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in 45 jurisdictions worldwide

Contributing editors: E Waide Warner Jr and Gavin R Skene

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Chile

María Fernanda Carvajal and Juan Guillermo Levine

Carey y Cía

1 Collateral

What types of collateral are available?

Chilean law allows the creation of security interests over almost all kinds of assets and rights held by project companies. The main security interests over assets are obtained through mortgages and pledges.

Mortgages can be granted over real estate, major vessels, aircraft, mining concessions and water rights.

Chilean law allows the creation of (i) regular pledges, where possession of pledged assets is vested in a creditor; and (ii) special pledges, where collateral remains with the pledgor.

Regular pledges (civil pledges and commercial pledges) are established over personal assets, receivables, credits and shares.

Special pledges are incorporated in several statutes. The most relevant special pledges are: pledges without conveyance, industrial pledges, agricultural pledges, pledge of securities in favour of banks and the warrants pledge. Industrial pledges and pledges without conveyance are granted over facilities, machinery and other moveable assets, motorised vehicles and inventory. Pledges without conveyance may also be created over goodwill and intellectual property. Agricultural pledges are established over personal assets to secure obligations related to agriculture and other related industries. Pledges over securities in favour of banks are created over bonds, debentures and shares of stock. The warrants pledge covers merchandise kept at bonded warehouses.

As part of the legal framework of the concessions system based on public-private alliances, the creation of special pledges over (i) the rights of a concessionaire under a concession contract, (ii) all payments of whatever nature by the government to a concessionaire pursuant to the concession, and (iii) revenues of the concessionaire, is allowed (eg, the special public works concession pledge and the special pledge over port concession).

Finally (though not constituting a security interest under Chilean law), lenders may be granted a conditional assignment of rights under material contracts (step-in rights), be named additional insured or loss payee under insurance policies, and request the borrower company to set up collateral accounts (onshore and offshore) with typical waterfall mechanics.

2 Perfection and priority

How is a security interest in each type of collateral perfected and how is its priority established? Are any fees, taxes or other charges payable to perfect a security interest and, if so, are there lawful techniques to minimise them? May a corporate entity, in the capacity of agent or trustee, hold collateral on behalf of the project lenders as the secured party?

Mortgages are perfected through notarial deeds registered in the Registry of Mortgages of the relevant real estate registrar. Mortgages over major vessels or aircraft must be recorded in specific registrars.

Regular pledges are perfected by delivery of pledged assets to the pledgee. However, for commercial pledges to be effective against

third parties, they must be executed in a notarial deed or notarised private deed.

The rules applicable to special pledges are scattered among different laws. Therefore, the formalities required to perfect them depend on the type of pledge. Pledges without conveyance are perfected through notarial deeds, an abstract of which is published in the Official Gazette. In addition, pledges over motor vehicles are registered in the Registry of Motor Vehicles. Agricultural and industrial pledges are perfected by notarial deeds or notarised private instruments and registered in the relevant pledge registry.

Pursuant to Law No. 20190 of June 2007 a new centralised system of pledges without conveyance was created, abrogating other special pledge statutes. Such amendments shall become effective 90 days after the enactment of relevant regulations, which is still pending at the time of writing. When it comes into effect, one single type of pledge without conveyance may be created over any personal property (except for vessels and aircraft subject to mortgage), by means of a notarial deed or a private deed authorised by a notary public, duly registered in a new Pledge Registry (although its validity will not be affected in the absence of registration).

In general terms, for those securities that require registration, priority will be given by filing and registration regardless of the date when the security interest was created following the 'first registered, first priority' principle.

Credits secured by pledges or mortgages rank below certain credits having a priority ranking (statutory priorities), eg judicial costs incurred for the general benefit of creditors; bankruptcy expenses; workers' remuneration and family allowances (a social security benefit); social security contributions; withholding and surcharge taxes; and severance payments up to certain limits. Although not free from doubt, it has been argued that credits secured with an industrial pledge should be paid irrespective of any other creditor, including those preferred credits previously described.

The perfection of mortgages and pledges is not subject to taxes, but to notarial, registration or publishing fees, as applicable.

A trustee or security agent can be used.

3 Existing liens

How can a creditor assure itself as to the absence of liens with priority to the creditor's lien?

For collateral that requires registration for perfection, a search can be carried out in each relevant registry. Chilean registrars can certify the existence of liens.

For collateral that does not require entry in a public registry, the assurance available to creditors regarding absence of liens is in the form of contractual warranties and representations by debtors.

Pledges over shares can be verified in the company's shareholders' registry.

Regarding pledges without conveyance (Law No. 18112) subject to publication, a search in a database of the Official Gazette may be

conducted. However, as indicated in question 2, once the amendments under Law No. 20190 become effective, all new pledges without conveyance, subject to this law, must be duly registered.

4 Enforcement of collateral

Outside the context of a bankruptcy proceeding, what steps should a project lender take to enforce its rights as a secured party over the collateral?

Under Chilean law, collateral foreclosure requires certain proceedings before a Chilean court. The relevant obligations are paid with the proceeds of the sale of collateral at a public auction. If there are no bidders at the public auction, the assets may be awarded to the secured lender. No repossession of collateral is available.

The length of proceedings depends mainly on whether the obligation of the debtor is evidenced in a document that entitles the holder to use summary proceedings (*títulos ejecutivos*). If no summary proceedings are available, the lender can (i) sue the debtor under ordinary proceedings, which may be quite lengthy; or (ii) ask the court to summon the debtor to acknowledge the debt. If the debtor so acknowledges, the lender is entitled to summary proceedings.

Security interests created for project financing have different enforcement proceedings. Moreover, it is possible that at least at the beginning of the proceedings, the same procedure is followed before more than one ordinary court of justice (although it is possible later to join the different proceedings before the same court of justice). As it would not be possible to enforce all the collateral in one single enforcement procedure, it becomes impossible to auction the relevant project assets as an ongoing concern (except 'economic unit' cases under bankruptcy proceedings). However, considering that in project financing the value of the assets is directly related to their contribution to the operation and development of the project as a whole, it would appear to be useless or economically unattractive to auction assets separately. Some of the aforementioned foreclosure issues have been traditionally solved by means of the lender's requiring in the financing agreements that the amount of principal of each disbursement of the loans be documented in a Chilean promissory note, duly signed by the borrower before a Chilean notary public and bearing evidence of the due payment of the applicable stamp tax (thus the note becomes a *título ejecutivo* entitling the lender to summary proceedings).

5 Bankruptcy proceeding

How does a bankruptcy proceeding in respect of the project company affect the ability of a project lender to enforce its rights as a secured party over the collateral? Are there any preference periods, clawback rights or other preferential creditors' rights (eg, tax debts, employees' claims) with respect to the collateral? What entities are excluded from bankruptcy proceedings and what legislation applies to them? What processes other than court proceedings are available to seize the assets of the project company in an enforcement?

The Chilean Bankruptcy Act (CBA) applies only to legal entities. Banks and trusts are not subject to bankruptcy proceedings but to liquidation proceedings in accordance with the banking law or the rules applicable to trusts (eg, pension funds and mutual funds).

The bankruptcy declaration shall contain, among others, (i) the appointment of a provisional receiver and an alternate, to act in the bankruptcy proceedings until a permanent receiver is appointed by the creditors' meeting, and (ii) the seizure of the assets of the debtor.

The bankruptcy declaration has the main following effects: (i) the debtor's assets can no longer be administered by the debtor; (ii) the credits are fixed as at the time of the bankruptcy declaration; (iii) credits against the debtor become due and payable (regardless of contractual payment terms); (iv) with exceptions, all existing or new litigation is consolidated in the bankruptcy court; and (v) trans-

actions entered prior to bankruptcy date and during the 'suspicious period' can be challenged, when not automatically voided.

In addition, the creditors' right to pursue actions for collection is suspended. Procedures against a bankrupt debtor initiated before the declaration are accumulated to bankruptcy proceedings (subject to certain exceptions). The rights of creditors secured with mortgages or pledges are not suspended, except if a creditors' meeting approves (i) the continuation of the bankrupted debtor's business and secured creditors concur to such approval; or (ii) the sale of all or part of the debtor's assets as an economic unit, provided mortgaged or pledged assets are part of the economic unit subject to such agreement.

The CBA allows an insolvent party or its creditors to submit agreement proposals to restructure the debtor's obligations and avoid bankruptcy. A restructuring proposal can be filed after the bankruptcy declaration and, if approved, will terminate the insolvency proceedings. Such proposals will become binding upon all creditors if approved by the affirmative vote of the debtor and two-thirds of the creditors holding at least three-quarters of the outstanding claims.

6 Foreign exchange

What are the restrictions, controls, fees, taxes or other charges on foreign currency exchange?

In general terms, foreign exchange transactions can be freely made in Chile. Only a few regulations restrict this general principle:

- operations that must be performed through the formal exchange market (commercial banks and exchange houses authorised by the Central Bank, FEM) and reported to the Central Bank (eg, credits, deposits, investments and capital contributions coming from abroad);
- operations that must be performed through the FEM (eg, operations with foreign capital funds and royalty payments for trademarks, copyrights and patents); and
- operations that need only be reported to the Central Bank (payments related to imports and exports).

7 Remittances

What are the restrictions, controls, fees and taxes on remittances of investment returns or loan payments to parties in other jurisdictions?

Chile has two laws that are fundamental in regulating foreign investment:

- the Foreign Investment Statute or Decree Law 600 (DL 600); and
- Article 47 of the Constitutional Organic Law of the Central Bank, also known as Chapter XIV of the Compendium of Foreign Exchange Regulations of the Central Bank (Chapter XIV).

A DL 600 investor may repatriate its investment one year after the date the investment entered into the country. No tax or other levy applies to such remittances up to the amount of the investment. Foreign currency for these remittances can only be acquired with the proceeds of the total or partial sale or liquidation of the shares or rights corresponding to the foreign investment. Profits may be remitted abroad at any time and with no limit to the amount, provided the applicable Chilean taxes have been paid in advance.

A Chapter XIV investor may at any time remit abroad the investment and its profits, without limit, provided such remittance is reported to the Central Bank. Except for complying with tax regulations and other reporting requirements, there are no rules in Chile affecting repatriation rights, except that remittances of foreign currency shall be made through a FEM entity. Remittances may be also made with funds maintained abroad, provided the Central Bank is informed on such remittances.

As a general rule, payments made from Chile in consideration for services provided by individuals or legal entities neither domiciled nor resident in Chile are subject to income tax withholding.

The general applicable income tax withholding rate on the payments made abroad is 35 per cent. However, some payments abroad are subject to different income tax withholding rates (eg, interest paid abroad in consideration of loans granted abroad by foreign or international banks or financial institutions is subject to a 4 per cent income tax withholding rate – thin capitalisation rules also apply).

8 Repatriation

Must project companies repatriate foreign earnings? If so, must they be converted to local currency and what further restrictions exist over their use?

Project companies are not required to repatriate foreign earnings, although they are generally subject to taxation in Chile.

9 Offshore and foreign currency accounts

May project companies establish and maintain foreign currency accounts in other jurisdictions and locally?

Project companies are allowed to establish and maintain foreign currency accounts both locally and in other jurisdictions.

10 Foreign investment and ownership restrictions

What restrictions, fees and taxes exist on foreign investment in or ownership of a project and related companies? Do the restrictions also apply to foreign investors or creditors in the event of foreclosure on the project and related companies? Are there any bilateral investment treaties with key nation states or other international treaties that may afford relief from such restrictions? Would such activities require registration with any government authority?

As general rule, investors wishing to bring foreign currency into the country as well as to repatriate the investment or its profits shall do it through a member of the FEM.

Chapter XIV provides an easy way for bringing foreign currency into the country, which is relatively exempt from public authority intervention. Investments conducted through Chapter XIV must exceed US\$10,000.

DL 600 may only be used for investments currently exceeding US\$5 million, or its equivalent in freely convertible foreign currency. In the case of investments comprising tangible assets, technology and capitalisation of profits or credits, the minimum amount is of US\$2.5 million. Investment projects filed with the Foreign Investment Committee (FIC), including related loans, must meet a 25:75 equity:debt ratio. All investments under DL 600 require prior approval from the FIC. If the investment is approved, a foreign investment contract will be executed with the Republic of Chile.

Additional authorisations are required for certain types of projects (eg, authorisation from the National Environmental Commission or the relevant Regional Environmental Commission for projects with a potential environmental impact; the Undersecretariat of Fishing's approval regarding investments in this sector; the Chilean Copper Commission's authorisation in the case of copper mining projects; authorisation from the Superintendency of Banks and Financial Institutions (SBIF) to operate in the banking sector; and authorisation from the Superintendency of Securities and Insurances (SVS) for projects related to insurance and investment funds).

There are no percentage restrictions on foreign holdings nor are there any restrictions on foreign ownership of real estate, with the exception of real property located in limiting territories, which may not be owned by nationals of border countries.

Only a few strategic activities are restricted to the state (eg, production of nuclear energy, and exploration and exploitation of oil and gas deposits, lithium, and deposits of any kind located on the sea floor under Chilean jurisdiction or in areas deemed, by law, to be important to national security). However, under certain circumstances, foreign companies can invest even in these sectors.

Concessions to operate public telecommunications services and intermediate services are reserved to companies established in Chile. However, in the case of radio broadcasting telecoms services, concessions requested or acquired by entities controlled above 10 per cent by foreign investors may be granted only if their country of origin grants Chilean citizens the same rights that they enjoy in Chile (reciprocity).

Foreigners may not invest in Chilean fishing companies unless their country has a relevant reciprocity arrangement with Chile. Chile practises an 'open skies' air transport policy, but makes market access for foreign companies subject to reciprocity. Chile also requires reciprocity with respect to international maritime traffic cargoes. Cabotage is reserved for ships registered in Chile (with some exceptions).

Electricity concessions are reserved to nationals or legal entities established in Chile.

11 Documentation formalities

Must any of the financing or project documents be registered or filed with any government authority or otherwise comply with legal formalities to be valid or enforceable?

As to the formalities for the perfection and enforceability of certain security interests, please see question 2.

Financing or project documents (not executed in Spanish) to be admissible in evidence in judicial proceedings in a Chilean court would have to be translated into the Spanish language by an official or court-appointed translator.

12 Government approvals

What government approvals are required for typical project finance transactions? What fees and other charges apply?

For general rules on requirements applied to foreign investors to act in Chile, see question 10.

As a general principle, there are no government approvals associated with project finance transactions per se. Each infrastructure or natural resource sector has specific legal and regulatory frameworks, and projects in these industries may be subject to prior authorisations, licences or even concessions.

13 Foreign insurance

What restrictions, fees and taxes exist on insurance policies over project assets provided or guaranteed by foreign insurance companies? May such policies be payable to foreign secured creditors?

The Insurance Law reserves insurance and reinsurance services in Chile for stock corporations incorporated in Chile for this sole purpose. However, Law No. 20190 of 2007 includes a chapter on insurance-market liberalisation: (i) enabling foreign insurance companies to set up branches in Chile (rather than having to establish a local company with separate capital), and (ii) allowing foreign companies from countries with which Chile has a corresponding international treaty to sell international maritime and air transport insurance, together with insurance for goods in transit.

Except for compulsory insurance (SOAP) and insurance relating to the pension and social security systems which must be taken out in Chile, Chilean natural or legal persons may freely take out insurance abroad, subject to foreign exchange regulations.

14 Foreign employee restrictions

What restrictions exist on bringing in foreign workers, technicians or executives to work on a project?

General rules apply: no less than 85 per cent of the workers of one given employer with more than 25 employees must be Chilean. This

restriction may be relaxed, among others, in cases where foreign technicians or experts have skills otherwise unavailable in Chile.

General immigration rules also apply: foreign workers are required to obtain work visas to work in Chile and individual employment contracts of foreigners must include certain mandatory clauses.

15 Equipment import restrictions

What restrictions exist on the importation of project equipment?

There are no specific limitations. All merchandise can be imported into Chile, with certain exceptions.

16 Nationalisation and expropriation

What laws exist regarding the nationalisation or expropriation of project companies and assets? Are any forms of investment specially protected?

Expropriation in Chilean territory is mainly regulated in article 19(24) of the Political Constitution (PC) and in the Chilean Expropriations Procedure Act. The PC grants the government authority to expropriate property, including property of foreign investors, only for public benefit or national interest, on a non-discriminatory basis and in accordance with due process of law, and with prior and fair payment of compensation.

Since 1991, Chile has negotiated and concluded several bilateral investment treaties (BITs). These treaties, among other things, protect private property rights through the establishment of basic principles and minimum standards in cases of expropriation.

17 Fiscal treatment of foreign investment

What tax incentives or other incentives are provided preferentially to foreign investors or creditors? What taxes apply to foreign investments, loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

A DL 600 investor may elect to be subject to either (i) the application of the normal tax burden as for local investors, or (ii) a fixed overall income tax rate (tax invariability) of 42 per cent, calculated on net taxable income (the current rate being 35 per cent), for a term of 10 years from the beginning of commercial production. This rate can be extended up to 20 years for mining projects over US\$50 million. Additionally, DL 600 investors are entitled to be treated in the same manner as a local investor and, in some cases, to the freezing of custom duties and value-added tax (VAT).

Other incentives include: in certain cases, accelerated depreciation of fixed assets to one-third of their normal life; deferred payment (from one to seven years) of customs duties on the import of certain capital goods; and the possibility for VAT taxpayers and exporters, in certain cases and under certain circumstances, to recover in cash accumulated VAT credits.

On December 2002, the Chilean Congress passed a law that created the 'Investment Platforms' regime, to promote the creation of investment vehicles for foreign investors that wish to establish their business centre in Chile from where to invest in other countries of the region. Such corporations are not subject to taxation in Chile on their foreign source income.

The Chilean Tax Code includes an exemption with respect to all taxes affecting foreign institutional investors (mutual funds and pension funds).

There are some regional incentives linked to isolated geographical zones and specific incentives to the forestry industry; the oil industry; to explore, exploit or process radioactive substances; to the installation of solar thermal systems; and to R&D activities.

Finally, Chile has entered into several double taxation treaties.

18 Government authorities

What are the relevant government agencies or departments with authority over projects in the typical project sectors? What is the nature and extent of their authority? What is the history of state ownership in these sectors?

Energy

- National Energy Commission (CNE)
- Superintendency of Electricity and Fuels (SEC)
- Ministry of Economy
- Ministry of Energy

Telecoms and media

- Ministry of Transportation and Telecommunication
- Telecommunications Undersecretariat
- National Television Council

Mining

- Ministry of Mining
- Regional Ministerial Secretariats (SEREMIS)
- Chilean Copper Commission (COCHILCO)
- National Geology and Mining Service (SERNAGEOMIN)

Maritime transport

- Transport Undersecretariat
- Directorate General of the Maritime Territory and Merchant Marine (DIRECTEMAR)
- Merchant Marine Development Commission

Ports

- Marine Undersecretariat of the Ministry of Defence
- DIRECTEMAR
- Also relevant for port infrastructure projects: the Ministry of Public Works (MOP) and the Directorate of Ports' Works (DOP)
- Enterprise System (SEP) regarding state port enterprises

Air transport

- Civil Aviation Administration (DGAC)
- Civil Aeronautics Board (JAC)
- National Directorate of Airports (DAP)

Fishing and aquaculture

- Fisheries Undersecretariat of the Ministry of Economy
- National Fisheries Service (SERNAPESCA)
- Instituto de Fomento Pesquero (IFOP)

Water treatment

- Superintendency of Sanitary Services (SISS)

19 International arbitration

How are international arbitration contractual provisions and awards recognised by local courts? Is the jurisdiction a member of the ICSID Convention or other prominent dispute resolution conventions? Are any types of disputes not arbitrable? Are any types of disputes subject to automatic domestic arbitration?

Law No. 19971 on International Trade Arbitration (modelled on the UNCITRAL Model Law) governs the arbitration of international disputes. Chile has been a party to the New York Convention and to the Inter-American Convention on International Trade Arbitration (the Panama Convention) since 1975. In general, foreign arbitral awards are recognised and enforced in Chile, subject to an exequatur from the Supreme Court, which will be granted provided legal requirements are met and there are no public order considerations.

Chile is also a party to the Convention on Settlement of Investment Disputes between States and Nationals of other States (1965

Washington Convention), which was ratified in 1991. In turn, almost every international investment or trade treaty signed by Chile includes the possibility of recourse to an ICSID court.

In general, all matters may be referred to arbitration unless there is an express prohibition on doing so (eg, antitrust matters, save for conflicts arising as a result of antitrust litigation; criminal cases; police court cases).

20 Applicable law

Which jurisdiction's law typically governs project agreements? Which jurisdiction's law typically governs financing agreements? Which matters are governed by domestic law?

Financing documents are typically governed by foreign law (usually New York or English). All agreements providing for the creation of security interests over property located in Chile are subject to the mandatory application of Chilean law.

21 Jurisdiction and waiver of immunity

Is a submission to a foreign jurisdiction and a waiver of immunity effective and enforceable?

Under Chilean law, there is no restriction on submitting civil or commercial agreements or relations to foreign law or jurisdiction, or to arbitration proceedings outside Chile, provided that there are some contacts with the jurisdictions whose laws are selected and provided, further, that Chilean law shall apply on issues of public policy.

Any security interest granted over assets located in Chile shall be governed by Chilean law and subject to the jurisdiction of Chilean courts, but the principal loan agreement may be governed by a foreign law and subject to the jurisdiction of courts sitting abroad.

The enforcement of foreign judgments is subject to an exequatur from the Supreme Court. Once the exequatur is granted, a foreign judgment is as enforceable as a domestic one, and it may be enforced pursuant to the general rules.

The State of Chile and its bodies are authorised, regarding certain types of agreement, to submit them to foreign law and jurisdiction, to set special domicile, to appoint service agents abroad for purposes of any such agreement, and to waive sovereign immunity (Decree Law 2,349 and Supreme Decree 1,009, both of 1978, as amended).

22 Title to natural resources

Who has title to natural resources? What rights may private parties acquire to these resources and what obligations does the holder have? May foreign parties acquire such rights?

The PC provides that the state is the owner of all mineral, hydrocarbon and fossil fuel deposits within Chilean territory. Under Chilean law, as a general rule, all metallic and non-metallic substances may be subject to concessions, which may be granted to individuals and companies for exploration and development of these natural resources.

There are no restrictions on foreigners owning mining rights. Nevertheless, there is some doctrinal discussion as to whether Decree Law 1939 of 1979, which prohibits the nationals of bordering countries acquiring border real estate, is also applicable to concessions. No domestic partner is required.

The Chilean Mining Code expressly states that the following substances are not subject to concession: (i) liquid and gaseous hydrocarbons, (ii) lithium (with some exceptions), and (iii) deposits of any kind located on the sea floor under Chilean jurisdiction or in areas deemed, by law, to be important to national security. These non-claimable mineral substances may be mined by the state or under administrative concessions or special operational contracts, all of them governed by their own legal statute.

The Geothermal Law provides that geothermal energy belongs to the state, although natural or legal persons organised under Chilean law may apply for geothermal concessions.

According to Chilean law, water is a national asset for public use and private entities are entitled to use water through water rights.

Restrictions or limitations set out in regulations applicable to properties belonging to native populations and on national monuments and archaeological sites shall also be considered.

23 Royalties on the extraction of natural resources

What royalties and taxes are payable on the extraction of natural resources, and are they revenue- or profit-based?

The 'specific mining tax', became effective on 1 January 2006 (Law No. 20026, as amended). It is structured as an income tax on the 'taxable operating income' from mining activities.

Any entity that extracts minerals that could be subject to a mining concession, and which sells such minerals in any state of production, is subject to the tax on its 'taxable operating income', meaning net income determined for corporate tax purposes, with adjustments such as: elimination of gross receipts not directly connected to the sale of mining products; inclusion of costs and expenses not directly connected to any such sale and of interest charges, loss carryovers, and expenses related to the acquisition of a right to exploit a mine owned by a third party (lease, usufruct, etc).

The tax rate is progressive, based on the taxpayer's gross sales of minerals with a rate schedule from 0 to 4.5 per cent, although mining taxpayers with gross sales of minerals greater than a certain threshold are subject to a 5 per cent flat-rate tax (threshold currently US\$350 million, approximately).

Law No. 20026 modified DL 600, adding article 11-ter, which provides that mining investments of US\$50 million or more may, for 15 years from the commencement of commercial production, claim invariability of the specific mining tax, including its rate and tax base and the future imposition of any other tax assessed on income from mining activities, including royalties or similar charges and methods of determination. The invariability regime is incompatible with the income tax invariability rights generally available to foreign investors under other DL 600 provisions.

24 Export of natural resources

What restrictions, fees or taxes exist on the export of natural resources?

There are no restrictions other than the one established by Law No. 16624, which requires copper producers (over 75,000 tons per year) to reserve or stock a percentage of their production for consumption by national industry. The amounts of copper to be reserved are determined by COCHILCO.

25 Environmental, health and safety laws

What laws or regulations apply to typical project sectors? What regulatory bodies administer those laws?

The PC guarantees all persons the right to live in a clean environment and it establishes that the law may determine specific restrictions in exercising particular rights and privileges in order to protect the environment. Law No. 19300 of 1994 (recently amended by Law No. 20417 dated 26 January 2010) is the most important environmental legal statute. Together with its regulations (ie, Executive Decree No. 95 of 2001), it sets out the legal framework, including the environmental impact assessment system (EIAS). Chile has also subscribed and enacted as Chilean domestic law several environmental treaties (eg, the United Nations Climate Change Convention and the Kyoto Protocol).

Currently, the principal regulatory authorities are the National Environmental Commission (CONAMA) and the Regional Environmental Commissions (COREMAS). Law No. 20417 of 2010 created new environmental institutions such as the Ministry of the Environment (Ministerio del Medio Ambiente), the Council of Ministers for

Update and trends

In relation to capital markets, it is accurate to state that the 2008 financial crisis is 'largely behind us' owing, mainly, to sound financial regulation, low exposure to 'toxic assets' and timely policy action by monetary and fiscal authorities. The Chilean export-based economy, however, was largely hit by the overall trade collapse, which depressed commodity prices – but they have now recovered to near pre-crisis level.

Prior to the crisis, private investment in infrastructure projects (mainly using the concession mechanism under the Concession Law) was financed through equity/loan arrangements where financing for the construction phase was placed with local banks under medium-term loans which were subsequently repaid with long-term bonds issued by the project company, in local currency, and placed on the local market with institutional investors (pension funds and life insurance companies).

To enhance bond placing with institutional investors, repayment of bond interest and principal on scheduled maturity dates was guaranteed by financial guarantee insurance policies issued by top-rated private international insurance entities, such as MBIA, FSA and XL Limited.

Post crisis, no large infrastructure projects have emerged. However, the government has recently announced an ambitious programme for infrastructure projects to be tendered during 2010/2011. An open question is how long-term financing for such projects will be obtained, whether the pre-crisis type of guaranteed bonds financing arrangements will be available and, if not, whether local institutional investors will be prepared to purchase long-term bonds not guaranteed by international monoliners.

Sustainability (Consejo de Ministros para la Sustentabilidad), the Environmental Assessment Service (Servicio de Evaluación Ambiental), and the Superintendency of the Environment (Superintendencia del Medio Ambiente). These institutions have not been implemented yet; thus, CONAMA is still operating.

26 Project companies

What are the principal business structures of project companies?

What are the principal sources of financing available to project companies?

The principal business structures for project companies are stock companies or corporations, limited liability partnership or a branch office in Chile. In addition, special companies ruled by the Mining Code are also used (eg, contractual mining companies).

The principal sources of financing for project companies are commercial loans or syndicated loans from local or international banks. Multilateral financial institutions are also a common source. Though less frequently, local and international capital markets are also used. Ultimately, regarding mining projects, the purchase of a royalty associated with future production of a mine and the *avío*, a similar contract to the above, have appeared as alternatives to finance.

27 Public-private partnership legislation

Has PPP-enabling legislation been enacted and, if so, at what level of government and is the legislation industry-specific?

PPP legal and regulatory framework is embedded in a multi-sector concession law, the Public Works Concessions Law (the Concessions Law), contained in Decree No. 900 of 1996 of the Ministry of Public Works, as recently amended by Law No. 20410 dated 20 January 2010. The Concession Law is complemented for some sectors by sectoral laws (eg, Law No. 19542 of 1997, the Modernisation of State-Owned Ports Law). Specifics are contained in the respective PPP contracts.

28 PPP – limitations

What, if any, are the practical and legal limitations on PPP transactions?

Pursuant to the PC, the state and its agencies may conduct entrepreneurial activities or participate in the same only if a qualified quorum law authorises it. In such cases, such activities will be subject to the common legislation applicable to private individuals or entities, without prejudice to the exceptions that for justified reasons the law contemplates, which law must also be a qualified quorum law.

There are several areas or sectors of the economy in which the state or its agencies have been legally authorised to participate or grant concessions to private entities, such as mining, geothermal energy, electricity, gas, sanitation services, navigation, and so on.

29 PPP – transactions

What have been the most significant PPP transactions completed to date in your jurisdiction?

The Toll Roads Concessions Programme of the MOP, which effectively started around 1996, has been extremely successful and up to now includes eight inter-urban, 11 peripheral and six urban toll roads (of which five make use of electronic toll systems), covering a total of 2,500km, plus 10 airports, six prisons and several other projects currently under study and construction. Total investment in the past 15 years amounts to several million US dollars.

In terms of toll roads, some of the most significant transactions completed to date have been the following:

- Autopista del Maipo (266km road from Santiago to Talca) – original investment US\$705 million;
- Autopista Central (60.13km urban toll road with electronic toll system) – original investment US\$455 million;
- Costanera Norte (42.4km urban toll road with electronic toll system) – original investment US\$385 million.

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