Guide to doing business in Chile

April, 2018

GARRIGUES
Ways to invest in Chile

A) Company with separate legal personality

There are three main types of companies: the sociedad de responsabilidad limitada (S.R.L.), or limited liability company, the sociedad anónima (S.A.), or public limited company, and the sociedad por acciones (S.p.A.), or simplified joint stock company.

The main characteristics of S.R.L.s are as follows:

- Requires at least two shareholders, whose liability is limited to the amount of their capital contribution.
- May not have more than 50 shareholders or operate in the banking industry.

The main characteristics of S.A.s are as follows:

- Formed by the pooling of capital by shareholders liable up to the amount of their respective contributions, and managed by a board of directors, whose members can be changed at any time.
- May be open, closed or of a special nature. Open S.A.s are those that list their shares, either voluntarily or to comply with legal obligations, with the Securities Registry, supervised by the Chilean market regulator, Comisión para el Mercado Financiero (“CMF”). Under Chilean Securities Market Law 18,045, the following companies must be entered at the Securities Registry:
  - Issuers of securities that are publicly offered to investors.
  - Securities offered publicly.
  - Shares of S.A.s that have 500 or more shareholders or where at least 10% of the subscribed capital is owned by a minimum of 100 shareholders, excluding any shareholder that individually owns, either directly or indirectly, more than 10% of the capital.
  - Shares issued by S.A.s that seek registration voluntarily or to comply with legal requirements.

Companies entered on the Securities Registry are subject to the supervision of the CMF.

All other S.A.s are considered to be closed S.A.s. In addition, Special S.A.s are those that are subject to special rules, including but not limited to banks, insurance companies, pension fund managers, stock exchange companies and general fund managers.

- S.A.s are primarily managed by a board of directors, managers and the general shareholders’ meeting.

a. Board of directors: Primary management body that represents the S.A. both in and out of court, with all the powers of management and disposition not reserved for the shareholders in general meeting by law or in the bylaws.

b. Manager: Appointed by the board of directors, which also determines the authorities and duties of each managerial position.

c. General shareholders’ meeting: Can be annual or special, depending on the matters to be addressed.

The main characteristics of S.p.A.s are as follows:

- More flexible than S.A.s and S.R.L.s, and can be established and exist with a single shareholder.
- Governed by the Chilean Commercial Code and the S.p.A.’s bylaws. For matters not specifically addressed in the bylaws, the regulations for closed S.A.s will apply.
- As with S.A.s and S.R.L.s, the liability of shareholders in S.p.A.s is limited to the amount of their respective contributions.
- According to the Chilean Commercial Code, S.p.A. shareholders may freely select the

1 Law 18,046, on S.A.s and Securities Market Law 18,045

2 Among other obligations, these companies are required to accurately, sufficiently and duly disclose all essential information on their organization, their securities and any share offers.
management structure they deem most appropriate. Except where all shareholders unanimously agree, S.p.A.s are required to hold general shareholders' meetings in order to amend the bylaws.

B) Representative office of a foreign company

Extension in Chile of the legal personality of the foreign company. Governed by the Commercial Code and by Law 18,046 on S.A.s

As representative offices do not have their own legal personality, the commercial activities they carry out are deemed to be performed by the foreign company.

Procedural formalities for incorporating a company

In general, a public deed of incorporation must be executed before a notary public. By way of exception, S.p.A.s can be incorporated using a notarized private instrument.

In any event, an extract of the deed of incorporation or private incorporation instrument must be placed on file at the Commercial Registry and published in the Official Gazette, within the statutory periods established for each type of company.

General matters regarding investment

The following is considered foreign direct investment:

- Transfer into Chile of foreign capital or assets owned or controlled by a foreign investor, with a value of at least US$5,000,000 or the equivalent foreign currency amount, in the form of freely convertible foreign currency, any type or status of tangible asset, reinvestment of profits, capitalization of loans, transfer of capitalizable technology of any nature, or foreign investment loans from related companies.

- Investments that, within the amounts referred to above, are transferred to Chile by means of the acquisition of or participation in the capital or equity of a Chilean company, directly or indirectly, whereby the foreign company obtains control of at least 10% of the voting rights in the investee, or of an equivalent percentage ownership in the capital of a non-S.p.A. or in the equity of the company in question.

A foreign investor is understood to be any individual or legal entity incorporated abroad and neither resident nor domiciled in Chile, that transfers capital to Chile in the terms indicated above. Qualifying foreign investors are entitled to request a certificate from the Chilean Investment Promotion Agency, allowing that company to operate under the common foreign investment legal framework established in Law 28,848, which sets out a series of advantages for foreign investors.

Tax issues

The main taxes established under Chilean legislation are as follows:

Business income tax (Chilean IDPC)

Nature: Direct, proportional internal revenue tax subject to annual returns, levied on the capital gains listed in article 20 of the Chilean Income Tax Law (LIR), i.e., corporate income.

Tax rate: Depending on the tax system to which the business income taxpayer is subject, the rate would be 25% (attributed regime) or 27% (partially integrated regime).

Business income tax is levied on gross income from full accounting records, subject to certain legal exemptions, including but not limited to interest income and presumptive income.

Employment income tax (Chilean IUSC)

Nature: Direct, progressive (by tax bracket) internal revenue tax made through monthly withholdings, applied to employment income as defined in article 42 of the LIR, which distinguishes between dependent and independent workers.

Dependent workers (contracted employees): Tax is withheld by the employer upon payment of employee compensation, for deposit with the tax authorities by the 12th day of the following month. The maximum tax rate is 35%, levied on all legally-taxable employment income and therefore excluding receipts that are not considered income for tax purposes.

Independent workers (self-employed): Subject to individual income tax (Chilean IGC) and required to issue invoices for work performed, with the payer withholding 10% to be deposited with the tax authorities.

3Law 20,848
**Individual income tax (Chilean IGC)**

**Nature:** Direct, progressive internal revenue tax subject to annual returns and levied on income received or accrued by, or attributed to, individuals domiciled or resident in Chile.

**Tax rate:** The maximum rate is 35%, which can be credited against the business income tax paid on the same income.

Taking into account the foregoing and depending on the tax regime applied, the total individual income tax burden would be either 35% (attributed regime) or 44.45% (partially integrated regime).

**Nonresident income tax (Chilean IA)**

**Nature:** Direct, proportional internal revenue tax levied on Chilean-source income received by or attributed to taxpayers neither resident nor domiciled in Chile. This tax is regulated in articles 58, 59 and 60 of the LIR, which establishes different rates and tax administration methods depending on the income in question.

**Dividends and profit-sharing** paid to a taxpayer neither resident nor domiciled in Chile are subject to nonresident income tax (an annual, return-based tax established in article 58) at 35%. Notwithstanding any tax treaties in effect, Chile may always subject such income to nonresident income tax, to the extent that the related taxpayer can credit all business income tax paid by the issuing company on the same income.

**Other Chilean-source income,** such as royalties, interest expense, remuneration for services rendered in Chile or abroad, lease payments received and insurance and reinsurance premiums, are subject to nonresident income tax under article 59 of the LIR, through a monthly withholding at rates of between 4% and 80%. Business income tax paid may not be credited in these cases. Instead, the payer must withhold the nonresident income tax for deposit with the tax authorities within the first 12 days of the month following the payment, distribution, withdrawal, remittance, payment on account or draw down.

**Tax treaties:** Chile has entered into numerous tax treaties whereby nonresident income tax can be reduced or exempted.

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**Mining tax**

**Nature:** Levied on "operational income" from mining activities.

**Taxpayer:** Any individual or legal entity that extracts minerals subject to concession and sells these minerals in any state of production.

Levied on the liquid mining operational income, which is determined according to the mining company’s production and sales levels, as follows.

- Mining companies whose annual sales (including to related parties) do not exceed the equivalent value of 12,000 metric tons of fine copper are exempt from the mining tax.
- Mining companies whose annual sales (including to related parties) exceed the equivalent value of 12,000 metric tons of fine copper but do not exceed the equivalent value of 50,000 metric tons thereof are taxed at progressive rates varying from 0.5% to 4.5%.
- Mining companies whose annual sales (including to related parties) exceed the equivalent value of 50,000 metric tons of fine copper are taxed at a rate which depends on their mining operational margin for the year (calculated as established by law). To that end, the LIR establishes tax brackets whereby the effective rate varies from 5% to 14%.

The equivalent value of a metric ton of fine copper is determined using the weighted average cash price of Grade A copper on the London Metal Exchange during the respective year.

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**Property tax**

Property tax is levied on the official appraisal value of all real estate assets, which for these purposes is calculated by the Chilean tax authorities. Property tax is paid by the owner of the asset, although, in certain cases, the tax may be paid by the lessee or usufructuary of the property.

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**Value added tax (VAT)**

**Nature:** Indirect tax levied on the price of goods and services sold, as well as the value assigned to certain special taxable events.
**Tax rate:** 19%

**Taxpayer:** To apply VAT in sales transactions, the transactions must be carried out by regular traders. The identification of a party as a regular trader falls to the sole discretion of the Chilean tax authorities. In contrast, to apply VAT on the price of a service, the service provider need not be a regular provider. Accordingly, sporadic services are also taxed, requiring only that they are used or rendered in Chile.

**VAT exemptions:** Two exemptions are particularly relevant for foreign investors:

- Foreign investors certified under the foreign investment law are exempt from VAT on imports of capital goods to be used in the development, exploration or operation of certain projects in Chile, such as mining, industrial, forest, energy and infrastructure projects, among others, where the investment is at least US$5,000,000 and meets the other requirements set out in article 12.10 of the VAT law, which also establishes a process for requesting an exemption from the Ministry of Finance.

- Receipts not considered income under article 17 of the LIR and those subject to nonresident income tax under article 59 of the same law are also exempt from VAT, except where, in the case of nonresident income tax, the related services were rendered in Chile and are exempt by virtue of tax treaties or other laws to avoid international double taxation.

**Business license tax**

Under Decree-Law 3,063, in general, any commercial activity that requires a fixed place of business must secure a business license from the relevant municipality.

The business license tax is calculated on the basis of the capital declared by the respective company. The tax rate ranges from 0.25% to 0.5% of the corresponding capital. It may not be less than one tax unit (approximately US$79) nor exceed 8,000 tax units per year (US$634,000).

**Customs duties**

Imports of goods into Chile are subject to customs duties, determined on the basis of the item’s tariff heading and customs value and, where applicable, the origin of the merchandise. These values are set out in the Customs Tariff agreement, which systematically categorizes all merchandise for import and export.

Customs duties are levied at a general ad valorem tariff of 6%, calculated on the customs value or CIF of the goods. In addition to these duties, imports are also subject to VAT at a rate of 19% of the customs value or CIF.

Chile is party to several free trade agreements that provide for reduced tariff rates, where applicable.

**Labor and employment matters**

**Regulation:** The labor relationship is governed by the Chilean Labor Code, the individual employment contract and any regulated or unregulated collective labor agreements.

Although employment contracts can simply be established through mutual agreement, they should be ratified in writing in order to evidence the relationship terms. Where no written contract exists, the contract stipulations alleged by the employee shall be those presumed to be legally valid.

**Working hours:** In general, the usual work day, not to exceed 45 hours per week. Certain exceptions to this rule are established for managers, directors, authorized representatives entrusted with administrative powers, and those individuals not working under direct supervision.

**Salary:** The minimum monthly wage is approximately US$457. Under Chilean legislation, companies must compensate employees terminated under certain circumstances.

Other than this compensation, companies are not required to provide additional benefits to employees, except where expressly agreed in the employment contract. The main additional benefits are covered by the social security administration.

**Vacation:** In addition to public holidays, employees with over one year of service are entitled to 15 business days’ paid vacation.

**Freedom of association:** Under the Chilean constitution, the right to form labor unions in the cases and form established in the Labor Code is protected as a constitutional guarantee.
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# Garrigues Offices

## International Offices

### The Americas

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