Doing business in Chile

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GARRIGUES

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Chile is a country with a stable, open and diversified economy, which offers investment opportunities in various business sectors, such as mining, energy, agriculture, tourism and innovation.

It has a network of trade agreements with over 60 countries, which provide access to global markets and reduce import and export costs. It has also signed over 35 international double taxation treaties with various countries, including Spain, the United States of America, and the United Kingdom.

Its legislation is favorable to foreign investment, providing legal certainty for investors, flexibility to choose between different types of company to do business and guaranteeing them nondiscrimination, access to the formal exchange market, protection of property rights and the possibility of availing of various tax regimes, depending on the type and amount of the investment.

It also has over 30 bilateral investment treaties, which establish international arbitration as a mechanism for resolution of disputes between Chile and the respective investors.

In short, Chile is an attractive and reliable destination for foreign investors seeking growth and development opportunities.

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General introduction

The country's principal considerations

Chile is a tricontinental country, made up of three geographical zones: continental Chile, which comprises a strip on the west coast of the Southern Cone; insular Chile, which is a collection of volcanic islands in the Southern Pacific Ocean and Chilean Antarctic Territory. It borders Peru to the north, Bolivia to the northeast and Argentina to the east, with total land borders of 7,801 km, and

the Drake Passage to the south.

Its capital city is Santiago, situated in the central zone, other significant cities being Valparaíso, Concepción and Antofagasta. The country's official language is Spanish.

The population of Chile is over 19 million.

According to figures from the National Institute of Statistics of Chile, in the last quarter of 2023 a national unemployment rate of 8.5% was recorded.

The legal currency is the Chilean peso (CLP).

According to figures from the World Bank, the country's GDP is approximately USD 301.03 billion, whereas the GDP per capita is USD 15,355.50.

Principal imports and exports

Chile is the world's largest producer of copper, lithium and iodine, and also of forest and agricultural products. It is also a strong exporter of fishery products, such as Atlantic salmon.

According to reports of the Sub-secretariat for International Economic Relations, in 2023 exports reached USD 94,937 million, of which "traditional" exports accounted for 54% (represented mainly by copper, lithium carbonate and cellulose) and "non-traditional" exports accounting for 46% (with a significant increase in the fruit sector). The U.S., China and the European Union are Chile's most relevant export markets.

Chile's principal imports are fuels, cars, cellular phones, medicines and meat. Total imports for the year 2023 reached USD 85,508 million, intermediate goods accounting for 54%, consumer goods for 26% and capital goods for 20%. The principal markets from which Chile imported were China, Mercosur, the U.S. and the European Union.

The economy's characteristics

Chile cuenta con una economía diversificada en Chile has a diversified economy in its business sectors, including mining, agriculture, fisheries and services, which reduces its reliance on a single sector. Furthermore, Chile has implemented stable and prudent economic policies, with a robust institutional framework that promotes investment and development.

Economic openness and active participation in international trade and tax agreements have boosted exports. Political stability, solid independent institutions such as the Central Bank and low levels of corruption also contribute to investor confidence. In addition, responsible fiscal management has kept public debt under control, inflation at manageable levels, which has provided Chile with the highest income per person (GDP per capita) in Latin America, according to official figures from the Ministry of Foreign Relations.

The country shows resilience in the face of economic crises, implementing effective counter-cyclical measures with an ability to look ahead. Education and innovation are priorities on the national agenda, training of the workforce and technological development being promoted.

In summary, economic diversification, political stability, trade openness and responsible fiscal policies are key factors that have consolidated Chile as one of the most solid economies in the region.

The principal areas that make up the Chilean economy are mining, agriculture and tourism.

In Chile approximately 25 different products are extracted from mines, mainly copper, lithium and iodine, Chile being the world's largest producer of these minerals.

The agrifood sector in Chile is fundamental for the country's economy, accounting for a significant part of exports. Climatic diversity allows production of a wide range of agricultural products, such as fruits, wines, cereals and forestry products. The Chilean food industry has grown steadily, being known for its capacity for innovation, quality and traceability. The adoption of sustainable practices and advanced technology is a characteristic feature of agriculture. Agricultural exports, especially fresh fruits, play a crucial role in generating revenue, China being one of the principal destinations. Despite the challenges, such as climate variability, the agrifood sector in Chile is still a key element for the country's economic development and international profile. Within the agrifood sector there are around 27 subsectors linked to exports.

Finally, as regards the tourism sector, Chile stands out as an ecotourism destination, due to its geographical diversity. The Chilean Federation of Tourism Enterprises (Fedetur), estimates that

2023 ended with approximately 3,660,000 foreign tourists arriving in the country, even coming close to pre-pandemic figures, with a forecast for 2024 exceeding 4,400,000, i.e., maintaining the steady increase.

In 2022 it was estimated that the country's total workforce amounted to 9,610,900.

Why Chile?

Among the advantages of doing business in Chile are the following:

- Trade agreements with 64 markets, representing 64.1% of the world population.
- As part of its trade policy, Chile is a country that promotes free trade and constantly seeks to update and establish trade agreements with other countries and blocks. It has one of the most powerful networks of Free Trade Agreements in the world, allowing access to 86.3% of the world GDP under preferential tariff conditions.
- Agreements for the avoidance of double taxation with over 35 economies
- Advantageous legislation and regulation for foreign investors.
- Membership of various economic forums, like APEC, associate member both of the Andean Community and of Mercosur, and founding member of the Pacific Alliance.

Further information here.

Investment protection

Legal treatment of domestic and foreign investment

Except for some specific cases, there are no restrictions nor are authorizations required for foreign investments in Chile, both in relation to the percentage of foreign stakes in Chilean companies, and of foreign ownership of real estate.

Foreign investment in Chile is mainly regulated by Law No. 20848 on Direct Foreign Investment in Chile ("Framework Law on Foreign Investment", of January 1, 2016). Foreign investors can also use and benefit from the agreements, treaties and conventions that Chile has signed with other nations, which include Free Trade Agreements, Bilateral Investment Treaties and International Taxation Treaties.

[1] Recital 6, MODERNIZATION COMMISSION REPORT D.L. 600 – Final report modernization commission DL600 (economia.gob.cl)

Contracts signed by foreign investors with Chile, under the repealed Decree Law 600 (i.e., those signed up to December 31, 2015), will remain in force, as will the rights and obligations provided for in such contracts that are conferred or imposed on foreign investors that signed them.

Without being a regulatory framework protecting foreign investments, but rather regulations established by the Chilean Central Bank, under the powers conferred by the Law governing it in order to carry out its legal purpose of ensuring currency stability and the normal functioning of the system of payments[1], one must take into consideration Chapter XIV of the Compendium of Foreign Exchange Regulations of the Central Bank of Chile.

General considerations concerning the Framework Law on Foreign Investment

The Framework Law on Foreign Investment establishes a series of benefits for foreign investors that meet certain requirements.

Under its provisions direct foreign investment means the transfer to the country of foreign capital or assets owned by a foreign investor or an entity that is controlled by a foreign investor, of an amount exceeding USD 5,000,000 or the equivalent in other foreign currencies.

Also considered direct foreign investment is that which, taking into account the above-mentioned amount, is transferred to Chile and is made through the acquisition of a stake in the assets of a business or in the capital of the company receiving the investment, incorporated in Chile, which confers on the foreign investor control of at least 10% of the voting rights of the company's shares, or of an equivalent percentage stake in the capital or in the equity of a company.

In accordance with the provisions of the Framework Law on Foreign Investment, foreign investors' investments may be made by: freely convertible foreign currency; physical property in all its forms or states; reinvestment of profits; capitalization of debts; technology in its various forms capable of being capitalized; or loans linked to foreign investment from related companies.

Rights granted by the Framework Law on Foreign Investment to foreign investors

The Framework Law on Foreign Investment creates the Foreign Investment Promotion Agency, whose principal objective is to promote and attract any kind of capital and investments to Chile and establish the country as a foreign investment destination.

The Foreign Investment Promotion Agency will be the institution in charge of issuing a certificate, which must be sought by foreign investors interested in taking advantage of the benefits established in the Framework Law on Foreign Investment. This certificate will prove that the investor complies with the requirements to be classified as such (it being necessary to prove, inter alia, the making of the investment in Chile, the manner in which it was made, the amount, destination and nature of the investment).

The following are the rights conferred by the Framework Law on Foreign Investment on investors that hold the above-mentioned certificate:

- To remit abroad the capital invested and net profits generated by such investments, when the applicable tax obligations have been fulfilled.

- The right to access the formal exchange market to settle the currencies constituting the investment and to obtain the necessary currencies to remit the capital invested or the net profits obtained. The exchange rate applicable for the settlement or receipt of currencies on the formal exchange market will be freely agreed by the foreign investor and the relevant financial institution, when the applicable tax obligations have been fulfilled.

- To be subject to the common legal rules applicable to domestic investors, without suffering arbitrary discrimination, directly or indirectly, when compared with such investors.

- Exemption from value added tax (VAT), in relation to imports of capital goods intended for investment projects, if the requirements imposed in tax legislation are met.

Chapter XIV of the Compendium of Foreign Exchange Regulations of the Central Bank of Chile

Foreign credit transactions, deposits, investments and contributions of foreign capital that enter the country, of an amount equal to or greater than USD 10,000, or the equivalent in other currencies, will be subject to Chapter XIV of the Compendium of Foreign Exchange Regulations of the Central Bank of Chile.

The Compendium provides that transfers of funds to Chile from abroad that exceed the above-mentioned amount must be reported to the Chilean Central Bank and made through a formal exchange market entity.

It should be pointed out that, although foreign exchange transactions are currently subject to reporting obligations and must be carried out through a formal exchange market entity, the Central Bank has the power to impose other measures, such as (i) the obligation to maintain a legal reserve, which may not in any event exceed 40%; (ii) require prior authorization from the Bank for certain payments or remittances;

and (iii) impose the obligation to convert, in whole or in part, to national currency, foreign currencies received by persons resident in Chile.

It is important to bear in mind that the Central Bank is currently in the process of standardizing and updating the requirements to report foreign exchange transactions, for which purpose it is implementing a Foreign Exchange Reporting System, all of which will be carried out by a restructuring of the above-mentioned Compendium.

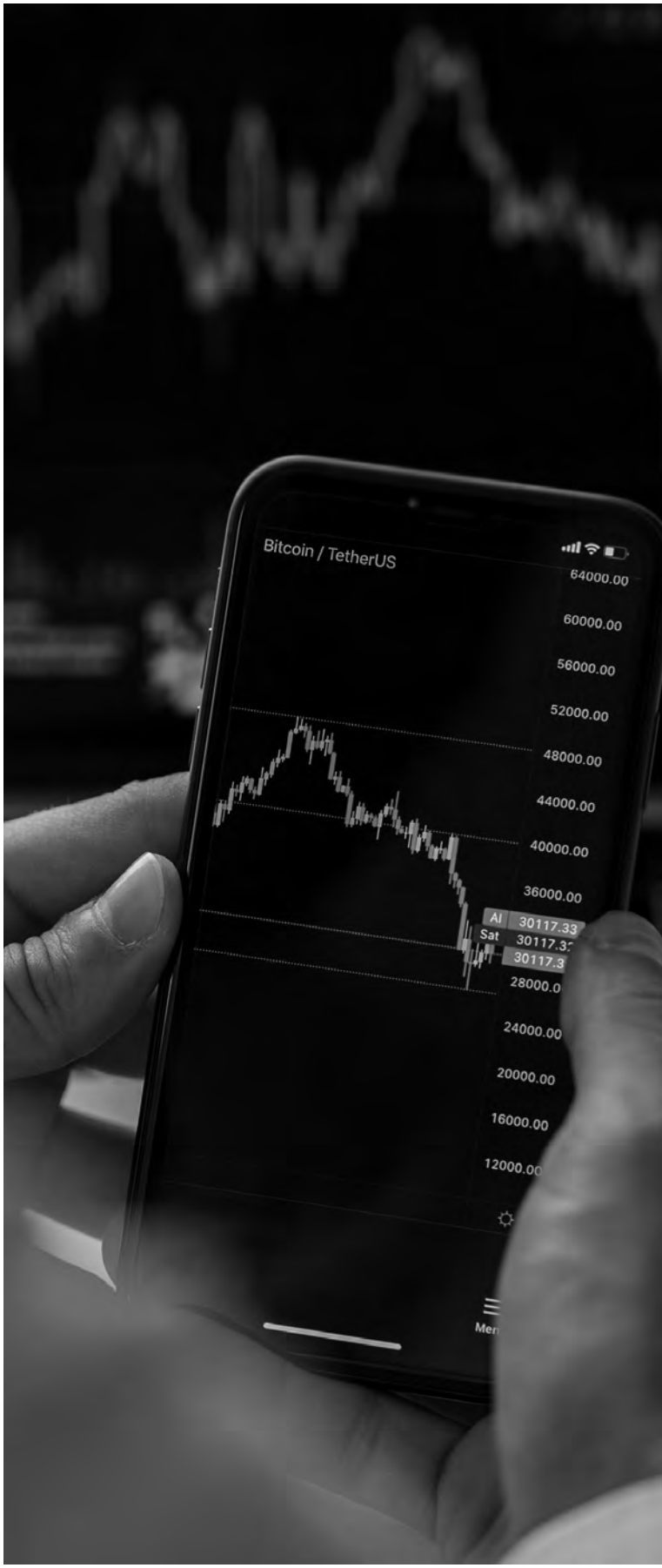
For that purpose, at the end of 2023, the Central Bank concluded a public consultation (from October 16 to December 15, 2023), to receive opinions from the public and include them in this restructuring process. This process should culminate in a change in the structure of the Compendium, affecting Chapter XIV and the way in which reporting entities must report the relevant transactions to the Central Bank.

Investment protection treaties

Chile has signed 33 bilateral investment treaties, the first of them with Spain in 1991. It is currently the country of the Latin American and Caribbean region with the largest number of international treaties containing chapters protecting foreign investments.

These treaties establish international arbitration as a mechanism for resolution of disputes between Chile and the investors of the country with which Chile signed each treaty. In most cases these arbitrations are referred to the International Centre for Settlement of Investment Disputes, and in some cases, are subject to the rules of the United Nations Commission on International Trade Law (UNCITRAL).

Despite the large number of investment treaties signed by Chile, claims have only been filed against Chile on seven occasions, two of them pending resolution on the date of this report. Of the five cases already resolved, two were decided in favor of the investor and three in favor of Chile.



Corporate

Ways to invest in Chile

As was pointed out, there are various ways to invest in Chile, there being no major restrictions in general for a foreign investor to do so.

As regards the organizational structures for doing business in Chile, there are those that provide a legal personality separate from the investor, and those that constitute a branch of the foreign investor in Chile, i.e., maintaining the investor's legal personality. Chilean legislation does not require a particular corporate form to do business (except for certain specific matters or services that require special permits or that require to have an exclusive purpose, such as insurance companies, banks and fund managers). As such, depending on the investor's business activity, one or other corporate form might be suitable, taking into consideration especially the requirements that might be imposed by legislation for that particular business.

Types of entities and their principal aspects

Chilean legislation mainly offers the following corporate structures with separate legal personality from the investor:

- Limited liability partnerships (*sociedades de responsabilidad limitada*);
- Corporations (*sociedades anónimas*) (which may be listed or close); and
- Companies limited by shares (*sociedades por acciones*).

Limited liability partnershipsa

Limited liability partnerships are entities governed by the provisions of Law No. 3918 and, in addition, by the Commercial Code and the Civil Code. The following are the principal characteristics of limited liability partnerships:

- They are entities formed by two or more members, who may be individuals or legal entities, whose liability is limited to the amount of their respective contributions. They are established by public deed, which must indicate, inter alia, their members and their percentage stake in the capital, the name, registered office, purpose, capital and the form of management. An extract of that deed must be subsequently registered in the Commercial Registry of the relevant Real Estate Registrar (*Conservador de Bienes Raices*), and published in the Official Gazette, within 60 days, from the date of the deed in question..
- Limited liability partnerships cannot have more than 50 members.
- The amount of the capital for the establishment of the partnership and the terms of payment of such capital may be freely established by its members. There are no minimum capital restrictions. The capital is not divided into shares.
- The management of limited liability partnerships may be freely decided unanimously by the partners.
- The distribution of profits may be freely established by the partners in the partnership bylaws.
- Any assignment of partnership rights, increases or reductions of capital, or any partnership amendment, must be unanimously approved by the partners.

Corporations

Corporations are regulated by Law No. 18046 and its Regulations. The following are the principal characteristics of corporations:

- They are formed by the pooling of capital by shareholders (two or more, who may be individuals or legal entities, national or foreign), who are liable up to the amount of their respective contributions. They are incorporated by public deed, which must indicate, inter alia, their shareholders, the name, registered office, purpose, capital and number of shares into which it is divided, the duration, and the form of distribution of profits. An extract of that deed must be subsequently registered in the Commercial Registry of the relevant Real Estate Registrar,

and published in the Official Gazette, within 60 days, from the date of the deed in question.

- The capital of corporations is divided into shares, which may be freely transferred, unless certain restrictions are agreed by a shareholders' agreement or in the corporation's bylaws.

- The amount of the capital for the establishment of corporations may be freely determined by the shareholders and may be paid in cash or in kind. The period for paying the capital of corporations is, in principle, three years from the date of the deed of incorporation. If payment is not made within the above-mentioned period, the capital will be reduced, by operation of law, to the amount actually subscribed and paid. No minimum capital is required to establish them.

- Corporations are managed by a board of directors (*directorio*), elected (and removed) by their shareholders. Close corporations must have a board of directors with at least three members, and listed corporations must have a board with at least five or seven directors, as applicable. The board of directors will represent the company in question with all the powers of management and disposal not reserved for the shareholders' meeting, by law or the bylaws.

  Law No. 18046 provides that corporations shall have one or more managers appointed by the board of directors, which shall establish their powers and duties, and may replace them at its discretion. The capacity of General Manager, in listed corporations, is incompatible with that of director, and in the case of close corporations, that incompatibility will only apply to the Chairman of the Board of Directors.

- In relation to the distribution of dividends in corporations, the law establishes a minimum distribution of 30% of the net profits of each financial year, unless the corporation's shareholders unanimously decide otherwise.

  The board of directors of corporations can decide to distribute interim dividends during the financial year, from its profits, as long as there are no accumulated losses.

- Corporations can be listed, closed or special. Listed corporations are those that register their shares in the Securities Registry, supervised by the Chilean market regulator, known as the Financial Market Commission (*Comisión para el Mercado Financiero*) (CMF). Corporations which have had for twelve consecutive months more than 2,000 shareholders registered in the shareholders' register, or such higher number as may be established by the CMF by general regulation, must be registered in the Securities Registry. Special corporations are those specified by law. Closed corporations are those that do not qualify either as listed or special corporations.

Companies limited by shares (*sociedades por acciones*) (SpA)

Companies limited by shares are a type of company that provide great flexibility for their shareholders, even allowing them to have only one shareholder. They are governed by the provisions of their bylaws, by articles 424 et seq. of the Commercial Code and, in addition, by the rules governing close corporations insofar as they are not inconsistent with their nature. The following are the principal characteristics of companies limited by shares:

- They are formed by one or more shareholders (that may be individuals or legal entities, national or foreign), liable up to the amount of their respective contributions. They are established by public deed or private instrument attested by a notary public, which must include basically the same items mentioned above for corporations. An extract of the public deed or attested private instrument must also be registered in the Commercial Registry of the relevant Real Estate Registrar, and published in the Official Gazette, within 60 days, from the date of the document in question.

- The capital of companies limited by shares is divided into shares. No minimum capital is required to establish them, and it may be paid in cash or in kind. The period for paying the capital may be set by the shareholders in the corporate bylaws, but in the absence of a provision, the share capital must be paid within five years, from the date of the deed of

incorporation. If payment is not made within the above-mentioned period, the capital will be reduced, by operation of law, to the amount actually subscribed and paid.

- As in the case of corporations, the general rule is that shares may be freely transferred, unless certain restrictions are agreed, by shareholders' agreement or in the bylaws.

- Companies limited by shares will have such form of management as is freely decided by their shareholders.

- Companies limited by shares may freely establish the rules on distribution of dividends.

Branch of a Foreign Company (*Agencias*)

In Chile, branches of foreign legal entities, governed by Law No. 18046 and by the Commercial Code, are the form of organization that do not have a legal personality separate from that of the investor, and as such, there is no need to establish a company. The following are the principal characteristics of such branches of foreign companies:

- In order to establish a branch of a foreign company in Chile, the foreign investor's agent or legal representative must have the following documents notarized in a notary's office in Chile (which must be legalized before a consul or an apostille affixed to them, and if they are not in Spanish, they must be duly translated into that language):

    - Incorporation documents and a certificate that the foreign company validly exists;

    - A certified copy of the current bylaws, and

    - A general power of attorney granted by the foreign company to the agent, stating (i) the identity of the grantor and clearly and specifically stating that the agent operates in Chile under the direct responsibility of the company, and (ii) that the agent has broad powers to carry out transactions in its representation, including any powers that are expressly specified by law.

- Together with the notarization of the above-mentioned documents, the agent must execute a public deed under which the branch is created, establishing its name, together with its capital, registered office and purpose, and in which it is declared that (i) the foreign company is aware of Chilean legislation and the regulations by which its branches, acts, contracts and obligations must be governed in the country; (ii) the foreign company's assets are liable under Chilean law, especially to meet the obligations that it must fulfil in Chile; (iii) it undertakes to maintain in Chile assets that can be easily realized to meet the obligations that must be fulfilled in the country. An extract of that deed must be subsequently registered in the Commercial Registry of the relevant Real Estate Registrar, and published in the Official Gazette, within 60 days, from the date of the deed in question.

- No minimum capital is required for the establishment of a branch of a foreign company in Chile, and it does not need to be fully paid at the time it is established. That capital can be increased or reduced, by public deed executed by the agent in question.

- The annual balance sheet of the branch of the foreign company must be published in a daily newspaper of where it is located, within four months from year-end.

- The agent, with broad powers, will manage the branch of the foreign company.

- There are no specific limitations regarding dividends, which must comply with the obligations in relation to taxation and remittance of profits imposed on foreign investors, in accordance with what is stated in the previous section.

Dissolution and removal of different types of entities

Dissolution of limited liability partnerships

Limited liability partnerships are dissolved on the following grounds:

- Absence of an essential element, for example if the partnership is left with only one partner.

- Expiration of the term for which it was established, if any;

- Conclusion of the business for which it was created, where applicable;

- Agreement of the partners;

- Withdrawal of one of the partners; and

- The other grounds provided for by law and in the bylawso.

Dissolution of corporations

A corporation may be dissolved on the following grounds:

- Expiration of the term for which it was established, if any;

- Where for an uninterrupted period of more than 10 days, all the shares are in the hands of a single person;

- By resolution of an extraordinary shareholders' meeting (2/3 of the total issued voting shares);

- By revocation of the authorization for its existence in accordance with the provisions of the law;

- By enforceable judgment of the courts in the case of close corporations, and

- All other grounds provided for in the bylaws.

Dissolution of companies limited by shares

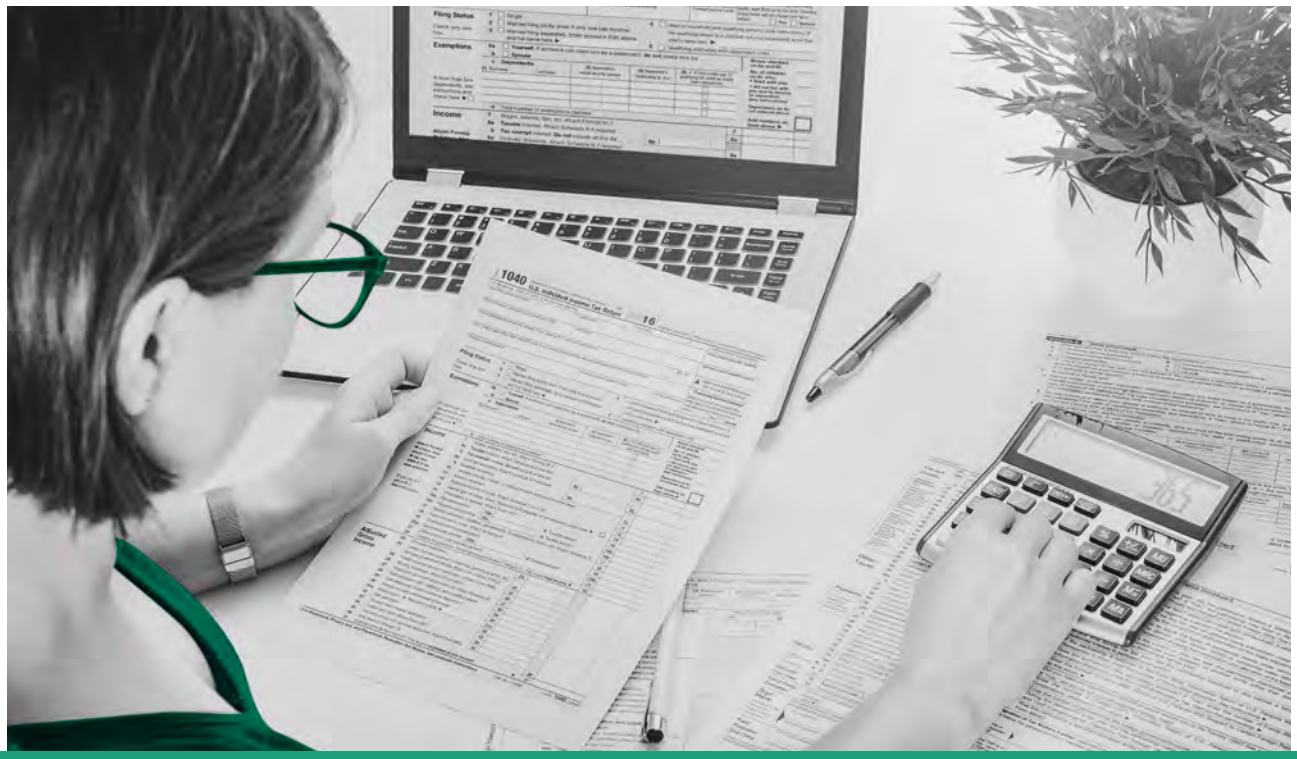
Companies limited by shares are dissolved on the following grounds:

- Expiration of the term for which it was established, if any;

- By resolution of an extraordinary shareholders' meeting;

- By enforceable judgment of the courts; and

- All other grounds provided for in the bylaws.



Chilean tax regime

Introduction

In Chile, a distinction is made between the domestic tax regime and the nonresident tax regime. The domestic tax regime is overseen by the Internal Revenue Service, and comprises income taxes (i.e., corporate income tax, labor income tax, personal income tax, nonresident income tax, and other excise taxes and withholdings taxes), and sales and services taxes (i.e., VAT and the additional tax on alcoholic beverages, soft drinks and the like), Stamp Tax, and Property Tax, among others.

The National Customs Service oversees the ad valorem duties paid upon import of goods into Chile.

The collection of taxes under the domestic and nonresident tax regimes is carried out by the General Treasury of the Republic.

Lastly, there is a municipal tax regime enforced by the municipal authorities. The municipal tax payable by companies is the main tax of the municipal tax system.

Direct taxes

Following the traditional tax distinction, taxes can be classified as direct or indirect. In Chile, practically all taxes are direct, with the important exception of VAT, which is an indirect tax.

Below we summarize the direct taxes that normally apply to business activities carried out in Chile.

Income taxes

General aspects

The Income Tax Law (Decree Law No. 824) is the legal framework establishing income taxes. It sets forth a tax regime for capital income and

another for labor income. It also establishes withholdings taxes and some special taxes.

Before commenting on the main characteristics of the income taxes levied in Chile, it is useful to refer first to some definitions and principles on which the Chilean income tax system is based.

- Basic taxable event: is the obtaining of "income" which, for these purposes, is defined as "revenue constituting profits or benefits yielded by a thing or activity and all benefits, profits or equity increases received or accrued, irrespective of their nature, origin or name."

  The legal definition of income is broad, and the general rule is that all equity increases are subject to income taxes. This general rule leads us to ask ourselves if there are any exceptions, and the answer is yes; therefore, there are some equity increases that are not subject to income tax according to the Income Tax Law.

  However, there are progressively fewer equity increases that are exempt from income tax. Some examples are the gain obtained by authors or inventors from the transfer of intellectual or industrial property rights, the compensation for years of service received by employees upon termination of their contract, and scholarships.

- Taxpayer: income tax is levied on the worldwide income of persons domiciled or resident in Chile. For these purposes, domicile is defined as the residence accompanied, real or presumed, by the intention to remain in Chile. On the other hand, tax residence is defined as the permanence in Chile, uninterrupted or not, for one or more periods exceeding 183 days in total, within any 12-month period. Lastly, the Income Tax Law establishes that the absence or lack of residence in Chile is not a determining cause for the loss of domicile in Chile, if the person continues to have, directly or indirectly, the principal place of business in Chile.

  Exceptionally, foreigners that have their domicile or residence in Chile are liable for income tax only on their Chilean source income during the first three years. Although in certain cases, the Regional Director of the Internal Revenue Service (SII in Chile) is authorized to extend this exception to the general rule of taxation on income obtained worldwide, there are very few cases in which it has been extended.

  For income tax purposes, the law defines Chilean source income as income derived from assets located in Chile or from activities carried out in the country. Nonetheless, some incomes have been specifically regulated, i.e., royalties, trademarks and other industrial or intellectual property rights, shares or participations in companies incorporated in Chile and bonds and other publicly or privately offered securities issued in Chile.

- Territoriality: as stated previously, persons with domicile or residence in Chile are subject to tax on their worldwide income, with the exception mentioned above for foreigners who establish their domicile or residence in the country.

  Persons without domicile or residence in Chile are subject to taxes on their Chilean source income. However, exceptionally, the Income Tax Law levies a withholding tax on the services provided to persons with domicile or residence in Chile, although they are provided from abroad by persons without domicile or residence in Chile.

- Foreign source income: according to the Income Tax Law, taxpayers with domicile or residence in Chile must include foreign source income in their income tax returns. In this context, as a general rule, taxpayers must consider their net income received from abroad.

  However, as an exception, taxpayers with domicile or residence in Chile must include in their Chilean taxable base the passive income obtained abroad through foreign controlled companies (CFC) without domicile or residence in Chile. Income obtained abroad through CFCs must be included in the taxable base in accordance with the provisions on income and expenses established in Chilean legislation.

- Thin capitalization rules: the Income Tax Law establishes a beneficial tax treatment for interest paid abroad, among other

cases, to foreign or international banks or financial institutions. In these cases, the withholding tax rate is 4%, as opposed to the general rate of 35%. Furthermore, under international double taxation treaties (DTT), the withholding tax rate may be reduced to 10% or 15%, depending on the country of residence of the creditor receiving the interest.

Considering that the reduced withholding tax rate on interest paid abroad may encourage situations of excess indebtedness, the tax legislation establishes limits to the indebtedness of taxpayers with domicile or residence in Chile.

Under the thin capitalization rules, debtors domiciled or resident in Chile are subject to a 35% tax on interest paid on excess indebtedness, to the extent paid to related parties abroad. To offset this 35% tax, the debtor domiciled or resident in Chile may obtain a credit for withholdings paid on that interest.

The tax law considers that a debtor is in a situation of excess indebtedness when its total debt exceeds three times its equity (tax equity – *capital propio tributario*). For these purposes, domestic and foreign debt, with related and unrelated parties, is considered.

Lastly, the law defines related-party debt, indicating the cases in which a relationship is presumed to exist, such as when the domicile or residence of the lender is in a territory with a preferential tax regime.

- Indirect sales of underlying Chilean assets: the Income Tax Law levies an additional 35% tax on gains derived from the sale of shares or participations of companies incorporated abroad that directly or indirectly confer an interest in underlying Chilean assets.

  For the provision to be applicable: (i) the sales made abroad must not be in the context of a corporate reorganization; (ii) 10% or more of the foreign shares or participations must be sold; and (iii) the market value of the underlying asset located in Chile must represent at least 20% of the market value of the foreign asset, or the market value of the underlying asset located in Chile, for the portion sold indirectly abroad, must have a market value in excess of 210,000 Annual Tax Units. The provision grants the foreign transferor the option to declare and pay the tax as if the Chilean assets had been effectively sold, including the possibility of applying any exemption or benefit contemplated in Chilean legislation that would have applied in case of a direct sale.

  Underlying Chilean assets include, among others, shares, participations, ownership units, agencies, permanent establishments, or any kind of movable or immovable assets.

- Ancillary obligations: taxpayers with domicile or residence in Chile are required to file different tax returns with the Chilean IRS. From these, the Chilean IRS prepares the tax returns (mainly for individuals) and collects useful information to verify the correct determination of taxes.

Corporate income tax (Chilean IDPC)

The Chilean corporate income tax (CIT) is a tax levied on capital income, according to the classification contained in Article 20 of the Income Tax Law, which includes income from real estate, movable capital, industrial activities, commerce, intermediation activities and, in general, income from any source, nature or denomination, whose taxation is not expressly stipulated under other tax.

CIT is a proportional tax, which is declared and paid annually. The tax rate depends on the tax regime applied. In this regard, taxpayers under the partially integrated general regime are subject to a tax rate of 27%. Taxpayers under the pro SME regime are subject to a tax rate of 25% (transitorily, the rate is 10% for 2023 income, and 12.5% for 2024 income).

As a general rule, CIT taxpayers determine their annual income/loss based on complete accounting records, with the adjustments established by law (aggregates, and deductions from the financial result for items such as depreciation/amortization of assets, inflation adjustments, etc.).

CIT taxpayers normally file their taxes on an accrued basis. However, pro SME taxpayers file their taxes based on the income received (except

for related party transactions, to which the general accrued income rule applies).

Personal income tax (Chilean IGC)

Personal income tax (PIT) is levied on the worldwide income of individuals domiciled or resident in Chile.

An increasing and progressive rate is applied, and it is filed and paid every year. The marginal rate is capped at 40%.

In general terms, the taxable base of this tax is made up of (i) amounts received or withdrawn for any concept from companies or entities; (ii) capital gains; (iii) income exempt from CIT but subject to the Global Complementary Tax; (iv) income exempt from the PIT (labor income), which is added to the taxable base for the sole purpose of increasing the tax rate; and (v) interest on publicly offered debt instruments.

CIT paid by corporations or partnerships on income they distribute to individuals may be taken in whole or in part as a credit against the individual's PIT liability. If the CIT paid on income exceeds the PIT, the individual may request a refund of the excess.

In the case of profits from corporations or partnerships under the partially integrated general regime, the credit amounts to 65% of the CIT. For taxpayers subject to the marginal rate of 40%, the partial reporting of the credit may lead the taxpayer to bear a total effective cost of 50.55%. However, the law limits the maximum effective tax rate to 44.45%.

In the case of income derived from corporations or partnerships under the pro SME regime, the credit is 100% of the CIT.

To determine the CIT credit, the companies or entities subject to this tax must keep the so-called "Business Income Record", where they record the income they obtain, its nature for tax purposes (taxable, exempt or non-subject to taxes income) and the CIT paid.

Withholding tax (Chilean IA)

Withholding tax (WHT) is levied on the Chilean source income of individuals or legal entities

without domicile or residence in Chile (i.e., nonresidents).

WHT is filed and paid every month. The tax rate applied to withdrawals or distributions of income is 35%. Reduced tax rates apply to other types of income, such as: (i) royalties and licenses for the use of industrial or intellectual property; (ii) remuneration for professional or technical services; (iii) interest when the debtor is Chilean; and (iv) use of computer software; among others.

Nonresidents of Chile, who receive withdrawals or distributions of income from Chilean corporations or partnerships that are subject to CIT, are entitled to obtain a partial or total credit for the CIT paid by such entities, on the income distributed to them.

In the case of income from corporations or partnerships under the partially integrated general regime, the credit is 65% of the CIT, unless the recipient of the dividend is a resident of a country with which Chile has signed a DTT, in which case the credit will be 100% of the CIT paid. This means that the effective WHT rate for residents in countries with a DTT will be 35%, while the effective WHT rate for residents in countries without a DTT will be 44.45%.

In the case of income derived from corporations or partnerships under the pro SME regime, the credit is 100% of the CIT.

It may be recalled that CIT is allocated to WHT based on the information provided by the Business Income Record of the corporation or partnership from which the income derives.

The WHT is normally withheld by the taxpayer with domicile or residence in Chile who pays or transfers the income abroad, who is also subject to the obligation to file and pay the tax monthly.

Labor income tax (Chilean IUSC)

The labor income tax is a payroll tax levied on labor income.

An increasing and progressive rate is applied, and it is filed and paid monthly. Normally, this tax is withheld by the company paying the remuneration, which is also the party obliged to file and pay it over to the tax authorities each month. Compulsory social security and health contributions (up to the legal limit) are deducted from the taxable base.

Labor income tax has the same rate scale as the PIT, which means that the tax obligations of individuals who only obtain labor income are met by the employer withholding, filing and paying the labor income tax.

Self-employed individuals are not subject to this tax. If they are domiciled or resident in Chile they are subject to the PIT, while if they are not domiciled or resident in Chile they are subject to WHT.

Penalty Tax on Rejected Expenses

The Income Tax Law penalizes the use of company resources for the benefit of its partners or shareholders, and the use of resources for expenses that do not meet the legal requirements to be tax deductible expenses (commonly referred to as “rejected expenses”).

If partners or shareholders benefit from the company’s resources, the penalty applies to the partner or shareholder who has benefited. In this regard, the partner or shareholder subject to PIT or WHT must include the benefit obtained in its taxable base. Also, the PIT or WHT will be increased by 10% of the benefit obtained.

Rejected expenses are subject to a single penalty tax of 40%, which is applied to the base obtained (the expenses paid).

Tax assessment

The Chilean IRS is empowered to assess the taxable base when the price or value assigned to the property transferred or the service provided is significantly lower than the current market value applied in similar transactions. Moreover, the Chilean IRS is empowered to assess the transfer price of real estate when the value agreed by the parties is significantly higher than the current market value.

The difference between the price or value agreed by the parties and the value determined by the Chilean IRS is subject to a penalty tax of 40%.

Transfer pricing

Chilean transfer pricing regulations largely follow

the OECD's recommendations and guidelines, and it is common practice for the Chilean IRS to refer to the OECD Transfer Pricing Guidelines in their inspections in this area. These regulations only apply to cross-border transactions between related parties.

Infringement of transfer pricing regulations is penalized with a 40% single tax, applied on prices, values or yields challenged by the Chilean IRS. This tax is borne by the party domiciled or resident in Chile. In addition, the legislation envisages a penalty of 5% of the value differences detected by the Chilean IRS. However, the penalty does not apply if the taxpayer duly provides the Chilean IRS with the information required by the SII during the inspection.

Municipal tax

The Municipal Income Law establishes a direct tax levied on individuals or entities that perform any type of profession, industry, trade, art or any other secondary or tertiary activity for profit, regardless of its nature or the denomination given to it.

Primary or extractive activities are also subject to the municipal tax in the cases of operations involving any product elaboration process and when the products obtained from this type of primary activities are sold directly by the producers in stores, stalls, kiosks or any other place that allows their direct dispatch to the public or to any buyer in general.

The municipal tax is settled and collected by the municipal authorities. It is levied annually and paid in two installments, the first in July and the second in January. The taxable base is the taxable income declared to the Chilean IRS in the annual income tax return. The tax rate is determined by the Municipal Council, and ranges from a minimum rate of 0.25% to a maximum rate of 0.5%, with a cap of 8,000 monthly tax units. In order to avoid situations of double taxation between parent companies and subsidiaries, the law allows for the reduction of taxable income for amounts of capital invested in other companies that are subject to municipal tax.

Tax Treaties

Chile has entered into more than 35 DTT, all of them according to the OECD Model Convention, with some variations, such as the so-called "Chile clause", which modifies the OECD Model on dividends. In this regard, Chile has included a clause in all its DTT to not limit the WHT rate on dividends, provided that the CIT is totally used as a credit against the WHT.

Chile currently has DTT in force with Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Colombia, Croatia, Czech Republic, Denmark, Ecuador, France, India, Ireland, Italy, Japan, Korea, Malaysia, Mexico, Netherlands, New Zealand, Norway, Paraguay, Peru, Poland, Portugal, Russia, South Africa, Spain, Sweden, Switzerland, Thailand, United Arab Emirates, United Kingdom, United States and Uruguay.

Indirect taxes

Indirect taxes are those in which there is a de jure taxpayer who is required by law to pay the tax, but there is a de facto taxpayer who bears the economic impact of the tax. These taxes include VAT and the additional tax on alcoholic beverages, soft drinks and the like.

The Sales and Services Tax Law – or the Chilean VAT Law (Decree Law No. 825) – is the legal text which levies VAT on sales and services defined generically in that law. In this regard, "sale" is defined as any agreement, irrespective of the denomination given to it by the parties, whose purpose is to transfer, for valuable consideration, the ownership of movable tangible property, real estate, a share in the ownership of such property or rights in rem over them and, in addition, any act or contract that leads to the same purpose or that the same law equates to a sale; and "service" is defined as the action or provision that a person performs for another and from which he receives an interest, payment, fee or any other form of remuneration. However, the law also taxes certain special events, such as (i) imports; (ii) leases of movable property or furnished real estate; and (iii) digital services, among others.

This tax is levied at a rate of 19% on the price or remuneration paid for the events described in the preceding paragraph, which must be paid monthly by the seller or service provider.

Some of the established exemptions are aimed to promote foreign investment and international trade. Among such exemptions are the following:

- Foreign investors certified under the foreign investment law are exempt from VAT on imports of capital goods intended to be used in the development, exploration or operation of certain projects in Chile, such as mining, industrial, forestry, energy and infrastructure projects, among others, when the investment is at least USD 5,000,000 and meets the other requirements set forth in Article 12, letter B No. 10 of the VAT Law. This exemption contemplates a request process before the Ministry of Finance.

- Payments made abroad for services provided or used in Chile, if they are subject to WHT under Article 59 of the Income Tax Law, unless such services are exempt under a DTT or other laws..
- Incomes not subject to CIT, according to Article 17 of the Income Tax Law.

Other taxes

Mining tax

The specific mining tax is levied on the operating income obtained from mining activities, i.e., any individual or entity that extracts mineral substances under concession and sells them at any stage of production.

Since January 1, 2024, firstly, an ad valorem component is applied, with a fixed rate of 1% on annual copper sales of mining operations that obtain annual sales of more than 50,000 metric tons of fine copper. Secondly, an operating component is applied, and a specific tax is payable at rates that depend on the metric tons of fine copper sold each year, as follows:

- Annual sales not exceeding the equivalent value of 12,000 metric tons of fine copper shall be exempt from this component.

- Mining operations whose sales (including those with related parties) are more than 50% copper and exceed the equivalent value of 50,000 metric tons of fine copper are subject to an increasing progressive tax rate ranging from 8% to 26%.

- Mining operations whose sales (including those with related parties) do not exceed 50% copper and 50,000 metric tons of fine copper are subject to an increasing progressive tax rate ranging from 0.4% to 4.4%.

- Mining operations whose sales (including those with related parties) exceed the equivalent value of 50,000 metric tons of fine copper, but are not composed of more than 50% copper but rather of other minerals, are subject to a tax rate ranging from 5% to 34.5%.

The law caps the potential tax burden to 46.5% of the adjusted taxable operating income from mining activities, which is determined taking into account the CIT, the WHT and the Mining Tax.

In this regard, the equivalent value of a metric ton of fine copper is determined using the weighted average spot price of Grade A copper on the London Metal Exchange during the respective year.

Stamp tax

Stamp tax is levied on the issuance or execution of certain documents mentioned in the law. This tax is levied on bills of exchange, money orders, promissory notes, simple or documentary credits and any other document containing a monetary credit operation.

Stamp tax is levied at the rate of 0.066% of the amount of the taxable document for each month or fraction of a month elapsed between the issuance of the document and its maturity date, with a maximum tax rate of 0.8%. Sight documents or documents without a maturity date are subject to a tax rate of 0.332%.

Transactions involving credit from abroad are an exception to the documentary nature since stamp tax accrues on these transactions even if a taxable document is not issued.

As a general rule, the taxpayer of this tax is the creditor, who can recover the tax from the debtor.

Property tax

Property tax is levied on the official appraised value of all real estate, which for these purposes

is calculated by the Chilean IRS based on the criteria established by law. The tax rate ranges from 0.98% to 1.204%.

Property tax is paid by the owner of the real estate, although, in certain cases, the tax may be paid by the lessee or usufructuary of the property.

In addition, a surcharge is applied to taxpayers who own more than one real estate, considering the sum of the appraised values of all the properties as the basis. The surcharge is an increasing progressive tax rate, with an exempt bracket and two taxable brackets, one subject to a rate of 0.15% and the other subject to a rate of 0.425%.

General anti-abuse rule

The Tax Code includes a general anti-abuse rule that penalizes taxpayers who, abusing the forms provided by law, avoid the taxable events contained in the laws. This rule also penalizes those who, through simulation, avoid the taxable events contained in the laws.

For purposes of the application of the general anti-abuse rule, abuse is deemed to exist when the realization of the taxable event is totally or partially avoided, or the taxable base or the tax obligation is reduced, or the commencement of such obligation is postponed or delayed, through legal acts or transactions that, individually considered or as a whole, do not produce relevant legal or economic results or effects for the taxpayer or for a third party, other than those that are merely tax related.

Simulation is deemed to exist when the legal acts or transactions in question conceal the taxable event or the nature of the elements comprising the tax obligation, or the true amount or date of its inception.

The Chilean IRS must request to the Tax and Customs Court the declaration of abuse of forms in law or simulation . The tax court, along with declaring the abuse or simulation, determines the tax differences, with reassessments and interest. In addition, the court applies a penalty of up to 100% of all taxes that should have been paid.

Labor and social security

General characteristics of working hours

Ordinary working hours

The ordinary working hours may not exceed 45 hours weekly. This maximum is divided into not less than five and not more than six days. The maximum workday is 10 hours.

From April 26, 2024, the maximum ordinary working hours of 45 hours will be gradually reduced to 40 hours weekly as from April 26, 2028. In addition, the weekly working hours will be divided into four days per week if their total duration does not exceed 40 hours weekly.

However, there are certain categories of employees that are excluded from the maximum workday limit, such as managers and assistant managers.

Overtime

The employer and the employee may agree in writing on overtime up to a maximum of two hours daily, provided that the employees' health is not harmed. A 50% surcharge is paid on the pay agreed for ordinary working hours.

That agreement must be based on temporary circumstances and its duration may not exceed three months, subject to extension.

Daily and weekly rest

The daily rest is granted in the middle of the workday, intended for a snack and may not be less than 30 minutes, which does not count as working hours.

Sundays and public holidays are rest days. However, depending on their functions, certain employees may divide their working hours among those days, with entitlement to the appropriate compensatory rest days.

Vacation

Employees with more than one year's service will be entitled to an annual vacation of 15 fully paid workdays, which must be uninterrupted, except the excess above 10 days, which can be split. This vacation can be accumulated by agreement of the parties, but for a maximum of two consecutive periods..

Minimum wage

The current gross minimum wage is CLP 460,000.

In July 2024, the gross minimum wage will reach CLP 500,000.

Forms of recruitment (including recruitment of foreign staff)

Employment contract

Individual employment contracts are of a consensual nature, under which the parties are initially bound; the employee undertakes to provide personal services on a subordinate and dependent basis and the employer undertakes to pay certain remuneration for these services.

The Labor Code regulates different types of employment contracts, namely:

- Fixed term, in which the duration of the contract is set, which may not exceed one year. On an exceptional basis, in the case of employees who have a professional or technical qualification awarded by a higher education institution recognized by Chile, the term of the contract may not exceed two years. Fixed-term contracts can only be renewed once but respecting in any event the total duration indicated above.
- Indefinite term, when the duration of the employment relationship is not established.
- For specific work or operation, when its duration is linked to the performance of a specific piece of physical or intellectual work.
- There are also other special contracts, such

as apprenticeship contracts, which have particular characteristics depending on the case.

Recruitment of foreign staff

Recruitment of foreigners is permitted by law, provided that certain immigration and labor requirements are met.

In companies with more than 25 employees, 85% of their employees must be Chilean nationals.

Foreigners must have a temporary or permanent residence permit or a work permit to be eligible to work in Chile.

Outsourcing

In Chile, there are two types of outsourcing:

- Working under a subcontract: the work performed under an employment contract by an employee for an employer, known as the contractor or subcontractor, when the latter, under a contractual arrangement, undertakes to execute work or provide services, at its own risk and using its own employees, for a third-party individual or legal entity that owns the work, enterprise or operation, known as the main company, at which the services are provided or the works contracted are executed.

Under this system, the main company is jointly and severally liable for the employment and social security obligations borne by the contractors. Such liability will be limited to the time or period for which the employee or employees provide services under a subcontract for the main company. That liability may be subsidiary if the main company exercises the rights to information and to make withholdings from payments to contractors established by law.

The main company is directly responsible for protecting the health and safety of the employees that work on its sites.

- Provision of temporary employees: it is an arrangement whereby an enterprise duly established and engaged exclusively in such activity, known as a Temporary Employment Agency, makes temporary employees available to another company, known as the User Company, only in the cases and for the maximum periods specifically stipulated by labor law in this respect.

Teleworking

Teleworking is regulated by the Labor Code.

Employees that are subject to this arrangement must enter into a telework agreement, which must contain the minimum requirements imposed by law, inter alia, the manner in which the service will be provided remotely, either in whole or in part, the place from which services will be provided, duration, mechanisms for supervision or monitoring by the employer, possible exclusion from a work timetable and also disconnection time.

The right to disconnection is the time during which the employee will not be obliged to respond to requests, orders or communications from the employer. The disconnection time must be at least twelve uninterrupted hours in a twenty-four hour period. Furthermore, the employer may not in any event contact or send orders or other requests on rest days, days of leave or during vacation.

Labor costs

All employees are obliged to contribute monthly to the social security institutions. Although these contributions are borne by the employee, it is the employer that has the obligation to withhold the relevant amounts from the employee's wage and to pay them to the relevant institutions.

Social costs that must be borne by the employer in Chile:

- Labor accident and occupational illness insurance: 0.90% of the employee's monthly remuneration subject to a limit of 84.3 UF[2]. Depending on the company's activity, an additional differentiated contribution may be established not exceeding 3.4% of the employee's monthly remuneration subject to the above-mentioned limit.

  This contribution may possibly amount to 7.7% of the employee's monthly remuneration if the employer fails to provide sufficient health and safety conditions for its employees or to implement the safety measures ordered by the labor authorities.

- Disability and survivors' insurance (SIS): 1.49% of the employee's monthly remuneration subject to a limit of 81.6 UF.

- SANNA Law (Insurance for working mothers and fathers of children and young people suffering from a serious health condition): 0.03% of the employee's monthly remuneration subject to a limit of 84.3 UF.

- Contribution for strenuous work (this is, mental or physically demanding services or labors): 1% to 2% of the employee's monthly remuneration subject to a limit of 84.3 UF. This contribution applies in the case of employees that are required to perform strenuous work.

- Unemployment insurance: 2.4% of the employee's monthly remuneration subject to a limit of 126.6 UF.

[2] The UF or Unidad de Fomento is a readjustment index, calculated and authorized by the Chilean Central Bank, which is readjusted in accordance with the Consumer Price Index. As of January 2, 2024, 1 UF is equal to approximately CLP 36,805 and USD 42.

Social costs that must be borne by the employee in Chile::

- Pension fund: Approximately 13% of the employee's monthly remuneration (10% paid to the fund and 1%-3% for the commission paid to the fund manager) subject to a limit of 84.3 UF.
- Health insurance: 7% of the employee's monthly remuneration subject to a limit of 84.3 UF. This contribution may be greater if the employee obtains private insurance.
- Unemployment insurance: 0.6% of the employee's monthly remuneration subject to a limit of 126.6 UF.
- Contribution for strenuous work: 1% to 2% of the employee's monthly remuneration subject to a limit of 84.3 UF.
- Income tax: progressive tax that can vary from 0% to 40% on the taxable income.

Termination of the employment relationship

Individual employment contracts can only be terminated on the grounds provided for by law.

In general, the grounds for termination conferring a right to indemnity are "the employer's needs" and "written notice of unilateral termination". In these cases, the employer would have to pay the following sums to the employees:

- Indemnity in lieu of notice: it is paid if the employer fails to give at least 30 days' notice of the dismissal. This indemnity is equal to the employee's last monthly remuneration up to a limit of 90 UF.
- Severance indemnity for years of service: equal to 30 days of the employee's last monthly remuneration for each year of service or fraction exceeding six months, subject to the following limits: (i) the employee's last monthly remuneration is limited to 90 UF, and (ii) the number of years of service is limited to 11 years (unless the employee was hired before August 14, 1981).
- Accumulated annual vacation pay: Compensation is paid for the pending annual vacation and/or that proportionately owed, calculated on the basis of the employee's monthly remuneration (without any limit).

Pension system

The objective of the Chilean pension system is to provide pensions for all persons whose working life ends by reaching the legal retirement age (60 years for women and 65 years for men) or due to some impediment to continued employment. In the event of death of the person affiliated, the system provides a survivors' pension for their beneficiaries.

Employees must contribute monthly, on a mandatory basis, to their individual capitalization account managed by the Pension Fund Manager (AFP) to which they are affiliated.

The contribution that is allocated for that purpose is 10% of the employee's taxable remuneration, subject to a limit of 84.3 UF. An additional percentage is added, for the payment of the management commission charged by the relevant AFP.

The objective of that saving is that, using those resources, the employee can fund a pension when he reaches the legal retirement age.

In addition to the above-mentioned mandatory contribution, the employee can voluntarily contribute for the purpose of his future pension, by various voluntary savings mechanisms, such as voluntary pension savings (APV), agreed deposits and pension savings accounts.

Collective employment relations

Creation of a labor union

To create a labor union at company level, the following quorums are required:

- When there is another labor union in existence at the employer:
  - An employer with over 50 employees: 25 employees who represent at least 10% of the total workforce.
  - An employer with 50 employees or less:

eight employees who represent at least 50% of the company's total workforce.

- **When there is no other existing labor union:** eight employees. They must complete the quorum of 25 employees who represent at least 10% of the company's total workforce, within a maximum period of one year, after which it will cease to have legal personality, by operation of law.

- **When an employer has more than one establishment,** a labor union can be created with a minimum of 25 employees who represent at least 30% of the employees of that establishment.

- **Irrespective of the percentage that they represent,** 250 or more employees of the same company can create a labor union.

In order to establish labor unions other than at company level, a minimum of 25 employees is required.

Collective bargaining

Labor unions can negotiate with the employer under the regulated or nonregulated collective bargaining procedure.

The former involves being subject to the procedure, time limits, rules and guarantees established by the Labor Code, which provides for, inter alia, minimum quorums, legal protection from dismissal and the right to strike. On the other hand, nonregulated bargaining has no procedure, has no date for reaching an agreement and does not provide either for rights such as legal protection from dismissal and the right to strike.

Real estate

Public and private property

Chilean law provides that national property is that belonging to the entire nation and is classified as property for public use and State-owned property. National property for public use includes rivers, beaches, lakes, roads, bridges, streets and squares. This property is under the control of various State bodies and cannot be privately owned.

All lands, situated within the territorial boundaries, that have no other owner are also State-owned property.

In general, privately owned real estate is all property that is registered in the name of its respective owner in the Property Registry of the Real Estate Registrar (*Conservador de Bienes Raíces*) (CBR) of the commune (smallest administrative subdivision) in which it is situated.

Ownership of real estate is only acquired in one of the ways recognized by law, transfer (*tradición*) being the most significant.

In Chile, the only valid way to make a transfer of ownership of real estate and other rights in rem created on such property, except easements, is registration of title (sale, contribution to a company, exchange etc.) in the Property Registry of the competent CBR. All such titles, when referring to real estate, with very specific exceptions, must be recorded in a public deed executed before a notary public.

Rural and urban properties

In Chile a distinction is drawn between an urban area, which lies within the urban limits defined in the respective planning instruments, and rural areas, which are all properties that are located outside such urban boundaries.

Within the urban limits of the city it is possible to subdivide, develop and build, subject to the technical practices and provisions derived from the Urbanism and Construction General Law (*Ley General de Urbanismo y Construcciones*) and from the applicable territorial planning instrument.

On the other hand, in relation to rural properties, the law seeks to preserve their agricultural use preventing streets being made on them to facilitate the establishment of settlements and the creation or emergence of urban centers without complying with the territorial planning rules. Although on an exceptional basis, subject to authorization and reports of various authorities, rural lands can be developed to complement industrial activities with dwellings, to equip a rural sector, equip tourist sectors, or for the construction of social housing complexes.

The distinction between urban and agricultural property is also relevant in relation to certain specific rules governing leases.

Condominium

Condominium of real estate is governed by special legislation, and refers to a specific form of ownership of different units into which a piece of real estate is divided, which confers on the owners a right of exclusive ownership of such units and a right of common ownership of the property necessary for the existence, security and maintenance of the condominium, which is called common property.

Condominiums can be located in urban areas and, on an exceptional basis, in rural areas, in the case of housing projects the construction of which has been authorized in advance in accordance with the law.

In order for real estate to be subject to condominium, Condominium Regulations (Reglamento de Copropiedad) must be executed by public deed, governing, inter alia, the co-owners' rights and obligations, the management of common property and the restrictions on the use of common property and creating Condominium Plans, showing in graphic form the saleable units and the common property. The regulations and the plan in question must be approved by the Municipal Works Department (*Dirección de Obras Municipal*) (DOM) of the commune in which the real estate is located.

Both the regulations and the plan and the certificate issued by the DOM rendering the real estate subject to condominium must be presented to the CBR of the place where the real estate subject to condominium is situated so as to duly register and keep the record of registered entries relating to the property.

Competent entities

Real Estate Recorders (*Conservadores de Bienes Raíces*) are officials assisting in the administration of justice who act as certifying officers and are in charge, inter alia, of various registers relating to the real estate of a commune or grouping of communes, the principal function of those registers being to maintain the record of ownership of real estate and to fully publicize any encumbrances to which they are subject. Recorders are in charge of the updating and keeping, inter alia, of the Property Registry, the Mortgages and Encumbrances Registry and the Registry of Incapacity and Prohibitions of Transfer.

Notaries public also assist in the administration of justice and are certifying officers, with responsibility for attesting and keeping in their archive the instruments that are executed before them, for providing the parties concerned with copies of such instruments, and for making any entries that are entrusted to them by law. Notaries carry out their functions within one or more communes as stipulated when they are appointed, although the instruments that are executed before them are valid throughout the national territory.

Another very important institution in relation to the division, development and construction of real estate is the Municipal Works Department (DOM), which is the municipal unit in charge of ensuring compliance with planning and construction rules applicable in a certain commune. The DOMs authorize subdivisions within the urban limits, grant permits and endorse constructions erected in accordance with such permits on urban and agricultural properties of the commune and approve the creation of condominium arrangements relating to real estate, among other functions relating to town planning and construction.

Competition

Control of conduct: abuse of dominant position, horizontal and vertical collusive practices

Anti-competitive practices are contained in the general definition of the offense established in article 3 of Decree Law no. 211 (DL 211): “any event, act or agreement that impedes, restricts or hinders free competition, or that tends to cause such effects”.

The same article identifies, by way of example, anti-competitive practices, among which should be noted agreements involving competitors (paragraph a), the abuse of a dominant position (paragraph b), predatory practices or unfair competition (paragraph c) and the holding by the same person of important executive positions or the position of director in two or more competing companies (paragraph d).

The above-mentioned practices may be penalized by, among other measures, fines equal to 30% of the offender’s sales from the line of products or services linked to the infringement during the period in which it has occurred or up to double the profit reported due to the infringement; the modification or dissolution of the companies, corporations and all other private-law legal entities that have been involved in the acts; and with imprisonment ranging from between four and five years to between five and ten years, in the case of certain collusive practices; apart from the preventive, corrective or prohibitive measures that may be ordered in this respect in each case.

Actions aimed at pursuing liability for infringement of competition legislation may be filed by the National Economic Prosecutor’s Office (*Fiscalía Nacional Económica*) (FNE), as representative of the public interest in economic matters, and by any entity showing a legitimate interest in the matter.

Control of structures: prior control of business concentrations

Under article 47 of DL 211, business concentration means any event, act or agreement, or combination thereof, whose effect is that two or more economic operators that do not form part of the same business group and that are previously independent of each other, cease to be independent in any area of their activities, by any of the following means:

- Merging, irrespective of the form of corporate organization of the entities that merge or of the entity resulting from the merger.
- One or more of them acquiring, directly or indirectly, rights which allow it, individually or jointly, to decisively influence the management of another. According to the FNE Competition Guide, decisive influence can be acquired even without having control of the company within the meaning of the Securities Market Law, if the possibility of exercising passive control is acquired, i.e., by vetoing strategic decisions.
- Becoming associated under any form to create an independent operator, distinct from them, that carries out its functions on a permanent basis. This means that the entity formed is of a permanent nature, as well as having functional autonomy.
- One or more of them acquiring control over the assets of another on any basis.

Las operaciones que no se verifiquen de alguno de los modos referidos, no podrán ser notificadas a la FNE en el marco del procedimiento especial de control de concentraciones, ni siquiera de manera voluntaria.

Transactions that are not carried out in any of the above-mentioned ways cannot be notified to the FNE as part of the special control of concentrations procedure, not even voluntarily.

According to article 48 of DL 211, supplemented by Specific Resolution 157, of 2019, so that any of the concentrations referred to above must be notified to the FNE, the following requirements must be met: that the sum of the sales in Chile of the operators planning to be concentrated has reached, in the year prior to that in which it is notified, amounts equal to or greater than 2,500,000 UF and that, separately, at least two of the operators that plan to be concentrated have generated sales, in the same period, equal to or greater than 450,000 UF. This is so, irrespective of the jurisdiction in which the transaction occurs, if there are subsidiaries or assets in Chile that show sales higher than those mentioned.

If the above-mentioned thresholds are not reached, there will be no obligation to notify the concentration to the FNE, although a voluntary notification can be made to that authority, before completing the concentration, which will be subject to the same rules as a mandatory notification. If this does not occur, the FNE may also commence the investigations that it considers appropriate in this respect within one year, from the completion of the transaction.

Transactions notified in accordance with the system of control of concentrations will be investigated during Phase 1, which will last for 30 business days from when the notification is considered complete. If when Phase 1 has passed, the FNE concludes that the transaction notified may substantially reduce competition, it may extend the investigation for a maximum additional period of 90 days (Phase 2). The above-mentioned periods may be suspended by mutual agreement of the parties and the FNE or by presenting mitigating measures.

When its investigation has ended, the FNE can approve the transaction notified unconditionally, or subject to the measures offered by the notifying parties themselves, or prohibit it, if it concludes that the transaction is capable of substantially reducing competition.

The decision to prohibit can be appealed to the Competition Court (*Tribunal de Defensa de la Competencia*) (TDLC) by means of a special appeal for review established for this purpose.

Suppression of unfair competition

Acts of unfair competition can possibly constitute an abuse of a dominant position, when they are performed for the purpose of attaining, maintaining or increasing a dominant position. In all other cases, the ordinary courts have jurisdiction.

Legislative recommendation

Both the FNE and the TDLC have powers to make reasoned proposals to the President of the Republic, under a legislative recommendation procedure in the first case, and an investigation or market study in the latter case, through the relevant Minister, for the amendment or repeal of statutory provisions or regulations that it considers anti-competitive and also for the enactment of laws or regulations when necessary to promote competition or regulate the conduct of certain business activities that are carried on under noncompetitive conditions.

However, it is a mere recommendation, which does not impose any obligation on the addressee other than to express their opinion in this respect when made by the TDLC. A recommendation made by the FNE, on the other hand, does not even give rise to an obligation to respond.

Consumer protection

In Chile, relations between suppliers and consumers are regulated by Law No. 19496 on the Protection of the Rights of Consumers (LPDC), the consolidated text of which was established by Decree with Force of Law No. 3, published on May 31, 2021.

The LPDC contains a collection of provisions, both substantive and procedural, which regulate, inter alia, consumers' rights and the exercise of such rights, the obligations of suppliers of goods and/or services, infringements to the detriment of consumers and proceedings before the courts.

In relation to consumers' rights, the LPDC guarantees, among others: the free choice of goods and/or services, access to true and appropriate information, nondiscrimination, consumer safety, the right of withdrawal, and the right to the legal warranty, which enables consumers to request replacement, repair or refund if the product is defective.

Furthermore, for the purpose of reinforcing protection of the above-mentioned rights, the LPDC provides a list of duties of suppliers of goods and/or services, obliging them to provide true and appropriate information, ensure the quality and safety of the products and services offered, and to refrain from misleading advertising. In addition, they are required to implement customer service and after-sale service procedures, speeding up the resolution of possible disputes.

From a procedural perspective, the LPDC provides that the infringement of its provisions will give rise to complaints or proceedings, aimed at penalizing the infringing supplier, annulling unfair clauses included in preformulated standard contracts, obtaining performance of the obligation breached, achieving the cessation of the act that interferes with the exercise of consumers' rights, or at obtaining adequate compensation for damages or the appropriate timely redress. These proceedings can be filed both individually and for the benefit of the common or collective interest of consumers.

In addition, the LPDC creates and entrusts to the National Consumer Service, the monitoring of compliance with the provisions of the LPDC and of all legislation protecting consumers' rights. It also confers on it, inter alia, powers to provide an administrative interpretation of that legislation, handle claims filed by consumers against suppliers, and file court proceedings for the protection of the public, collective or common interest of consumers.

Banking and the securities market

Financial intermediation and regulated activities

The financial intermediation industry primarily comprises two key markets: the Primary Market, where companies issue securities to finance their operations; and, the Secondary Market, where these securities can be subsequently traded and liquidated. The regulated players in this industry are mainly composed by insurance companies, mutual funds, pension funds and investment funds.

Banking financial intermediation and regulated activities

The financial intermediation led by banking institutions is permitted and regulated by law and regulations.

Banking regulator

The principal banking regulatory agency in Chile is the CMF. The CMF serves as a supervisory body vested with the legal status of a public service. Its mission is of an essentially technical nature, aimed at ensuring the proper functioning, development and stability of the financial market. Additionally, the CMF endeavors to facilitate the participation of market players and promote the protection of public trust within the financial sector. The CMF is entrusted with the responsibility of ensuring compliance with the applicable laws, regulations, bylaws and standards by regulated entities, including financial institutions. This oversight extends from their incorporation through to their liquidation. As an autonomous entity, the CMF possesses distinct legal personality and assets, and liaises with the President of the Republic of Chile through the Ministry of Finance.

This entity's role in banking regulation is fundamental, as it plays a crucial role in mitigating the risk of financial intermediaries becoming insolvent and potentially affecting the financial market , the so-called "systemic effect". Various mechanisms have been explored to regulate the liquidity of banks, with the legal reserve and the Basel III liquidity coverage ratios emerging as the predominant methods presently employed. The legal reserve has been extensively utilized not only as a means of regulating liquidity but also as a tool for monetary policy. In the Chilean banking sector, the General Banking Law holds significant importance, as it establishes the prerequisites and parameters for establishing a bank within the country, along with providing a comprehensive framework for defining banking activities. Aligned with the principles outlined in the Basel II and III international agreements, the current regulatory framework for banking risk management adheres to a three-pillar structure. Firstly, prudential regulation establishes minimum capital requirements and mandates for risk coverage. Secondly, the banking supervision process involves the interaction between the risk assessment conducted by the regulated bank itself and the assessment and requirements imposed by the supervisory authority. This interaction enables the supervisor to impose additional requirements on the bank in response to risks not adequately covered by the prudential minimum requirements. Thirdly, market discipline, facilitated by public information, allows stakeholders to analyze and evaluate the financial standing of the banks.

The enactment of the new General Banking Law in 2019 represented a significant development. While maintaining key elements from the preceding 1986 legislation, the new law introduced a forward-looking perspective aligned with the contemporary banking solvency standards, particularly those outlined in Basel III. This approach aimed to address lessons learned from critical situations that emerged in the aftermath of the 2008 global financial crisis. Moreover, the new law brought improvements in the supervisory institutional structure, enhancing its independence and autonomy. Notably, it integrated various institutions responsible for supervising and regulating the securities, insurance, banking and financial markets into a unified framework.

Securities market regulator

Similar to the banking sector, regulation of the securities market in Chile falls under the oversight of the CMF. This regulatory body was established in 2019 following the merger of the former Banking and Financial Institutions Supervisory Authority (SBIF) with the Securities and Insurance Supervisory Authority (SVS).

Other regulatory bodies

In addition to the CMF, other regulatory bodies participate in overseeing these markets. These include:

- Internal Revenue Service (Servicio de Impuestos Internos, SII);
- Pensions Supervisory Authority (Superintendencia de Pensiones;
- ISAPRES (private healthcare institutions) Supervisory Authority (Superintendencia de Instituciones de Salud Previsional); and
- The Central Bank of Chile (Banco Central de Chile).

‘Fintech’

The recent enactment of Law No. 21521 (Fintech Law), represents a significant development in Chile’s regulatory framework. Preceded by years of research and coordination led by the CMF, this legislation has paved the way for open banking and the adoption of new technologies in the provision of financial services in Chile, aiming to enhance accessibility to financial inclusion and innovation within the country.

Financial inclusion in Chile and business opportunity

In a study conducted in eight South American countries[3], Chile ranks second in the financial inclusion, trailing only behind Argentina. This assessment is based on a benchmark, evaluating factors such as access to financial services, monthly use by existing users, and quality of service. While it excels in terms of access and usage of financial services, raking third and first, respectively, its service quality ranks sixth. The study highlights the cost of the financial system as an area with room for growth, with only 13% of respondents considering it as good or very good.

Digital identification

Chilean institutions have made significant progress in digital identification, particularly with the implementation of the “Single Key” system. This allows individuals to have a unified electronic identity, streamlining their interactions with the State agencies online, which has notably expedited this process. Managed by the Digital Governance Department of the Office of Secretary-General of the Presidency of the Republic. Furthermore the OECD has recommended utilizing the Single Key platform to access private services, as opposed to creating separate private platforms for the

[3] Argentina, Chile, Panama, Ecuador, Colombia, Peru, Mexico and Colombia. Credicorp Capital Financial Inclusion Report available at: https://grupocredicorp.com/indice-inclusion-financiera/

same purpose. Thus, current legislation permits the use of both simple and advanced electronic signatures, which are increasingly employed in legal transactions across the country.

Exchange controls

In an ecosystem characterized by free exchange, the Fintech Law entrusts the regulation of crypto assets, particularly stablecoins that closely resemble traditional forms of money, to the Central Bank. These are considered akin to foreign currency, and as such, they are subject to the regulations governing to foreign currency. On the other hand, financial digital assets, which exhibit greater volatility, fall under the supervision of the CMF.

Payment system

Each year, digital payment systems in Chile facilitate transactions equivalent to 110% of the country's GDP, with 48% of transactions executed through electronic fund transfers. The Fintech Law addresses the regulation of payment initiation services, enabling customers with demand deposit or bank accounts to directly issue payment orders from those accounts. However, certain aspects of the regulation pertaining to this provision are yet to be finalized by the CMF.

One of the principal revolutionary developments in the payment systems market has been rapid growth of virtual wallets in recent years. Some platforms now boast over two million users. Virtual wallets offer a convenient, swift and secure method for making payments, without imposing any transaction costs on depositors.

Fintech in figures in Chile[4]

Chile has emerged as an attractive hub for fintech companies, experiencing an average annual growth rate of 29.5% from 2019 to 2023. Presently, there are 375 fintech companies operating in Chile, with 20.6% of them being international ventures that have established a presence in the country. These primarily originate from Colombia, Mexico, Argentina and the United States.

Fintech companies in Chile operate across diverse sectors, encompassing payments (20.7%), business financial administration (17.3%), granting of loans (14.3%), insurance (10.7%), asset management (10.3%), and technologies for financial institutions (9.7%). The remaining 17%account for other areas.

In terms of revenue, 74.2% of fintech companies in Chile generate revenue below USD 4,000,000, 10.5% have revenue exceeding USD 4,000,000 and the remaining 15.3% currently have no revenue.

Fintech regulation

The fundamental regulatory framework for fintech companies in Chile is provided by the Fintech Law, which mandates the CMF to establish specific regulations governing the industry and the open finance system. On January 12, 2024, the CMF issued General Regulation No. 502, which outlines the process for the registration of new regulated entities in the Financial Service Providers Registry. As of the date of this report, the CMF is in the process of issuing regulations pertaining the open finance system.

Competent authorities

The country's financial market is supervised by two principal regulators: the CMF and the Central Bank. The CMF, in addition to supervising the banking industry and the securities and insurance markets, among others, is responsible for overseeing crowdfunding platforms, alternative trading systems, credit and investment advisory services, safekeeping of financial instruments, and order routing and intermediation of financial instruments. On the other hand, the Central Bank is responsible for regulating the foreign exchange market, including regulations relating to payments and stablecoins. From their perspective, stablecoins are considered as a means of payment or currency in foreign exchange transactions.

[4] Available at: https://www.finnovista.com/wp-content/uploads/2023/10/Radar-Finnovista-Chile-2023-1.pdf

Data protection

Personal data protection is a fundamental right that is included in article 19.4 of the Constitution of the Republic of Chile, which guarantees to all persons "respect and protection of privacy and the honor of the person and one's family, and also, the protection of one's personal data". However, the regulation in this respect is established in Law No. 19628 on the protection of the right to privacy (LPVP), published in 1999.

The LPVP establishes a series of rules governing the processing and protection of personal data of individuals, both from a substantive and procedural perspective. Some of the most notable aspects of the current legislation is the existence of certain rights which the law confers on data subjects to modify, eliminate or block their personal data that are being processed by third parties and the possibility of applying to the courts by means of a special action known as habeas data, seeking protection for the above-mentioned rights when such requests have not been met by the data controller.

In addition, it provides for a series of obligations imposed on data controllers, inter alia: to use the data only for the purposes for which they were collected, protect the accuracy and truthfulness of the data subject's data, care for the data with due diligence, assuming responsibility for any damage caused, and keep secret data entered in their data banks or records.

In addition, the current regulations define the conditions under which personal data can be processed by public bodies. Pursuant to this legislation Supreme Decree No. 779, of 2000, of the Ministry of Justice, was enacted, approving the Regulations governing the Registry of Personal Data Banks under the control of Public Bodies.

On the date of this report, a bill of law to amend the LPVP is before Parliament (consolidated gazettes 11092-07 and 11144-07), the texts of which are based on the European General Data Protection Regulation and on the principles promoted by the OECD, of which Chile forms part since 2010, and to which it has given international commitments to improve the standard of privacy legislation.

The bill of law contains various new features, among them the regulation of special categories of personal data, privacy by design, which will require data processing systems to be devised incorporating data protection, transparency mechanisms, compliance models, regulation of data security linked to the obligation to notify possible breaches and the regulation of international transfers of personal data. However, the most important changes involve the inclusion of an extensive list of infringements and penalties, as well as the creation of the Data Protection Agency, a specialized entity that will supervise, resolve and penalize in administrative proceedings infringements of the law.

Infraestructure

Public infrastructure procurement schemes

In relation to public infrastructure procurement, two major alternatives can be identified in Chile by which the State is provided with such infrastructure: on the one hand, the Public Works Contract and, on the other hand, the Public Works Concession Contract.

The Public Works Contract is regulated in Supreme Decree MOP No. 75 of 1992 under which the Ministry of Public Works (MOP) entrusts to a third party the execution, repair or maintenance of public works. In order to be able to participate in public tender processes held for this type of procurement, applicants must be registered in the Contractors' Registry at the Ministry of Public Works, for which purpose they must present their background information.

Alongside the Public Works Contract is the Public Works Concession Contract. This type of procurement is governed by the Public Works Concessions Law, its characteristic feature being that the successful tenderer is entrusted the construction of public works to subsequently operate and maintain them according to certain service levels. Thus, they are contracts under which the State and the concessionaire are bound for a lengthy period. In view of this, the State has various prerogatives, most notably the power to unilaterally alter the works or concessioned services (agreeing with the concessionaire on the appropriate compensation, for the purpose of maintaining the economic and financial balance of the contract).

Financial aspects

There are varied tools for the financing of infrastructure projects. The participants in these financial markets are both foreign and local institutions.

The legislation governing concessions has recognized and established various tools aimed at providing finance for this type of projects, especially recognizing the possibility of granting pledges on concession contracts and regulating the procedure for a change of concessionaire in the event of default.

This has permitted financing to be structured on the basis of project financing principles, in which the flows (under the concession contract) and the business unit are available to the financiers of projects, although in these cases, the assets that can be provided as collateral are usually limited, with the flows under the concession contract being those that provide the principal collateral for creditors.

Dispute resolution

Jurisdiction of the Courts

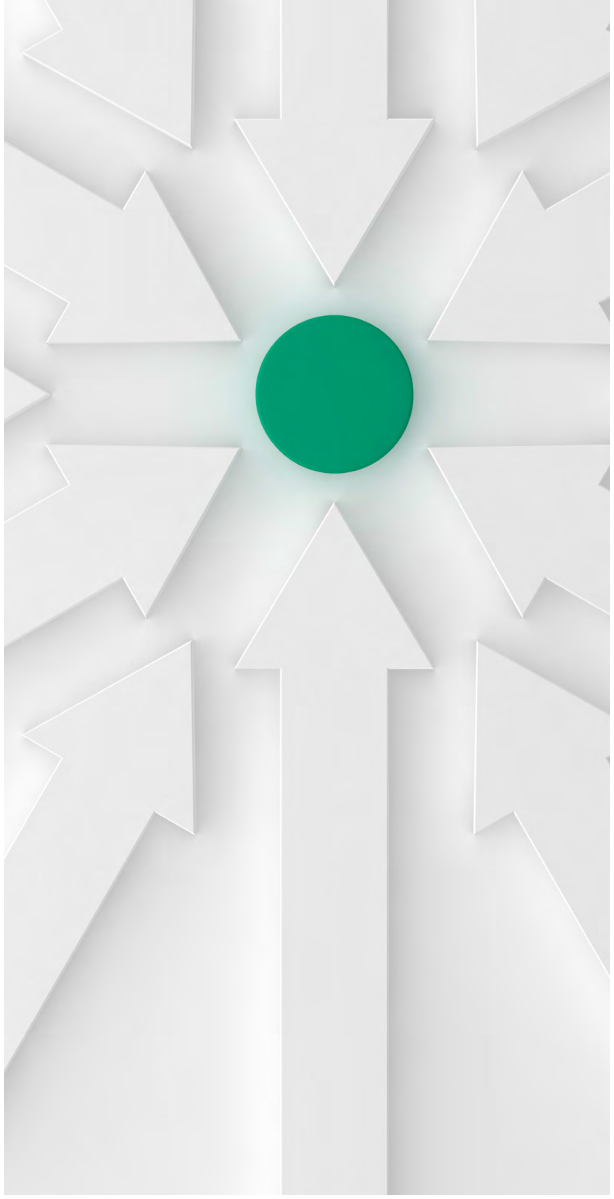
In Chile the courts of first instance (*juzgados de letras*) have jurisdiction to hear civil and commercial disputes. An appeal lies from their judgments to the Court of Appeal of the territory in which the lower court in question is located. An appeal can be filed to overturn the judgment at second instance which is heard by the Supreme Court, the highest court in the country, with jurisdiction over the entire territory.

Proceedings relating to civil and commercial disputes are conducted in writing. It is a procedure that takes several years. Most of the time is taken up in the proceedings at first instance. However, there are currently considerable delays in hearing and ruling on appeals in the Court of Appeal in Santiago and in the Supreme Court.

There are special courts for employment, tax, criminal and family cases. The proceedings before each of these courts are subject to reformed procedures.

Not forming part of the judiciary, but under the administrative supervision of the Supreme Court, are special courts with jurisdiction over competition, public procurement, the environment and industrial property.

In relation to disputes between private parties and authorities of the State there is an administrative procedure before the authority itself and, subsequently, the private parties can seek a review in the civil courts of the decisions of the public authority.



Alternative dispute resolution methods

Alternative dispute resolution methods play a significant role in the dispute resolution landscape in Chile.

In this respect, arbitration has had a recognized legal basis in Chile, being included as a form of resolution under the umbrella of "compulsory arbitration", i.e., in relation to which the courts of first instance do not have jurisdiction regardless of the wishes of the parties. Examples of compulsory arbitration are the division of common property or joint ownership, the liquidation of companies, shareholder disputes and maritime disputes.

Furthermore, the judiciary generally show deference towards arbitration. This is because, in most cases, the grounds and decisions in arbitral awards are not altered or overruled by the courts. Additionally, arbitral awards are enforced as though they were judgments from courts of first instance.

In Chile it is increasingly common for contracts to contain arbitration clauses and for the parties to thereby waive the possibility of filing appeals against arbitral awards. This is due to the fact that one of the principal motivations for arbitration is to provide a dispute resolution mechanism that is fast and efficient. Like in other countries, the sectors giving rise to the largest number of arbitrations are real estate, construction and energy.

The principal arbitration institution in Chile is the Arbitration and Mediation Center of the Santiago Chamber of Commerce (CAM), which in 2023 incorporated into its rules the emergency arbitration, whereby an arbitrator is appointed to hear requests for precautionary measures that need to be resolved quickly, before the commencement of the arbitration as such. The CAM has also, for several years, a list of arbitrators aged under 40 years, for the hearing of disputes relating to smaller claims, which has promoted the extension of arbitration to all kinds of disputes and not only those of a more substantial nature.

In relation to public works concessions, since 2010 there is a "technical panel" in Chile for the resolution of technical or economic disputes that arise during the performance of concession contracts. Once the technical panel has conducted its review, if the dispute continues, it may be referred by the parties to be heard by an Arbitral Commission or the Santiago Court of Appeal.

International commercial arbitration

International commercial arbitration in Chile is regulated by a 2004 law that is based on the UNCITRAL model law.

The CAM has international commercial arbitration rules, but, in practice, the parties usually apply domestic arbitration rules to arbitrations of an international nature.

The deference of the judiciary towards arbitration can be noticed particularly in relation to international arbitration, since, as of the date of this report, we are not aware of any successful appeal to overturn an award in an international arbitration held in Chile.

As regards arbitral awards issued abroad, the Supreme Court has consistently recognized their validity, giving rise to their enforcement in Chile.

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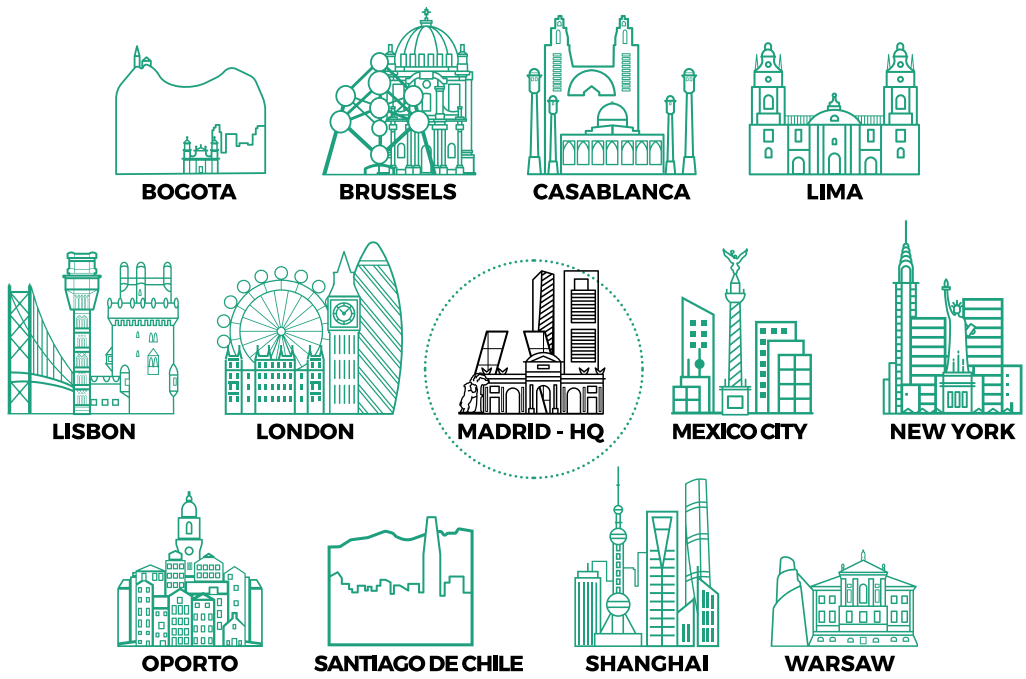

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