

### III. Chile

The Chilean economy has remained strong this year in spite of the struggling European economy and the debt ceiling crisis that affected the United States. In terms of M&A activity, Chile has continued standing out as a main M&A player within the Latin American region, providing attractive investment opportunities for foreign and local entrepreneurs. A healthy regulatory framework has played a crucial role in maintaining Chile as the most investor-friendly country within the region, according to international think

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15. Sandy Walker, *SOE Amendments to Investment Canada Act Passed*, DENTONS (July 18, 2013), <http://www.dentons.com/en/insights/alerts/2013/july/18/soe-amendments-to-investment-canada-act-passed>.

16. *Wells v. Bioniche Life Sci. Inc.*, [2013] ONSC 4871, paras. 48–58 (Can. Ont.).

17. Canada Business Corporations Act, R.S.C. 1985, c. C-44.

18. *Wells*, [2013] ONSC 4871, paras. 48–58.

19. *Id.* paras. 59–65.

20. *Id.* paras. 91–101.

21. *See id.*

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

M&A & JOINT VENTURES 69

tanks. The Latin American Private Equity & Venture Capital Association's (LAVCA) 2013 Scorecard on the private equity and venture capital environment placed Chile at the top of its rankings for the eighth consecutive year, and the Transparency International's 2012 Corruption Perception Index ranked Chile as the most transparent country in Latin America, ranked 20 worldwide, just behind United States, which ranked 19.<sup>22</sup>

This year's legal developments have certainly improved the entrepreneurial environment. The most noticeable one is Law No. 20,659 (also known as the "One-Day Company Law") and its respective regulation, which simplifies company start-ups and M&A/JV transactions given the possibility of using shelf companies.<sup>23</sup> Before these laws became effective, Chile only counted with the general system for creating and amending companies, which is slow, owing to the registration with the Registry of Commerce and publication in the Official Gazette involved in the organization of a company.

With this new regime, company start-ups and amendments may now be performed in only one business day, by providing an online form of articles and bylaws and an electronic online registry of legal entities. The rapidness is due to the fact that the online registry is simultaneously connected with the Internal Revenue Service, which assigns the taxpayer identity to the new company and approves its start-up.<sup>24</sup>

Not only does this regime allow corporate acts—such as incorporations, amendments, mergers, and liquidations—to be perfected in a limited amount of time, but also it has the advantage of being very cost-effective because the online form and the registration process are completely free of charge. Basically, the only expenses involved in this process are those related with obtaining a digital signature for signing the online forms.<sup>25</sup>

While any type of legal entity (other than the public corporations) may benefit from this system, the regulation has established different dates for the roll-out of the new system. The legal entities currently benefitting from this new regime are limited liability companies and individual limited liability enterprises.

In another important development, the Chilean Securities and Insurance Securities Commission (SVS) is currently preparing a new regulation that intends to strengthen the rules related to potential conflicts of interest of securities intermediaries and the perceived abuse of holding company structures.<sup>26</sup> This new regulation comes as a reaction to the recent trading and corporate scandal locally known as Caso Cascadas that involved the public corporation SQM, where the board of SQM and well-known brokerage firms were accused by minority shareholders of lack of transparency and allegedly executing trades while having conflicts of interest.<sup>27</sup>

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22. See LATIN AM. PRIVATE EQUITY & VENTURE CAPITAL ASS'N, 2013 SCORECARD: THE PRIVATE EQUITY AND VENTURE CAPITAL ENVIRONMENT IN LATIN AMERICA (2013), available at <http://lavca.org/wp-content/uploads/2013/04/2013-LAVCA-Scorecard.pdf>.

23. Francisco Ugarte & Luciano Aguilera, *Legal Innovations that Foreign Investors Should Consider*, IFLR 1000, <http://www.iflr1000.com/LegislationGuide/947/Legal-innovations-that-foreign-investors-should-consider.html> (last visited Mar. 29, 2014).

24. *Id.*

25. *Id.*

26. *Qué es la SVS: Presentación* [What is SVS: Presentation], SUPERINTENDENCIA VALORES Y SEGUROS, <http://www.svs.cl/portal/principal/605/w3-article-12389.html> (last visited Mar. 29, 2014).

27. Anthony Esposito & Felipe Iturrieta, *Frustrated Shareholders Lash Out At Chile's Scandal-hit SQM*, REUTERS (Oct. 11, 2013, 3:09 PM), <http://www.reuters.com/article/2013/10/11/chile-sqm-idUSL1N0I119720131011>.

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70 THE YEAR IN REVIEW

The new draft rule sets forth a series of obligations for securities intermediaries.<sup>28</sup> Firstly, securities intermediaries and their respective directors, managers, and administrators must solve any potential conflict of interests that may arise in the performance of their services, giving their clients prompt and sufficient information of the transactions that they intend executing. Moreover, for the first time, securities intermediaries would be responsible for setting whistleblower protection programs.

Secondly, in order for securities intermediaries to act in their client's best interest, the new draft rule requires the parties to enter into a service agreement, containing clauses that would solve potential conflict of interest between them, reporting obligations related to purchase or sale for each product or type of service that the securities intermediaries intend purchasing, and other obligations that securities intermediaries would need to comply with (such as KYC requirements and offering their clients services or products in accordance with their investment profile).<sup>29</sup>

Finally, the new rule requires each securities intermediary to establish a transaction guideline, always benefitting the client instead of themselves. Also, each order and instruction received by the securities intermediary must be duly documented or supported (including voice recordings) in order for them to be made available to the SVS, if requested.<sup>30</sup>