

# Legal 500

## Country Comparative Guides 2025

### Chile

### Investing In

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This country-specific Q&A provides an overview of investing in laws and regulations applicable in Chile.

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## Chile: Investing In

### 1. Please briefly describe the current investment climate in the country and the average volume of foreign direct investments (by value in US dollars and by deal number) over the last three years.

Over the last 30 years, Chile has been widely considered as one of the main hubs for foreign investment in Latin America due to its economic and political stability. The social unrest in October 2019 jeopardized that stability, leading the political class to begin a constitutional process to draft a new Carta Magna that would be democratically approved by Chilean citizens. In September 2022, the first Constitution proposal was rejected, opening a second charter to approve a new draft. The second draft was again rejected on December 17, 2023, consolidating the constitution of 1980, which would provide greater certainty and confidence in the country for both Chilean citizens and foreign investors.

Foreign direct investment for January-September 2024 reached US\$17.760 million in the period. It is worth noting that foreign direct investment in year-to-date 2024 is 5% higher than the average for the January-September period over the past two decades (since 2003)<sup>1</sup>.

However, the accumulated amount represents a 36% decrease compared to the flow recorded at the same date last year, due to the high comparison base. It is worth noting that between January and September 2023, the accumulated FDI reached US\$18.422 billion, and on an annual basis, the total for 2023 was the highest in the past nine years.<sup>2</sup>

#### Footnote(s):

<sup>1</sup> InvestChile, November 11<sup>th</sup> 2024.  
<https://www.investchile.gob.cl/es/ied-sep-2024/>

<sup>2</sup> InvestChile, November 11<sup>th</sup> 2024.  
<https://www.investchile.gob.cl/es/ied-sep-2024/>

### 2. What are the typical forms of Foreign Direct Investments (FDI) in the country: a) greenfield or brownfield projects to build new facilities by foreign companies, b) acquisition of businesses (in asset or stock transactions), c) acquisition of

### minority interests in existing companies, d) joint ventures, e) other?

FDI flows to Chile mainly by different large acquisitions of business. There is not a typical form of FDI with the exception of setting up a special purpose vehicle (SPV), generally a joint stock company (SpA) in order to allocate risks in that vehicle and therefore, protecting the holding abroad.

Note that Law No 20,848 expressly incorporates a definition of FDI, which is understood as the transfer to Chile of foreign capital or assets owned by a foreign investor or controlled by them, amounting to US\$5,000,000 or more. This transfer may occur through the exchange of freely convertible foreign currency, contribution of physical goods, reinvestment of profits, capitalization of credits, transfer of technology that can be capitalized, or credits associated with foreign investment from related companies. Additionally, Law No 20,848 set out an additional criterion to qualify as FDI any investment transferred to Chile, with a minimum of US\$5,000,000, which is realized through the acquisition or participation in the equity of a company or in the capital of the recipient company of the investment, established in Chile, granting control of at least 10% of the voting rights of the shares or social rights of the company.

### 3. Are foreign investors allowed to own 100% of a domestic company or business? If not, what is the maximum percentage that a foreign investor can own?

Yes, as there is no specific restrictions for foreign investors.

Note that who qualify as foreign investors may, if they so choose, request a Foreign Investor Certificate from InvestChile<sup>3</sup>. This certificate will enable their access to the regime established by Law No 20,848. The certificate is issued within 15 business days from the submission of all required documentation to InvestChile.

#### Footnote(s):

<sup>3</sup> InvestChile is the Foreign Investment Promotion Agency of Chile ("Agencia de Promoción de la Inversión" or "APIE"), a public entity that represents the State of Chile.

#### 4. Are foreign investors allowed to invest and hold the same class of stock or other equity securities as domestic shareholders? Is it true for both public and private companies?

Yes, foreign investors are allowed to invest in and hold the same class of stock or other equity securities as domestic shareholders. This is applicable to both public and private foreign companies as there is no specific prohibition which sets forth any restriction regarding the origin of the foreign investor.

This is due to the **principle of non-discrimination** established by Law No. 20,848, which ensures equal treatment between local and foreign investors. This principle positions Chile as one of the most open countries to foreign investments, with only a few specific limitations regarding sector-specific regulations, such as:

- The prohibition to acquire the ownership (or any other right), possession or tenancy of real estate bordering a neighboring country, which only applies to the nationals (persons or companies) of the border country. This restriction could be raised by the President of the Republic of Chile, passing a Supreme Decree based on national interests.<sup>4</sup>
- Restrictions for the use of radio spectrum: Law No. 18,168 of Telecommunications considers the use of radio frequencies a strategic resource, therefore, its administration is the responsibility of the State of Chile. In this regard, the law mandates that the holders of broadcasting service concessions (television channels with frequency) must be Chilean, or the concessionary companies must be incorporated in Chile, or the control of these entities must predominantly rest with Chilean individuals.
- Cabotage: Decree Law No. 3,059 stipulates that cabotage is reserved for Chilean vessels. In this context, it establishes that this activity may be conducted by vessels built in Chile, or acquired by nationals, and vessels registered in Chilean registries and predominantly owned by Chileans. Notwithstanding the foregoing, foreign merchant vessels are permitted to engage in national cabotage depending on the cargo volume and other requirements.
- Tugboats: Decree Law No. 2,222 explicitly establishes that towing operations and other manoeuvres conducted in Chilean ports must be carried out using only tugboats with Chilean flag. This implies that such tugboats must be registered in Chile and operate under the country's maritime legislation, ensuring that these activities are controlled by vessels that meet the standards required for safety, efficiency, and

sovereignty within the national territory. However, the regulation allows that, in exceptional situations or qualified cases, the Directorate General of the Maritime Territory and Merchant Marine ("DIRECTEMAR"), may grant a special authorisation for the use of foreign-flagged tugboats.

- Exploration, exploitation and use of hydrocarbon deposits: The Constitution of Chile grants to the State of Chile an exclusive, absolute, and inalienable ownership over the exploration, exploitation, and use of hydrocarbon deposits. This principle implies that hydrocarbon resources cannot be subject to direct private ownership. Instead, the State maintains total control over their exploration, exploitation, and use, as a means of ensuring that their utilisation aligns with the public and strategic interests of the country. Therefore, although private investment is not completely prohibited, investors must operate under strict regimes authorised by the State. This restriction affects both local and foreign investors.

#### Footnote(s):

<sup>4</sup> Article 7, Law Decree No 1,939, year 1977.

#### 5. Are domestic businesses organized and managed through domestic companies or primarily offshore companies?

Primarily through domestic corporate structures, although domestic businesses with presence abroad may hold ownership in companies organized under a particular jurisdiction.

#### 6. What are the forms of domestic companies? Briefly describe the differences. Which form is preferred by domestic shareholders? Which form is preferred by foreign investors/shareholders? What are the reasons for foreign shareholders preferring one form over the other?

Domestic companies commonly used the following forms:

##### 1. Individual Limited Liability Company (EIRL):

- **Regulation:** Since February 2003 when Law N° 19,857 came into force, individuals in Chile have been able to acquire the status of a legal entity as an Empresa Individual de Responsabilidad Limitada or E.I.R.L.

Whatever their purpose, these companies are subject to the Commercial Code and can undertake any type of civil

and commercial activities.

- **No of partners:** It is legal entity of a commercial nature with assets distinct from those of its owner, formed by a single individual.
- **Capital:** Their assets are limited to the amount specified in their deeds and the owner is answerable only for personal goods up to the capital contributed to the company while the company is answerable with all its goods.
- **Company name:** The company's name must include that of its founder or a traded name that refers to its purpose and must also include the expression "Empresa Individual de Responsabilidad Limitada" or "E.I.R.L.". The company's purpose must indicate the nature of its activities and the sector or specific area in which it will operate.
- **Formalities:** Public deed or electronically using "Tu Empresa en un Día" website, at no cost. An abstract of its articles of incorporation must be registered in the Business Registry of the Real Estate Registrar of its registered office and published in the Official Gazette within 60 days.
- **Liability:** From the point of view of its assets, the company's liability is limited to the capital indicated in its deed.
- **Administration:** The administration is freely agreed by the founder. Usually, the founder is the administrator.

## 2. Limited Liability Company (S.R.L.):

- **Regulation:** Limited liability companies are governed by Law 3,918 of March 14th, 1923. Also, by rules contained in the Commerce and Civil Code.
- **No of partners:** Limited liability companies are usually formed by a small number of partners. The partners may be Chilean or foreign, individuals or legal entities. It must have a minimum of 2 partners and a maximum of 50.
- **Capital:** The amount of capital is freely fixed by the partners in the organization document there is no minimum capital requirement. The capital is not divided into shares and the partners' interest in the company is represented by their rights in the capital or in the proportion fixed in the organization document. These rights are not easily transferable or assignable, since it requires the approval of all partners, documented by means of an amendment to the partnership deed. Likewise, any change to this deed requires the consent of all partners and the granting of the corresponding formal amendment.
- **Company name:** The name of the company may contain the name of one or more partners or a reference to its purpose and must include the word "Limitada" without which the partners will be

considered jointly responsible for its liabilities.

- **Formalities:** Public deed or electronically using "Tu Empresa en un Día" website, at no cost.

Article 352 of the Commerce Code establishes the content of the public deed:

- Name, profession, national identification card number and residence of the partners.
- Name and residence of the company.
- Specific purpose for which the company is being set up.
- Duration.
- Capital.
- Management.
- Distribution of profits.

An abstract of its articles of incorporation must be registered in the Business Registry of the Real Estate Registrar of its registered office and published in the Official Gazette within 60 days.

- **Liability:** In these companies, each partner's liability is limited to the amount of the capital contribution or to the amount fixed by the partners in the organization document.
- **Administration:** Management is entrusted to one or more of its partners or to any other person, as established in the organization document.

## 3. Public Limited Liability Companies (S.A.):

- **Regulation:** Stock corporations are governed by Law 18,046, published in the Official Gazette on October 22nd, 1981. The law distinguishes between two different types of stock corporations: "Open Stock Corporations" and "Closed Stock Corporations".

**Public corporations** are those whose stock is publicly traded in accordance with the Securities Market Law. These companies are subject to supervision by the Financial Market Commission ("CMF") and must be on the National Securities Register.

**Close corporations** are all those that do not meet the above requirements but may voluntarily submit to the norms applying to public corporations.

- **No of partners:**

**Public corporation:** They have at least 500 shareholders or, if they have less than this number, 10% of their subscribed capital is held by at least 100 shareholders.

**Close Corporation:** At least two shareholders.

- **Capital:** Capital takes precedence independently of who contributed it, explaining their name in Spanish, literally, anonymous companies.

A corporation's starting capital must be fully subscribed and paid in within a period of three years and, if this does not occur, its capital is automatically reduced to the amount effectively subscribed and paid in.

- **Distribution of profits:** In the case of **closed stock corporations**, shareholders can freely determine in the bylaws the distribution of net profits and dividends. However, if not otherwise addressed in the bylaws, at least 30% of annual net profits have to be distributed as cash dividends. **Open stock corporations** are required by law to annually distribute at least said minimum amount.
- **Company name:** It must include the words "Sociedad Anónima" or the abbreviation "S.A."
- **Formalities:** Public deed or electronically using "Tu Empresa en un Día" website, at no cost. It is incorporated by public deed, and it must contain:
  - Name, profession, national identification card number and residence of the shareholders.
  - Name and residence of the company.
  - Specific purpose for which the corporations is being set up.
  - Duration.
  - Capital.
  - Management.
  - Distribution of profits.
  - Any other relevant issue agreed by the shareholders.

An abstract of its articles of incorporation must be registered in the Business Registry of the Real Estate Registrar of its registered office and published in the Official Gazette within 60 days.

- **Liability:** Corporation is defined as a company formed by a common fund provided by shareholders who are responsible only for their respective capital contributions and it is administered by a board of directors.

The law expressly indicates that shareholders are only liable for the payment of their shares and are not obliged to return to the company's treasury, the profits they may have received.

- **Administration:** Corporations are administered by a board of directors (minimum 3 members for closed corporation and 5 for public corporation) elected by the shareholders' meeting.

All seats must be put up for election at the end of the board's period which may not exceed three years, but directors can be re-elected indefinitely. Unless otherwise stated in the corporation's statutes, it is understood that the board will be elected each year.

The board appoints the General Manager. Decisions are taken by the majority according to the vote of all the partners.

Bylaws shall specify the minimum frequency of Board of Directors' meetings and how they will be called.

#### **4. Joint stock company (SpA):**

- **Regulation:** As part of the new legislation introduced by Law N° 20,190, Joint Stock Companies are governed by articles 424 et. Seq. of the Code of Commerce.

In the absence of specific stipulations, the rules governing stock corporations apply.

- **No of partners:** It can be set up and exist with only one shareholder. It can be established by one or more partners.
- **Capital:** The amount of capital is freely fixed by the partners in the organization document there is no minimum capital requirement.

Its by-laws can establish different series of shares in order to participate separately in the results of different business ventures.

- **Company name:** It must include the abbreviation "SpA".
- **Formalities:** It can be incorporated by public or private deed; in which case the signatures must be authorized by a public notary or electronically using "Tu Empresa en un Día" website, at no cost.

The deed must contain:

- Name, profession, national identification card number and residence of the shareholders.
- Name and residence of the company.
- Specific purpose for which the corporations is being set up.
- Duration.
- Capital.
- Management.
- Distribution of profits.
- Any other relevant issue agreed by the shareholders.

An abstract of its articles of incorporation must be

registered in the Business Registry of the Real Estate Registrar of its registered office and published in the Official Gazette within 60 days.

A shareholder registry must be kept.

- **Liability:** Article 429 of the Commerce Code states that each partner's liability is limited to the amount of the capital contribution.
- **Administration:** Management is not necessarily entrusted to a board of directors. Administration is freely agreed by partners in the By-Laws.

It is very flexible and shares features of both a corporation and a partnership.

#### 5. Foreign companies' agencies in Chile:

- **Regulation:** The Chilean commercial law considers a branch as the locally registered office of a foreign company. In this case, it is the foreign company agency itself who appears acting in Chile, without incorporating a new company. – **No of partners:** It should be established only with the parent company.
- **Capital:** No minimum capital is required to establish a branch unless its capital is registered under a foreign investment regime. Its capital pertains exclusively (100%) to the head office.
- **Company name:** It must include the words "Agencia en Chile".
- **Formalities:** In order to formally open a branch in Chile, it is necessary to notarize and register in a Notary Public's registry the following documents: a certificate evidencing that the company has been legally constituted and is in existence; documents containing the bylaws of the foreign company; and a general power of attorney granted by the foregoing company to one or more persons (agents) to act on its behalf in Chile.

All of this documentation must be sent to Chile in the original version and then officially translated into Spanish.

Finally, an abstract of these documents and public deed, which makes special reference to the main characteristics of the foreign company and Chilean branch, must be published in the Official Gazette, and registered in the Registry of Commerce of the company's domicile, within a period of 60 days from the date of said public deed.

- **Liability:** The head office is responsible for the operation of the branch.
- **Administration:** An agent in Chile must be entrusted with all powers. The agent can delegate all or any of

its powers to one or more proxies.

#### a) Which form is preferred by domestic shareholders?

Joint Stock Company (SpA).

#### b) Which form is preferred by foreign investors/shareholders?

Joint Stock Company (SpA).

#### c) What are the reasons for foreign shareholders preferring one form over the other?

In general terms, flexibility and autonomy. This applies to the transfer of stocks or interests in the company, freedom to set up the rights and obligations that govern the internal relationships between shareholders or partners, the administration of the company (either through a board of directors or proxies) and the possibility to approve corporate restructurings such as conversions, merger and demergers.

### 7. What are the requirements for forming a company? Which governmental entities have to give approvals? What is the process for forming/incorporating a domestic company? What is a required capitalization for forming/incorporating a company? How long does it take to form a domestic company? How many shareholders is the company required to have? Is the list of shareholders publicly available?

Please refer to question 6. above. Additionally, foreign investors that wish to make investments or undertake business in Chile must obtain in the Chilean IRS ("Servicio de Impuestos Internos") a tax identification number, request the start of activities, and obtain the municipal business license.

#### a) Which governmental entities have to give approvals?

No further approval is required for forming a company, although there are specific regulations for some sectors, such as banking, insurance, stock exchange, amongst others, which apply equally to both domestic citizens and foreigners.

#### b) What is the process for forming/incorporating a domestic company?

Please refer to question 6. above.

**c) What is a required capitalization for forming/incorporating a company?**

There is no minimum required capitalization for forming/incorporating a company.

**d) How long does it take to form a domestic company?**

It will depend on the particular case. On average it may take from 1 to 15 business days approximately.

**e) How many shareholders is the company required to have?**

Please refer to question 6. above.

**f) Is the list of shareholders publicly available?**

It will depend on the type of company. It is publicly available in the case of Limited Liability Company (S.R.L.) and Public Limited Liability Companies (S.A.).

**8. What are the requirements and necessary governmental approvals for a foreign investor acquiring shares in a private company? What about for an acquisition of assets?**

Please refer to questions 4. and 7. letter a) above.

**9. Does a foreign investor need approval to acquire shares in a public company on a domestic stock market? What about acquiring shares of a public company in a direct (private) transaction from another shareholder?**

Please refer to questions 4. and 7. letter a) above.

**10. Is there a requirement for a mandatory tender offer if an investor acquired a certain percentage of shares of a public company?**

Yes, there are four scenarios in which a tender offer is required by law. They are governed by Articles 199 and 199 bis of Law 18,045 (the "Stock Exchange Law"):

- In the case of transactions that allow a person to take control of a public company (Securities Exchange Law, Article 199 letter a)). A controller of a company is any person or group of persons with a common action agreement who, directly or through other natural or legal persons, participates in its ownership and has the power to perform any of the following actions: a)

To secure the majority of votes at shareholders' meetings and elect the majority of directors, in the case of joint stock companies, or to secure the majority of votes at assemblies or meetings of its members and appoint the administrator or legal representative or a majority of them, in other types of companies; or b) To decisively influence the management of the company. If a group of persons has an agreement to act jointly to exercise any of the powers referred to in the preceding letters, each of them shall be called a member of the controller.

- If a person who is already a controller seeks to acquire 2/3 or more of the voting shares of the company or of one of the series of shares of said company (Securities Exchange Law, Article 199 letter b)).
- If it is intended to acquire control of a company that, in turn, controls another public company and represents 75% or more of the value of its consolidated assets, an offer must first be made to the shareholders of the latter for an amount not less than the percentage that will enable it to acquire control (Securities Exchange Law, Article 199, letter c)).
- If, as a result of an acquisition, a person or group of persons acting in concert reaches or exceeds two-thirds of the issued voting shares of a public company, it must make a tender offer for the remaining shares within 30 days from the date of the acquisition (Securities Exchange Law, Article 199 bis).

Articles 199 and 199 bis of the Securities Market Law provide for various circumstances that modify or even exclude the aforementioned cases and should therefore be taken into account when studying them.

**11. What is the approval process for building a new facility in the country (in a greenfield or brownfield project)?**

The agencies and permits involved may vary depending on whether the facilities are to be constructed on brownfield or greenfield sites, although in both cases it will be necessary to have rights over the property (i.e., tenant, owner, etc.) where the facilities will be developed.

In the case of brownfield projects, the developer must obtain a building permit from the Building Department ("Dirección de Obras Municipales" or "DOM") of the respective City Council where the project will be executed, both for a new construction and for the modification of an existing one. Subsequently, once the works are completed, a final inspection must be requested from the same Department, after which the construction can be occupied or put to use.

For greenfield projects, the aforementioned permits and inspections also apply, however, prior to obtaining the building permit, a Favourable Construction Report must be obtained from the Regional Secretariat of the Ministry of Housing and Urban Development ("Secretaría Regional del Ministerio de la Vivienda y Urbanismo") and the Agricultural and Livestock Service ("Servicio Agrícola Ganadero" or "SAG") of the Region where the project will be executed.

Finally, in both cases—depending on the project's location, the nature of the facilities, or the purpose for which they will be used—it may be necessary to obtain a favourable Environmental Qualification Resolution ("Resolución de Calificación Ambiental" or "RCA") from the Environmental Assessment Service ("Servicio de Evaluación Ambiental" or "SEA").

**12. Can an investor do a transaction in the country in any currency or only in domestic currency? a) Is there an approval requirement (e.g. through Central Bank or another governmental agency) to use foreign currency in the country to pay: i. in an acquisition, or, ii. to pay to contractors, or, iii. to pay salaries of employees? b) Is there a limit on the amount of foreign currency in any transaction or series of related transactions? i. Is there an approval requirement and a limit on how much foreign currency a foreign investor can transfer into the country? ii. Is there an approval requirement and a limit on how much domestic currency a foreign investor can buy in the country? iii. Can an investor buy domestic currency outside of the country and transfer it into the country to pay for an acquisition or to third parties for goods or services or to pay salaries of employees?**

Generally, payments in the country are made in the local currency. However, the parties to a transaction are free to agree that it can be made in any currency. When transactions are made through banks, it is up to the banks to decide which currencies are accepted.

**a) Is there an approval requirement (e.g. through Central Bank or another governmental agency) to use foreign currency in the country to pay:**

- in an acquisition, or to pay to contractors, or
- to pay salaries of employees?

No approval from any governmental agency is required to pay in a foreign currency.

**b) Is there a limit on the amount of foreign currency in any transaction or series of related transactions?**

Although there is no limit, banks or financial institutions may have restrictions for security reasons, which will depend on each of them.

On the other hand, from January 2025 the new article 92 ter of the Tax Code will be in force. This provision establishes a limit of no less than 50 UF and no more than 135 UF, or its equivalent in foreign currency, so that purchase and sale transactions may be carried out with any means of payment, provided that they are supported by a document stating the identity of the payer or by a relevant or exempt invoice; or, if the payment is made in cash, this circumstance shall be stated in the relevant invoice or document. If the above condition is not met, the transaction must be made exclusively by electronic means of payment or by any other means that allows the payer to be identified. It is not possible to split the payment in order to comply with this provision.

**c) Is there an approval requirement and a limit on how much foreign currency a foreign investor can transfer into the country?**

No, but foreign capital that enters the country, whether through loans, deposits, investments, or capital contributions from abroad, and exceeds 10,000 US dollars or its equivalent in other currencies, needs to be reported to the Central Bank of Chile via commercial banks. This reporting system is governed by Chapter XIV of the Central Bank of Chile's International Exchange Standards. If such transactions occur without the entry of foreign currencies into the country, the responsibility to report them directly to the Central Bank falls on the foreign investor or the investment recipient.

**d) Is there an approval requirement and a limit on how much domestic currency a foreign investor can buy in the country?**

No.

**e) Can an investor buy domestic currency outside of the country and transfer it into the country to pay for an acquisition or to third parties for goods or services or to pay salaries of employees?**

Yes.



### 13. Are there approval requirements for a foreign investor for transferring domestic currency or foreign currency out of the country? Whose approval is required? How long does it take to get the approval? Are there limitations on the amount of foreign or domestic currency that can be transferred out of the country? Is the approval required for each transfer or can it be granted for all future transfers?

The Foreign Investment Committee oversees the authorization and management of foreign investments. Investments made under Chapter XIV of the Summary of the Foreign Exchange Regulations of the Chilean Central Bank only need to be reported to the Central Bank and do not require additional authorization.

Chile has two main foreign exchange markets: the "formal" and the "informal" markets. Certain transactions, such as foreign currency liquidation and profit remittance under the Foreign Investment Law, must be conducted through the formal market. In contrast, other transactions can freely take place in the informal market.

Foreign exchange operations in the formal market must be carried out through authorized banks and financial institutions. Exchange rates in the formal market are not fixed.

- **Whose approval is required?** Please refer to the response above.
- **How long does it take to get the approval?** Please refer to the response above.
- **Are there limitations on the amount of foreign or domestic currency that can be transferred out of the country?** Please refer to the response above.
- **Is the approval required for each transfer or can it be granted for all future transfers?** Please refer to the response above.

### 14. Is there a tax or duty on foreign currency conversion?

No. The Chilean tax policy is for taxes to be neutral, that is, that in and of themselves they should not attract or restrict foreign investment. Thus, the rates are in line with those prevailing in the countries most interested in investing in Chile.

### 15. Is there a tax or duty on bringing foreign or domestic currency into the country?

Although there is no specific tax on the entry of foreign or domestic currency into the country, income from abroad that is tax free in the country of origin must be taxed in Chile, unless there is an agreement to avoid double taxation with the country of origin, in which, in addition, it has been expressly established that such income will not be taxed in Chile.

### 16. Is there a difference in tax treatment between acquisition of assets or shares (e.g. a stamp duty)?

From the buyer's perspective generally no because there are two types of corporate tax depending on whether the buyer has the tax residency in Chile or not: in the first case, it is subject to Corporate Income Tax (27%), and, in the second one it is subject to a withholding tax (depending on the activity from 15% to 35%). There are exceptions related to real estate assets and others. In any case, if there is not a money-lending operation it shall not apply a stamp duty tax.

From a seller's perspective: for individuals -nationals or foreigners- Global Complementary Tax and Withholding Tax shall be payable on a cash or accrual basis, as chosen by the taxpayer. For other taxpayers (companies), capital gains will always be considered income, subject to Corporate Income Tax or Withholding Tax on a cash or accruals basis. The tax cost of the shares can be deducted from their sale price, which can lead to a lower tax burden.

### 17. When is a stamp duty required to be paid?

First and foremost, the stamp duty in Chile is primarily levied on documents or acts that account for a money-lending operation. This encompasses any transaction where one party delivers or agrees to deliver an amount of money, and the other party agrees to pay it at a time other than that at which the agreement is entered into.

In light of the aforementioned details, the timing of this tax payment will be contingent upon the specific type of document containing a money-lending operation and the taxpayer classification:

- For private deeds, the stamp duty shall be paid within the next five business days from the date of the emission of the document that contains a money-lending operation (e.g., credit loans, promissory notes, etc.).
- If the taxpayer is a legal entity that shall declare its income through complete accounting records, within

the next month from the date of the emission of the document that contain a money-lending operation.

From April 1, 2023, the only way to declare and pay the stamp duty is electronically.

**18. Are shares in private domestic companies easily transferable? Can the shares be held outside of the home jurisdiction? What approval does a foreign investor need to transfer shares to another foreign or domestic shareholder? Are changes in shareholding publicly reported or publicly available?**

It will depend on the type of company.

In the case of stock companies such as S.A. and SpA, it governs the principle of free transferability of shares. Accordingly, shares can easily be transferred, without any restriction, unless the transferability is limited through shareholder agreements, which shall only be enforceable between the parties to the shareholder agreement.

Transfer of shares can be carried out in three different ways:

- Private instrument signed by the transferor and the transferee, before a notary public;
- Private instrument signed by the transferor and the transferee, before two witnesses of legal age or before a stockbroker (in the case of publicly traded companies);

Public deed signed by the transferor and the transferee.

In the case of "intuito personae" companies, such as SRL, the transfer of interests requires the unanimity of the partners' consent and the reform of the company's bylaws. In addition, an extract of said deed must be registered in the Companies Registry and published in the Official Gazette. EIRL shall follow the same formalities, although the consent is given by the single individual member.

**a) Can the shares be held outside of the home jurisdiction?**

Foreign investors can hold shares in local companies through foreign entities. However, the shares of the local company will remain being Chilean.

**b) What approval does a foreign investor need to transfer shares to another foreign or domestic shareholder?**

Please refer to question 18. above.

**c) Are changes in shareholding publicly reported or publicly available?**

Please refer to question 7., letter f) above.

**19. Is there a mandatory FDI filing? With which agency is it required to be made? How long does it take to obtain an FDI approval? Under what circumstances is the mandatory FDI filing required to be made? If a mandatory filing is not required, can a transaction be reviewed by a governmental authority and be blocked? If a transaction is outside of the home jurisdiction (e.g. a global transaction where shares of a foreign incorporated parent company are being bought by another foreign company, but the parent company that's been acquired has a subsidiary in your jurisdiction), could such a transaction trigger a mandatory FDI filing in your jurisdiction? Can a governmental authority in such a transaction prohibit the indirect transfer of control of the subsidiary?**

There is no mandatory FDI filing applicable.

Nevertheless, it is worth noting the two main legal sources that regulate foreign investment in Chile:

– Chapter XIV of the Compendium of Foreign Exchange Regulations of the Central Bank of Chile ("Compendium"): The Compendium sets forth reporting obligations with regards to foreign investment that exceeds US\$10,000. Under this mechanism, foreign investment is understood as the transference into the country of foreign currency or the disposal of funds abroad, in both cases exceeding US\$10,000, in order to acquire Chilean assets. The transference of foreign shares or social rights in exchange for Chilean assets is considered a foreign investment as well, if the value of the foreign shares or social right surpasses the referred threshold.

Law No 20,848: This law created the Foreign Investment Promotion Agency<sup>5</sup>, whose main role is to promote and attract foreign investment to Chile. APIE does not exercise any control over foreign investments.

**a) With which agency is it required to be made?**

Please refer to question 19. above.

**b) How long does it take to obtain an FDI approval?**

No FDI approval procedure is required.

**c) Under what circumstances is the mandatory FDI filing required to be made?**

Please refer to letter b) above.

**d) If a mandatory filing is not required, can a transaction be reviewed by a governmental authority and be blocked?**

There may be transactions that can be intervened by governmental authorities when it comes to specific-sector regulations, such as antitrust, environmental and national security.

**e) If a transaction is outside of the home jurisdiction (e.g. a global transaction where shares of a foreign incorporated parent company are being bought by another foreign company, but the parent company that's been acquired has a subsidiary in your jurisdiction, could such a transaction trigger a mandatory FDI filing in your jurisdiction?**

Please refer to question 19. above.

**f) Can a governmental authority in such a transaction prohibit the indirect transfer of control of the subsidiary?**

Please refer to question 19. and letter d) above.

Footnote(s):

<sup>5</sup> Please refer to footnote 3.

**20. What are typical exit transactions for foreign companies?**

Corporate exit strategies seek to maximize shareholder value. Common exit strategies include the sale of a business, spinoff, and initial public offering.

- Sale of business: a business is sold to a buyer (from the seller's perspective, the sale of a business can provide needed cash, and from the buyer's perspective, the purpose for acquiring the business may vary – i.e. complement existing business).
- A spinoff: pro rata distribution of a subsidiary's stock to the parent company's shareholders. As a result, a piece of the company is "carved-out" to its existing shareholders.
- Initial public offering: a parent company may carve-out a portion of itself to create a new company to be traded on a public exchange, allowing the company to

raise capital from public investors.

**21. Do private companies prefer to pursue an IPO? i. on a domestic stock market, or ii. on a foreign stock market? iii. If foreign, which one?**

Yes, generally on a domestic stock market. However, nowadays private companies are trying to establish their businesses in a reliable jurisdiction such as Mexico (mainly), as well as Colombia and Peru before thinking to pursue an IPO.

**22. Do M&A/Investment/JV agreements typically provide for dispute resolution in domestic courts or through international arbitration?**

Generally, these types of transactions set forth dispute resolution clauses in Chile (mostly through domestic arbitration). However, when there are several foreign investors, it is common to establish an international arbitration clause, mostly in New York or Paris.

**23. How long does a typical contract dispute case take in domestic courts for a final resolution?**

Commercial proceedings in domestic courts, depending on the type of proceeding, can last from three to seven years. If it is a domestic arbitration between two and five years.

**24. Are domestic courts reliable in enforcing foreign investors rights under agreements and under the law?**

Yes, local and foreign investors are equally treated under the Chilean Law, as long as the legal documents fulfill the minimum requirements the Chilean Law provides to enforce the respective rights.

**25. Are there instances of abuse of foreign investors? How are cases of investor abuse handled?**

Under the principle established by Law No 20,848 that foreign investors have an equal treatment than local investors, there are no instances of abuse of the former in the Chilean jurisdiction.

If there were instances of abuse, foreign investors can

seek protection from the International Centre for Settlement of Investment Disputes (ICSID). Chile is a Contracting State from January 25th, 1991, ratifying the ICSID Convention the same year.

## 26. Are international arbitral awards recognized and enforced in your country?

Yes. Chile has been a contracting state to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) since 1975.

In addition, recognition and enforcement of foreign arbitral awards are governed by Law No. 19,971, which in turn adopts the New York Convention regime.

The purely procedural rules for recognition and enforcement themselves are set forth by the Chilean Civil

Procedural Code.

## 27. Are there foreign investment protection treaties in place between your country and major other countries?

Yes, Chile has signed 34 Free Trade Agreements as well as several Promotion and Reciprocal Protection of Investments Agreements and 37 Double Taxation Agreements. Chile is also a party to:

- the Pan-American Convention on Private International Law (Bustamante Code) since 1934;
- the Inter-American Convention on International Commercial Arbitration since 1976; and
- the Convention on the Settlement of Investment Disputes between States and Nationals of Other States since 1991 (ICSID Convention).

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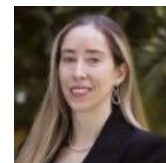
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