

CARIOLA DIEZ PEREZ-COTAPOS
CIA LTDA
ABOGADOS

DOING BUSINESS
IN CHILE

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INTRODUCTION

Cariola Díez Pérez-Cotapos & Cía Ltda., one of Chile's leading law firms, traces its origins back to the first quarter of the 20th century. From its inception, the firm has excelled in providing legal advice to industry, banking, finance, foreign investment, international trade, transportation and large-scale mining.

The firm offers high-quality legal advice to its clients and provides a comprehensive range of legal services to meet today's business needs, including commercial and corporate law, mergers and acquisitions, mining, banking and finance, capital markets and securities, foreign investments, environmental matters, taxation, labor and employment, litigation and arbitration, transportation and aviation, media and telecommunications, fisheries and aquaculture, insurance, competition and antitrust, e-commerce and intellectual property. The firm has a leading practice in the field of mergers and acquisitions, advising important foreign companies in the acquisition of large listed corporations in Chile, including public bids or tender offers in Chile and in the United States. The firm's experience in mining, telecommunications, energy and utilities, privatization, finance and securities laws is also at the forefront of the market.

Cariola Díez Pérez-Cotapos believes in the advantages of teamwork and in the benefits of exchanges of opinions and fluent communication with its clients and their advisors, whether in-house lawyers or independent counsel in other countries. For that reason, each matter assigned to the firm has at least one partner in charge, heading a team of associate lawyers and specialized attorneys, depending on the matter at hand. The purpose of this work structure is to ensure efficient teamwork, in such a manner that, at all times, there are several professionals

informed about the matter at issue and who are thus able to provide legal assistance at any moment. There is permanent interaction between the work groups in charge of a specific client and the specialized lawyers of the firm, so they can benefit from the combined experience of the different practice areas at Cariola Díez Pérez-Cotapos.

The partners and associate lawyers of Cariola Díez Pérez-Cotapos are not only outstanding practitioners in the legal profession, but have also gained recognition in the academic field by lecturing as professors in the country's most respected law schools and universities. Furthermore, lawyers of the firm participated in the drafting of the Political Constitution of Chile, have acted as legal advisors to public entities, and have been members of the Chilean Senate. The partners and associates of the firm are fluent in at least one language other than Spanish, and a large number of members of the firm hold graduate degrees from leading universities in the United States and in the U.K. and have spent time abroad training at foreign law firms, enhancing their foreign language abilities and broadening their exposure to the international legal system.

The firm has its main offices in the capital city of Santiago and its services have countrywide coverage. Cariola Díez Pérez-Cotapos has strong and permanent relationships with other law firms in Chile and abroad, and over the years has developed an extensive network of professional contacts and relations with leading law firms in Latin America.

PRACTICE AREAS

Asia-Pacific Desk

Over the years we have expanded our services to international companies and developed an extensive network, long-term relationships with the most important law firms across the globe practicing in Latin America. We are fully aware of the relevance of the Asian-Pacific and Chinese market for Chile.

Since 2004, we have been working on increasing our presence in Asia-Pacific, especially in China by organizing and participating in seminars and conferences related to China and establishing contacts with Chinese authorities, chambers of commerce and other social and business organizations. In our client-portfolio we are proud to have several Chinese state-owned companies as well as private companies, in areas such as mining, agroindustry, automotive, industrial, heavy machinery, among others. In order to consolidate our relationship with Asian investors, our firm has created the Asia-Pacific Desk, by means of which we are prepared to conduct all the China as well as Asia-Pacific related transactions of our firm and to provide specialized services to our clients.

The Asia-Pacific Desk is staffed with lawyers who are not only fluent in Chinese, English and Spanish, but also have Chinese background as well as professional experience and significant involvement in China-related transactions. We believe that this constitutes a great asset that provides a significant support to our Asian clients in entering into the local market of Chile. Additionally, many of our lawyers hold master degrees in the most important Universities of the world, including China, the United States and Europe, as well as professional working experience with international law firms.

Banking, Finance and Capital Markets

We advise banks and financial institutions, local and international, in structuring bilateral

and syndicated loan facilities, project financing, structured financing, and other financial transactions with diverse and complex collateral packages. We also assist banks and financial institutions, securities brokers, investment funds, leasing and factoring companies, in connection with regulatory and compliance issues applicable to its activities in Chile.

We also participate in financial distress situations, domestic and international, including financial restructuring transactions and reorganizations.

In addition, we advise on capital market operations, such as public securities offerings, public tender offers, takeover operations of listed companies, as well as corporate reorganizations. This includes advice and assistance to investment banks in capital and debt placements in Chile and abroad, including private and public placements, 144A bonds and ADRs.

Finally, we provide assistance to international and Chilean stock corporations, with affiliates in Chile, in their incorporation processes, capital raising, business development, joint ventures, transfer of shares and companies, and mergers and acquisitions transactions. We have regular interaction with the Central Bank of Chile, the local SEC, the local bank supervisor, as well as foreign investment authorities and other governmental entities.

Closely Held and Family Businesses

The vast majority of midsize businesses, large companies and economic conglomerates in our country are controlled by entrepreneurial family groups or closely held companies. Past experience shows beyond doubt, that the companies that have been able to develop and consolidate over time are those who have been able to adequately balance the three

spheres that revolve around them: ownership, family and management.

Over the years, our firm has participated in the purchase and sale of family businesses and closely held companies; as well as in the development and implementation of corporate and family governance structures allowing for the peaceful, orderly phase-in of the new investors in the closely held company or the new generations into the ownership and management of the family business, enabling them to endure the test of time.

Each closely held company or business family has its own characteristics and realities, which calls for tailor-made solutions. To this end, our firm has attorneys with vast experience in corporate issues (drafting of ad-hoc bylaws, shareholders' agreements, family protocols, etc.), taxation (design of efficient ownership structures, corporate reorganizations) and probate (assistance in drafting and preparing wills), which allows us to provide comprehensive assistance of considerable added value on these matters.

Competition/Antitrust

Our practice represents clients, both judicially and out of court, with the goal of ensuring that their economic activities comply with the regulations governing market competition. With a business-oriented focus, we aim at helping our clients, and especially their commercial areas, to conduct their business in a competitive manner, identifying issues that may generate contingencies, and protecting their interests before the *Fiscalía Nacional Económica* (FNE) and *Tribunal de Defensa de la Libre Competencia* (TDLC).

Our counselling focuses on the following matters:

Merger control, where we coordinate with the corporate team handling the transaction in analyzing potential anticompetitive risks and helping to devise mitigations, and we also represent clients in filing the relevant clea-

rance applications before the TDLC and/or the FNE (including out-of-court settlements); contentious and non-contentious cases before the TDLC in connection with various aspects of a company's business, such as cartels and concerted practices, discriminatory and exclusionary practices, price-fixing and price-discrimination, resale price maintenance, vertical restrictions, unfair competition, abuse of a dominant position, among others; intellectual property issues and day-to-day advice on compliance relating to antitrust, unfair competition and consumer protection matters, where we take a proactive and preventive role to avoid potential contingencies or conflicts that may result in litigation or governmental scrutiny, as well as collaborating with the structuring of their business models and practices to ensure compliance with the relevant regulations.

Our firm has advised clients in a wide range of industries, such as pharmaceutical; aerial; land and maritime transportation; infrastructure; oil and energy; media; medical and health services; retail; food; Fast Moving Consumer Goods; technology and e-commerce, among others.

Constitutional Law

In connection with Constitutional Law we advise our clients in the defense of their constitutional rights related with their economic activities, such as property rights, the right to acquire any kind of property, legal equality, equal distribution of legal burdens, due process, equal treatment by the Government in economic matters, freedom of association, privacy, among others.

The work consists on the exercise of judicial actions, like the constitutional protection action (*recurso de protección constitucional*), inapplicability of statutory provisions for unconstitutionality (*recurso de inaplicabilidad por inconstitucionalidad*), and illegality claims against governmental entities, such as municipalities and superintendencies. The work also includes the exercise of adminis-

trative remedies and claims, like reconsideration claim (*recurso de reposición*), hierarchical claim (*recurso jerárquico*), invalidation request (*solicitud de invalidación*), revision claim (*recurso extraordinario de revisión*), and other specific remedies.

In addition, the work comprises the preparation and filing of request for legality statements (*dictámenes*) by the General Comptroller's Office (*Contraloría General de la República*) in matters of its competence whenever there is a constitutional issue.

Finally, the work also includes the preparation of legal reports (*informes en derecho*) in constitutional matters when a client requires the report as a supporting opinion on a judicial procedure or as a document in support of a business decision.

Corporate and M&A

This is one of our most intense and creative practice within the firm as well as one of the leading M&A areas in Chile, requiring the combined efforts of our corporate, tax, finance, antitrust and labor attorneys, among others, as a full-service firm.

Our work in this area includes: joint-ventures; private equity and venture capital deals; acquisition of private and public (listed) companies, both domestic and cross-border deals; complex corporate mergers and spin-offs; corporate restructuring transactions with and without change of control; structuring and restructuring legal investment vehicles; participation in due diligence processes and data room preparation; bids from companies or assets; preparing acquisition strategies and offers to purchase companies and/or assets; contingency analysis; preparation of preliminary purchase agreements; negotiation and drafting of purchase and shareholders' agreements; securing prior approval from the pertinent regulators; structuring of financing and security packages; and the drafting of related documents.

We have assisted major foreign companies in the acquisition of large companies registered in Chile, including assistance in simultaneous tender offers staged in Chile and the United States.

Energy

We are an active player as legal counsel to local and foreign companies in the electricity, gas and water sectors, structuring joint ventures, project construction and development, operational agreements and acquisitions and sale of electric generation, transmission and distribution companies, among others. We have also assisted clients in the privatization of state-owned power plants and utilities.

Our attorneys have thorough command of local regulations on electricity generation, transmission and distribution and fuels, as well as of regulations applicable to water and gas utilities. We also provide legal assistance to participants or financial consultants in projects structured without resource allocation or else in financing initiatives for future projects.

We have also advised foreign companies in greenfield renewable energy projects, such as hydro, solar, wind, biomass, and geothermal in the whole process from development, financing, permits processes of greenfield projects for both conventional and non-conventional energy to regulatory matters, mergers and acquisitions and dispute resolution.

Other important clients of this area are mining companies and industrial clients, which demand large blocks of energy through power purchase agreements, which had become increasingly complex and sophisticated in Chile in the last few years.

Environmental

Our firm works intensely in the discussion and review of environmental impact studies and declarations, and in administrative claims and ju-

dicial actions in the context of the Environmental Impact Assessment System. In addition, we provide advice to our clients in the analysis and compliance of the applicable environmental regulations, as well as in sanctioning procedures initiated by supervising authorities, such as the Superintendency of Environment, the Superintendency of Electricity and Fuels, and the Health Authority, among others.

Our attorneys have played an important role in disputes related to environmental contingencies that have resulted from an increasing number of disputes and new environmental regulations in connection with industrial, mining, agriculture and retail projects.

This practice area includes not only the work related to the application of the General Environmental Act, Law 19,300, but also the Sanitary Code and supplemental regulations for both bodies of law.

Fisheries and Aquaculture

We have more than 30 years of significant experience in fisheries issues, providing a comprehensive advice of foreign and local companies in their extractive activities, processing as well as distribution and commercialization of fishery resources. We provide to our clients ongoing advice and legal support in their dealings with the Ministry of Defense, Navy Undersecretariat, General Bureau of the Maritime Territory and Merchant Marine, Undersecretariat of Fisheries and National Fisheries Service, State entities in charge of supervising and regulating these activities.

We have actively participated in matters relating to fisheries, aquaculture and maritime issues in general, such as aquaculture concessions as well as its transfer and lease; import, acquisition, substitution and transfer of fishing vessels and salmon transportation; mortgages constitution of vessels and pledge on aquaculture and biomass concessions; transfer and lease of tradable fishing licenses; granting of naval

documents; compliance with the legal regulations on the management of fresh and frozen seafood products; its process activities, environmental regulations for processing, slaughter, disposal and on fishing vessels; regulations on shipping (cabotage); port regulations in general; loading and unloading, among others.

Foreign Investment

This area of practice provides advice to foreign companies that are interested in doing business in Chile or entering into a joint venture with local companies.

The above includes the determination of the most appropriate and advantageous legal vehicle, ranging from an agency, permanent establishment to the incorporation of a specific company (whether a limited liability, a corporation or a simplified corporation), or even the incorporation of a number of entities which are structured as a group of companies, including the advice on applicable contractual arrangements and shareholders/partners agreements, and including as well the evaluation of the most appropriate tax alternatives on the basis of local regulations and any applicable Double Taxation Agreement. Likewise, our advice includes the recommendation of the available or most convenient foreign investment regime, taking into account also any Bilateral Investment Treaties which may exist with the country of origin of the investment.

Our advice on this area also includes the preparation, submission and monitoring of the applications for certificates of foreign investor at the *Agencia de Promoción de la Inversión Extranjera*, the fulfillment of applicable regulations on foreign exchange before commercial banks and the Central Bank of Chile, the preparation of the documents and applications for those mandatory registrations in Chile before tax and municipal authorities, and the representation of foreign investors before the *Agencia de Promoción de la Inversión Extranjera*, other regulatory agencies and the Central Bank of Chile.

Hotels, Resorts and Casinos

Our firm has assisted large international hotel chains now present in Chile, not only in how they have established in the country and operate their facilities directly on a daily basis, but also in negotiating operational, management and franchise agreements with third parties related to operation, administration and franchise contracts. Likewise, we advise hotel operations in all areas such as labor, litigation, commercial, regulatory and operational issues on a daily basis.

We represented an important number of hotels in Chile related to author rights in connection to music, audiovisual reproductions, among others. In addition, ever since the Gaming Casinos Law was enacted, we have assisted several foreign investors in applying for and/or securing licenses to operate gaming casinos, cooperating in the preparation of documentary submissions and filing of comprehensive projects with the administrative authorities, in addition to negotiating with local investors, suppliers and partners. Moreover, we have advised gaming casinos in purchases and mergers negotiations; contracts with hotel chains, restaurant operations and other contracts and services.

Insolvency

We offer to our local and foreign clients, creditors or debtors, a comprehensive professional advice to represent and lead them throughout all stages of liquidation and reorganization proceedings.

Our firm has vast experience in this area. We have participated in many liquidation and reorganization proceedings according to the new Insolvency and Re-Entrepreneurship Act. We also have been involved in several bankruptcy and complex judicial settlements. Therefore, we have a multidisciplinary team of lawyers, allowing us to address insolvency situations in their fullest dimension through an ongoing interaction of expert lawyers in liquidation and reorganization proceedings, legal experts in financial matters, such as reorganization of

companies and liabilities, creation of security interests and guarantees, purchase and sale of credits and labor lawyers who face contingencies of this kind for the debtor and the creditor in an insolvency situation.

We have participated in many proceedings, representing local and foreign debtors and creditors in different industry sectors such as retail, transportation, general trade, and technology, among others, with special emphasis on the proposition and evaluation of corporate reorganizations, which seems to be the trend set by the new law.

Insurance

Our firm has advised foreign insurers in structuring contracts and policies to comply with Chilean regulations relating to life and liability insurance plans, such as annuities and casualty insurance. In turn, we also assist foreign and local insurance brokers in structuring life insurance and retirement plans for our corporate clients in Chile.

We have vast experience in terms of reviewing and analyzing liability risk coverage for general liability, property, aircraft and cargo insurance, including the review and underwriting of the relevant policies and discussions with officers of the Securities and Insurance Superintendency.

Besides, our litigation department has been active in acting on behalf of clients both in loss management and in arbitration about coverage and extension of compensation coming from insurance policies.

Intellectual Property

Our sister firm, Sargent & Krahn, is the oldest Intellectual Property (IP) firm in Chile and offers comprehensive services in this area. For instance, we can name the following: searches, filing and prosecuting trademarks and patents; regulation of IP rights; litigation; negotiation

and drafting of license agreements; regulation issues related to pharmaceutical industry; advice in information technology (IT); databases protection and negotiation of software licenses.

We especially value the relationship with our clients. Therefore, each client is appointed a general IP counsel who is teamed with a litigation attorney. We also have technical professionals with experience in matters related to engineering, electronics, chemistry, biology, software and pharmaceutical products.

Sargent & Krahn has developed an extensive international network of correspondents who collaborate with the registration and litigation of trademarks and patents of Chilean companies abroad.

Our firm's ability to develop in-house products and services differentiates us from our competition and facilitates the contact with our clients. In 1991, we developed WEEKMARK, today a computer platform which our clients can access freely to check the status of their trademarks, as well as conduct limited searches of trademarks that belong to third parties. In 2013, our firm relaunched this platform, adjusting it to the current requirements and including additional services.

Labor and Social Security

Our practice counsels on the laws and regulations that have a bearing on labor and social security activities in Chile.

Our services include drawing up and preparing all kinds of employment contracts, suited to all forms of contracting arrangements allowed under current legislation, structuring of compensation and benefits packages, stock option programs, preventive labor audits, support in corporate restructuring processes having labor impacts, and in service outsourcing processes. It also includes drawing up employment contracts with expatriate staff and preparing and monitoring applications for work permits and visas, providing support in all areas of interest for expatriate executives who reside in Chile.

We also advise companies that are conducting collective bargaining processes, both with unions as well as with groups of workers, strike assistance and preparation of collective employment contracts and agreements.

We regularly organize lectures and seminars for clients, attended by their Human Resources departments and divisions, to discuss relevant topics regarding to this area of practice.

Litigation and Arbitration

Our team specializes in conflict prevention, litigation and arbitration related to the different areas of law.

Our attorneys have vast experience in civil, commercial, capital markets, insurance, constitutional, labor, construction, environmental, regulatory, tax, competition and consumer protection litigation and in defense against class actions in general.

Our lawyers are qualified to act in any type of courts and in different stages of the process. All of them are bilingual and have been selected among the best students of their respective college class. Several of them are university professors and also participate in professional associations' activities through diverse positions in the Chilean Bar Association.

We usually act in procedures before the Arbitration and Mediation Center (CAM) as well as the International Chamber of Commerce (ICC). We also represent our clients in proceedings before national and international courts of arbitration, local ordinary courts, competition courts, labor courts, tax courts and in different administrative proceedings against authorities and public institutions, and before the Public Procurement Court.

Mining and Natural Resources

Our firm is one of Chile's leading law firms in the fields of mining and natural resources, assisting a vast array of foreign and local clients,

providing comprehensive advice in all related matters, particularly exploration, development, financing and operation of mining projects, worksite closures and related matters.

We have participated actively in headline-making acquisitions and sales of mining companies and assets (copper, gold, silver, nitrates, iron ore, coal), as well as in the development and operation of numerous mining and energy projects, from initial exportation all the way to construction, startup and expansions, including strategic advice in preparing legal investment vehicle strategies, organization of companies, project finance, preparation and negotiation of all kinds of contracts and joint ventures, due diligences, strategic alliances, venture capital, production finance, take-off, supplies, surface property issues, processing of mining title and mining litigation, securing and processing of permits and authorizations with the regulators, arbitration, insurance litigation, international purchase and sale of minerals and supplies, and other areas related to these activities, such as the development, processing and acquisition/purchase of water rights, community relations, port activities, regulatory and environmental issues.

Our practice area includes both junior and large companies as well as comprising ongoing corporate assistance as required by our clients for their daily business activities.

Real Estate and Urban Development

Our firm has vast experience in all areas of real estate law, such as sale and purchase agreements; leases; mortgages; easements; usufructs; condominiums; expropriations; concessions over national assets for public use; rules on acceptance and regularizations of buildings; urban and rural mergers and subdivisions, and also in subjects regarding indigenous property law; agrarian reform; forests law, among others. On urban matters, we have broad experience in zoning changes, construction capabilities and types of equipment.

Our team has focused its real estate practice in the development of industrial, commercial and residential projects, covering all stages from the planning to the implementation of these projects. In the industrial sector, our experience addresses every stage of the project, among others, property due diligence, drafting and negotiating of promises, purchases, sales or leases, including all necessary permits and urban aspects for the implementation of such projects. In terms of commercial real estate, we have extensive experience in projects of shopping centers and other commercial purpose facilities, and office buildings, including co-ownership regime and management of buildings. In the residential area, we have advised companies in the development of housing projects.

Regulatory Law

Our firm provides ongoing assistance to our clients in their legal relationships with the administrative authorities in various sectors of our national economy.

Our services include defending administrative claims brought by the Sanitation Authorities, Superintendencies, Undersecretariats and other public regulators.

The work also comprises the legality analysis of sublegal provisions, the preparation of legal reports and the representation of our individuals and legal entities in the defense of their rights vis-à-vis governmental entities through judicial and administrative remedies and claims.

It also includes demands for public information through the mechanisms created under the Law on Access to Public Information, requests for resolutions to the General Comptroller's Office on various issues, representing clients in challenges to government procurement bids, administrative remedies, illegality claims due to municipal acts or omissions, purchase of fiscal assets, obtaining concessions and administrative permits, legal advice on permitted land use and zoning plans, and related matters.

Taxation

Our tax group offers high added-value tax advice in all matters related to corporate, owner and executive taxation. The attorneys in this area are dedicated exclusively to fiscal issues and have solid legal and technical backgrounds, allowing them to offer creative solutions for the myriad tax situations companies must face, regardless of their particular characteristics. Publications such as Chambers & Partners, The Legal 500, International Tax Review, and Latin Lawyer feature and recommend our firm's taxation experts.

Tax assistance to our clients covers a broad range of services in relation to recurring questions facing national and international groups, as well as the analysis and incidence of emerging tax issues on corporate restructuring operations and mergers and acquisitions; financial operations and products; capital market operations; structuring and operation of equity funds; project finance; compensation plans for corporate executives and directors; designing and organizing tax-efficient structures for estate and family business planning.

We are also vastly experienced in assisting and defending our clients in tax and transfer pricing audits and other adversary proceedings, combining wide-ranging expertise in tax, procedural and administrative law to offer an optimal defense for taxpayers' interests in all kinds of procedures, remedies or litigation with the tax administration.

Technology, Privacy and Media

We created the new Technology, Privacy & Media area within our firm. It offers a unique niche of experienced attorneys with a strong technology background. We advise our local and international clients in the entire range of issues related to technology, including software licensing; software as a service and cloud computing; transfer and licensing of technology; Infrastructure projects with technology components; trade

secrets; database protection; information security, among others.

Regarding to privacy includes legal issues such as processing of personal data and commercial information, privacy policies, protection of clients data and direct marketing campaigns.

In the media industry, we assist our clients on issues related to telecommunications, advertising, internet and social networks, publicity rights, content licensing and entertainment law.

Transportation and Infrastructure

Our firm has provided full advice in large infrastructure projects, such as the construction of highways, ports, dams, hospitals and prisons, whether to clients acting as single member, whether to clients participating in a consortium which includes other local members or foreign partners.

In each project we have participated from the origin, including highly-complex tender processes of concessions of public works, municipal concessions or private tender processes, as well as in the subsequent acquisitions or transfers of interest in projects under construction or under operation. In all of these cases, our advice extends to the different steps and related aspects of a project, including project financing, regulatory matters, environmental, administrative law, tax, corporate, contractual matters, antitrust regulations, unfair competition, insolvency and related insurances, as well as those specific regulatory aspects that govern each particular project, in addition to the representation of the project-holder before competent authorities.

With regard to transport, our firm has provided both full advice and particular advice about regulations specifically applicable to major air-transport and sea-transport transnational

companies, and also to major local land-transport companies, including multimodal transport and logistics services companies. Our advice includes the application of bilateral, regional or multilateral international treaties that could be relevant for the case, as well as the application of both mandatory and default provisions on liabilities of the transport companies (limits, exclusions, etc.) and available insurances, in addition to the representation of such companies before competent authorities.

DOING BUSINESS IN CHILE

Chile offers a stable economic and political environment, with excellent growth prospects. It also has a respectable legal framework, designed to guarantee the protection of investments and the ability to operate in accordance with normal business practice. Chilean financial markets are well developed, with a high domestic savings rate largely due to its private pension fund system.

This document briefly discusses the legal framework applicable to any individual or company interested in carrying out business activities in Chile. The foreign investment regulations, corporate structure alternatives as well as the relevant tax provisions are summarized to explain the legal means available to do business in Chile. Naturally, the most convenient structure for any given business should be determined on a case by case basis, because this document is intended only to provide an overview of the most relevant provisions.

Generally, there are no restrictions based on the nationality of partners, shareholders or owners of Chilean companies. The only restrictions imposed by law in this respect apply to certain highly specific fields of business such as coastal shipping.

I.- BUSINESS ORGANIZATIONS IN CHILE

There are several structures in which companies may be organized to undertake activities in Chile. From non-profit organizations to stock corporations, Chilean law sets forth different applicable regimes according to the different needs.

Generally, a foreign company may freely select any of the following forms of organization:

- A) Branch of a Foreign Legal Entity
- B) Corporation
- C) *Sociedad por Acciones* (Simplified Corporation)
- D) Limited Liability Company

In the case of banks, insurance companies and fund managing companies (e.g., pension-fund, etc.), among others, the law sets out certain regulatory requirements to be fulfilled, i.e. prior authorization by the competent local authority.

As a general rule, no particular structure is mandatory to undertake business in Chile, save for certain specific businesses, e.g. banking services, insurance companies, management of funds, etc. Therefore, the various different considerations set out below must be carefully weighed to determine the most appropriate structure.

A.- BRANCH OF A FOREIGN LEGAL ENTITY (*Agencia*)

A branch of a foreign legal entity is not an autonomous legal entity in itself but an agency of the parent company in Chile.

(1) Establishment

To establish a branch of a foreign legal entity in Chile, it is necessary that certain consul-certified and legalized documents be registered with a local Notary Public. Thereafter, the agent must execute a public deed containing a statement of establishment for the branch. A summary of said statement must comply with certain publicity requirements. No prior official authorization is required.

Specifically, copies of the following documents in their original language of execution must be consul-certified and legalized:

- Articles of incorporation of the foreign entity.
- By-laws of the foreign entity.
- Certificate of good-standing (or similar) of the foreign entity.
- Power of Attorney granted to the agent who will manage the branch.

If the original documents are issued in a language other than Spanish, they should be previously translated by the Ministry of Foreign Affairs of Chile.

Both the original documents and translations thereof must be filed with a Notary Public in Chile for registration.

On the same date of registration of those documents, the appointed agent should execute a public deed dealing with the following:

- (a) The name, capital (amount and capital contribution terms), domicile and corporate purpose of the branch in Chile;
- (b) A declaration and representation that the foreign entity is aware of the Chilean legislation that will govern its affairs in Chile, its branch, contracts and obligations; that the foreign entity and its assets shall be subject to Chilean laws, particularly as to compliance of obligations undertaken in Chile; and that the foreign entity consents to maintain in Chile assets that can be easily sold or liquidated to meet its obligations in Chile.

A summary of the public deed must be published in the Official Gazette and registered with the Registry of Commerce within 60 days from the date of its execution.

According to article 447 of the Commerce Code and article 121 of the Corporations Act (Law N^o. 18,046), the power of attorney granted to the agent must be a general one, with *carte blanche* authority, including a clause stating that the agent shall act in Chile under direct responsibility of the foreign entity, and with broad powers to carry out operations on its behalf. The authorities to represent the foreign entity before Chilean Courts, in the terms set forth by the Chilean Civil Procedure Code, should also be included. Therefore, and notwithstanding that most companies usually do not grant general powers of attorney to their officers or employees as a matter of policy, they must do so if they wish to operate a branch in Chile.

(2) Liability of the foreign entity

The foreign entity is liable for all the activities and business carried out by the Chilean branch,

and this liability is not limited to the assets located in Chile.

(3) Capital

No minimum capital is required for the establishment of a branch of a foreign entity in Chile. Any amount of capital may be determined at the time of establishment of the branch, without being mandatory that said capital be paid-in on the date of establishment. Furthermore, the capital of the branch may be modified at any time, either increasing or reducing it, in which case said amendment must be executed by the agent through a public deed. The publication in the Official Gazette and registration with the Registry of Commerce of a summary thereof must be arranged within 60 days. Reductions of capital must be authorized in advance by the Internal Revenue Service.

(4) Management

The branch shall be managed by the agent, who shall be vested with broad authority to represent the foreign entity as explained in (1) above.

(5) Remittances of profits

There are no limitations with regard to the remittance of profits from the branch, provided that all the pertinent taxes have been paid and that applicable foreign investment remittance terms and foreign exchange regulations have been complied with.

(6) Publication of Financial Statements

The agent must publish the financial statements of the branch every year in a local newspaper of the corporate domicile of the branch indicated in the notarized deed of establishment.

B.- CORPORATION (Sociedad Anónima)

In general terms, Chilean regulations on corporations do not differ much from those of other jurisdictions.

Under Chilean law (basically, the Corporations Act -Law Nr. 18,046- and its Regulations), corporations may be either publicly-held or closely-held corporations.

Publicly-held corporations are basically those where the shares are publicly traded or those having 500 or more shareholders or in which at least 10% of the shares belong to 100 shareholders, excluding for purposes of calculation thereof those shareholders who individually exceed such percentage.

Closely-held corporations are basically those not falling within the above definition.

Publicly-held corporations are subject to the supervision of the Superintendency of Securities and Insurance (SVS), whereas closely-held corporations are not. However, shareholders in a closely-held corporation may agree to have it governed by those regulations applicable to publicly-held corporations, thereby becoming a corporation subject to the control of the SVS.

Also, if a corporation, due to particular regulations, is required by law to register its shares with the SVS, such corporation would be deemed to be a publicly-held corporation, becoming thereby subject to the oversight of the SVS as well. And if a corporation, due to particular regulations, is required by law to subject to the oversight of the SVS, such corporation is not deemed *per se* to be a publicly-held corporation but it becomes subject in any event to disclosure and reporting requirements applicable to such kind of companies (e.g., concessionaires of public works).

Lastly, other corporations, such as insurance companies, fund managing companies, etc. are qualified as “special corporations” and are also subject to the oversight of the SVS and generally are subject to the rules applicable to publicly-held corporations.

(1) Incorporation¹

Corporations, whether publicly-held or closely-held, are incorporated through the execution

¹ Under Law Nr. 20,659, the incorporation procedure –as well as amendments to the by-laws and dissolution.

of a public deed by at least two incorporators. Certain legends required by the law must be included, such as the name of the shareholders, their profession and domicile; the corporate name, purpose of the corporation, its domicile; the capital stock and the number of shares into which is divided, the description of preferred series, if any; and others. The public deed must also contain the by-laws of the corporation.

A summary of the public deed must be published in the Official Gazette and registered with the Registry of Commerce within 60 days from the date of its execution.

(2) Liability of the shareholders

Shareholders are only liable for the amount they have agreed to pay-in for subscribed shares.

(3) Capital

Capital must be paid within three years from the date of execution of the incorporation deed, or within such shorter period as provided in the by-laws, if any, indexed pursuant to Chilean inflation rates, or adjusted under other specifically-agreed mechanisms (e.g. exchange rate).

The capital of the corporation set forth in the by-laws –unless the company be subject to IFRS (International Finance Reporting Standards) as applicable accounting principles- shall be automatically increased, on an annual basis, in accordance with the Chilean inflation rate, once the balance sheet of the company has been duly approved by the shareholders.

Any other increase of the capital of corporations shall require, generally, the amendment to the by-laws, which, in turn, shall require an extraordinary shareholders’ meeting, which must be recorded in a public deed. A summary of said deed must be published in the Official Gazette and registered with the Registry of Commerce within 60 days as from the date of execution thereof.²

Among other means, increases in the capital of the corporation may be obtained through the

² Publication in the Official Gazette and registration with the Registry of Commerce may be substituted for the electronic submission of a form under Law Nr. 20,659. See preceding footnote.

capitalization of profits or retained earnings; through capitalization of debts; or through additional contributions in cash or in kind. Any additional capital must be paid-in within three years as from the date of the relevant shareholders' meeting, or within such shorter period as is agreed therein, if any, except for stock option plans, regarding which the term for payment could be extended up to five years.

In any case, before increasing the capital of closely-held corporations by issuing new shares, any existing reserves must be firstly capitalized.

Should the shareholders agree on an increase of capital by issuing new shares, the existing shareholders have a preemptive right to proportionately subscribe for any new shares (except where shares are issued for stock option plans, but only up to 10% of the total issued shares), a right which may be freely waived or transferred.

Reductions in the corporation's capital must also be agreed generally at an extraordinary shareholders' meeting and attested to in a public deed. A summary of said deed must be published in the Official Gazette and registered with the Registry of Commerce within 60 days from the date of execution thereof (besides some additional publications required by law)³. Prior authorization by the Internal Revenue Service is mandatory. The reimbursement of funds, if applicable, may only be conducted after a 30-day waiting period following the publication in the Official Gazette.

Corporations, with some qualified exceptions, may not acquire their own shares.

(4) Management

The management of a corporation is vested upon a Board of Directors appointed by the shareholders. The Board shall not have less than three members in closely-held corporations, and not less than five or seven, as the case may be, in publicly-held corporations, as required by the law. Directors need not to be shareholders of the company.

A shareholders' meeting may, at any time, remove the Board as a whole.

The Board of Directors may delegate some of its authority upon a General Manager who shall have the judicial representation of the company and shall be entrusted with the duty of implementing the resolutions of the Board of Directors. In publicly-held corporations, Directors cannot serve simultaneously as General Manager; in closely-held corporations, only the President of the Board is subject to such restriction.

(5) Distribution of Profits

The law requires that publicly-held corporations distribute at least 30 % of their net consolidated profits each year, unless otherwise agreed by the shareholders' meeting with the unanimous vote of all issued shares.

In closely-held corporations, shareholders may have the by-laws to include any policy for the distribution of profits as they may wish, provided that a minimum distribution percentage be set forth therein.

Interim dividends may be approved by the Board of Directors, provided that there are no accumulated losses. Should there be any accumulated losses, or in case the corporation ends up with losses or with profits in an amount lower than the distributed sum, each Director shall be personally liable for the reimbursement of such dividends.

(6) Financial Statements

Financial statements of closely-held corporations may be audited by account examiners or external auditors appointed by the shareholders' meeting or through any other mechanism set out in the by-laws, including the option to exempt the company from any audit or review.

Financial statements of publicly-held corporations must be audited by an external auditing firm, duly registered with the SVS ("*Empresa de Auditoría Externa*"), to be appointed annually by the shareholders' meeting.

3. Publication in the Official Gazette and registration with the Registry of Commerce may be substituted for the electronic submission of a form under Law Nr. 20,659. See footnote 1.

Publicly-held corporations must publish their financial statements as well as certain relevant information required by the SVS in their website; if the company does not have a website, then it must publish them in a local newspaper of its corporate domicile.

(7) Transfer of shares

Shareholders may freely transfer their shares, except if the by-laws (only of closely-held corporations) or a shareholders' agreement contain a limitation.

In publicly-held corporations, the by-laws may not limit the free transfer of shares. Any private agreement between shareholders setting forth transfer restrictions, whether in a closely-held or in a publicly-held corporation, must be deposited with the company and annotated in the company shareholders' registry in order to be enforceable against third parties (but under no circumstances against the company).

Transfers of shares must be executed before a Notary Public, two witnesses of age or a securities broker, or else, through public deed, and must be annotated in the shareholders' registry in order to be effective before the company and third parties.

(8) Dissolution

A corporation is dissolved and terminated when its term of duration expires, unless it has been incorporated to perpetuity. Additionally, corporations are dissolved if it is so agreed by 2/3 of the total issued shares, in an extraordinary shareholders' meeting called for that purpose, or if all the shares are held by one person or entity for a period exceeding 10 consecutive days, or if merged into another company. The by-laws of the company may include other additional events that result in the dissolution of the corporation.

Should the dissolution of the corporation takes place, its liquidation shall be undertaken by a liquidation committee freely elected by the shareholders, except where no liquidation is

necessary (acquisition of all the shares by one person or entity, or merger)

(9) Minority shareholders

Any minority shareholder is entitled to withdraw from a corporation in case certain resolutions are agreed upon by the shareholders' meeting. Among such resolutions are: the transformation of the corporation into another legal form; merger; disposal of 50% of the company's assets; issuance of preferred shares, or the increase or reduction of preferences attaching to such shares.

Some other grounds for withdrawal may be included in the by-laws by the shareholders. The withdrawal right implies the corporation's obligation to purchase all of the dissenting shareholder's shares, either at book value, in the case of closely-held corporations, or at market value, in the case of publicly-held corporations.

C.- SIMPLIFIED CORPORATION (*Sociedad por Acciones*)

Under legislation enacted in 2007 to encourage -among other things - private entrepreneurship and investment in venture capital companies, a new kind of company structure was introduced in Chile (namely, "*Sociedad por Acciones*", or "SpA"), which basically provides for a corporate structure similar to that of a closely-held corporation, although having some material differences to reduce formalities and administrative costs attached generally to corporations. Accordingly, the SpA is not an appropriate vehicle to raise capital from the public and if, as a matter of fact, it is held by 500 or more shareholders, or at least 10% of the shares belong to a minimum of 100 shareholders (excluding those shareholders who individually exceed such percentage), over a period longer than 90 days, they become governed, as a matter of law, by the provisions applicable to publicly-held corporations.

SpAs are governed by the Commerce Code, but in the absence of provisions therein (and in the

relevant by-laws), they are governed by those provisions applicable to closely-held corporations.

Some noteworthy peculiarities of the SpAs (as opposed generally to corporations) are the following:

(1) Sole shareholder

Notwithstanding that a critical legal requirement for every company under Chilean laws is having at least two partners or shareholders, a SpA may have a single shareholder, even from the time of incorporation, as a sole incorporator. Further, unless otherwise set forth in the by-laws, a SpA is not dissolved if all of the issued shares are acquired by one shareholder.

The above provides a useful corporate alternative for foreign companies having to form a subsidiary in Chile, thereby avoiding the need to include a nominal partner or shareholder to meet formally the two-partner/shareholder rule.

(2) Incorporation and Amendments⁴

Incorporation formalities are substantially similar to those of closely-held corporations, but the execution of a public deed may be replaced alternatively with a private document, provided that the signatures therein be authorized by a Notary and that such document be recorded in a Notary. Also, the applicable term for registration and publication of this public deed or private document is reduced from 60 days to 1 month.

The by-laws contained in the public deed or private document containing the articles of incorporation may be amended by a shareholders' resolution adopted not only in a formal shareholders' meeting but also directly through a public deed or a private document, provided that all of the shareholders execute such deed or document.

(3) Capital

Capital must be paid within the term set out in the by-laws. In the absence of any clause govern-

ing this issue, the applicable term is five years as from the incorporation date or the date of capital increase resolution, as the case may be.

The by-laws may authorize management to increase capital, along with providing the conditions to exercise such authority, notwithstanding the regular authority of the shareholders to decide on capital increases.

There is no need to consider preemptive rights to subscribe for newly-issued shares for the benefit of existing shareholders, unless otherwise provided in the by-laws.

Capital reductions require the unanimous consent of the shareholders, unless the by-laws provide for a specified majority instead.

(4) Voting rights

The by-laws may contemplate a series of shares having special voting power, i.e. having more than "one vote per share".

(5) Management

The management of a SpA may be freely organized in the by-laws. Accordingly, a SpA may be managed by any given body (a Board, a Committee, etc.), by one or more shareholders or by third parties, or through any other mechanism that the shareholders deem to be suitable.

(6) Distribution of profits

The by-laws may set out a preferred series of shares entitled to receive a dividend for a given or determinable amount and at any and all event, becoming therefore a dividend that is not contingent upon actual profits earned by the SpA.

Also, the by-laws may provide that profits resulting from, or associated to, a specific line of business or specific assets, be distributed as dividends regardless of general profits or losses of the SpA resulting from all other businesses, assets and financial results generally.

4. Under Law Nr. 20,659, the incorporation procedure—as well as amendments to the by-laws and dissolution—could be significantly reduced, having no cost, by the mere submission electronically of a form through the web site of the Ministry of Economy. The application of this law to the different business organizations has been designed on a gradually basis, from limited liability companies (already applicable) through Sociedad por Acciones (already applicable) and closely-held corporations (mid 2016). Publicly-held corporations do not qualify for purposes of this law.

D.- LIMITED LIABILITY COMPANY (*Sociedad de Responsabilidad Limitada*)

Under Chilean law, the interested parties may set up an unlimited liability company. Since limited liability companies are patterned on the same rules as those set out for unlimited liability companies, except mainly for this specific characteristic, we will now refer to rules that are commonly applied for both (with the exception of (3) below, which only applies to limited liability companies).

(1) Organization⁵

Limited liability companies are organized by execution of a public deed by at least two parties, either individuals and/or legal entities. Said deed must also set forth the name of the company, its corporate purpose, capital contributions and so on, as well as the by-laws of the company. A summary of said deed must be published in the Official Gazette, and registered with the Registry of Commerce within 60 days from its day of execution.

Limited liability companies may not have more than 50 partners, whether individuals or legal entities.

(2) Supervision

Limited liability companies are not subject per se to any particular supervisory control, such as that exercised by the SVS over publicly-held corporations.

(3) Liability

Partners' liability is limited to their obligation to contribute a given amount into the company, or to contribute to the company's liabilities up to a certain amount, if any, as indicated in the by-laws.

(4) Capital

There is no minimum capital requirement to incorporate a limited liability company in

Chile. Partners may freely determine the terms and conditions for the payment they intend to contribute to the company.

The corporate capital may be amended from time to time, either increasing or decreasing it. Reductions of capital require the prior approval of the Internal Revenue Service.

Capitalization and increases to the corporate capital may be obtained through contributions in cash or in kind, and/or capitalization of profits, retained earnings or debts.

(5) Management

The management of a limited liability company may be vested in one or more partners, in a third party or in a Board of Directors or other suitable body specially appointed for that purpose. The quorum and structure of this body, in case the partners decided to include it, may be freely established in the by-laws.

(6) Distribution of profits

The terms and conditions for profit distributions may be freely set forth in the by-laws by the partners.

(7) Transfer of interest

The transfer of ownership interests in a limited liability company requires the unanimous consent of all its partners. Otherwise, the transfer will be null and void.

In case the partners agree to transfer their interests, a public deed must be executed and a summary thereof published in the Official Gazette and registered with the Registry of Commerce within 60 days from the execution date.

(8) Financial Statements

Limited liability companies are not generally required to publish their financial statements.

5. Under Law Nr. 20,659, the incorporation procedure –as well as amendments to the by-laws and dissolution– could be significantly reduced, having no cost, by the mere submission electronically of a form through the web site of the Ministry of Economy. The application of this law to the different business organizations has been designed on a gradually basis, from limited liability companies (already applicable) through Sociedad por Acciones (already applicable) and closely-held corporations (mid 2016). Publicly-held corporations do not qualify for purposes of this law.

II.- FOREIGN INVESTMENT IN CHILE

The regulatory framework for foreign investment in Chile is mainly found in two legal bodies: The Framework Law for Direct Foreign Investment in Chile (Law 20,848 or “DFI Law”), in effect as of January 1, 2016, and Chapter XIV of the Compendium of Foreign Exchange Regulations of the Central Bank of Chile. Additionally, Chile has executed Agreements on Reciprocal Promotion and Protection of Investments (“APPIs”, also known as Bilateral Investment Treaties or “BITs”) and Free Trade Agreements (“FTAs”) with numerous countries, providing additional protection for foreign investors. This also includes the Agreements for the Avoidance of Double Taxation that Chile has entered into with various States, which grant a more favorable tax treatment to foreign investments that come from such states.

A. DIRECT FOREIGN INVESTMENT LAW (“DFI LAW”)

The DFI Law regulates investments made by any natural or legal person incorporated overseas, not residing or domiciled in Chile, whose investment is equal to or greater than USD\$5,000,000, or the equivalent to said sum in other foreign currencies.

1. Methods of Investment:

- a. Freely exchangeable foreign currency.
- b. Tangible goods in all forms and conditions.
- c. Reinvestment of profits.
- d. Credit capitalization.
- e. Technology in its various forms suitable for being capitalized.
- f. Credits associated with foreign investment derived from related companies.

2. Materialization and Purpose of the Investment:

The application of the rights conferred to the foreign investor by the DFI Law requires for the investment to be made in a Chilean company that receives the investment after January 1, 2016, and this investment must grant the investor the direct or indirect control over, at

least, 10% of the company’s voting shares, or an equivalent percentage or stake in the corporate equity if it is not a stock-based company, or in the assets of the respective company.

3. Proceedings and Foreign Investor Certificate:

In order to qualify as a foreign investor and access the rights available under the DFI Law, it is necessary to request a certificate issued by the Agency for the Promotion of Foreign Investments (the “Agency”) demonstrating the interested party’s foreign investor status. The request submitted before the Agency must provide evidence that the investment was materialized in the country, including a detailed description thereof, indicating its amount, purpose and nature, all subject to the manner and conditions determined by the abovementioned Agency.

4. Rights of the Foreign Investor under the DFI Law:

The following are the basic rights granted by the DFI Law:

- a. Overseas repatriation - at any time - of the invested capital and net profits, once the applicable tax obligations have been fulfilled. In any case, this right shall be subject to the limitations and restrictions that the Central Bank may impose in accordance with its general attributions regarding foreign exchange.
- b. Access to the Formal Exchange Market (“FEM”, comprised by banks and other authorized financial entities) to liquidate currencies that comprise the investment and to acquire the currencies necessary to repatriate the invested capital and net profits, applying the exchange rate that is freely agreed with the corresponding FEM entity. This right shall in any event be subject to the limitations and restrictions that may be imposed by the Central Bank in accordance with its general attributions regarding foreign exchange.
- c. Right to not be arbitrarily discriminated, whether directly or indirectly, subjecting the

foreign investor to the legal regime that is applicable to local investors.

- d. Right to value added tax (VAT) exemption in the import of capital assets, provided that they comply with certain special requirements and procedures envisaged in the tax regulations. This right is applicable both to the foreign investor and to the company that is the recipient of its investment.

5. Transitory Tax Invariability:

The DFI Law does not set forth the possibility that foreign investments can resort to a tax invariability regime, as was the case of the previous foreign investment regime set forth by Law Decree 600, which was in force and effect until December 31 of 2015.

Notwithstanding the foregoing, the DFI Law establishes that during a period of 4 years, expiring on December 31 of 2019, foreign investments shall be entitled to resort to tax invariability with a total income tax rate of 44.45%, during a term of 10 years, as from the start-up date for the corresponding company or as from the date when the investment entered the country, in case it refers to a company that was already operational. In any case, the foreign investor shall be entitled to waiver said tax invariability and be subject to the general rules that are applicable to this matter.

6. Mining Projects:

Additionally, during a 4-year period expiring on December 31, 2019, and regarding investments related to mining projects, for a sum equal or greater than US\$ 50,000,000, foreign investors are also given the possibility of entering into foreign exchange agreements with the State of Chile.

If foreign investors choose this alternative, for a term of 15 years, they shall be entitled to: (i) resort to the invariability of the legal provisions regarding the specific tax applicable to mining activities, established in articles 64 bis and

64 ter of the Income Tax Law (specific tax to the operational income of mining activities or “royalty” income), without being affected by the increased rate, expansion of the tax base or any other amendment that causes said tax to increase; (ii) benefit from the non-application of new taxes, royalties, tariffs, duties or similar levies, referred specifically to mining activities, that could be established after the date on which the respective foreign investment agreement is executed; and (iii) benefit from the non-application of prospective amendments to the sum or manner of calculating the exploitation and exploration permits. The abovementioned 15-year term shall be calculated in calendar years, as from the calendar year of the respective company’s start-up.

Foreign investors benefited with the aforementioned rights shall bind the respective recipient companies to submit their annual financial statements for external audits and, in addition, said companies must file their financial statements - individual and consolidated, quarterly and annual - along with an annual report containing information about the entity’s ownership, before the Superintendence of Securities and Insurance. In the event of breach of this requirement, the penalty is the lapse of the aforementioned rights.

7. Effectiveness of the foreign investment agreements executed under the previous system:

Foreign investment agreements executed until December 31, 2015, between the State of Chile and foreign investors subject to Law Decree No. 600, shall remain in full force and effect and, consequently, the respective foreign investors shall retain all of the rights and obligations stipulated under the referenced foreign investment agreements.

The management of said foreign investment agreements shall correspond to the Agency, in its capacity of legal successor of the Foreign Investment Committee.

B.- CHAPTER XIV OF THE COMPENDIUM OF FOREIGN EXCHANGE REGULATIONS OF THE CENTRAL BANK OF CHILE

Chapter XIV of the Compendium of Foreign Exchange Regulations of the BCCH (“Chapter XIV”) regulates all foreign loans, deposits, investments and capital contributions for an aggregate amount equal to or higher than US\$10,000, (minimum amount currently in force under BCCH’s policy) transferred into Chile from abroad.

Pursuant to the current foreign exchange regulations, all transfers of funds into Chile from abroad relating to loans, deposits, investments or capital contributions must be made through the FEM and be informed to the BCCH. However, no access to the FEM is guaranteed to the foreign investor or capital contributor and the Chilean borrower, as applicable, for the repatriation of the capital investment and/or profits, or the payment of the principal of and/or interest on the foreign loan, respectively (save for investments on loans made under D.L. 600, pursuant to foreign investment contracts signed prior to December 31st, 2015).

(1) Foreign Loans

- (a) Loans may be disbursed in Chile or abroad; in both cases, these loans must be informed to the BCCH.
- (b) The terms for repayment of principal and interest may be freely agreed between the creditor and debtor, including the interest rate agreed upon by the parties.
- (c) If the debtor defaults on the payment of principal and/or interest, the law entitles the guarantor to pay and carry out the transfer of the funds. Such guarantee must be informed to the BCCH according to Chapter XIV as well.
- (d) The remittance of principal is not subject to taxation. The remittance of interest is subject to a 35% withholding tax, unless the lender is a foreign or international financial institution

(e.g., a bank), in which case the payment of interest is subject to a 4% withholding tax.

(2) Capital Contributions, Investments and Deposits

Chapter XIV also establishes certain rules applicable to capital contributions, investments and deposits made in Chile from abroad, in foreign currency. These regulations do not apply to contributions in kind and are only applicable to acts involving payment obligations or the subsequent right to transfer foreign currency abroad by individuals or entities with residence or domicile in Chile.

According to the above referred regulations, the capital contributor or the investor does not formally enter into a foreign investment contract with the State of Chile, but must inform such acts to the BCCH according to the regulations of Chapter XIV. In addition, as mentioned above, payments and transfers from and to Chile, arising from the aforementioned acts, must be made through the FEM.

Chapter XIV entitles the investors to freely repatriate the capital contributed or invested in Chile and remit the profits obtained from such capital contributions or investments at any time.

(3) Minimum Amount

Chapter XIV of the Compendium of Foreign Exchange Regulations applies only to those transfers from and to other countries under foreign loans, capital contributions, investments and deposits of an aggregate amount of US\$ 10,000 or more (minimum amount currently in force under BCCH’s policy).

III.- ECONOMIC PUBLIC ORDER

The Political Constitution of the Republic envisages certain principles and rules that seek to establish the foundations for our economic system, which are collectively known as “economic public order”. Many of such principles and

rules are based on the respect for individual liberties and private initiative as the primary driving forces of economic activities.

The main rules that establish economic public order may be summarized below:

(1) Constitutional rights and their protection

The Constitution protects certain economic constitutional rights, such as the property right, the right to acquire goods, equality before the law, equal protection of the law in the exercise of rights, the right of association, freedom of work, the equal distribution of taxes and other public burdens as determined by law, the right to develop any lawful economic activity, non-discrimination by the State in economic matters, etc.

The property right is particularly relevant, as it is the pillar for private economic activity. The Constitution provides that no one can be deprived of his or her property, except if mandated by a law that authorizes expropriation in the name of public welfare or national interest. It also sets forth that the expropriated party will be authorized to challenge the legality of the expropriation before national courts, and such party will always be entitled to compensation for the monetary damages that were effectively caused, which compensation must be paid in cash and up front.

The Constitution additionally sets forth that only the law may establish the limitations and obligations that result from the social function of property, as required by the Nation's general interests, national security, public use and sanitation and the conservation of the environmental heritage.

Furthermore, the Constitution also grants a special action, known as the "Constitutional Protection Action", which may be exercised by any person that has been deprived, threatened or disturbed in the legitimate exercise of certain constitutional rights by an arbitrary or illegal action or omission. The Constitutional Protection

Action, which was created in 1976, has given rise to a rich case law related to the protection of constitutional rights.

(2) Control of public spending

The Constitution establishes numerous provisions with the goal of controlling public spending.

For example, only the President of the Republic may initiate the discussion of bills of law intended to (i) create new public services or jobs that are remunerated by the State; or (ii) take out loans or enter into any other kind of operations that could bind the State's credit of financial liability and cancel, reduce or amend obligations, interests or other financial burdens, regardless of their nature, established in favor of the State.

Likewise, the President must submit to Congress, every year, the bill for the National Budget. In turn, Congress is not entitled to increase or decrease the estimation of income within the context of this bill; and in general is only entitled to reduce the expenses contained in the same. Additionally, Congress is not entitled to approve any new expenditures to be charged to the Nation's funds, without specifying, simultaneously, the sources from which the necessary resources to finance such expenditures will be obtained.

Finally, one of the main functions of the General Comptroller of the Republic - an autonomous body, of constitutional status, which is independent from the Executive Branch - is to monitor the State's income and investment of its funds, as well as to examine and judge the accounts of persons in charge of assets belonging to governmental entities.

(3) Autonomy of the Central Bank

The Constitution recognizes the Central Bank as an autonomous entity, which is independent from the Executive Branch. Its specific powers are defined by an Organic Constitutional Law, which provides that its function is to preserve currency stability and the normal functioning of internal and external payments. In addition,

this statute indicates that the Central Bank is empowered to regulate the amount of money and credit in circulation, the execution of foreign credit and exchange transactions, and to issue regulations pertaining to monetary, credit, financial and foreign exchange regulations.

Furthermore, the Constitution also sets forth that the Central Bank may not act as guarantor for financial institutions, nor acquire instruments issued by the State, its bodies or the companies it owns. Likewise, it also provides that no public expenditure or loan may be financed by direct or indirect loans issued by the Central Bank.

IV.- COMPETITION LAW

The competition legal regime applicable in Chile is contained in Decree Law No. 211 (“DL 211”) which sanctions any act or agreement that prevents, restricts or hinders free competition, or that tends to produce any of the aforementioned effects.

The system is composed by an Antitrust Court under the name of *Tribunal de Defensa de la Libre Competencia* (“TDLC”) which is independent from the Government and whose function is to prevent, correct and punish attempts against free competition. Also, there is a National Economic Prosecutor (“NEP”), a government body in charge of investigating alleged violations to free competition, and filing claims on behalf of the national interests and pursuing the claims before the Antitrust Court.

The proceedings before the TDLC may be contentious and non-contentious, depending upon the different matters decided on them.

A.- ANTITRUST

The DL 211 broadly defines the conducts contravening free competition as “*any fact, act or transaction that impedes, restricts or distorts free competition or tends to produce such effects*”. This broad definition is then somehow refined by

three -also rather- broad examples, which are classified as restrictive practices, namely (i) agreements between business agents, whether express or tacit, or the joint conducts among them abusing of the market power arising from such agreements, with the purpose of fixing purchases or sales prices, limiting the production of goods or assigning areas or quotas of market, excluding competitors or affecting tender processes results; (ii) the abusive exploitation by a company or by a conglomerate of companies with a common controller, of a dominant position in the market, by way of fixing purchases or sales prices, imposing tied sales of products, assigning areas or quotas of market or imposing other abusive practices; and (iii) predatory practices or unfair competition, carried out with the purpose of reaching, maintaining or increasing a dominant position.

The Antitrust Court can punish the aforementioned conducts applying *inter alia* fines for fiscal benefit for up to an amount equivalent to 30,000 annual tax units (US\$29,000,000 approx.) for cartel and up to 20,000 annual tax units (US\$19,600,000 approx.) for other anticompetitive conducts. The fines may be imposed on the corresponding legal entity, on its directors, managers and on any person involved in the conduction of the relevant act. In the case of fines applied to legal entities, their directors, managers and those persons having benefited from the respective act may be jointly liable to the payment thereof, provided they took part in its execution.

As far as the cartels are concerned, the DL 211 provides a leniency program which benefits the business agent that provides the NEP with complete information regarding a collusion case. The NEP is entitled to make dawn raids and intervene communications during investigation procedures regarding collusion cases.

B.- MERGER CONTROL

Chilean merger control rules provide for voluntary filing.

In Chile, there is no mandatory *ex ante* merger control, although such control can be applicable if (i) the merging parties voluntarily submit the proposed transaction to the review and approval of the Antitrust Court, or (ii) if the NEP and/or third parties challenge the transaction before the Antitrust Court, or (iii) if the NEP and the parties involved in the transaction arrange an extrajudicial agreement and submit such agreement to the Antitrust Court for its approval. However, the consultation would be mandatory when a special law states such consultation, or as an imposition derived from effective injunctions.

If there is no consultation and the transaction is challenged by the NEP or by a third party, the Antitrust Court will review the transaction in a contentious procedure.

Concerning future transactions, the Antitrust Court -acting upon the request of the NEP or a third party- may also force the merging parties to submit the proposed transaction to the Antitrust Court's approval. Also, the Antitrust Court may issue injunctions in order to prevent the execution of a proposed transaction –even if the latter is not voluntarily submitted to consultation by the parties.

In the event the merging parties submit the proposed transaction to the Antitrust Court's prior review, such transaction cannot be carried out until it is cleared by the Antitrust Court. The final decision may (i) reject the transaction; (ii) clear it; or (iii) clear it subject to conditions, e.g. divestitures. If approved by the Antitrust Court, the transaction cannot be subsequently challenged and shall not carry further liabilities for the intervening parties, unless later and based upon new circumstances the transaction is considered by the Antitrust Court as unlawful. In this case, however, the effects of the new qualification of the transaction apply only for the future and not retroactively.

The consultation procedure regularly takes from 6 to 9 months. It may later be revised by the Supreme Court.

There is no safe harbour or notification threshold, so that the merging parties will have to engage in their own economic and legal analysis in order to determine whether to file the consultation or carry on with the transaction without such prior clearance.

The Chilean law has not established the parameters to consider which merger should be filed or not before the antitrust authorities. This analysis (related to the convenience or inconvenience of a voluntary consultation) should be made from a legal-economic perspective for each case.

The NEP has released Guidelines on Horizontal Concentrations (the "Guidelines") as a means of informing the market on the criteria to be followed by the NEP when assessing a transaction with horizontal concentration implications. The Guidelines, however, are not binding for the Antitrust Court.

In 2009 and through *Auto Acordado* No. 12 on Relevant Information in the Preventive Control of Concentration Transactions, the Antitrust Court established the information that, based upon verifiable means, must be attached to an *ex ante* merger consultation to be submitted before the Antitrust Court on a voluntary basis, in a non-contentious procedure.

Pursuant to the Guidelines, the NEP must first define the relevant market(s) embraced by the proposed transaction by analysing the relevant products and/or services, the geographic area and the temporal dimension of such relevant market. In determining the merging parties and the resulting entity market share, the NEP takes into consideration, preferably, the parties' monetary sales. In order to determine the levels of concentration in the relevant market, the NEP will use the so-called Herfindhal-Hirschman index, which is an index employed by the US Department of Justice and the US Federal Trade Commission. Further, the NEP shall assess the existing conditions to the relevant market, e.g. entry barriers, timelines, likelihood and sufficiency of the entry and strategic behaviour.

Then the NEP will focus on the potential adverse competitive effects of the proposed transaction and whether such effects can be reached through unilateral conduct and/or coordinated interaction. Finally, the NEP will consider the efficiencies resulting from the merger counterbalancing the potential anticompetitive effects of the proposed transaction.

Once the investigation is concluded, the NEP may either (i) close the file; (ii) submit a consultation or a lawsuit before the Antitrust Court; or (iii) settle in an extrajudicial agreement which ought to be approved by the Antitrust Court.

V.- CHILEAN TAXATION

A.- OVERVIEW

Under the Constitution of the Republic of Chile, taxes, customs duties and all kinds of public charges must be implemented through the enactment of a law passed by the Congress.

The initiative to legislate in tax matters rests only with the President of the Republic. Consequently, taxes may not be changed unless the Executive Branch takes action and Congress approves said initiative.

Matters related to fiscal policy are under the authority of the Minister of Finance.

In tax matters, government action is carried out by three different public agencies:

- (a) The Internal Revenue Service (IRS), which is in charge of the administration of tax laws and has the power to issue regulations and conduct tax audits;
- (b) The Treasury, which is in charge of tax collection; and,
- (c) The Customs Agency, which deals with all matters related with custom duties applicable to imports.

If, as a consequence of a tax audit, a claim is submitted by a taxpayer, the competent court will be the Taxes and Customs Courts. Its decision may be appealed before the corresponding Court of Appeals and, through certain procedures, the case may go up to the Supreme Court.

The main taxes established by Chilean law are the following:

- (1) Income Taxes;
- (2) Value Added Tax (VAT)
- (3) Stamps Tax; and
- (4) Real Estate Tax.

B.- INCOME TAXES

(1) General Aspects

Under Chilean law, the concept of taxable income is very broad and includes all kinds of earnings or profits and, in general, any increase in wealth generated during a fiscal year.

As a general rule, taxpayers domiciled or residing in Chile are subject to taxation on income of any source. Non domiciled and non-resident taxpayers are taxed only on income from Chilean sources. As an exception to the above, foreigners who establish their domicile or residence in Chile will only be subject to taxes on income from Chilean sources for the first three years (this term may be extended by the IRS National Commissioner).

(2) Taxes established in the income tax law are the following:

First Category Tax: This tax is paid by the business generating the income and is payable, at a rate of 21% per fiscal year 2014, 22,5% for fiscal year 2015, 24% for year 2016 and 25% as of 2017.

The law provides for two options, namely attributed income or semi integrated income. In the case of attributed income the taxpayer must pay tax on the income he is entitled to, whether paid or not. In the case of semi integrated inco-

me, the taxpayer will only pay personal income tax or additional tax assessed on partners or shareholders not domiciled nor resident in Chile when actually paid. In the case of semi integrated income, the First Category Tax will be 27% in lieu of 25 but personal income taxes or additional tax will only be paid once the profit has been received.

The amount of this tax is considered as a credit against taxes, if any, payable by the owners or shareholders of the company following profit distributions. In the case of semi integrated income, the credit will be 65% of the First Category Tax, unless the foreign investor is from a country with which Chile has a double tax treaty, in which case the credit will be 100% of the First Category Tax.

Monthly provisional payments -aggregating 1% of gross income during the first year- must be made by the company as an advance against the final tax accrued at the end of the respective fiscal year. After the first year, such provisional payments are calculated according to the ratio between the amount paid for First Category Tax and the interim payments.

- (b) Mining Royalty: This tax is applied to the mining companies' incomes obtained in the exercise of its activities. Regarding mining companies with annual sales on any kind of minerals up to the equivalent to the value of 50,000 and not less than 12,000 metric tons of fine copper or less, they are subject to a progressive tax rate with a maximum of 4.5%. Mining companies with higher sales are subject to a progressive tax rate from 5% to 14 %, depending on their operational margin.

- (c) Second Category Tax: This tax is a progressive tax applied on the aggregate amount received by an employee on account of wages, salaries, profit-sharing or others.

The taxation rates range from 0% to 40% of the relevant income per fiscal year. The maximum rate will be reduced to 35% as of 2017.

Second category taxpayers are not subject to any other income taxation, unless they have income from sources other than wages or salaries.

- (d) Personal progressive Tax: This tax is applied to persons domiciled or residing in Chile on income of any source, including income originating from outside of Chile and must be yearly declared by the taxpayer.
- (e) Additional Tax: The Additional Tax is assessed, as a general rule, on income from Chilean sources earned by individuals or entities neither domiciled nor residing in Chile.

This tax is also assessed on certain payments made by Chilean taxpayers abroad, as analyzed herein.

The general tax rate is 35%, although in some cases it might go down to 2%, as explained below.

As mentioned before, the First Category Tax paid may be credited against the Additional Tax but must also be considered as additional taxable income for the Additional Tax. In the case of semi integrated income and if the foreign investor is from a country with which Chile does not have a double tax treaty, the credit for the First Category tax is limited to 65% of said tax.

In some cases the Additional Tax must be declared annually by the taxpayer, whereas in others it must be withheld by the person or entity making the payment.

(3) Taxes on enterprises and their owners or shareholders

Business enterprises of any kind, as already mentioned, are subject to the First Category Tax on accrued income.

Thereafter, when the taxpayer is taxed under the attributed income tax system the shareholders, partners or owners domiciled or resident

outside Chile, and in the case of a branch, , such profits are subject to the Additional Tax on accrual basis, whether distributed or not.

Since the First Category Tax may be credited against the personal Progressive Tax or the Additional Tax, as the case may be, it represents only a projection of the final tax burden. In other words, First Category Tax affects only the cash flow of the company.

In the case of a foreign-owned company, the attributed income of its owners or shareholders is subject to a 35 % Additional Tax.

Accordingly, the overall income tax burden affecting the income of a company owned by a foreign non-resident entity in the case of the attributed income alternative will amount to 25% payable by the company plus 35% payable by the foreign owner, minus 25% of distributed amounts, which is accepted as a credit against the 35%. Thus, the effective rate ultimately affecting the Chilean income will total 35%, as shown below:

Profits before taxes	\$ 100
First Category Tax	\$ (25)
	—————
Profit after corporate tax	\$ 75
Additional Tax (35% on 100)	\$ (35)
Minus credit	\$ 25
	—————
Additional Tax payable	\$ (10)
Profits after taxes	\$ 65
Total tax burden (25+10)	\$ 35

The same tax burden applies in case the foreign investor is from a country with which Chile has a double tax treaty.

In the event the taxpayer has opted for the semi integrated system, the calculation is as follows:

Profit before tax	\$ 100
First Category Tax	(27)
After tax profit	73
Additional Tax (35% on 100) (35)	
Credit (65% on 27)	17.55
Additional Tax due	17.45
Profit after tax	55.55
Total tax burden	44.45

(4) Transfer of Shares and equity rights

Transfers of shares and are usually subject to First Category Tax and Additional or Personal Progressive Tax, as the case may be. However, under certain conditions, transfers of shares could be exempt from all taxation.

(5) Depreciation

Depreciation on fixed assets, except for land, is tax-deductible using the straight-line method based on their useful lives, in accordance with the guidelines of the Chilean Internal Revenue Service (IRS), calculated on the value of the assets, restated by cost of living variation.

However, the taxpayer may opt for accelerated depreciation for new assets if acquired locally, or for new or used assets if imported, with useful lives of over three years. For this purpose, the assets will be assigned useful lives equivalent to one-third of the normal span, eliminating fractions of months. Taxpayers may discontinue the use of the accelerated method at any time but may not opt again for the accelerated method.

The IRS has issued general guidelines on the useful lives of fixed assets for different acti-

vities, such as industry, mining or fisheries. However, the competent Regional Tax Director may, at the request of the taxpayer or of the Foreign Investment Committee, modify the applicable depreciation if deemed advisable.

In general, no allowance is made for amortization of intangible assets, such as goodwill, patents, trademarks, etc. Depletion is not tax deductible, except for the acquisition price of mining properties, where the price may be deducted on a unit of production basis.

Please note that the additional tax expense for the operating company (caused by the used of the accelerated depreciation), will not be considered in calculating the taxes applicable over the distribution of profits to its shareholders or partners.

(6) Branch of foreign corporation

Branches of foreign entities are taxed with world source income. The Income Tax Law gives the IRS the authority to assess the taxable income of a branch should the accounting records not prove adequate for assessing it. In such a case, the IRS may assess taxable income on the basis of gross receipts, assets, capital invested, sales, or percentage of exports and imports.

(7) No income tax on imports

The 35% Additional Tax levied on certain payments to persons or entities not domiciled in Chile is not applicable to imports, provided the import prices are reasonable in terms of market values. Amounts paid in excess of reasonable prices are taxable.

(8) Interest payments

Interest on loans obtained abroad is normally subject to a 35% Additional Withholding Tax; nevertheless, interest paid to non-Chilean banks or financial institutions are taxed at a reduced 4% rate under certain conditions.

(9) Royalties, patents and technical assistance

In general, the payment of royalties, patents and fees to entities not domiciled in Chile is subject to a 30% Additional Tax to be withheld by the payer. However, the rate of this tax is reduced to 15% for royalties related to invention patents, utility models, industrial designs, designs of integrated circuits or mask work, new vegetable varieties and software, provided that the licensor is neither related to the licensee nor a resident of or incorporated in a tax haven.

Although, if what you are paying is an “standard software” it will be tax exempt. In the case of technical assistance or engineering services, the rate is 15%. However, the tax rate goes up to 20% if these services are rendered by a related party or by a person or entity residing or incorporated in a tax haven.

All these payments are normally deductible as expenses for tax purposes.

(10) Related party transactions

In the case of transactions between related parties, the IRS may object to the prices, values or returns charged or paid by the local entity if those prices, values or returns differ from prices charged or paid in arm’s length transactions.

(11) Income Taxes on Payments made to Individuals or Entities not domiciled in Chile

In accordance with the general rules indicated below, payments made to an individual or entity not domiciled in Chile, are subject to additional tax to be withheld by the payer, generally 35%.

The rate is lower in the following cases:

- Payments made to insurance companies not established in Chile for insuring equipment or other goods located in Chile and for life or medical insurance of individuals who are residents of or domiciled in Chile are taxed 22%. In these cases, reinsurance is taxed at a 2% rate.

- Payments for engineering services or technical assistance, 15%.
- Remunerations paid to individuals or entities not domiciled in Chile for maritime transportation to and from Chilean ports and commissions thereon, as well as remunerations originating from services to vessels and freight in Chilean or foreign ports, 5%. This tax is not applied, on the basis of reciprocity, when, in the country where the vessel is registered or in the country of the operator, a similar charge does not exist or is not applied to Chilean vessels.
- Payments for the rental, lease, charter or any other contract which provides for the use of foreign vessels for coastal trade, 20%. The same is applied when the relevant contract allows or does not forbid coastal trade.
- Payments for the rental of imported capital goods eligible for deferment of custom duties, 1.75%.
- Services corresponding to commercial, industrial, financial, mining, construction, insurance, advertising, data processing and other business activities;
- Rental of movable goods, as well as the rental of real estate furnished or equipped to carry out industrial or commercial activities;
- Leasing of said goods;
- Insurance premiums, with some exceptions; and,
- In certain cases, construction activities (analyzed later in greater detail).

(2) Tax Liability

As a general rule, the seller of goods or services is responsible for the payment of the tax. The amount of VAT, however, is added to the price of the goods or services. Consequently, it is actually the buyer who bears the economic impact of the tax.

Exceptionally, when the seller is not domiciled in Chile or for other reasons is difficult to control by the IRS, the buyer has to withhold and pay VAT.

The tax is payable monthly, except for special situations such as imports.

(12) Excess indebtedness

- In the case of excess indebtedness caused by loans from abroad, subject to 4% withholding tax on interest, the local debtor must pay a difference of 31%. There is excess indebtedness when it exceeds three times net worth, including local debts.

C.- VALUE ADDED TAX.

(1) Tax Rate and Transactions Subject to VAT

The tax rate is 19% assessed on the price of the transaction. When the price is manifestly below the normal level, the IRS is empowered to assess it.

In general terms, the following transactions are subject to VAT:

- Sales and other contracts whereby the title to movable goods is transferred, provided that they are executed on a recurrent basis;

(3) Credit and Debit System

VAT charged by a company on sales of goods or services is called “VAT debit”. VAT borne by a company on purchases of goods or services is called “VAT credit”. The tax borne on the acquisition of related physical assets, including buildings and constructions, may also be credited.

VAT credits are deducted from VAT debits and the difference has to be paid to the Chilean Treasury.

If in any given month credits exceed debits, the difference may be carried forward and added to the credits of the following month.

VAT credits incurred in the purchase of fixed assets that remain outstanding for more than six months will be refunded in cash by the Treasury.

(4) Exemptions

There are few exemptions in the Chilean VAT law. The main ones are the following:

- (a) Exports;
- (b) Interest on loans and other financial operations. In the case of deferred payment of a sales price, interest charged is subject to VAT;
- (c) International freight, both by air and sea;
- (d) Personal services; and
- (e) Services subjected to Additional Tax, unless the services are provided in Chile and also that those enjoy a specific tax exemption given by the Chilean law or by treaties to avoid double taxation in Chile.
- (f) Revenues which are not considered as income.

(5) Construction

New housing, buildings and constructions of any kind sold by construction companies are charged VAT.

Provisions have been established in the law allowing for the deduction of the cost of the land from the taxable basis. Revenues originating from construction contracts are also subject to Income Tax.

(6) Exports

As indicated previously, exports are exempt from VAT. However, exporters may recover VAT charged on purchases or services necessary for their exporting activities as a credit against the debit originated in their local sales. Additionally, they may recover this credit in cash as a refund.

D.- STAMP TAX

Bills of exchange, promissory notes, letters of credit and, in general, any kind of documentation referring to a loan or a credit transaction for borrowed money are subject to stamp tax.

The rate is 0.066% monthly on the face value of the document, with a maximum of 0.8%. Should the document be payable at sight, the rate is 0.332%.

E.- REAL ESTATE TAXES

Real estate is taxed at a rate between 1% and 1.4% per annum. The tax is assessed on the fiscal valuation of the property.

VI.- LABOR AND SOCIAL SECURITY SYSTEM

A.- LABOR CONTRACTS

Our legislation recognizes three categories of labor contracts: individual labor contracts, collective labor contracts, and special contracts.

(1) Individual Labor Contract

This is a written contract between an employer and an employee whereby they are bound, the employee to render personal services under ties of dependence and subordination (“vínculo de subordinación y dependencia”) to the former, whereas the employer to pay compensation for those services.

Article 10 of the Labor Code states the minimum provisions that must be included in the individual labor contract, namely the date and place of the contract, the identity of the parties, the position of the employee and job description, the place of work, the remuneration to be paid by the employer, the terms of payment (at maximum 1-month intervals), workday and workweek, the duration of employment and the benefits in cash or in kind to be provided by the employer.

(2) Collective Labor Agreements

Our Law recognizes two different collective labor contracts namely the Contrato Colectivo and the Convenio Colectivo.

(2.1) Contrato Colectivo (Collective Labor Contract): According to the Labor Code, this contract is agreed upon by one or more employers with one or more unions or with nonunionized employees who come together to negotiate collectively, or with both groups, to establish common working conditions and remunerations for a fixed period of time. The collective contract must be agreed upon in writing and cannot have a term of less than two years or more than four years. Also, the law stipulates the minimum clauses to be included in these contracts.

The provisions agreed upon in collective labor contracts are the result of a collective bargaining process, an operation regulated in the Labor Code regarding Union and Collective Bargaining.

(2.2) Convenio Colectivo (Collective Labor Agreement): In addition to the collective labor contracts, the law allows the employer and the employees (either with a union or with a group of at least eight employees) to enter into a collective labor agreement. These agreements also establish common working conditions and remunerations for a fixed period of time. When Collective Labor Agreements are negotiated with a group of employees, some minor procedures have to be followed.

The only difference between the Contrato Colectivo and the Convenio Colectivo is that the latter, unlike the former, does not require a regulated collective bargaining process, if negotiated with a labor union, and is neither subject to regulated procedures nor accorded privileges granted by formal collective bargaining. Therefore, when it is referred to unions, the Convenio Colectivo is an agreement that may be executed at any time since

it depends solely on the discretion and will of the parties.

Once they are duly executed, both agreements have the same effects and are binding on both parties.

(3) Special Contracts

Our law also considers the existence of special labor contracts. Each of these contracts has its own characteristics and specifications, e.g. the apprenticeship contract which is restricted to individuals under 21 years of age; farm employees' contracts; contracts for employees on ships or at sea and temporary dock employees and contracts for domestic help.

(4) Labor Contract Duration

The parties may agree on a perpetual contract or limit the duration of the contract to the completion of a particular job to be performed by the employee, or else agree on a fixed period of time. In this last case, the duration of the contract cannot be agreed for periods exceeding one year, or two years in the case of managers, professionals and technicians. At the expiry of the original fixed period or of its extension, the contract terminates ipso facto but, if the employee continues rendering services for the same employer, by virtue of law the term of the contract becomes perpetual.

(5) Worker's Age

For purposes of labor and social security legislation, work may begin, as a general rule, at the age of 18 and retirement may occur at the age of 65 for men and at the age of 60 for women. Nevertheless, the Social Security System contains provisions which allow for early retirement in certain cases.

In Chile, retirement is not a legal cause of termination.

(6) Employee's Nationality

The law states that at regarding Companies with 25 or more employees hired, at least 85% of them must be Chilean citizens. To determine this ratio, the law excludes technicians who cannot be replaced by Chilean nationals. For this purposes the law deem the following persons as Chileans: (i) foreigners whose spouse or civil partner or whose children are Chilean, including widows or widowers of a Chilean spouse; and (ii) foreigners who have resided in the country for more than five years, not considering accidental absences.

(7) Working Hours

The normal workweek is limited to a maximum of 45 hours. This maximum must be worked in no less than five and no more than six consecutive days. The normal workday shall not exceed 10 hours.

Overtime -which is defined as the time worked by the employee in excess of the legal or agreed workday, if shorter- shall be agreed only to take care of necessities or temporary situations of the company, which are all those circumstances that, while not permanent in the company's productive activity and deriving from occasional events or from unavoidable factors, do imply a greater work demand in a certain amount of time (but not more than 2 overtime hours per day). Overtime work agreements shall be evidenced in writing and be temporarily effective over a period not exceeding three months, renewable by agreement of the parties. However, the permanence of the circumstances that originated them, which by no means shall affect the occasional character of the overtime work, will determine the limit for its renewals. Overtime must be paid at 50%.

Working hour limits do not apply to employees who work for different employers; to managers or administrators, or to employees who work without immediate superior supervision or outside the working premises, factory, etc. Said

limits apply neither to employees who are hired to work outside the office using telecommunication or computing media; nor employees whose activities are not of a steady nature or require only their presence.

There is also an exception regarding stores or commercial establishments which, in days immediately prior to Christmas or National Holidays, may extend the workday by two hours. In these cases, the hours in excess of the 45-hour maximum will be paid as overtime.

(8) Part Time Jobs

The Labor Code regulates a special contract called "part time". Its week duration cannot exceed 2/3 of the normal working week, that is, 30 hours. According to Chilean law, part time jobs are subject to the same provisions applicable to regular jobs, with the following exceptions: i) the maximum profit-sharing payment can be ratably reduced in accordance to the number of hours worked, and ii) the parties are able to agree on different alternatives for workweek distribution, thus allowing the employer to choose between said alternatives and select the one that will be used during the following week or period.

(9) Daily and Weekly Rest and Yearly Vacations

(9.1) Daily Rest Period

The workday must be divided into two periods, leaving between them at least a half-hour break for lunch, which must not be considered for the purposes of determining the workday. The law also indicates some cases in which the rest period is longer, i.e. restaurants, hotels and club employees.

(9.2) Weekly Rest Period

Sundays and days legally established as holidays shall be nonworking days, except for activities authorized by law to be performed on those days.

Companies exempted from the above prohibition must compensate their employees with a paid day off in exchange for worked Sundays or holidays. However, in certain activities, at least two rest days in the month must be granted on Sundays. When more than one paid day off is accumulated in one week, the parties may agree on a special distribution or on a special remuneration mechanism. In this last case, remuneration for the compensated rest day has a surcharge that cannot be less than 50%.

(9.3) Vacations

Employees who have worked for more than one year have the right to an annual paid vacation of 15 working days. After working ten years, continuously or not, for the same or different employers, vacations are extended by one working day for every three years of service.

In case of employees who work in the 11th and 12th Regions of the country and the province of Palena, the basic vacation period is 20 days.

(10) Maternity leave and benefits

(a) Maternity Leave:

Female employees are entitled to six weeks leave before (prenatal leave) and twelve weeks after (postnatal leave) the birth of a child, on full pay. This payment is made by the Social Security system and not by the employer. In addition, women cannot be dismissed for a period of one year as from the end of the postnatal leave, other than with prior authorization of a labor court.

Additionally to the referred postnatal leave, a parental permit was incorporated by law in October, 2011. This supplementary permit, as a general rule, provides a 12 weeks permit after the end of the postnatal dispensation, on full pay. Nevertheless, the mother entitled to this benefit may choose to return to her job in a part time schedule, in which case the parental permit and subsidy is extended to 18 weeks. In this case, the subsidy granted by the Social

Security System is reduced to 50% of its salary and the employer must pay, at least, 50% of the remuneration set forth in the labor agreement and all variable remuneration to which she is entitled to. Likewise, the mother may benefit the father of the child by granting him part of the parental leave. In this case, the subsidy will be paid according to the salary of the father.

When the health of a child under one year of age requires attention at home as a result of a serious illness, which circumstance will be demonstrated through a medical certificate issued by the services in charge of the infant's health, the employee mother will be allowed to an employment leave and subsidy allowance in cases of prenatal, postnatal and paternal postnatal leaves, during the period prescribed by the health service. If both parents are under a labor agreement, either one of them, at the mother's choice, will be able to use this permit and will be entitled to the corresponding subsidy allowance. However, the father will be entitled to these rights in case the mother of the child is deceased or if the legal custody has been granted by a judicial ruling.

Additionally, the employee who has been entrusted by a court of law with the personal care of a child less than one year old, as a protection measure, shall also be entitled to such leave and subsidy allowance. This right shall be extensive to the spouse or civil partner mentioned above.

Establishments with more than 20 female employees, regardless of their age or marital status, must provide a nursery service for children under 2 years old. Employers may contribute to an external nursery school to provide such service. While the women are feeding their babies, they must be granted one hour a day for this purpose.

(b) Other leaves of absence:

In the event of death of a child, spouse or civil partner, every employee shall be entitled 7 calendar days of paid permit, in addition to the legal vacations to which the employee is

entitled to. In this case, the employee shall also be entitled to labor protection or immunity for one month, as from the date of death, thus entailing that said employee cannot be fired unless a labor court has previously authorized such dismissal.

However, regarding employees hired for a fixed term or for a specific task or service, labor protection shall favor them only during the effective term of the corresponding employment contract if said term is less than one month, without requiring the court's authorization.

This permit shall amount to three business days in the event of death of a child during pregnancy, as well as in the event of death of the worker's father or mother, albeit without granting the benefit of labor protection or immunity.

(11) Remunerations

The law considers as remuneration the cash payments and cash-equivalent benefits in kind that the worker receives from the employer on account of the employment agreement.

The remuneration includes base salary, overtime pay, commissions, profit sharing and bonuses. The law further indicates that certain payments or allowances do not constitute remuneration, such as lunch, family allowance for each charge of the employee, transportation allowance, etc.

The remuneration must be paid in the agreed fixed period, which cannot exceed one month. However, in the case of variable remunerations, this variable remuneration or commission is usually paid monthly, bimonthly or quarterly. Other payments which depend on the quarterly or yearly results of the company, i.e. bonuses and profit sharing, are paid at the end of the quarter or business year, respectively.

The amount of compensation can be freely agreed upon between the employer and the employee. However, the law sets a minimum level, which in the case of the monthly base salary for

employees working 45-hour weeks cannot be lower than one legal monthly minimum wage (CL\$250,000; US\$372 approximately).

(11.1) Profit Sharing

Under the provisions of the Chilean Labor Code, if a company earns profits, it must share part of them with its personnel. The law stipulates that companies must distribute 30% of net profit to the employees, calculated in proportion to the employee's salary. The basis used to determine profits is the corporate taxable income (subject to certain adjustments) less 10% of net equity. However and in lieu of the above obligation, the employer may pay a bonus of 25% of the yearly salary, but the bonus in this case, regardless of the level of salary of the employee, cannot exceed 4.75 monthly minimum wages (at present app. CL\$1.187,500; US\$1,767).

The company and the employees may agree on a profit-sharing system different from those described above, provided the payment to the employee is not lower than the two alternatives mentioned above.

(11.2) Additional Benefits

Employers have no legal obligation to provide fringe benefits, other than benefits which may be voluntarily agreed upon in individual or collective contracts or agreements. Pension and sickness benefits are covered by the Social Security system described later in this report. There is no legal obligation to provide catering facilities and meals.

(12) Health and Safety

(a) Chile provides for a public and private medical system for employees including preventive and curative health care. The preventive medical service provides for periodic medical checks. When employees are found to suffer a specific illness, they are granted sick leave. During periods of sick leave the employer cannot terminate the labor contract without cause, but

the medical system pays the salary starting on the fourth day of illness or the first day in case of leaves exceeding 10 days. A monthly cap applies. This system is funded through employees' contributions.

Employees' Compensation Insurance provides for medical and dental attention, hospitalization and medicine as well as indemnities (depending on the type of disabilities suffered) and related expenses.

Indemnities are granted in the form of a pension to the injured employee or to his/her spouse and dependent children in case of death of the employee. The Employees' Compensation Fund is funded through a base contribution (made by the employer) of 0.9% of the employee's salary (with a cap of 74.3 U.F. (US\$ 2, 859 approximately) per base salary), plus an additional payment, which must be borne by the employer exclusively depending on the activity and level of risk of the company (additional rate from 0% to 3.4%).

(b) The Employees' Compensation Insurance Law established under Law Nr. 16,744 states the obligation for companies or establishments with more than 25 employees to create a Permanent Safety, Hygiene and Risk Prevention Committee (*Comité Paritario*), comprising representatives of both employers and employees. This committee is responsible for the adoption of all the measures needed to avoid work-related accidents and for recommending the proper use of the safety gear existing in the company. None of the employees' representatives in this committee can be dismissed while sitting on the committee, without prior authorization of the labor courts.

(13) Termination of the Labor Contract

The Labor Code establishes provisions regarding the termination of the labor contract and employment stability. Under this statute the labor contract may only be terminated by agreement of both employer and employee, by the employee's resignation, by the death of the

employee, by the expiry of the fixed term agreed upon in the contract, by the completion of the work for which the employee was hired, by an act of God or circumstances beyond the control of the parties (*force majeure*) and upon dismissal by the employer.

If the employer dismisses the employee based on the general grounds known as "needs of the company," such as changes in economic conditions, downsizing of the company, or in case of termination at will (when permitted), the following severance compensations will be awarded to the employee: i) Severance compensation for years of services: amounting to one month's remuneration for each year or fraction thereof in excess of six months spent in the service of the same employer, with a limit of 330 days' worth of compensation. However, for the purposes of calculating this severance compensation, the law stipulates that the basic monthly remuneration cannot exceed a maximum of 90 "Unidades de Fomento" (approximately US\$3, 292), which cap may be waived by the parties; ii) If the dismissal notice is not given 30 days in advance, the employee will be entitled to receive a severance compensation equivalent to one month's remuneration (same cap above applies).

If the employer does not pay the above severance to the employee, some increases may apply up to 150%.

Nevertheless, if the employee is dismissed for cause, i.e. serious breach of contract by the employee, material misconduct, etc., no right to severance compensation arises for the employee. However, the employee may contest the dismissal before the Labor Courts and if the Courts rule in favor of the employee, the company will be obliged to pay the severance indicated above plus an additional penalty of up to 100% of the above-calculated severance compensation, depending on the termination cause invoked.

According to article 162, 5th paragraph, of the Labor Code, if at the time of dismissal the social security contributions are not duly paid, the

dismissal will not result in terminating the labor contract. Consequently, the employer could be forced to pay the remuneration and other payments established in the labor contract to the employee until these social security contributions are finally and duly paid.

Labor release settlement agreements must be made available to the employee within 10 work days after him/her separation.

(14) Subcontractor Employees / Temporary Employees

In Chile it is common that large companies subcontract companies to perform specific tasks or render special services such as security and cleaning services, catering, etc.

Chilean law provides that if the contractor breaches legal or contractual obligations towards his employees, the main company (usually called client) can be jointly-liable or bear subsidiary liability. This liability is extended to labor and social security obligations, therefore during the life of these contracts the principal must permanently verify that contractors comply with their obligations unto their employees.

Temporary employees supply is permitted only for some exceptional circumstances provided by law and for a limited time period.

B.- UNIONS

Unions are regulated by the Labor Code, which recognizes the autonomy of these organizations. Under the law, their main purposes are to represent the employees in exercising their rights, foster integration between employers and employees, check compliance with social security and labor legislation, help their members, promote education and improvement of safety in the work place and provide non-profit services to the members. Employees are free to join the union or stay out of these organizations. Employees may join only one union in a single company.

Under the law, more than one union may exist in each company.

C.- SOCIAL SECURITY

(1) Overview

In 1980 the Government introduced a major change in the Chilean Social Security system, making a transition from Government-administrated pension and managed healthcare systems, to contributions made to funds administrated by private entities subject to overall Government control.

Under Decree Law N° 3,500 of 1981, old-age pensions are financed exclusively by the employees through contributions that are accumulated in individual accounts at entities known as *Administradoras de Fondos de Pensiones* (AFP). For these purposes, employees must contribute 10% of their monthly remuneration up to a maximum of 74.3 *Unidades de Fomento* (currently approximately US\$2,718). Any remuneration in excess of 74.3 *Unidades de Fomento* is not subject to the 10% contribution. The *Unidad de Fomento* is a monetary unit created by statute back in 1975, which is adjusted daily in accordance with the variation undergone by the CPI and is used for tax, labor and other cases in which inflation adjustments are required by law or by agreement of the parties, e.g. medium- and long-term financing, lease agreements, etc.

In addition, employees must contribute a 7% of their monthly remuneration for medical care, also up to a 74.3 UF cap.

Additionally, there is a mandatory insurance that covers labor accident and professional diseases, which is financed by an employer's contribution equal to 0.95% of the employees' remuneration plus an additional payment ranging from 0% to 3.4% depending on the company's business risk.

Finally, the employers must contribute between a 1% and 1.5% of the employee's remuneration for disability and survival insurance (SIS).

(2) Coverage

The Social Security system covers all employees, including independent employees. The latter are legally obliged to contribute to a mandatory insurance that covers old age, disability and survivorship insurance.

As from 2018, social security payments for health insurance shall also be mandatory, in the case of employees, affiliation to the system is mandatory.

In the case of foreign employees, as a general rule, they must also pay social security contributions as indicated above. However, Law N° 18,156 grants exemption from social security contributions to foreign technician employees and the company that contracts them, provided that the following conditions are met:

1. The expatriate subscribes to a social security system outside Chile covering at least illness, pension, disability and death.
2. The employee expressly declares in his employment agreement that he will remain a subscriber to the foreign social security system.

This exemption includes the employee's contribution to the pension and healthcare fund but does not exempt the employer from paying contributions to the Employees' Compensation Insurance mentioned above.

D.- UNEMPLOYMENT INSURANCE

This insurance is financed on a tripartite basis, as the contributions are paid by the employer, the employee (2.4% and 0.6% of the employees' taxable remuneration up to a maximum of 111.4 UF, respectively) and the government.

This insurance is mandatory for every employee hired after October 1st, 2002, whereas it is discretionary for those employees hired before said date.

In the case of fixed-term contracts, the entire contribution (3%) is exclusively financed by the employer.

E.- TAXES

(1) National Employees

Remunerations of employees are subject to a monthly Second Category Income tax, under a progressive tax scale to be deducted at source by the employer. This tax is payable by the company to the Treasury within the first 12 days of the month following that of the deduction.

Currently, the tax brackets range that goes from exemption to a 40% tax rate.

(2) Foreign Employees

Foreigners' employees rendering services in the country and that are domiciled or residing in Chile is also subject to the Second Category tax as explained above.

As a general rule, foreigners neither domiciled nor residing in Chile and working in Chile are subject to a flat 35% Additional Income tax to be deducted by the company that employs them in Chile upon payment of the salary or fee, and the tax is payable to the Treasury within the first 12 days of the month following that in which the tax was deducted. However, the rate for said additional tax shall be 20% in case the foreign employee with no residence or domicile in Chile receives remunerations from a Chilean source, originating in the provision of scientific, cultural or sports services. Likewise, the tax rate shall be 15% if such employee is remunerated by a Chilean source, originating from the provision of services deemed to be professional or technical.

The tax law does not contain a definition of domicile, and in the absence of such definition the general provisions of the Civil Code apply. Under these provisions, domicile is acquired whenever sufficient evidence exists that the foreigner is coming to live in Chile for a reasonable period of time, i.e. if he is hired under a labor contract for one year or more, assumes an executive position in the company, brings his family, etc.

In the case of residence, the Tax Code does provide a definition, indicating that residence is acquired when the foreigner stays in Chile for more than six continuous months in any single year or more than six months, whether uninterruptedly or not, in any two consecutive tax years.

In the case of foreigners, during their first three years of residence in Chile they must pay taxes as indicated above only on their Chilean source income and this three-year term may be extended by the tax authorities. After the three-year term or its extension is over, the foreigner must pay taxes on worldwide income.

VII.- ENVIRONMENTAL REGULATIONS

In the last decade, Chilean environmental law has become increasingly important and consistent with far higher standards. From the judicial enforcement of the constitutional right to live in a pollution-free environment to the enactment of the Environmental Act, Law 19,300 ("EA"), and numerous decisions by the environmental authorities and landmark jurisprudence, the environmental regulations have formed a legal body that must be taken very much into account when considering any new investment project with environmental consequences.

In Chile, there is no single body of laws that encompasses the entire gamut of environmental regulations. Rather, it is scattered throughout numerous legal statutes of varying hierarchy, each referring to a specific matter. The following paragraphs provide a brief summary of

the regulations we consider most relevant-from a practical standpoint- in developing any given activity or project.

A.- GOVERNMENTAL ENVIRONMENTAL BODIES AND ENVIRONMENTAL COURTS

There are three Governmental bodies related with the application of environmental regulations in Chile:

First, the Environmental Ministry, which is in charge of the design and application of environmental policies, plans and programs, and the protection of the biodiversity and renewable resources. Second, the Environmental Evaluation Service ("SEA"- for its Spanish acronym), whose main function is to administer the Environmental Impact Evaluation System.

Finally, the Environmental Superintendency ("SMA"- for its Spanish acronym), which is a decentralized public service that executes, organizes and coordinates the follow-up and supervision of the environmental certification resolutions, prevention and decontamination plans, environmental quality and emissions regulations, management plans, and other environmental instruments established by law.

In addition, there are Environmental Courts, whose main role is to resolve environmental controversies, such as lawsuits seeking reparation of environmental damage, claims against decisions by the SMA, and claims against environmental certification resolutions, amongst others.

B.- ENVIRONMENTAL IMPACT EVALUATION SYSTEM ("SEIA" –Spanish acronym)

This system was created by the EA. Any project or activity included in a specific list contemplated by the EA must be submitted to this system prior to its performance or modification.

The projects and activities that must be submitted to the SEIA include, inter alia, high-voltage power transmission lines and related

substations; power generation facilities with capacity above 3 MW; airports, bus and truck terminals and train stations, railroads, gas stations, highways and public thoroughfares capable of affecting protected areas; ports, waterways, shipyards and maritime terminals; urban development and tourism projects in certain areas; industrial or real estate projects in areas declared to be latent or saturated; mining projects, including coal, oil and gas, and comprising prospection and extraction work, processing facilities and disposal of waste and sterile rock, as well as the industrial extraction of aggregates, peat or clay; oil pipelines, gas pipelines, mineral or comparable ducts, etc.

If the project or activity that must be submitted to the SEIA is found to produce certain relevant environmental impacts, described in the EA, then an Environmental Impact Study (“EIA”- Spanish acronym) must be filed with the SEIA. If the project or activity is not found to produce said impact, then no EIA is necessary, only an Environmental Impact Statement (“DIA” – Spanish acronym).

Among the environmental consequences that require filing of an EIA instead of a DIA we have risks to human health, due to the quantity and quality of effluents, emissions or residues; potential material adverse effects on the quantity and quality of renewable natural resources, including soil, water and air; the relocation of human settlements or significant alteration to the lifestyles and customs or the population; their location in or in the vicinity of human settlements, resources and protected areas, priority conservation sites, protected wetlands and glaciers likely to be affected, as well as the environmental value of the territory where its location is planned; and any significant alteration, in terms of magnitude or duration, to the landscape or tourist value of any given area; and any alteration to monuments or sites of anthropological, archeological and historical value, and in general those that are part of our cultural heritage.

There are several differences between how an EIA and a DIA are processed, chiefly the deadlines that the environmental authorities have to work with in issuing an environmental certification resolution (“RCA” – Spanish acronym). In the case of an EIA, the authority has 120 days, whereas for a DIA the deadline is shortened to 60 days. In practice, these deadlines are longer because the procedure is usually suspended at the request of the project owner in order to collect data and information needed to answer inquiries made by the authorities.

The corollary of this process is an RCA, which could be either unfavorable, in which case the project or activity cannot be carried out, or favorable. In this last case, the RCA usually establishes certain conditions that the owner must meet during the various different project implementation and operation stages.

C.- OTHER RELEVANT ENVIRONMENTAL REGULATIONS

(I) Emission and environmental quality standards

There are several emission standards that establish maximum limits that certain specific sources may emit.

In relation to atmospheric emissions, specific emission standards apply in the Santiago Metropolitan Region that are more stringent than those generally in force.

As to industrial liquid waste, emission sources must adhere to the relevant emission standard, the application of which depends on the water mass that receives the discharge (rivers, lakes, underground aquifers, sea). Usually, in order to comply with the emissions standard, one needs to implement a waste treatment plant under the operational supervision of the Water Utilities Superintendency.

Elsewhere, there are environmental quality standards that set out the maximum limits for the concentration of pollutants likely to pose

a risk to human health or an environmental protection or conservation hazard. There are quality standards for the control of pollutants that affect the atmosphere and inland and maritime waters.

(2) Hazardous solid waste

The handling of hazardous waste is regulated by Executive Order 148 of 2003, i.e. Sanitary Regulations for the Management of Hazardous Waste, which introduces conditions for the management, storage and elimination of these wastes. Significant hazardous waste generators must file a waste management plan with the Sanitary Authority for approval.

Hazardous waste transportation is regulated by Executive Order 298 of 1994, i.e. Regulations for the Transportation of Hazardous Waste, which establishes the safety conditions to be met by all vehicles that carry hazardous materials or wastes.

(3) Native Forestland Act

Law 20,283 on the Reclamation of Native Forestlands and Forest Development generally provides that any tree-felling activity on native forestlands, regardless of the location, must be conducted on the basis of a management plan previously approved by the National Forestland Protection Agency (“CONAF” – Spanish acronym). Nevertheless, it does forbid the felling, elimination, destruction or removal of planting stock of native plant species that are part of a native forest and classified as “in danger of extinction,” “vulnerable,” “rare,” “insufficiently known” or “out of danger.”

(4) Indigenous Peoples Act

Law 19,253 introduced a special statute applicable to indigenous peoples. It provides that indigenous lands may not be disposed of, attached, encumbered or acquired through adverse possession, except among indigenous communities or individuals belonging to the same ethnic group. Nevertheless, they may

be subject to liens upon authorization by the National Agency for the Furtherance of Indigenous Peoples (“CONADI” – Spanish acronym). These liens cannot include the home of an indigenous household and the land it needs to survive. Likewise, lands owned by indigenous communities cannot be leased, conveyed under bailment or assigned to third parties for their use, enjoyment or administration. Lands belonging to indigenous individuals may be subjected to the above treatment for a maximum of five years. In any case, these lands, with the prior consent of CONADI, may be exchanged for non-indigenous lands having comparable commercial value, duly ascertained; the latter will then be deemed to be indigenous lands and the former will no longer enjoy this status.

Additionally, Chile has ratified the International Labor Organization Nff169 Convention on Indigenous and Tribal Peoples. Pursuant to that Convention the government must consult the indigenous people, through appropriate procedures, about legislative or administrative measures that may affect them.

(5) Liability for environmental damages

In general, liability for environmental damages is subjective, i.e. for a person or entity to be required to cure environmental damages or pay indemnification equivalent to said damages, not only must it have caused those damages, but they must also have been the result of willful misconduct or negligence. Exceptionally, there are some cases of strict liability, such as the damage regulated by the Nuclear safety Act 18,302 of 1984, the Navigation Act contained in Decree Law 2,222 of 1978, and the Agricultural Protection Act contained in Decree Law 3,557 of 1981, that regulates the use of pesticides.

VIII.- INTELLECTUAL PROPERTY

A.- TRADEMARKS

Trademarks have an effective term of 10 years. Registrations are granted for products and

services as classified under the 10th edition of Nice Classification. In addition, the Law has two additional categories of trademarks; one is the “establecimiento comercial” for retailer names, and the other is known as “establecimiento industrial,” for the name of manufacturing facilities. There is no trade name registration in Chile, but the Corporate Law grants protection for the name of Stock Corporations registered in the Registry of Commerce.

Trademark applications are filed before the “Instituto Nacional de la Propiedad Industrial” (INAPI) and are subject to an examination on formalities before publication, and on absolute and relative grounds after publication. Applications are published in the Official Gazette for opposition purposes. As in most jurisdictions, the Law contains a full range of grounds for opposition, and also contemplates the right for the owners of non-registered trademarks to file oppositions based on famous trademarks registered abroad, even if the trademark has not been previously used in Chile.

The trademark application process takes about 6 months if no oppositions are filed. Opposition proceedings last for about 1 year and are decided by the Director of the INAPI and may be appealed before a specialized Court, the “Tribunal de Propiedad Industrial” (Industrial Property Court). The Industrial Property Courts decisions may be subject to further annulment remedies (“Recurso de Casación en el Fondo”), to be filed with the Supreme Court whenever the decision issued by the Industrial Property Court has been reached in breach of substantive law.

Use of trademarks is not mandatory in Chile and trademark registrations are not subject to cancellation based on lack of use.

A power of attorney is required to represent a trade mark owner before the INAPI. In the case of foreigners, the power of attorney may be accompanied with the registration application, or within the following 30 days. The power of attorney has no formalities if it comes in

original version, and it must be legalized before a Chilean consulate if it is a copy thereof, or an Apostille according to The Hague Convention as from 30 August 2016. One Power of Attorney is sufficient to file any number of applications in the name of the same company, and also to act on opposition proceedings and related matters.

B.- PATENTS & DESIGNS

Patents have a validity term of 20 years counted as from the filing date, while for designs it is 10 years, also counted as from the filing date.

In order to file a patent application in Chile, the applicant must submit the complete text of the patent application in Spanish. However, INAPI practice has been to accept documents in English provided that a translation into Spanish thereof is subsequently provided.

With regard to design applications, the applicant needs to file a complete set of drawings including side, front, plane, upper, rear and bottom plan views, showing the shape and configuration of the article in order to prepare the description. A description of the drawings is needed to proceed with the filing and may be prepared at our end.

Whenever claiming priority over a foreign patent or design, the applicant needs to file a certified priority document within 90 days as from the filing date. Additionally, if the applicant is not the inventor or designer himself, an assignment document is also needed. Such assignment document needs to be notarized and subsequently legalized before Chilean Consul in the country of its execution.

As far as the procedure is concerned, both patent and design applications undergo a preliminary examination, of a formal nature, which takes about four months to complete. After this period has elapsed and provided there are no observations resulting from this examination, an abstract of the application is published in

the Official Gazette. As of that time, the entire application and all documents pertaining to it are left open for public inspection and a 45 working-day period starts for possible oppositions by third parties.

Regardless of whether oppositions are filed or not, and without the need to file a special request for examination, an examiner is appointed by the INAPI to conduct a substantive analysis on the applied invention.

The whole procedure for obtaining a patent lasts roughly 3 years while the procedure for obtaining a design lasts approx. 2 years. However, if the matter is complex and/or subject to oppositions by third parties, this term may be longer.

Patent and Design applications must be filed with a Power of Attorney, duly executed before a Notary Public and subsequently legalized before a competent Chilean Consul in the country of its execution.

Chile joined the Patent Cooperation Treaty (PCT) on June 2, 2009, thus it is possible to file national phase applications for international applications filed on or after said date.

IX.-VISAS FOR FOREIGNERS

Chilean law provides three kinds of visas for foreigners who wish to work in Chile, as follows:

A.- TOURIST VISA

Foreigners coming to Chile for business but not intending to immigrate, take up residence or conduct remunerated activities are considered tourists.

The tourist visa is granted for a maximum period of 90 days. However, the authority is empowered under exceptional circumstances to limit the stay of the visitor to shorter periods. In certain special cases, the tourist visa may be extended once, for a maximum period of 90 days

counted as from the expiry of the first period. To obtain a tourist visa, the foreigner must hold a passport.

Even though tourists are not allowed to develop remunerated activities in Chile, in certain cases, the Foreigners' Department of the Ministry of Internal Affairs may grant a special Work Permit to a tourist, allowing him to carry out remunerated services in Chile for periods not exceeding 30 days. This Work Permit may be extended for additional periods of 30 days until the expiry of the original or extended period of the tourist visa.

B.- VISA SUBJECT TO AN EMPLOYMENT AGREEMENT (WORK VISA)

This visa is granted to foreigners who are living in Chile under a employment agreement. This visa is also made extensive to the spouse, parents and children living with the foreign employee in Chile. These beneficiaries however are not allowed to engage in business activities in the country unless they obtain their own visa. The Work Visa is granted subject to the following requirements:

- (a) The employer must have legal domicile in Chile;
- (b) The employment agreement must be signed in Chile before a Public Notary or outside Chile before a Chilean Consul;
- (c) In case of foreigner professionals or technicians, they must prove they hold the corresponding professional degree through duly certified documents;
- (d) The profession, activity or work to be carried out by the employee is necessary for the country;
- (e) The activities that the employee will carry out in Chile are not considered to be dangerous for national security;

- (f) The employment agreement must contain special provisions, such as; (i) employer's obligation to withhold and pay the income tax affecting the employee's salary; (ii) the employer's obligation to pay travel expenses of the employee and his family to return to his country of origin or to any other country that may be agreed upon termination of the labor contract; (iii) reference to the social security system to which each employee shall be affiliated; and (iv) the fact that the employment will only be in force once the employee has any kind of permit or visa that allows him to do so.
- (g) The foreigner may only engage in the activities agreed upon in the employment agreement and cannot accept other remunerated positions without prior approval of the authorities.

The visa is granted for up to two years and may be extended for equal periods. The employee may apply for a permanent residence in Chile after two years residing in the country. This visa expires upon termination of the employment agreement.

C.- TEMPORARY RESIDENCE VISA

This visa is granted, inter alia, to professionals, technicians and experts who do not come to Chile under a labor contract with a company or branch office in Chile, but as independent consultants and whose services in Chile are considered useful or convenient for the country. This visa also covers the spouse, parents and children and, again, these beneficiaries are not allowed to carry out business activities in Chile unless they obtain their own visas.

To obtain this visa, documents must be filed proving the applicant's professional degree as well as other documents that may be requested by the authority.

This visa is granted for up to one year and may be extended once for an equal period. The em-

ployee may apply for a permanent residence in Chile after completing one year of residence.

Additionally, the law provides for a temporary employment visa, which requirements are less strict, since the contract does not need to include the ticket obligation. Furthermore, this type of visa does not require a renewal in case the employee changes employer (a requirement which does exist regarding the visa subject to an employment contract).

Notwithstanding the foregoing, there are other types of temporary visas that apply for certain circumstances concerning foreigners that wish to apply for it.

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