Chamber of Commerce and the National Arbitration Center.

## 6.3. Judicial review

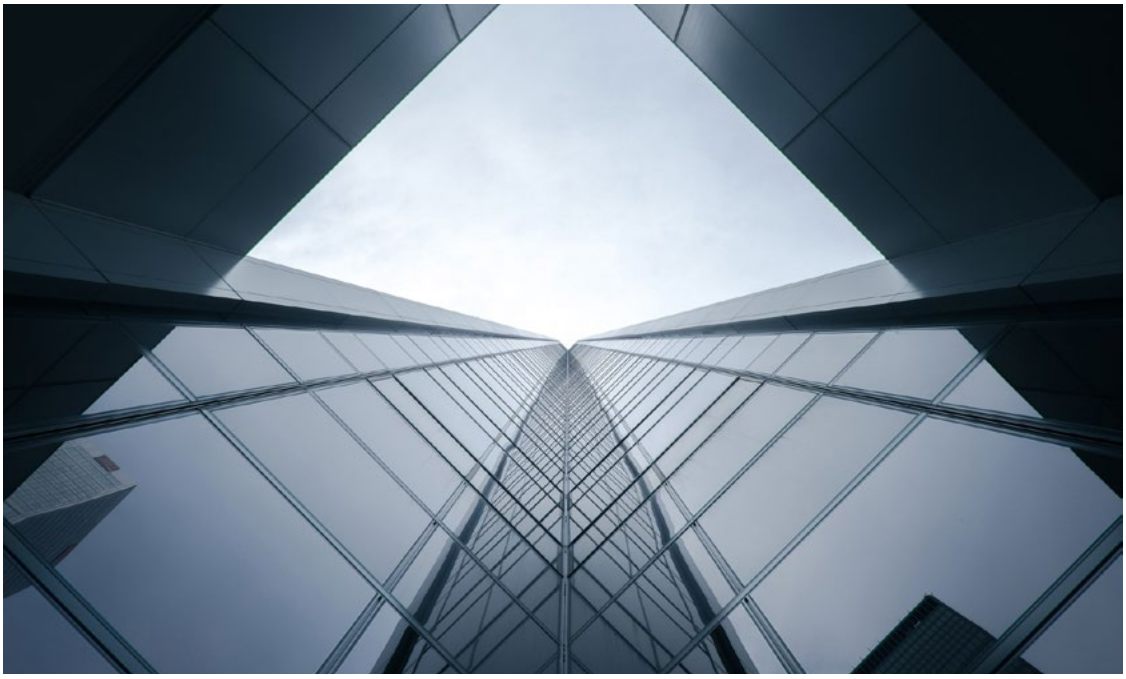
A distinction must be made between domestic and international arbitration with respect to judicial oversight of arbitration awards issued in Chile.

A broad system of appeals applies to domestic arbitration awards, since an appeal and an appeal for reversal can be filed in the same manner as against final judgments issued by the ordinary courts. However, the parties can (i) submit appeals to arbitration so that they may be heard by a higher arbitration court or (ii) waive the available appeals. Both academic doctrine and case law have established that an appeal for reversal cannot be waived if the court is not competent or in the case of ultra petita (granting more than what was sought by the parties). A complaint appeal cannot be waived either, given its disciplinary nature.

Only an appeal for annulment, established by the LACI, can be filed against international awards issued in Chile. The appeal for annulment does not consist of raising the matter to a higher court to decide on the merits of the matter submitted to arbitration, but rather its purpose is the annulment of the arbitration award on certain specific grounds.

These grounds are established in article 34 of the LACI and are as follows:

- One of the parties to the arbitration agreement was affected by some incapacity, the agreement is not valid by virtue of the law to which the parties have submitted it, or if nothing has been indicated in this regard, by virtue of the law of Chile.
- One of the parties has not been duly notified of the appointment of an arbitrator or of the arbitration proceedings, or it has not been able to assert its rights for any other reason.
- The award refers to a dispute not covered by the arbitration agreement or contains decisions that exceed the terms of the arbitration agreement. However, if the provisions of the award that refer to the issues submitted to arbitration can be separated from those that are not, only the latter may be annulled.



- The composition of the arbitration court or procedure has not been adjusted to the agreement between the parties, unless that agreement was in conflict with a provision of this law from which the parties could not deviate or, in the absence of such agreement, that did not comply with this law.
- Under Chilean law, the object of the dispute is not subject to arbitration.
- The award is contrary to public policy in Chile.

## 6.4. Recognition and enforcement of international arbitral awards in Chile

All international arbitration awards to be recognized and enforced in Chile must be approved through the exequatur process. Exequatur is an authorization granted by the Supreme Court for the enforcement in Chile of judgments issued abroad.

Foreign arbitration awards in Chile will have the force attributed, first of all, to existing international treaties between Chile and the country where the arbitration award is issued. In the absence of a treaty, the award will have the same force given to Chilean arbitration decisions by the country where it originates.

If it is not possible to demonstrate reciprocity, the exequatur will be approved if (i) the award does not contravene public policy in Chile; (ii) domestic courts are not competent for hearing the matter; (iii) there is due summons; and (iv) the award has been enforced in the jurisdiction where it was issued.

## 6.5. Arbitration proceedings in which Chile is a party

Chile can be a party to investment arbitration and international commercial arbitration.

It has developed a strong negotiating policy in the investment arbitration area for agreements for promoting and protecting foreign investments and free trade agreements that include chapters on investments.

In most of these instruments, Chile has decided to apply friendly solutions as the first step in conflict resolution and subsequently offer the investor the option of a forum. The investor will be able to decide whether to submit the dispute to Chilean jurisdiction or to international arbitration. However, the applicable regulatory instruments in each specific case must be analyzed.

Chile, its agencies, institutions and companies are empowered to submit to foreign courts, including arbitration courts, any disputes arising from the international contracts into which they enter.

However, the following requirements must be met: (i) the contract must be international (the parties must have their establishments in different countries or one of them must have its main center of business abroad); (ii) the State, its agencies, institutions or companies must participate; and (iii) the contract must be of an economic-financial nature.

## 6.6. Arbitration when contracting with the State

The Public Works Concession Act considers arbitration one of the possible dispute resolution mechanisms between the State and a contractor.

Disputes or claims that arise as a result of the interpretation or application of the concession contract or its performance may be initiated by the parties before an arbitration commission or the Court of Appeals of Santiago.

Disputes of a technical or economic nature between the parties during the performance of the concession contract must be submitted for the consideration of a technical panel at the request of any of the parties. The technical panel does not have jurisdiction and only issues a technical and duly founded recommendation that does not curtail the parties' power to submit the same dispute to an arbitration commission, but only when such matters have been previously submitted to a technical panel to obtain a recommendation.

The Ministry of Public Works may only file an appeal with the arbitration commission once the final launch of the works has been authorized, unless it requests the declaration of serious breach of the concession contract by the contractor, which can be requested at any time.

The arbitration commission must be made up of three university professionals, two of whom, at least, must be lawyers, and one must preside over the arbitration commission. The members are appointed by mutual agreement of the parties based on two lists of experts: the first one made up of lawyers and drawn up for this purpose by the Supreme Court, and the second one made up of professionals appointed by the Competition Defense Court through a public competency tender, during which it must verify the suitability of the chosen professionals and the absence of any barring issues or incompatibilities.

The arbitration commission will have the authority of an arbitrator with respect to the proceedings and will review the evidence under the rules of sound analysis, allowing any source of evidence or background that, in the commission's opinion, can establish the substantial and pertinent facts in dispute.

The commission will have 60 business days from the date the parties are summoned to issue a final judgment in accordance with the law, which will be justified and state the factual, legal, technical and economic considerations on which the decision has been made. The final decision cannot be appealed.

# 7 Insider information

*Persons who are presumed to have inside information must maintain confidentiality and cannot use the information for their own benefit or that of others*

## 7.1. Definition

"Insider information" is:

- Any information on one or more issuers of securities, their businesses or one or more securities they have issued, not disclosed to the market and whose knowledge, due to its nature, can influence the price of the issued securities.
- Information on certain facts or background that refers to pending negotiations that, when known, could harm the interests or the business and that has been classified as confidential information through the approval of three-quarters of the company's directors. As for companies with no governing body, the decision to classify certain information as confidential must be made unanimously by the directors.
- Any information on decisions involving the acquisition, sale and acceptance or rejection of specific investment offers by an institutional investor in the stock market.

## 7.2. People who are presumed to have insider information

It is presumed that the following persons have insider information:

- The directors, managers, administrators, senior executives and liquidators of the issuer or institutional investor, if appropriate.
- The persons indicated above, who act as controller of the issuer or institutional investor, as the case may be.
- The controlling persons or their representatives who carry out transactions or negotiations intended to transfer that control.
- Directors, managers, administrators, legal representatives, senior executives, financial advisers and securities broker-dealers, with respect to any information on decisions involving the acquisition, sale and acceptance or rejection of specific investment offers by an institutional investor in the stock market and any information relating to the placement of securities that has been entrusted to them.

It is also presumed that the following persons possess insider information, to the extent that they had direct access to the facts contained in the information:

- The main and dependent executives of the external auditing companies of the issuer or institutional investor, as the case may be.

- The partners, managers, administrators and main executives and members of the rating boards at the rating agencies that rate the issuer's securities or the issuing company.
- Employees working under the direct direction or supervision of the directors, managers, administrators, main executives and liquidators of the issuer or institutional investor, as the case may be.
- Persons who provide permanent or temporary advisory services to the issuer or institutional investor, as the case may be, insofar as the nature of their services may allow them access to that information.
- Public officials working at institutions that supervise issuers of publicly offered securities or funds authorized by law.
- The spouses and partners of the persons indicated in the first paragraph of this section 7.2, as well as any person living at the same residence.

## 7.3. Obligations and prohibitions for individuals with insider information

Persons who, through their job, position, activity or relationship with the issuer of securities or with persons who are presumed to have insider information, have the following obligations:

- They must maintain confidentiality and cannot use the information for their own benefit or that of others, or acquire or sell, for themselves or for third parties, directly or through other people, the securities regarding which they have insider information.
- They are prohibited from using insider information to obtain profits or avoid losses, through any type of transaction involving the securities to which the information refers or with instruments whose returns are affected by those securities.

*The use or disclosure of inside information carries criminal penalties and the obligation to compensate anyone harmed*

- They must refrain from communicating the information to third parties or from recommending the acquisition or sale of the securities concerned, and ensure that no such action occurs through subordinates or trusted third parties.

## 7.4. Penalties for non-compliance

Anyone who reveals or uses insider information, for his or her own benefit or that of others, or acquires or sells, on his or her own behalf or for third parties, directly or through other people, the securities for which they have insider information will be subject to ordinary imprisonment of a minimum to medium term (from 541 days to 10 years).

In turn, anyone harmed will be entitled to claim compensation from the offender within four years from the date the insider information was disclosed to the market and the investing public.

The above does not preclude the offender's obligation to repay to public authorities, unless there is another injured or aggrieved party, all gains or profits obtained from insider trading.

# 8 Free market competition

*Chilean regulation penalizes actions that hinder free market competition and includes a mandatory prior notification mechanism regarding certain transactions that have effects in Chile*

## 8.1. Overview

The regulation of free market competition in Chile is essentially set out in Decree-Law 211 of 1973 and its amendments ("DL 211"), and its main purpose is to promote and defend free market competition. In general, DL 211 penalizes any event, action or agreement that impedes, restricts or hinders free market competition or that tends to produce such effects.

Basically, the main entities responsible for promoting and protecting free market competition are the Free Market Competition Defense Tribunal ("TDLC") and the National Economic Prosecutor's Office ("FNE").

### 8.1.1. TDLC

The TDLC is an independent body, subject to the supervision of the Supreme Court. It is made up of five regular members, three of whom, at least, must be lawyers and two must be graduates or have postgraduate degrees in economics, plus two alternates. The role of the TDLC is to prevent, correct and penalize any action against free market competition. It has the authority to hear both contentious and non-contentious matters, issue general instructions and rule on certain special appeals.

### 8.1.2. FNE

The FNE is a decentralized, independent public service, subject to the supervision of the President of the Republic through the Ministry of Economy, Development and Reconstruction and headed by the National Economic Prosecutor.

Within the defense and promotion of free market competition, the FNE has the following powers:

- It is endowed with broad powers to investigate any events, actions and agreements that prevent, restrict or hinder free market competition, or that tend to produce such effects.
- It acts as a party, representing the general interest, before the TDLC and the courts of justice, and it may require the TDLC to exercise its authority.
- It signs out-of-court agreements with economic agents involved in its investigations to safeguard free market competition.
- Supervises compliance with its resolutions and the judgments reached by the courts of justice with respect to free market matters.

## 8.2. Anticompetitive practice

Under article 3 of DL 211, any event, action or agreement that prevents, restricts or hinders free competition, or that tends to produce such effects, constitutes anticompetitive practices. In addition to this generic offense, article 3 establishes certain special cases of anticompetitive behavior. We highlight the following:

### 8.2.1. Collusion

In general, agreements between competitors that have the effect or potential effect of preventing, restricting or hindering free competition are considered especially harmful to market competition.

Article 3 a) of DL 211 includes certain practices known as "hard cartels" that refer to anticompetitive agreements on price setting, limitation of production, allocation of zones or market quotas, and the distortion of bidding processes, and whose anticompetitive nature is independent of the market power held by the parties, their intention or the anticompetitive effects of the behavior. This article also penalizes agreements or concerted practices that, by granting market power to competitors, consist of determining marketing conditions or excluding current or potential competitors.

### 8.2.2. Abuse of dominant position

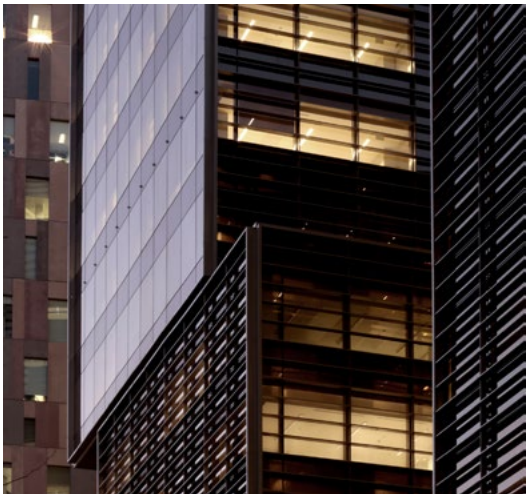
Article 3 b) of DL 211 penalizes the abusive exploitation by an economic agent, or a group of them, of a dominant position in the market, either by setting purchase or sale prices, imposing another product in a sale, assigning zones or market shares or imposing other similar abuses. It should be noted that it is abuse of the dominant position that is illegal and not the dominant position itself. There is no legal definition of what it means to have a dominant position or a pre-established defining threshold, so analysis is carried out on a case-by-case basis, depending on the market's characteristics.

Within the definition of illegal abuse of a dominant position, the FNE investigates the behavior that constitutes vertical restrictions (including price setting or suggestions, exclusive territories, preferred customer clauses and linked sales). It has indicated that its acceptance of the regulations on free market competition will depend on weighting the efficiencies, risks and anticompetitive effects inherent to those regulations, taking into consideration (i) the market share of economic agents, (ii) the anticompetitive effects of the restriction, and (iii) the efficiencies arising from the law that cannot be achieved through less restrictive free market measures.

### 8.2.3. Predatory practices

Article 3 c) of DL 211 penalizes predatory practices and unfair competition to achieve, maintain or increase a dominant position.

Predatory practices seek to exclude a competitor or impede the entry of a new competitor (e.g.,



predatory pricing). Unfair competition refers to any conduct contrary to good faith or good practices that, through illegitimate means, seeks to divert customers from a market agent as defined by Law 20169 on Unfair Competition, such as misappropriation of the reputation of others and misleading advertising.

#### 8.2.4. Cross participation or interlocking

Article 3 d) of DL 211 refers to the simultaneous participation of a person in executive or director positions in two or more competing companies, provided that the business group of each of these has an annual income that exceeds 100,000 UF (approximately USD 3,960,625) in the last calendar year. DL 211 requires the FNE be notified of certain acquisitions of capital in a competing company.

## 8.3. Penalties

If violations of free market regulations are detected, the TDLC may impose the following penalties:

- Fines for the legal person and its directors, managers and any other party involved up to (i) 30% of the violator's sales in the line of products or services associated with the violation during the period of violation; (ii) twice the economic profit arising from the violation; and (iii) 60,000 UTA (approximately USD 50,000,000), in the event that the aforementioned penalties cannot be applied.
- Modification or termination of actions, contracts, covenants, systems or agreements contrary to the law may be ordered, as well as the modification or dissolution of legal entities of private law participating in the action.
- For the behavior described in article 3 a), a ban on contracting with the State can also be ordered, as well as a ban on being awarded any concessions granted by the State. Behavior that constitutes hard cartels may also be penalized (imprisonment between 3 years and one day and 10 years), together with disqualification from holding management positions. It should be noted that there is a compensated whistleblower procedure that allows the penalties associated with collusion to be waived or reduced in the event of cooperation, under certain conditions.
- The above does not preclude any action for compensation of damages initiated by affected parties.

## 8.4. Control of concentration of operations

DL 211 includes a mandatory prior notification mechanism with the FNE regarding certain concentrations of operations that have effects in Chile.

#### 8.4.1 Requirements

The notification obligation is subject to two related requirements:

- The transaction represents a concentration of operations under article 47 DL 211, defined as any event, act or agreement, or a group of them, constituting a concentration of operations that has the effect of two or more economic agents that are not part of the same business group, and previously independent from each other, ceasing to be independent in any of their business areas, through any of the following means: (i) merger, (ii) acquisition of rights that grant decisive influence over the management of another company, (iii) association to set up an independent and

*The notification procedure has two phases*

permanent economic agent, or (iv) acquisition of control over the assets of another.

- When certain thresholds defined by the FNE are exceeded, although voluntarily notification of transactions that do not exceed those thresholds is allowed. This requirement means, in turn, the fulfillment of the following related requirements: (i) sales in Chile by the economic agents that plan to concentrate are, during the year before the year notification is verified, equal to or greater than the threshold established by the resolution issued by the FNE (currently, UF 2,500,000, or approximately USD 100,000,000); and (ii) at least two of the economic agents planning to concentrate have individually generated sales in Chile equal to or greater than the threshold established by the resolution issued by the FNE (currently, UF 450,000, or approximately USD 18,000,000).

### 8.4.2 Procedure

The requirements that the notification must meet are regulated by Decree 33 of March 1, 2017 issued by the Ministry of Economy, Development and Tourism, which approves the Regulation on the Notification of a Concentration Operation.

In general, a two-phase procedure is established as follows:

*Concentration operations cannot be completed until the final resolution ending the proceedings has been issued*

- **Phase 1.** The FNE must issue a resolution within 30 business days after the beginning of an investigation, either by simply approving the operation, approving it subject to certain conditions presented by the notifying party, or extending the investigation for an additional 90 business days when it considers that the operation could substantially reduce competition.
- **Phase 2.** It includes an extension of the phase by an additional 90 business days. Once this additional period has elapsed, the FNE can approve the operation (purely and simply, or subject to compliance with the conditions presented by the notifying party) or prohibit it. An appeal for review against the resolution that prohibits the operation can be filed with the TDLC.

### 8.4.3 Effects

Economic agents cannot complete concentration operations (which are suspended) until the final resolution or judgment ending the proceedings concerned has been issued.

### 8.4.4 Penalties

Failure to comply with the duty to not complete a concentration operation reported to the FNE that has been suspended, or with the obligation to report a concentration operation, is subject to the penalties established under Section 8.3 above, regardless of the fact that, in the second case, the TDLC can impose fines of up to 20 UTA per day (approximately USD 16,500) for each day of delay from the transaction completion date.


80.08.1
36.5.2

# 9 Public offer for the acquisition of shares

*Acquiring control over a public limited liability company in which a premium is paid to the controlling entity is subject to the regulations established by the Securities Market Law on Public Offers for the Acquisition of Shares*

## 9.1. Overview

Acquiring control over a public limited liability company incorporated in Chile in which a premium is paid to the controlling entity is subject to the regulations established by the Securities Market Law on Public Offers for the Acquisition of Shares. The purpose of these regulations is to protect minority shareholders by distributing among all of them the indicated "premium" that the buyer is willing to pay to gain control of the company in question.

A public offering is prepared to acquire shares in public limited liability companies or securities convertible into shares, through which its shareholders receive an offer to acquire their shares under conditions that allow the bidder to obtain a certain percentage ownership of the issuing company, within a specified period.

## 9.2. Voluntary and mandatory public offering

The offer may be voluntary, if the bidder presents it without being legally required to do so, or mandatory if required by law.

The Securities Market Law describes the cases in which a public offering must necessarily be carried out:

- Those that allow obtaining control of a company;
- If, as a result of an acquisition, control of two thirds or more of the capital of a company is obtained, an offer for the remaining shares must be made within 30 days after the previous offer (known as a "secondary offering"); and
- If the intention is to acquire control of a company that, in turn, controls another public limited company, when representing 75% or more of the value of its consolidated assets, an offer must be previously made to the shareholders of the latter for an amount not less than the percentage that allows control to be obtained.

The following situations are exempt from the above:

- Acquisitions resulting from a capital increase consisting of the first issue of shares which, due to their number, allows the buyer to obtain control of the issuing company;
- Acquisitions of shares that are sold by the company's majority stakeholder, provided that it is listed on a stock market and the price of the sale is paid in cash, and it is not substantially higher than the market price (for these purposes, a premium is deemed to

exist if the price is 10% higher than the market price of the shares);

- Those that occur as a result of a merger;
- Acquisitions due to death; and
- Those originating from forced sales.

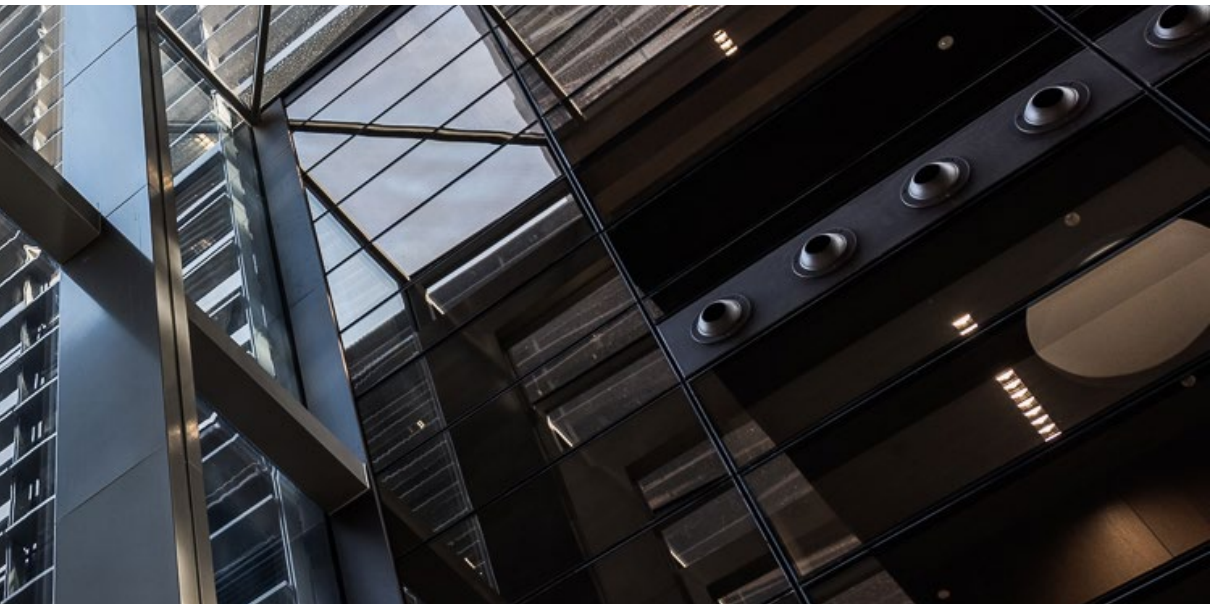
## 9.3. Restrictions on the bidder

- The public offering must involve all shareholders and must be irrevocable, but it may be subject to objective expiration conditions.
- If the number of acceptances exceeds the number of shares offered for acquisition, the bidder must buy them on a pro rata basis from each of the accepting shareholders.
- The public offering can be valid for 20 to 30 days, although in some cases the period must be 30 days, and it can be extended only once for a period of 5 to 15 additional days.
- The public offering can only be modified during the validity period to improve the price offered, in which case the shareholders that have previously accepted the offer have the right to receive the increase, or to increase the number of shares offered for purchase.
- Shareholders that agree to sell in a public offering may partially or fully withdraw during the offer's validity period and recover all of their shares or a portion of them.
- During the period the offer is valid, the buyer cannot acquire shares in the target company through private transactions or on national or foreign stock exchanges.
- If, within the 30 days prior to the effective date of the offer and up to 90 days after the date the public offering takes place, the buyer directly or indirectly acquires shares included in the offer under more beneficial price conditions than those set out in the public offering, the shareholders that have sold the shares are entitled to demand the difference in price or the benefit in question, taking into consideration the highest value paid. In such cases, the buyer and the persons who have benefited are jointly and severally obligated to pay.
- A shareholder that has acquired control cannot, within 12 months following the transaction date, acquire additional shares in the target company for an amount equal to or greater than 3%, without making a public offering, and the unit price per share cannot be less than that paid in the takeover transaction.

*The issuing company and the members of its board of directors are prohibited from acquiring treasury shares and from other actions during the entire term of the public offering period*

## 9.4. Restrictions and obligations of the issuing company and its board of directors

- During the entire term of the public offering validity period, the issuing company and the members of its board of directors are prohibited from acquiring treasury shares, creating subsidiaries, disposing of assets that represent more than 5% of the company's total value, or increasing its debt by more than 10% with respect to the debt before the start of the public offering. However, the Financial Market Commission ("CMF") may authorize, duly giving reasons, any of the above transactions as long as they do not affect the normal course of the public offering.
- The issuing company must provide the buyer an updated list of its shareholders within two business days from the start of the public offering.
- The directors of the issuing company must individually issue and make available to the public a written report containing their informed opinion regarding the suitability of the public offering for shareholders.



10

# Consumer Protection

*The Law on the Protection of Consumer Rights regulates the relationship between suppliers and consumers of goods and services, establishes a series of rights for consumers and regulates adhesion contracts to prevent suppliers from including abusive clauses*

The relationship between suppliers and consumers of goods and services is regulated in Chile by Law 19496 on the Protection of Consumer Rights ("**LPDC**").

## 10.1. Consumer and supplier definitions

Article 1 of the LPDC defines consumers and suppliers in the following terms.

**Consumers or users:** natural or legal persons that, by virtue of any onerous legal act, acquire, use, or enjoy goods or services as the final recipients. Under no circumstances may suppliers be considered consumers.

**Suppliers:** natural or legal persons, of a public or private nature, that habitually carry out production, manufacturing, import, construction, distribution or marketing activities involving the supply of goods or services to consumers, for which a price or fee is charged. Persons that have a professional degree and carry out their activity independently will not be considered to be suppliers.

An "act of consumption" must be carried out to be considered a consumer. An act of consumption must fulfill three requirements: (i) a payment is made (ii) within the context of a contract for which a good or service is received; and (iii) the good or service is acquired by the consumer as the final recipient.

The LPDC establishes that those who should be considered suppliers cannot be considered to be consumers. However, Law 20146, which sets out standards for smaller companies ("SME Statute"), makes certain LPDC standards applicable to micro and small companies, including consumer rights and obligations, supplier obligations, adhesion contracts, liability for noncompliance, information and advertising

## 10.2. Pro-consumer principle

Article 2 ter LPDC establishes the pro-consumer principle, under which the LPDC provisions must be interpreted in favor of consumers, supplementing this prevailing interpretation with the general rules for the interpretation of the LPDC.

## 10.3. Scope of the LPDC

Article 2 of the LPDC establishes its scope of application, stating that the rules relating to consumer protection apply to the following relationships:

- Legal acts that are commercial in nature for the supplier and civil in nature for the consumer.
- Selling tombs or burial locations.
- Acts or contracts in which the supplier is required to provide the consumer or user with the use or enjoyment of a property for specified, continuous or discontinuous periods not exceeding three months, provided that they are furnished and for the purpose of rest or tourism.
- Education contracts for basic, secondary, technical, professional and university education, but only in relation to the rules of equity in the stipulations and in the fulfillment of adhesion, information and advertising contracts and to file a claim with the courts to enforce those rights. The right to file an appeal with the courts regarding the quality of education or the academic conditions set by educational establishments is excluded.
- Contracts for the sale of homes built by construction companies, real estate companies and by the Housing and Development Services, excluding construction quality.
- Contracts entered into or executed to obtain health services, excluding health benefits. Those regarding matters relating to the quality of those services and their financing through health funds or insurance. Those regarding the accreditation and certification of public and private individual or institutional suppliers and, in general, those regarding any other matter that is regulated by special laws.

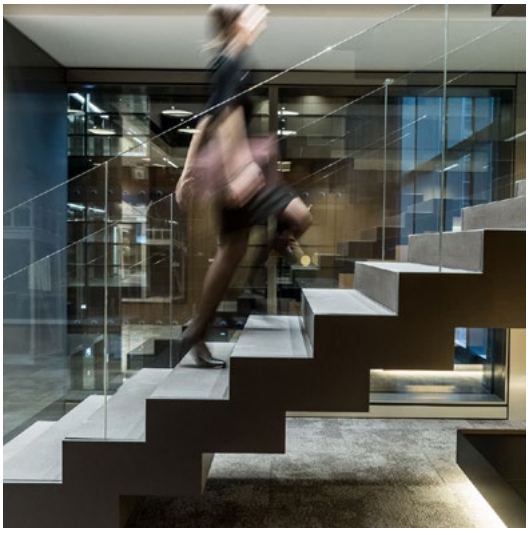
## 10.4. Consumer rights and obligations

The LPDC establishes a series of rights and obligations for consumers that cannot be waived in advance.

The main consumer rights and obligations are as follows:

- Freedom to choose goods or services. Silence does not constitute acceptance by consumers.
- A right to accurate and timely information regarding the goods and services offered, their price, contract conditions and other relevant features, and the obligation to duly become informed of those items.
- No arbitrary discrimination by suppliers of goods and services.
- Safety when consuming goods or services, protection of health and the environment and the obligation to avoid risks that may affect those items.
- The right to adequate and timely repair and compensation for all material and moral damages in the event of breach of any of the obligations set out in the contract with the supplier, and the obligation to act in accordance with the means afforded by the law.
- Education for responsible consumption and the obligation to carry out consumer transactions with an established business.
- Possibility of unilaterally terminating the contract within 10 days after receiving the product or contracting for the service, in case of acquisition of goods and contracting of services at meetings with the supplier, electronically or in physical stores in which the consumer did not have direct access to the good.

The LPDC also establishes **specific rights for consumers of financial products**:



- To receive information on the total cost of the product or service.
- To know the objective conditions previously and publicly established by the supplier to access credit and for other financial transactions.
- The timely release of the guarantees established to ensure compliance with obligations, once they have been satisfied.
- Choice of an appraiser of the assets offered as collateral from among the alternatives presented by the financial institution.
- Information, when requested, regarding the total settlement of credit facilities.
- Always being heard by the competent court under the LPDC.

## 10.5. Regulation of adhesion contracts

The LPDC regulates the rules of equity in the stipulations and in the fulfillment of adhesion contracts to prevent suppliers from including abusive clauses in adhesion contracts.

Although the LPDC does not define abusive clauses, it is understood that clauses are abusive when they can give rise to hidden damages to consumers in such a way that, if they had been aware of the possibility of damages, they would not have purchased the good or contracted the service.

The penalty for abusive clauses is their nullity.

The LPDC establishes specific grounds that constitute unfair clauses and a general rule.

Specifically, unfair clauses are those that:

- Grant one of the parties the power to terminate or amend the contract at its sole discretion or to unilaterally suspend its execution.
- Establish price increases for services or surcharges, unless they relate to additional benefits that may be accepted or rejected in each case and that are specifically defined separately.
- Place on the consumer the burden of defects, omissions or administrative errors, when not responsible for them.
- Invert the burden of proof to the consumer.
- Contain absolute limitations of liability that may deprive the consumer of the right to compensation for defects that affect the usefulness or essential purpose of the product or service.
- Include blank spaces that have not been filled in or blocked off before the contract is signed.
- Limit the remedies available to consumers to enforce their rights;

In general, abusive clauses are considered those that are contrary to the requirements of good faith, taking into account objective parameters for these purposes and causing, to the detriment of the consumer, a significant imbalance in the rights and obligations that result from the contract between the parties.

Additionally, under the LPDC, ambiguous clauses in adhesion contracts will always be interpreted in favor of consumers. Also, in case of conflicts or inconsistencies between clauses, the most favorable to the consumer must prevail.

## 10.6. Liability for noncompliance and actions

As a result of violations of the LPDC, consumers may submit complaints and file claims for any actions, omissions or behavior that affect the exercising of any of their rights.

These complaints or actions may be aimed at penalizing the supplier responsible for the violation, canceling the abusive clauses included in adhesion contracts, obtaining the supply of the unfulfilled obligation, stopping the action that affects the exercising of consumer rights, or obtaining due compensation for damages or the appropriate repair.

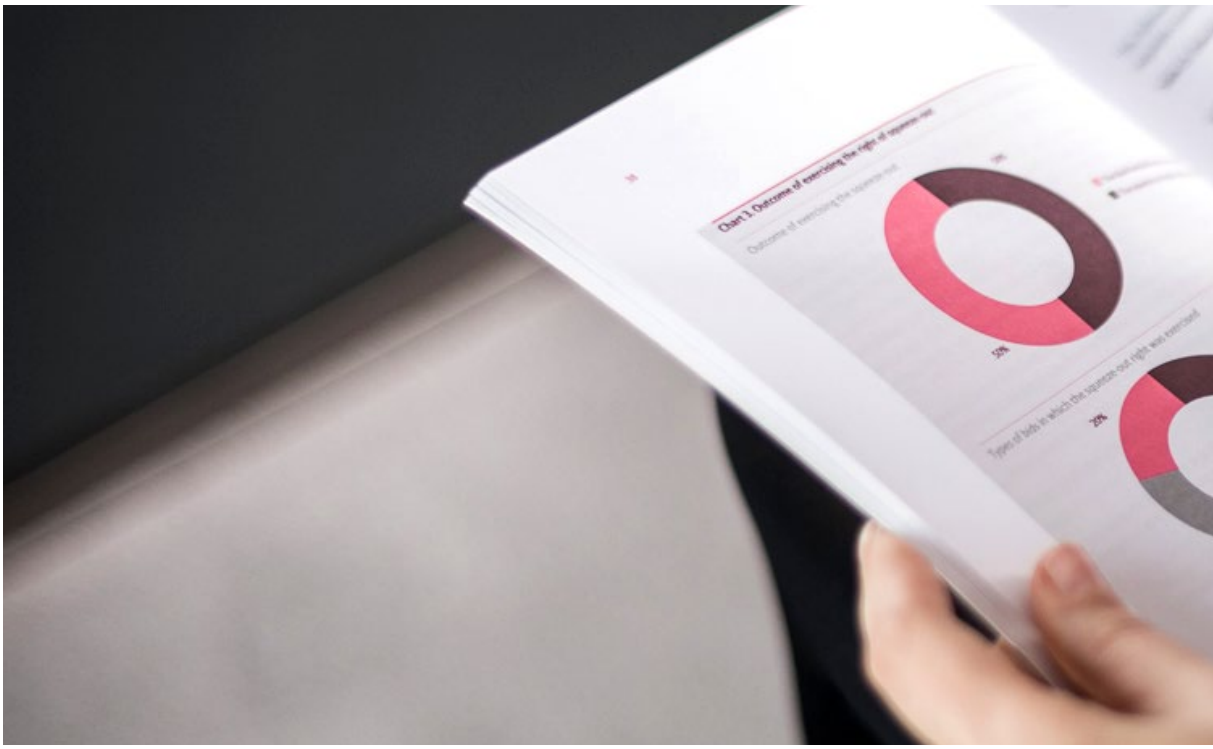
Filing complaints and actions can be done individually, and individual interests are those that exclusively promote the defense of the affected consumer's rights.

Exercising actions can also be done for the benefit of the interests of a group or the broad interest of consumers in general. Interests of a group are those promoted to defend the common rights of a certain or ascertainable group of consumers linked to a supplier through a contractual relationship. Broad interests of consumers are those that promote the defense of an undetermined group of consumers whose rights have been affected. Complaints or actions presented in defense of individual interests may be filed, at the choice of the affected consumers, with the local police court with jurisdiction over their residence or the supplier's address.

Actions in defense of interests of a group or broad interests of consumers in general can be filed with (i) the National Consumer Service; (ii) a Consumers Association; and (iii) a group of affected consumers with the same interest. These actions fall within the authority of the respective civil courts, under the general rules of court competencies.

## 10.7. The National Consumer Service

The National Consumer Service ("SERNAC") is the agency responsible for ensuring compliance with the LPDC, providing information regarding consumer rights and obligations, and carrying out consumer information and education actions.



*To ensure that adhesion contracts comply with the law, SERNAC grants the "SERNAC Seal"*

Its main functions include the following:

- Supervising compliance with the provisions of the LPDC and all consumer protection regulations;
- Administrative interpretating of consumer protection regulations for which it is responsible for monitoring;
- Proposing the issue, amendment or repeal of legal and regulatory precepts when necessary to adequately protect consumer rights;
- Initiating actions to defend the interests of groups or the broad interests of consumers in general; and
- Preparing, publishing and promoting consumer information and education programs.

Among the SERNAC'S obligations and powers is granting the "SERNAC Seal" to adhesion contracts by banks and financial institutions, commercial establishments, insurance companies, clearing houses, savings and credit cooperatives and other suppliers of credit, insurance and, in general, any financial products.

The purpose of granting the SERNAC Seal is to ensure that these contracts comply with the law, that suppliers have customer service resources and that the consumer is allowed to use an arbitrator or mediator to resolve financial disputes, in the event of not receiving a satisfactory solution from the financial supplier's customer service.

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* *in association with the respective local law firm*

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