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Chile: Law & Practice

Constanza Contreras, Juan Francisco Reyes, Maria Jose Chible
and Gabriela Muñoz
SCR Abogados



CHILE



Law and Practice

Contributed by:

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Contents

1. Legal System p.6

1.1 Legal System and Judicial Order p.6

2. Restrictions on Foreign Investments p.6

2.1 Approval of Foreign Investments p.6

2.2 Procedure and Sanctions in the Event of Non-compliance p.6

2.3 Commitments Required From Foreign Investors p.7

2.4 Right to Appeal p.7

3. Corporate Vehicles p.7

3.1 Most Common Forms of Legal Entity p.7

3.2 Incorporation Process p.8

3.3 Ongoing Reporting and Disclosure Obligations p.8

3.4 Management Structures p.9

3.5 Directors', Officers' and Shareholders' Liability p.9

4. Employment Law p.9

4.1 Nature of Applicable Regulations p.9

4.2 Characteristics of Employment Contracts p.10

4.3 Working Time p.11

4.4 Termination of Employment Contracts p.12

4.5 Employee Representations p.14

5. Tax Law p.14

5.1 Taxes Applicable to Employees/Employers p.14

5.2 Taxes Applicable to Businesses p.15

5.3 Available Tax Credits/Incentives p.16

5.4 Tax Consolidation p.16

5.5 Thin Capitalisation Rules and Other Limitations p.16

5.6 Transfer Pricing p.16

5.7 Anti-evasion Rules p.16

6. Competition Law p.17

6.1 Merger Control Notification p.17

6.2 Merger Control Procedure p.17

6.3 Cartels p.17

6.4 Abuse of Dominant Position p.18

7. Intellectual Property p.18

- 7.1 Patents p.18
- 7.2 Trade Marks p.19
- 7.3 Industrial Design p.19
- 7.4 Copyright p.20
- 7.5 Others p.20

8. Data Protection p.20

- 8.1 Applicable Regulations p.20
- 8.2 Geographical Scope p.21
- 8.3 Role and Authority of the Data Protection Agency p.21

9. Looking Forward p.21

- 9.1 Upcoming Legal Reforms p.21

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SCR Abogados is a mid-sized boutique Chilean law firm founded in 2017 offering legal services in corporate, employment, intellectual property, data privacy, compliance and other related practice areas, focusing on best-fit solutions for clients' needs while delivering high-quality legal services and creating long-term client relationships. Based in Santiago, SCR Abogados' val-

ue proposition consists of assigning seasoned lawyers with practical knowledge to each task in order to deliver a timely, complete, high-quality and business-oriented solution for the benefit of clients. The firm's client base ranges from individuals and start-ups to publicly traded companies and Fortune 500 companies in several industries.

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CHILE LAW AND PRACTICE

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The logo for SCR Abogados. It features the letters 'S', 'C', and 'R' in a large, blue, serif font, separated by dots. Below this, the word 'ABOGADOS' is written in a smaller, grey, sans-serif font.

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1. Legal System

1.1 Legal System and Judicial Order

Chile is a civil law country with a single national judiciary system. The Chilean Supreme Court is the hierarchical superior of all other courts in Chile (except for the Constitutional Court); there are general jurisdiction courts and specialised courts.

The general court system is a three-tiered system with a territorial division contemplating 16 Courts of Appeals (one per region, except the metropolitan region which has two) under which ordinary courts with jurisdiction over portions of the Court of Appeal's territory can be found. Ordinary courts have either general jurisdiction (hearing civil cases, labour cases, criminal cases, collections processes and family cases) or specialised jurisdiction (family courts, labour courts, civil courts and criminal courts).

Ordinary courts are customarily the first instance court of law, with their decisions being revised by Courts of Appeals as second instance court. The Courts of Appeals' decisions may be reviewed by the Supreme Court as a Court of Cassation (it is not an instance court and as such it does not review facts but only the application of legal rules to the facts of the case).

Special courts hearing criminal cases (oral cases not settled before ordinary courts), industrial property cases, elections cases, environmental cases, tax and customs cases, public procurement cases and antitrust cases exist as well, all under the hierarchical supervision of the Supreme Court or the relevant Court of Appeals, which acts as second instance court in such cases.

There is also a Constitutional Court to review the scope of legal provisions under the Constitution. It is independent from the Supreme Court and may be involved in legal approval process at the request of Congress or to decide cases where individuals consider the application of a legal rule to be against the constitutional provisions on a given matter.

Arbitration is generally permitted, with few exceptions. Arbiters' decisions may be reviewed by the ordinary court system under certain circumstances.

2. Restrictions on Foreign Investments

2.1 Approval of Foreign Investments

As a general rule, foreign investors do not require approval from Chilean authorities to invest in Chile. However, investors intending to make a direct foreign investment (as defined by statute) of USD5 million or more can request a foreign investor certificate to access certain benefits pertaining to their investment and the profits derived therefrom. The foreign investment certificate may be obtained by foreign investors (both individuals or corporations) intending to set up a business in Chile or those already in Chile that qualify under the statute.

2.2 Procedure and Sanctions in the Event of Non-compliance

To obtain a foreign investor certificate, a form must be submitted with the relevant authority (Foreign Investment Promotion Agency – APIE or Invest Chile) indicating the amount, purpose and form of the investment along with supporting evidence.

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The form is reviewed and a certificate issued within 15 days from delivery of the completed form and supporting evidence. Issuance of the certificate is a prerequisite to accessing the benefits available to foreign investors (namely, right to repatriation of start-up capital and profits (after tax), right to access formal currency exchange markets, right to non-discrimination and right to be exempt from VAT associated with the importation of capital goods).

2.3 Commitments Required From Foreign Investors

There are no special commitments other than making the corresponding investment as indicated in the foreign investor certificate application form and complying with local laws and regulations pertaining to the relevant activity.

2.4 Right to Appeal

There should be no refusal of foreign investment. If there were, the foreign investor would be entitled to re-file the application and or challenge it through administrative recourse.

3. Corporate Vehicles

3.1 Most Common Forms of Legal Entity

The Chilean constitution guarantees liberty of association and entrepreneurial freedom. Investment vehicles are divided between (i) capital or stock corporations and (ii) personal corporations, companies or partnerships. In the first kind of corporations the identity of the owner is irrelevant, whereas in the second it is of the essence.

There are no minimum capital contributions to any kind of vehicle (except for regulated entities such as banks, pension fund managing companies or mutual funds management companies); partners or shareholders may be individuals or

corporations, national or foreign, and the only special requirement is that the legal representative should be a Chilean national or have a Chilean work permit and be domiciled in Chile.

To allow for the entry of new investors or shareholders, capital corporations are most commonly used as investment vehicles. There are closed stock companies (stocks are not publicly traded), open stock companies (stocks are publicly traded at the local stock exchange market) and companies divided by shares (stocks are not publicly traded either).

Both open and closed stock companies are extensively regulated in the stock corporation law and its regulations, in terms of minimum content of the by-laws, governing bodies, reporting and auditing obligations, formalities, periodicity and scope of shareholders' meetings, minimum dividend distribution rules, director appointment and removal, liability standards, conflicts of interest and several other matters.

Companies divided by shares, on the other hand, are regulated by a different body of law, wherein the basic rule is minimum content of the by-laws and minimum dividend distributions, with absolute freedom to the founders in terms of everything else. Silence of the founders on a given matter is construed as them deciding to be governed by the provisions set out for closed stock corporations in the law on stock corporations and its regulations.

Stock corporations are governed by a general shareholders assembly which appoints a board of directors whose members in turn appoint a general manager. Shareholders' liability is limited to the capital contribution to which the stock pertains. There is no minimum share capital and there is a minimum of two shareholders.

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Companies divided by shares are governed by the governance body set out by the founders in the by-laws. Shareholders' liability is limited to the capital contribution to which the stock pertains. There is no minimum share capital and there is no minimum number of shareholders.

While companies may be with or without limited liability, there are no special requirements in order to set out limited liability for a given company; customarily, they therefore have limited liability. Companies are administered by a manager (whose appointment may be established in the by-laws or by the partners) or the government body set out in the by-laws.

Property is divided in terms of ownership percentages and decisions are made by unanimity unless the by-laws contemplate a different rule. The minimum distribution percentages set out in the stock corporation law and its regulations is understood to apply to companies as well; and limited liability companies have a maximum of 50 partners.

3.2 Incorporation Process

There are two systems for incorporating a company in Chile: (i) with the commercial registry; and (ii) under a simplified online system. In either case, when there is a foreign partner or shareholder, an investor tax ID must be obtained in advance (for which a power of attorney should be obtained from a Chilean consulate).

Both systems are legally valid, but the commercial registry system is subject to a higher review standard and is more expensive. The history of a company is easier to trace in the commercial registry system and copies of documents may be obtained with more ease.

The simplified online system is with the tax authority and other government agencies (with which co-ordination is easier) but is slightly more rigid in terms of content of the by-laws. It is not subject to third-party review, thus giving rise to difficulties with banks when the by-laws are inappropriate for the legal structure.

The commercial registry system requires a public deed, an abstract thereof, publication of the abstract in the official gazette and subsequent recordal with the commercial registry. The whole process takes between two and four weeks to be completed and, subsequently, a company tax ID must be obtained and municipal tax must be paid.

The simplified online system provides sample by-laws depending on the nature of the corporate vehicle and the partners/shareholders need to have an advanced electronic signature (as defined by the Chilean statute) or involve a notary public who does. Once the online process is complete, the company is incorporated and valid, with a corporate tax ID being given immediately and the municipal tax being due upon incorporation.

3.3 Ongoing Reporting and Disclosure Obligations

In general terms only amendments to the by-laws are subject to advertisement in public records.

Entities supervised by the Financial Markets Commission (hereinafter CMF) – banking, insurance, securities and exchange authority – are required to actively report on information concerning them or their business (including management changes, control changes, liabilities, shareholders' meetings dates, capital changes,

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dividend payments, among other facts or circumstances).

Financial statements need to be approved, as set out in the corresponding entity's by-laws. Approval of financial statements may need to be made by registered auditing companies, depending on the nature of the corporate vehicle or business activities of the companies involved.

Open stock corporations, special companies and some closed stock corporations may be required by law (or their own by-laws) to be audited by registered auditing companies. Additionally, given the nature of their operations (as issuers of securities), some entities may need to be audited. In the latter case, this is irrespective of the corporate vehicle.

3.4 Management Structures

For stock corporations, there is usually a general manager (appointed by the board of directors) with broad powers of representation and a structure of power holders (also defined by the board of directors) authorised to execute operations representing monetary amount limits which increase depending on the power structure and the joint signature of power holders.

For companies or partnerships, the management structure is usually a single manager or managing committee appointed by the partners.

3.5 Directors', Officers' and Shareholders' Liability

Directors have a fiduciary duty to the corporation. The same duty applies to executive officers. Since they represent the shareholders' and the company's interests, they are jointly and severally liable before shareholders and the company for any damages caused as a result of their decisions when made fraudulently or negligently. The

general business rule applies to assess negligence. Under insolvency scenarios or legal violations, directors and officers may also be liable before the affected third parties.

It is worth pointing out that directors are personally liable for any damages caused as a result of their decisions. Shareholders, on the other hand, are only liable for their capital contribution.

4. Employment Law

4.1 Nature of Applicable Regulations

As a general rule, Chilean labour law establishes minimum mandatory protections that cannot be waived voluntarily by the employee. As statutory minimums, these protections can be improved either unilaterally by the employer or by the agreement of both parties. Also, the employer may establish or agree on benefits not contemplated by the law, provided that the minimum rights and benefits established by law in favour of employees are respected and maintained unaltered.

Benefits or individual employment conditions may be reduced, suspended, changed or eliminated only with the employee's consent and safeguarding the statutory minimums. Employers do not have the right to eliminate unilaterally an employee's monetary benefit or individual employment condition, even if it is not written. Further, any rights, benefits or privileges actually granted (on a somewhat regular basis) by an employer to an employee during the term of the employment contract, even if not agreed upon in writing by the parties, may be enforced by the employee if they are considered tacit or clauses.

There are no national or industry-related collective bargaining agreements (CBAs) in Chile, only

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company unions and CBAs. If in the company there is no union or no CBA in force, the company is not obligated to apply any other special collective agreement.

Case law is not mandatory in application under the Chilean legal system but is guidance for future court decisions.

4.2 Characteristics of Employment Contracts

An employment contract is defined as a consensual agreement whereby an employee and an employer assume reciprocal obligations. The employee is obliged to provide services personally, under a relationship of dependency and subordination with the employer, who in turn is obliged to pay agreed remuneration for these services. Whenever dependent services with these features or characteristics are rendered, an employment contract is presumed to exist.

Key Factors in Determining Employment Relationship

In assessing whether or not an employment contract exists, a key issue is whether a relationship of “dependency and subordination” indeed exists. According to court decisions, the key factors in determining whether such a relationship exists include:

- the employee’s obligation to assist at a workplace;
- the continuity of the services provided by the employee at the workplace;
- the employee’s fulfilment of a working time schedule;
- the employee’s obligation to obey the employer’s instructions and orders;
- the employer’s right to direct the employee and dictate the form and timing of the employee’s work; and

- the employer’s general supervision of the employee in the course of performing their functions.

Although an employment contract may be deemed to exist without a written contract (see above), the statute requires contracts to be in writing. Employment contracts must be signed by both the employer and the employee. Contracts must contain provisions on a range of issues specified by statute (ie, duties, work schedule, duration, among others).

Written Contract

An employer must ensure that there is a written contract in place within 15 days after an employee starts work (five days in the case of contracts with a duration of less than 30 days) and should be registered at the Labour Bureau website within 15 days, or will face a fine. Additionally, if the employee continues to work without signing the employment contract, this does not affect the validity of the employment relationship but, in the event of a dispute, it will be presumed that the terms of the employment agreement are those indicated by the employee (without prejudice to the employer being able to assert and prove otherwise).

Termination

An employment contract may only be terminated on the grounds set out in the Labour Code. An employer must observe certain procedures when terminating an employment contract, including a formal notice and providing a draft general release or final settlement, which confirms the end of the employment relationship and that the employee has received all payments due from the employer. Verbal termination will be considered unjustified and will be sanctioned with a 50% surcharge of the severance per years of service and fines. Additionally, the employer

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will not be allowed to provide in court evidence regarding the facts that motivate the dismissal.

Open-ended employment contracts are the general rule, although fixed-term contracts and contracts to perform a particular task or service (that is, task- or project-based contracts) are permitted. All employment contracts must state their term, and, unless the contract is explicitly agreed for a fixed term or to perform a particular task or service, the term is considered to be open ended.

Fixed-Term Contracts

For most employees, the duration of a fixed-term contract must not exceed one year. A fixed-term contract may be renewed once, but the total duration, including the renewal, must not exceed one year. In the case of managers and employees with a professional or technical qualification from a higher-education institution, a fixed-term contract may have a duration of up to two years. Again, one renewal is permitted but the total duration, including the renewal, must not exceed two years.

If an employee works non-continuously for the same employer under more than one fixed-term contract for a period of 12 months or more within a 15-month period (starting at the beginning of the first contract), the employee is considered to have an open-ended contract with the employer. An employee on a fixed-term contract is also considered to have an open-ended contract with the employer if: (i) the employee continues to work for the employer (with the employer's knowledge) after the end of the term of the fixed-term contract; or (ii) the contract is renewed more than once.

Fixed-term contracts terminate automatically on their expiry date (written notice must be given),

and neither party is required to pay compensation associated with the termination.

Contracts to perform a particular task or service do not have a fixed term. They terminate automatically on completion of the specified task or project (written notice must be given), with special compensation per months of service.

Special Rules

Special rules apply also to the employment contracts of apprentices and temporary agency workers, employment contracts of agricultural workers, seafarers, civil aviation crews, dockworkers, artists and performers, domestic workers and professional sports people. Depending on the type of worker concerned, these special rules deal with matters such as working time, rest periods, payment of wages, benefits in kind, health and safety, and termination of contract.

4.3 Working Time

The general rule is that an employee cannot work more than ten hours a day or more than 45 hours a week. The 45 hours a week may be distributed over no more than six or fewer than five days a week.

An employee may not opt out such restriction. However, Article 22, second paragraph, of the Labour Code establishes certain categories of employees that are excluded from the maximum working hour rules:

- people who render services to different employers;
- managers, administrators, attorneys with administration powers and those who work without direct supervision;
- people hired to render services from their home or other place freely determined by the employee;

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- commission and insurance agents, travelling sales persons, collectors and other employees who carry out similar services;
- employees who render services on fishing boats; and
- people hired to render services outside the company's premises, through telecommunication means.

As of April 2024, maximum working hours will be gradually reduced until reaching a maximum of 40 hours per week in the year 2028. The new work schedule allows the distribution of the weekly maximum in four days, compensation of overtime with periods of rest and the distribution of the monthly work schedule in weekly averages of 40 hours, among other alternatives.

Only employees subject to a working schedule are entitled to overtime payments. An employee will have worked overtime if the hours worked by the employee during a week exceed the contracted working hours or the legal maximum hours per week, whichever is lower. Overtime hours must be paid with a 50% surcharge together with the employee's salary.

4.4 Termination of Employment Contracts

Employment contracts may be terminated only on grounds specified by statute. An important legal distinction is made between grounds of termination that entitle the employee to compensation from the employer, and grounds of termination that carry no such entitlement.

Grounds Where Employee Is Not Entitled to Compensation

Employees are not entitled to compensation when they are dismissed "for cause" because of committing various specified types of misconduct or breaches of the employment con-

tract. In addition, no compensation is payable if the contract is terminated on various grounds that do not involve any "fault" on the part of the employer. These grounds of termination are as follows:

- mutual consent of the parties;
- resignation by the employee;
- the death of the employee;
- the termination of a fixed-term contract at the end of its agreed term; and
- termination as a result of acts of God or force majeure.

Grounds Where Employee Is Entitled to Compensation

Only four grounds of termination entitle the employee to compensation from the employer. All involve dismissal by the employer.

The first is dismissal on grounds of "business necessities" (broadly, this means redundancy). The second is dismissal "at will" (that is, without the employer having to cite any particular reasons), which applies only to certain types of employees, notably managerial and fiduciary positions. The third is the employer's bankruptcy. The fourth is the termination of a contract to perform a particular task or service on the completion of such task or service.

An employer must observe a minimum statutory 30-day notice period, or pay the employee, in lieu of this notice, a severance equivalent to one monthly wage, with the legal cap of Unidades de Fomento 90, when dismissing an employee for business needs and at will. (The Unidad de Fomento (UF) is a monetary unit used for tax purposes indexes to inflation adjusted daily and is commonly used in Chile. The exchange rate between the UF and the Chilean peso fluctuates daily on the basis of a direct proportion of the

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consumer price index variation for the preceding month. At the date of publication of this guide (July 2023), UF1 equals approximately USD45.) Prior notice (and therefore payment in lieu of prior notice) is not required if termination was made on grounds of termination “for cause”, namely without compensation. Also, in case of termination due to bankruptcy, the employment contract may be terminated without prior notice, but the employer shall pay one month’s remuneration in lieu.

According to the Labour Code, all grounds of termination entitle the employee to payment for pending/proportional days of vacation.

If the employment contract is terminated based on business necessities, at the employer’s will or company’s bankruptcy, unless the parties agreed on a higher conventional severance payment, the employer shall pay employees with more than one year of service a legal severance payment equal to 30 days of the employee’s last remuneration per each year of service, and part thereof higher than six months. (For example, if an employee worked for three years and four months, three monthly remunerations are due; if they worked for three years six months and one day, four monthly remunerations are due.) This legal severance is subject to two legal caps: (i) a cap on the monthly salary, of UF90; and (ii) a seniority cap of 11 years of service (330 days’ remuneration). This last cap is not applicable to employees hired before 14 August 1981.

The termination of contracts to perform a particular task or service due to the completion of the corresponding service or tasks, carry a severance per termination which shall be equivalent to one to two and a half days of remuneration for each month worked and fraction greater than 15

days (rounded up), depending on the effective date of the contracts.

For purposes of calculating the severance per years of services and the severance in lieu of prior notice the last monthly remuneration is used. It is understood that the employee’s “last monthly remuneration” includes all amounts that the employee is receiving for their services upon the date of termination, including tax and social security contributions and fringe benefits but excluding statutory family allowances, overtime payments and benefits or allowances that are granted sporadically or annually, such as profit sharing, Christmas allowances and annual incentives or bonuses. Regarding employees with variable remuneration, the severance will be calculated on the basis of the average received by the employee during the last three calendar months.

Special Rules

Special rules apply to the early termination of fixed-term employment contracts and contracts to perform a particular task or service.

Employees receive special protection against termination of employment at certain times – such as during maternity leave and for one year afterwards – and if they engage in various trade union or similar activities. Where an employee is covered by this special protection, the employer can terminate the employee’s contract only with the prior authorisation of a court, which will be given only in specified circumstances.

Employees must not be dismissed as a result of discrimination, especially on the statutory protected grounds, which include race, sex, age, trade union membership, religion, political opinion and nationality.

Employees may resign at any time by giving at least 30 days' notice. In certain circumstances, notably where the employer has seriously breached the employment contract, an employee may terminate the contract without prior notice and bring a court case seeking compensation from the employer. This is known as "indirect" (that is, constructive) dismissal.

There are no special rules for collective redundancies. Dismissal in these cases follow general rules, with the exception that union representatives may be dismissed without prior court approval in the case of permanent closure of the company.

4.5 Employee Representations

The Constitution recognises unions as legal entities and recognises the right of employees to form, join, not join, and withdraw from a union. Currently, employees are not obligated to join to any union.

The Labour Code recognises the right of employees to establish, without prior authorisation, the union organisations that they deem convenient, provided they respect applicable law and statutes. The role of the union is to represent its members in the carrying out and enforcement of their individual employment contracts and collective employment contracts or agreements. Unions also represent their members in collective bargaining and assist their members in the enforcement of employment laws, mutual aid and welfare, workplace safety, training, and leisure activities.

5. Tax Law

5.1 Taxes Applicable to Employees/Employers

Employers must deduct from employees' remuneration at source the income tax and social security contributions that the employees are obliged to pay, and pass these on to the relevant institutions. Employees shall pay second category tax, which has a progressive taxation of 0%, 4%, 8%, 13.5%, 23%, 30.4%, 35.5% and 40% of their remuneration.

Employees bear the cost of their social security contributions, which must be withheld by the employer from their monthly remuneration. Employees' social security contributions are as follows.

- Pension fund – This is equal to approximately 13% of the employee's remuneration (10% to the fund and 2–3% for commission to the administrator of the fund), with a cap over remuneration of UF81.6.
- Health insurance – This consists of 7% of the employee's remuneration, with a cap over remuneration of UF81.6.
- Heavy works contribution – This is equal to 1–2% of the employee's monthly remuneration, with a cap over remuneration of UF81.6. This contribution is applicable only to employees who are required to carry out heavy works.
- Workers' unemployment insurance – This is 0.6% of the employee's monthly remuneration, with a ceiling of UF122.6.

Additionally, the employer must bear the following social costs.

- Law No. 16,744 on Insurance for Work Accidents and Professional Diseases – This

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consists of 0.95%–4.35% of the employee's monthly remuneration, with a cap over remuneration of UF81.6. This contribution totals, at most, 7.75% where the employer neither provides sufficient health and hygiene conditions for its employees nor implements the safety measures ordered by the labour authorities.

- Heavy works contribution – This is equal to 1–2% of the employee's monthly remuneration, with a cap over remuneration of UF81.6. This contribution is applicable only to employees who are required to carry out heavy works.
- Disability and survival insurance – This consists of 1.61% of the employee's monthly remuneration, with a cap over remuneration of UF81.6.
- Workers' unemployment insurance – This is equal to 2.4% of the employee's monthly remuneration, with a cap over remuneration of UF122.6.
- Insurance for the accompaniment of children affected by a serious health condition (Sanna Law) This consists of 0.03% of the employee's monthly remuneration, with a cap over remuneration of UF81.6.

5.2 Taxes Applicable to Businesses

The connecting factors of business taxation are nationality, domicile and residence. The concept of "domicile" implies intent to remain in Chile, whereas "residency" is factual as it requires an individual to be in Chile for 183 days in total within any 12-month period. A legal entity is considered to be domiciled in Chile if it is incorporated in Chile.

National resident companies are subject to taxes in Chile on the basis of their global income. Foreign resident companies are only subject to taxes in Chile on the basis of their Chile-source income. Foreign non-residents are exceptionally

subject to withholding taxes in Chile on the basis of Chilean source payment.

There are diverse taxes. The most relevant ones are corporate income tax, value added tax (VAT) and withholding taxes.

Corporate income tax applies to corporations for their capital gains and business income during a given calendar year, with three different tax regimes depending on whether the taxpayer is a Small and Medium Entity (SME) or not. Accordingly, there is the general regime (semi-integrated regime) with a 27% corporate tax rate, which may be attributed to the owner by the time of the distribution with 65% of the amount paid as corporate tax offsetting the owners' tax liability; the general pro-SME regime with a 25% corporate tax rate attributed to the owner on the same tax period in which the income was generated and with 100% of the amount paid as corporate tax offsetting the owners' tax liability; and the transparent pro-SME regime which is not taxed at a corporate level and directly levies taxes on owners. Corporate income tax is determined annually and subject to tax return filings in April of the following calendar year.

VAT is the main tax on consumption in Chile, which is declared and paid monthly. This tax of 19% is levied on:

- sales of movable and immovable physical goods;
- services provided or used in Chile; and
- regular and occasional imports into Chile by any individual or legal entity.

Digital services provided by foreign taxpayers without domicile or residence in Chile are also subject to VAT (with a reduced tax rate). This includes streaming platforms, software, stor-

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age, IT infrastructure or platforms, advertising services and other digital services.

Withholding tax is a final tax applied to Chilean-source income received by individuals or legal entities that are not domiciled or resident in Chile and are subject to different tax rates depending on the nature of the concept which gave rise to the payment.

Municipal taxes must be paid by all Chilean domiciled companies.

5.3 Available Tax Credits/Incentives

Chile has adopted a tax credit method for relieving double taxation. This applies both to countries with which Chile has a double taxation treaty and those with which it does not.

When there are no tax treaties in force, taxes paid abroad are creditable for income on dividends, profits of a permanent establishment abroad, royalties, fees on technical activities, exportation services and fees and salaries, for underlying taxes (if any) and withholding taxes up to 32% (with lower rates on foreign income).

When there is a tax treaty in force, taxes paid in relation to income covered by such treaties are eligible as FTC for underlying tax (if any), withholding tax and branch tax, up to 35% of the foreign income.

Tax incentives are offered for:

- investment in “remote areas” covering investment credits and labour cost bonus;
- investment in “free trade zones”;
- investment incentives for SMEs; and
- R&D tax credits.

5.4 Tax Consolidation

Taxpayers resident of Chile are subject to tax on passive income derived by controlled foreign companies, whether such control is direct or indirect, using legal, economic and de facto control tests.

5.5 Thin Capitalisation Rules and Other Limitations

Thin capitalisation rules apply a 35% tax to interest and other related payments to non-resident related parties, where the payer is in a debt situation in excess of a ratio 3/1 debt-to-equity.

Since withholding tax on interest payments may be decreased to 4% in relation to certain financial instruments, thin capitalisation rules would have the effect of returning tax liability to 35%, but interest deductions would not be disallowed.

5.6 Transfer Pricing

Transfer pricing rules apply the arm’s length principle to related party transactions and business reorganisations that imply the transfer abroad of assets or activities that could have generated taxable income in Chile under arm’s length conditions. The tax administration is empowered to make transfer pricing adjustments. The increase of the taxable base is subject to a 35% tax.

Accordingly, operations entered with related entities, as defined in the tax statute, need to be made in market conditions and may be subject to price adjustments for the purposes of tax determination when below fair market values.

5.7 Anti-evasion Rules

The Chilean Internal Revenue Service (SII) is allowed to review operations within three years counted from the time in which they were declared, and, if not declared, within six years

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counted from the time the operation materialised.

During the review process, the SII may require information concerning the operations under review and may question the intent behind them, applying an economic interpretation of same.

There are general and specific anti-evasion rules. The general rules are applicable when the SII makes a formal request to the Tax Courts in order to establish whether there is simulation or abuse of the tax laws, which either diminish the tax base, elude the tax facts (partially or totally) or delay the application of taxes when the acts involved do not produce relevant economic or legal effects other than the questioned tax effects.

SII issues an annual list of operations that are considered as “not allowed” and which will be reviewed and sanctioned by construing the operation pursuant to its economic effects, despite its formal nature, thus resulting in the subsequent levying of taxes.

6. Competition Law

6.1 Merger Control Notification

The Office of the National Economic Prosecutor (FNE) has issued guidelines on merger controls which are applied by the FNE to determine the risk associated with a given merger control operation.

Operations which may give rise to a notification correspond to:

- “mergers”, namely formal mergers or agreements leading to the joint operation of two entities under a single management form;

- “control operations”, namely agreements involving the direct or indirect acquisition of individual or joint controlling rights over the other party;
- “associations” to form an independent economic agent to perform the parties’ function permanently; or
- “acquisition of assets, or control thereof” regarding the other party by any legal means.

Joint ventures not leading to the formation of a new economic agent independent from the parties do not qualify in principle as an association requiring a notification to the FNE.

In terms of size of the parties, the threshold for a mandatory notification is met if, individually, the sales of the parties to the controlled operation have individual annual sales of UF450,000 (approximately USD20.3 million) or more; or if the combined annual sales of the parties to a merger control operation amount to UF2.5 million (approximately USD113.1 million).

6.2 Merger Control Procedure

Upon notification to the FNE (mandatory or voluntary), the operation is reviewed to determine whether or not it entails a risk for competition. This review should take 30 working days (assuming the notification filing was complete). If it does not entail risks to competition, the operation is approved. If the FNE believes it does entail a risk to competition, the process will continue with a second-stage review process considering the adoption/proposal of mitigation measures or, if not possible, a rejection. This second stage should take 90 working days.

6.3 Cartels

Anti-competitive agreements and practices are expressly forbidden under the antitrust act. Agreements concerning price fixing, output

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reduction, territory allocation, bid rigging, determination of sale terms and actual or potential exclusionary practices are expressly forbidden. Cartels are reviewed under the per se rule (although in practice the courts have limited this standard).

6.4 Abuse of Dominant Position

Unilateral restrictions of trade derived from abuse of dominant position are reviewed under the rule of reason and are considered to be anti-competitive when exclusionary or disproportionately harmful in effect (to competitors or consumers).

7. Intellectual Property

7.1 Patents

Patents are available for inventions (solutions to technical problems arising from industrial works). They may be obtained for products, processes or inventions related thereto.

Pursuant to the statute, everything involving novelty, inventive step and industrial applicability is eligible for patent protection, as long as there is an enabling description and the subject matter is eligible for patent protection. In terms of subject-matter eligibility, the statute contemplates exceptions to the general eligibility standard regarding animals, plants, methods of treatment and diagnostics, along with other situations which correspond to ex ante declaration of lack of industrial applicability.

Patent applications are filed with the Chilean National Industrial Property Institute (INAPI). Chile is a member of the Patent Cooperation Treaty and thus applications may be filed as national phase applications by the 30th month, counted from the first priority claim.

The application is reviewed on formal grounds and then an abstract thereof is advertised in the official gazette. As from the advertisement date, the application is public and may be subject to a pre-grant opposition within a 45-day term, counted from the advertisement. If an opposition is lodged, the opponent becomes a party to the application proceeding and the applicant is entitled to respond to the opposition within a 45-day term, counted from the date of service of the opposition. If there are disputed facts, an evidence term will open.

The applicant must pay an examination fee within 60 days, counted from the expiry of the opposition term. INAPI appoints an expert from the list of existing experts to review the application and issue an opinion on its merits. The expert issues an examination report, which may be responded to within 60 days (extendible for an additional 60 days, once throughout the proceeding). The response is served on the expert, who then issues a second, and final, examination report. The applicant is entitled to respond to the second examination report within 60 days (extendible for 60 days if there has been no prior extension request during the proceeding). The response is reviewed by a patent examiner, who may issue additional office actions (to be responded to within 30 working days), may correct formal deficiencies ex officio accepting the application or may accept the application to grant as it stands. If the office action is not timely responded to or the objections are not overcome, the application is rejected.

The rejection may be appealed before the Industrial Property Court. The Industrial Property Court's decision may be challenged before the Chilean Supreme Court if the same was passed in breach of a legal provision.

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Granted patents are valid for 20 years, counted from their domestic application date (for national or conventional patents) or from the international filing date (for PCT national-phase applications).

Maintenance fees are due as from year ten of the beginning of their validity period and may be paid in full for the remaining validity period or in identical annual instalments.

Civil actions seeking the compensation of damages and criminal actions seeking the imposition of fines are available for patent violations and are tried before ordinary civil courts or criminal courts. Patent marking requirements are mandatory for the availability of criminal actions.

7.2 Trade Marks

Trade and service marks are available for signs able to identify goods and/or services with a given source or origin. The statute recognises both traditional and non-traditional marks and expressly contemplates as eligible subject matter words (including names of individuals), letters, numbers, and device elements, such as images, graphs or symbols, combinations of colours, sounds or three-dimensional shapes, and any combination thereof.

Chile is a member of the 11th version of the Nice Convention and allows for multiple class applications.

The Chilean mark system is a registration system with nationwide effects. The registration process is initiated with an application filed before the Chilean National Industrial Property Institute. The application is reviewed to verify that formal requirements have been met and is then advertised in the official gazette. Following the advertisement, there is a 30-day term for pre-grant oppositions. Following the opposition term, an

examiner reviews the application to confirm whether substantive requirements are met and may issue ex officio office action on absolute or relative grounds for refusal. If an office action is issued, the same is served on the applicant along with any oppositions lodged.

The applicant is given a 30-day term to respond to the office action and/or opposition(s). If there are disputed facts in the event of an opposition, a 30-day evidence term will be opened. The evidence term may be extended for an additional 30 days. Subsequently, a decision will be issued. The rejection decision may be appealed before the Industrial Property Court. The decision of the Industrial Property Court may be challenged before the Chilean Supreme Court if the same was passed in breach of a legal provision.

Registrations are valid for ten years, counted from the date of registration, and may be renewed indefinitely. Trade mark registrations obtained or renewed after 9 May 2022 may be cancelled on grounds of non-use (if five-year continued non-use can be asserted) or for becoming generic. Additionally, any registered mark may be annulled if it was granted in breach of absolute or relative grounds for rejection.

Civil actions seeking compensation of damages and criminal actions seeking imprisonment and/or the imposition of fines are available for trade mark violations and are tried before ordinary civil courts or criminal courts. Trade mark marking requirements are mandatory for the availability of criminal actions.

7.3 Industrial Design

Industrial designs are three-dimensional shapes whose shape, geometrical configuration, ornament or combination thereof gives rise to a novel physiognomy which may be perceivable by

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sight. The shape of an industrial design need not have any usefulness.

There is a dual registration system: a deposit system (abbreviated registration) and a substantive examination system (regular registration). The deposit is automatic (provided formalities are met) whereas the substantive examination system requires a formal pronouncement from the Chilean National Industrial Property Institute on the design's novelty, as well as the payment of examination fees.

The duration of the protection is 15 years, counted from the date of filing. Maintenance fees are due from year five, counted from the filing date, in either one instalment or yearly payments.

Civil actions seeking the compensation of damages and criminal actions seeking the imposition of fines are available for designs having undergone substantive examination. Further design marking requirements are mandatory for the availability of criminal actions.

7.4 Copyright

Intellectual property rights cover works of intellect fixed in a tangible medium of expression. Their protection stems from creation, not from registration, with the registration being relevant only to presume authorship and to afford a certain date to the creation of a work.

For works originally vested in individuals, the length of protection of economic rights is their lifetime plus 70 years, counted from 1 January of the year after their death. For works originally vested in corporations, the length of protection is 70 years, counted from the year of publication. Moral rights may not be waived and do not expire.

Civil actions seeking the compensation of damages and criminal actions seeking imprisonment, the imposition of fines and/or other remedies are available for copyright infringement. Such actions are tried before civil or criminal courts, as the case may be.

7.5 Others

Software and databases are protected under the copyright statute as copyrightable works.

Plant breeders' rights are available for new varieties of plants which meet Distinctiveness, Uniformity and Stability (DUS) standards and are novel. The Chilean system adheres to the UPOV 78 agreement, although it is expected to adhere to the UPOV 91 agreement at some point.

Trade secrets are protected under the Industrial Property statute provided the subject matter refers to a commercial or industrial activity, the knowledge is not generally known, and reasonable efforts to safeguard the knowledge are made by the holder.

8. Data Protection

8.1 Applicable Regulations

Even though a substantive reform on the subject is expected to take place in the coming year, Chile is currently a self-assessment regime.

There is currently no data protection authority and the main principle is that any data treatment requires the data to be collected from a public source or from the data subject, who should provide consent in writing, and the purpose of the treatment should be specified by the time of the collection.

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8.2 Geographical Scope

There is no specific regulation on data processing agreements nor international data transfers, although following the reform these will be regulated.

8.3 Role and Authority of the Data Protection Agency

There is currently no data protection agency.

9. Looking Forward

9.1 Upcoming Legal Reforms

Chile is currently undergoing a constitutional reform project. In 2022, a draft constitution was rejected in a referendum and a new constitutional process began. This process is not expected to significantly change these fields.

The most significant changes should be expected in connection with data protection. The proposed legal amendment contemplates the creation of a data protection authority, a detailed regulation of consent, rights of the data subjects, obligations of those responsible for database, reporting and transparency obligations, sanctions in events of non-compliance and explicit regulation of international data transfers, among other subjects.

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