



ICLG

The International Comparative Legal Guide to: **Lending & Secured Finance 2016**

4th Edition

A practical cross-border insight into lending and secured finance

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Editorial Chapters:

| | | |
|---|--|----|
| 1 | Loan Syndications and Trading: An Overview of the Syndicated Loan Market – Bridget Marsh & Ted Basta, Loan Syndications and Trading Association | 1 |
| 2 | Loan Market Association – An Overview – Nigel Houghton, Loan Market Association | 7 |
| 3 | An Overview of the APLMA – Janet Field & Katy Chan, Asia Pacific Loan Market Association | 12 |

General Chapters:

| | | |
|----|---|----|
| 4 | An Introduction to Legal Risk and Structuring Cross-Border Lending Transactions – Thomas Mellor & Marcus Marsh, Morgan, Lewis & Bockius LLP | 15 |
| 5 | Global Trends in Leveraged Lending – Joshua W. Thompson & Caroline Leeds Ruby, Shearman & Sterling LLP | 20 |
| 6 | Similar But Not The Same: Some Ways in Which Bonds and Loans Will Differ in a Restructuring – Kenneth J. Steinberg & Darren S. Klein, Davis Polk & Wardwell LLP | 26 |
| 7 | Yankee Loans – “Lost in Translation” – a Look Back at Market Trends in 2015 – Alan Rockwell & Martin Forbes, White & Case LLP | 32 |
| 8 | Commercial Lending in the Developing Global Regulatory Environment: 2016 and Beyond – Bill Satchell & Elizabeth Leckie, Allen & Overy LLP | 40 |
| 9 | Acquisition Financing in the United States: Will the Boom Continue? – Geoffrey R. Peck & Mark S. Wojciechowski, Morrison & Foerster LLP | 45 |
| 10 | A Comparative Overview of Transatlantic Intercreditor Agreements – Lauren Hanrahan & Suhrod Mehta, Milbank, Tweed, Hadley & McCloy LLP | 50 |
| 11 | A Comparison of Key Provisions in U.S. and European Leveraged Loan Agreements – Sarah M. Ward & Mark L. Darley, Skadden, Arps, Slate, Meagher & Flom LLP | 57 |
| 12 | The Global Subscription Credit Facility and Fund Finance Markets – Key Trends and Forecasting 2016 – Michael C. Mascia & Wesley A. Misson, Cadwalader, Wickersham & Taft LLP | 66 |
| 13 | Recent Trends and Developments in U.S. Term Loan B – David Almroth & Denise Ryan, Freshfields Bruckhaus Deringer LLP | 69 |
| 14 | The Continued Migration of US Covenant-Lite Structures into the European Leveraged Loan Market – Jane Summers & James Chesterman, Latham & Watkins LLP | 74 |
| 15 | Unitranche Financing: UK vs. US Models – Stuart Brinkworth & Julian S.H. Chung, Fried, Frank, Harris, Shriver & Jacobson LLP | 77 |
| 16 | Recent Developments in Islamic Finance – Andrew Metcalf & Leroy Levy, King & Spalding LLP | 82 |
| 17 | Translating High Yield to Leveraged Loans: Avoiding Covenant Convergence Confusion – Jeff Norton & Danelle Le Cren, Linklaters LLP | 86 |

Country Question and Answer Chapters:

| | | | |
|----|-------------------------------|---|-----|
| 18 | Albania | Tonucci & Partners: Neritan Kallfa & Blerina Nikolla | 91 |
| 19 | Andorra | Montel&Manciet Advocats: Audrey Montel Rossell & Liliana Ranaldi González | 97 |
| 20 | Argentina | Marval, O’Farrell & Mairal: Juan M. Diehl Moreno & Diego A. Chighizola | 103 |
| 21 | Australia | King & Wood Mallesons: Yuen-Yee Cho & Richard Hayes | 112 |
| 22 | Bermuda | MJM Limited: Jeremy Leese | 120 |
| 23 | Bolivia | Criales, Urcullo & Antezana: Andrea Mariah Urcullo Pereira & Daniel Mariaca Alvarez | 130 |
| 24 | Botswana | Khan Corporate Law: Shakila Khan | 137 |
| 25 | Brazil | Pinheiro Neto Advogados: Ricardo Simões Russo & Leonardo Baptista Rodrigues Cruz | 145 |
| 26 | British Virgin Islands | Maples and Calder: Michael Gagie & Matthew Gilbert | 153 |
| 27 | Canada | McMillan LLP: Jeff Rogers & Don Waters | 160 |
| 28 | Cayman Islands | Maples and Calder: Tina Meigh & Nick Herrod | 169 |

Continued Overleaf ➡

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Country Question and Answer Chapters:

| | | | |
|----|---------------------------|---|-----|
| 29 | Chile | Carey: Diego Peralta & Elena Yubero | 176 |
| 30 | China | King & Wood Mallesons: Jack Wang & Stanley Zhou | 183 |
| 31 | Costa Rica | Cordero & Cordero Abogados: Hernán Cordero Maduro & Ricardo Cordero Baltodano | 190 |
| 32 | Cyprus | E & G Economides LLC: Marinella Kilikitas & George Economides | 198 |
| 33 | Czech Republic | JŠK, advokátní kancelář, s.r.o.: Roman Šťastný & Patrik Müller | 206 |
| 34 | Dominican Republic | QUIROZ SANTRONI Abogados Consultores: Hipólito García C. | 212 |
| 35 | England | Allen & Overy LLP: Philip Bowden & Darren Hanwell | 219 |
| 36 | France | Freshfields Bruckhaus Deringer LLP: Emmanuel Ringeval & Cristina Radu | 227 |
| 37 | Germany | King & Spalding LLP: Dr. Werner Meier & Dr. Axel J. Schilder | 237 |
| 38 | Greece | KPP Law Offices: George N. Kerameus & Pinelopi N. Tsagkari | 248 |
| 39 | Hong Kong | King & Wood Mallesons: Richard Mazzochi & David Lam | 255 |
| 40 | Indonesia | Ali Budiardjo, Nugroho, Reksodiputro: Theodoor Bakker & Ayik Candrawulan Gunadi | 262 |
| 41 | Ireland | McCann FitzGerald: Fergus Gillen & Martin O'Neill | 270 |
| 42 | Japan | Anderson Mori & Tomotsune: Taro Awataguchi & Yuki Kohmaru | 278 |
| 43 | Mexico | Gonzalez Calvillo, S.C.: José Ignacio Rivero Andere & Samuel Campos Leal | 286 |
| 44 | Norway | Advokatfirma Ræder DA: Marit E. Kirkhusmo & Kyrre W. Kielland | 293 |
| 45 | Peru | Miranda & Amado Abogados: Juan Luis Avendaño C. & Jose Miguel Puiggros O. | 302 |
| 46 | Puerto Rico | Ferraiuoli LLC: José Fernando Rovira Rullán & Carlos M. Lamoutte-Navas | 312 |
| 47 | Romania | Reff & Associates SCA: Andrei Burz-Pinzaru & Mihaela Maxim | 319 |
| 48 | Russia | Mosgo & Partners: Oleg Mosgo & Anton Shamatov | 327 |
| 49 | Singapore | Drew & Napier LLC: Valerie Kwok & Blossom Hing | 334 |
| 50 | Slovenia | Brule, Gaberščik in Kikelj o.p., d.o.o.: Luka Gaberščik & Mina Kržišnik | 343 |
| 51 | Spain | Cuatrecasas, Gonçalves Pereira: Manuel Follia & María Lérica | 352 |
| 52 | Sweden | White & Case LLP: Carl Hugo Parment & Tobias Johansson | 361 |
| 53 | Switzerland | Pestalozzi Attorneys at Law Ltd: Oliver Widmer & Urs Klöti | 368 |
| 54 | Taiwan | Lee and Li, Attorneys-at-Law: Hsin-Lan Hsu & Cyun-Ren Jhou | 377 |
| 55 | Turkey | Paksoy: Sera Somay & Esen Irtem | 385 |
| 56 | Ukraine | CMS Reich-Rohrwig Hainz: Anna Pogrebna & Kateryna Soroka | 392 |
| 57 | UAE | Morgan, Lewis & Bockius LLP: Ayman A. Khaleq & Amanjit K. Fagura | 399 |
| 58 | USA | Morgan, Lewis & Bockius LLP: Thomas Mellor & Rick Eisenbiegler | 410 |
| 59 | Venezuela | Rodner, Martínez & Asociados: Jaime Martínez Estévez | 421 |

Chile

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Carey

1 Overview

1.1 What are the main trends/significant developments in the lending markets in your jurisdiction?

According to the Chilean Banks and Financial Institutions Association (“ABIF”), during 2015 the growth of credit was a modest 4.2% with respect to 2014. The housing sector played a significant role due to certain amendments to the value added tax (“VAT”) regime on the sale of real estate introduced by the 2014 tax reform, which produced an acceleration in this sector in order to benefit from an exemption regime. The energy sector continued being very active, with local banks increasing their involvement, where the trend is to step away from exposure to spot market prices and accept power purchase agreements (“PPAs”) with distribution companies as acceptable alternatives to the traditional PPAs. Finally, it is worth noting, the enactment of Law No. 20,855, in force since January 23, 2016, which in general terms, allocates to lenders the obligation to formally release mortgages or pledges without conveyance once the secured obligations have been fully paid.

1.2 What are some significant lending transactions that have taken place in your jurisdiction in recent years?

By amount and relevance in the banking industry, an unsecured loan from Scotiabank Chile to Cencosud Administradora de Tarjetas (“CAT”), a card issuer in the retail sector, for up to USD3 billion, as part of the acquisition by Scotiabank Chile of 51% of CAT, and the indirect acquisition of other related companies (including an insurance broker company).

By parties involved, the financing credit facility for up to USD 1,217 million for the development of the Alto Maipo Hydroelectric Project, a 531 MW run-of-the-river plant, owned by AES Gener (60%) and Antofagasta Minerals (40%). The deal involved the IFC, OPIC and IDB and several local and foreign banks in a highly controversial project in the vicinity of Chile’s capital.

2 Guarantees

2.1 Can a company guarantee borrowings of one or more other members of its corporate group (see below for questions relating to fraudulent transfer/financial assistance)?

Following certain corporate requirements depending on the type of company involved, provided the guarantor benefits somehow from

these operations, and subject to applicable insolvency, liquidation, reorganisation, moratorium or similar laws relating to or affecting creditors’ rights generally, and general principles of fairness, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing (regardless of whether considered in a proceeding in equity or at law), there is no restriction for this type of guarantee.

Additionally, note that, under Chilean General Banking Law, banks are not authorised to grant mortgages or pledges over physical assets, unless these agreements are granted in order to guarantee payment of the purchase price of those assets. Considering this, it has been construed that banks can provide guarantees over assets other than physical assets and subject to certain restrictions regulated by the Superintendency of Banks and Financial Institutions.

2.2 Are there enforceability or other concerns (such as director liability) if only a disproportionately small (or no) benefit to the guaranteeing/securing company can be shown?

Third party creditors or non-controlling equity holders could object to the transaction if it is not clear that it is in the best interest of the guarantor, or if the secured obligations are so disproportionate to the company’s assets and other obligations that its enforcement could cause the company to become insolvent. For example, under Chilean Corporations Law, directors of corporations are jointly and severally liable for any damages caused to shareholders for their negligent or malicious actions, making it highly unlikely that the approval of a board would be secured for such a disadvantageous operation. Should the agreements cause the company’s insolvency, there are actions for revocation which apply once the reorganisation or liquidation procedures have started according to the Chilean Insolvency Law. Among the agreements that can be revoked are any pledge or mortgage granted by the insolvent company within a year before the insolvency proceedings (to guarantee debts previously acquired), and any act or agreement (including granting guarantees) entered into within two years before the insolvency proceedings, provided that (i) the counterparty has known the company’s bad state of business, and (ii) that the agreement has caused damage to the other creditors, where damage means that terms and conditions were distant from the market’s at the time of the agreement. On the other hand, article 2,468 of the Chilean Civil Code grants the creditors of an insolvent debtor the right to request the revocation of certain agreements entered by such debtor (*acción pauliana*) provided that: (i) the transaction causes damages to the creditors (the transaction executed increased the insolvency of the debtor); (ii) the debtor was aware of its poor business condition at the time of entering into such act or contract; and (iii) in the case of an onerous act or contract, the counterparty of the debtor was also aware of the poor business condition of the debtor.

2.3 Is lack of corporate power an issue?

Yes. The Chilean Civil Code establishes in its articles 2,151 and 2,160 that the principal shall not be obliged toward third parties by acts or agreements entered into by its agent if (i) the latter did not mention that he was acting on behalf of the principal, and (ii) if the agent acts beyond the limits of its mandate. Therefore, if the agent does not have sufficient powers of attorney, and does not show to the counterparty the agreement by means of which the powers were granted to him, he would not be able to act on behalf of the principal.

2.4 Are any governmental or other consents or filings, or other formalities (such as shareholder approval), required?

It depends on the company's structure and on the type of guarantee. In order to guarantee third party obligations, and if the guaranteed obligations exceed 50% of the corporation's assets, an extraordinary shareholders' meeting must be summoned in order to obtain approval. Nevertheless, if the guaranteed company is a subsidiary, the board's approval suffices. Filings will depend on the type of guarantee, especially when the asset over which the guarantee is granted has been awarded by a public entity (e.g. concessions over public goods).

2.5 Are net worth, solvency or similar limitations imposed on the amount of a guarantee?

No. Nevertheless, please note that any operation executed between related parties needs to be done on the company's benefit, complying with the market's standards for price, terms and conditions, as previously explained above.

2.6 Are there any exchange control or similar obstacles to enforcement of a guarantee?

Currently there are no exchange control regulations. Payment in foreign currency is possible to the extent the parties have agreed such form of payment. Please note that in order to enforce a guarantee (as an accessory obligation) it is required that the obligations being secured comply with certain requirements, and in case of obligations governed by foreign law and subject to foreign jurisdiction, *exequatur* procedures have to be conducted. Subject to Law No. 18,010, regarding lending operations, transactions agreed in a foreign currency shall be payable according to the seller exchange rate of the payment date, which must be certified by a Chilean commercial bank. Please refer to our answers to questions 7.2, 7.3 and 7.7 in regards to the enforcement of foreign judgments procedure.

3 Collateral Security

3.1 What types of collateral are available to secure lending obligations?

Chilean law establishes several types of security regulated under different bodies of law. They can be classified in two big groups, i) guarantees over assets or rights *in rem*, and ii) personal guarantees.

- (i) Guarantees over assets: are divided between guarantees over moveable assets (pledge agreements); and guarantees over real estate (mortgage agreements).
 - a) Guarantees over moveable assets: these are made through the pledge agreement, which has four variations. These are:
 - Civil Pledge: the first one to be recognised by Chilean law and therefore the pattern for the other types of pledges. It has a wide scope as it may apply to any moveable property, including all kinds of personal rights and credits. Any obligation may be secured by this pledge including obligations to act, or to refrain from acting. However, it is not commonly used, as the pledgor must deliver the pledged asset, and therefore the ability to use and enjoy the asset is lost.
 - Commercial Pledge: The commercial pledge aims to secure obligations of merchants or commercial nature obligations. Though it is very similar to the civil pledge, unlike this, the material possession by the pledgee is not required, as it may be delivered to a third party bailee. It is not possible to secure future obligations – only currently existing and determined obligations – and its only requirement is that the material possession of the pledged property is not held by the pledgor. The Commerce Code requires certain formalities for granting the pledge, in order for the pledgee to be able to exercise its right to be paid preferentially. These formalities are: (i) the execution of the pledge agreement by means of a public deed, or by private instrument entered into a Chilean Notary Public's registry; (ii) reference made, on such instrument, to the amount of the debt secured and a description pledged asset; and (iii) if the pledge is granted over a credit, in order for the pledge to be enforceable upon the debtor, the creditor shall also notify the debtor prohibiting him/her to make any payment under the pledged credit to any person other than the creditor.
 - Banking Pledge over Moveable Assets (“Banking Pledge”): the banking pledge was created as a way of facilitating the granting of pledges over bearer instruments of any kind, credits payable to the order, and shares in favour of banks and other financial institutions, even foreign. Except if otherwise expressed, this pledge may secure all current or future obligations of the pledgor with the pledgee. Formalities for bearer instruments are only handing over the instrument by the pledgor to the pledgee. Credits payable to the order (i.e., not in bearer form) must be endorsed as a guarantee to the pledgee. Finally, shares shall be pledged by means of a public deed or private instrument, which must be notified to the company which issued the shares by a Notary Public. As the civil pledge and the commercial pledge this pledge does not allow the pledgor to remain in material possession of the pledged asset.
 - Pledge without Conveyance (“PwC”): this allows any kind of corporeal or incorporeal, present or future, moveable assets to be pledged in order to secure own or third parties obligations, present or future, irrespective of the fact that such obligations are determined or undetermined at the time of the pledge agreement. It must be executed either by means of a public deed or a private instrument, in which case the signatures of the appearing parties must be authorised by a Chilean Notary Public and then the instrument entered into a Chilean Notary Public's registry. The PwC agreement must contain the following minimum references: (i) the individualisation of the parties entering the agreement; (ii) the existing secured obligations or the specification that the pledge secures present and future obligations (*cláusula de garantía general*); (iii) the identification of the pledged assets; and (iv) the determined or undetermined amount to which the pledge is limited or the fraction in which the pledge secures several obligations, if applicable. The PwC agreement must be registered in a special registry

called the Pledge without Conveyance Registry. Upon its registration, the pledge without conveyance is enforceable upon third parties.

- b) Guarantees over Real Estate: are granted by means of a mortgage agreement, which is regulated by articles 2407 *et seq.* of the Chilean Civil Code. By means of a mortgage it is possible not only to secure existing and determined obligations but to secure all present and future obligations of the borrower (*cláusula de garantía general*). The mortgage must be executed by means of a public deed between the owner of the immovable asset and the mortgagee. The mortgage is later perfected by means of the registration of an abstract thereof in the relevant Mortgage Lien Registry and in the Prohibitions Registry (commonly, the mortgage deed will also contemplate a prohibition to transfer, convey and enter into acts or contracts with respect to the mortgaged property) of the correspondent Real Estate Custodian.

According to Chilean Civil, Commercial and Aeronautical Codes, mortgages can be granted over vessels and airplanes fulfilling certain requirements such as the vessel or airplane to be duly registered in the corresponding registry and the agreement to be granted by means of a public deed.

Likewise, mortgages can be granted over mining concessions and water rights, which need to be registered in the same manner in the Custodian of Mines' Registry or the Real Estate Registrar Property Registry, as appropriate.

- (ii) Personal Guarantees: The most common personal guarantees in Chile are sureties (*fianzas*) and joint and several guarantees (*fianzas y codeudas solidarias*). By means of sureties, one or more third parties are compelled to pay the debtor's obligation in the event that such debtor does not pay the secured obligation. By virtue of joint and several guarantees, the liability for default is enforceable directly against all of the debtor(s) and guarantors as a group or against any one of them as an individual at the choice of the enforcing creditor. The main characteristic of the joint and several guarantees is that guarantors become equally liable to the creditor, just as the primary debtor. Therefore, they are not entitled to request that (i) the debt be claimed first from the borrowers and only if they do not pay, then be collected from them, and (ii) the debt be divided equally or proportionally among the various guarantors. Please note that guarantees under Chilean law are accessory to the main obligations and cannot exceed the amount of such obligations. This is expressly regulated for sureties, where it is stated that they cannot exceed the main obligation being guaranteed and cannot be granted in terms more onerous than those of the main obligor, but can be granted in terms more effective (like securing its obligations as guarantor through a mortgage, for example). Chilean Civil Code does not provide for any formalities at all to grant sureties but if the obligation intended to be secure is a commercial obligation, it must be granted in writing. Where the guarantor of a surety and a joint several co-debtor is an individual married under joint ownership of the matrimonial estate (*sociedad conyugal*), the prior spouse's consent is required.
- (iii) Conditional Assignments of Rights: this agreement is widely used in the Chilean jurisdiction as a useful tool to safeguard creditors' rights in an event of default.

3.2 Is it possible to give asset security by means of a general security agreement or is an agreement required in relation to each type of asset? Briefly, what is the procedure?

It is not possible to dispose or grant a security over all of an entity's assets. The guarantee must clearly identify which assets are being granted. Additionally, each type of security requires specific formalities for perfection (see our answer to question

3.1 above), and although it is possible to grant different types of security interests in the same agreement as long as these formalities are complied with, it is not advisable as it could delay registration and other perfection requirements.

3.3 Can collateral security be taken over real property (land), plant, machinery and equipment? Briefly, what is the procedure?

Yes. Please refer to question 3.1.

3.4 Can collateral security be taken over receivables? Briefly, what is the procedure? Are debtors required to be notified of the security?

Yes, since the receivables are ultimately credits. As previously said in question 3.1, both the civil and the commercial pledges as well as PwCs can be granted over a credit. The creditor shall notify the debtor of the pledged credit, judicially or through a Chilean Notary Public, prohibiting him/her from making any payment under the pledged credit to any person other than the creditor. In case of pledges without conveyance, it is also required that a copy of the document evidencing the pledged credit is notarised with the Notary Public at the time of executing the pledge, and a reference to such must be made in the pledge itself.

3.5 Can collateral security be taken over cash deposited in bank accounts? Briefly, what is the procedure?

Yes, it can be taken by means of either commercial pledge or a PwC. The procedure is briefly explained in question 3.1.

3.6 Can collateral security be taken over shares in companies incorporated in your jurisdiction? Are the shares in certificated form? Can such security validly be granted under a New York or English law governed document? Briefly, what is the procedure?

Yes. All the pledges set forth by Chilean Law can be granted over shares. Nevertheless, the most commonly used are PwCs and commercial pledges. Please refer to question 3.3. The Corporations Law states that any liens or rights *in rem* over shares of a company will not be enforceable against it unless it has been notified by a minister of faith, who must leave a record of it in the company's shareholders' registry. Shares can be either in certificated form, or dematerialised in case of corporations and companies limited by shares.

According to the Chilean Civil Code, assets located in Chile are subject to Chilean Law, and hence, the pledge shall be granted in accordance with Chilean law.

3.7 Can security be taken over inventory? Briefly, what is the procedure?

Yes. Please refer to question 3.1 above.

3.8 Can a company grant a security interest in order to secure its obligations (i) as a borrower under a credit facility, and (ii) as a guarantor of the obligations of other borrowers and/or guarantors of obligations under a credit facility (see below for questions relating to the giving of guarantees and financial assistance)?

Yes, it can. Please refer to question 2.4 above.

3.9 What are the notarisation, registration, stamp duty and other fees (whether related to property value or otherwise) in relation to security over different types of assets?

It depends mainly on the kind of collateral the company is granting. Excepting civil and commercial pledges, all other collateral agreements must be executed by means of a public deed or by a private document which must be authorised and registered by a Notary Public. Although it is not a requirement, civil and commercial pledges are in most cases granted by means of a public deed because of its advantages in the Chilean legal system (mainly for enforceability and proof in trial). Therefore, notarisation expenses are common to all kinds of collateral over all kinds of assets.

In case of mortgages, as mentioned above, the agreement has to be registered in the relevant Mortgage Lien Registry and in the Prohibitions Registry of the Real Estate Custodian, which charges a fee as well.

In case of a PwC, it is necessary to register it in the PwC Registry, which also charges a fee. If a PwC is granted over shares which are deposited in the Central Securities Deposit, these must be registered in an electronic pledge registry, which also charges a fee for its services.

3.10 Do the filing, notification or registration requirements in relation to security over different types of assets involve a significant amount of time or expense?

No, expenses are not very high, and in general, registration and other administrative procedures do not take long, although it depends on the registrar and workload at the time of the registration request (it can vary between 10 and 40 business days). Regarding notarisation expenses, these depend on different aspects, such as the amount guaranteed. The PwC Registry charges a fixed CLP30,000 (approx. USD 42.85) fee for each registration.

3.11 Are any regulatory or similar consent required with respect to the creation of security?

No, but please consider that some assets are granted through administrative acts, and they may eventually require an authorisation of the relevant authority in order to grant security over them.

3.12 If the borrowings to be secured are under a revolving credit facility, are there any special priorities or other concerns?

No, there are not.

3.13 Are there particular documentary or execution requirements (notarisation, execution under power of attorney, counterparts, deeds)?

Yes; please refer to the answers above. In case of the execution of foreign agreements in Chile, legalisations by the Foreign Relations Ministry and the Justice Ministry must be carried out. From August 30, 2016 the Apostille Convention will come into force, replacing these legalisation requirements.

4 Financial Assistance

4.1 Are there prohibitions or restrictions on the ability of a company to guarantee and/or give security to support borrowings incurred to finance or refinance the direct or indirect acquisition of: (a) shares of the company; (b) shares of any company which directly or indirectly owns shares in the company; or (c) shares in a sister subsidiary?

There are no such prohibitions or restrictions under Chilean Law.

5 Syndicated Lending/Agency/Trustee/Transfers

5.1 Will your jurisdiction recognise the role of an agent or trustee and allow the agent or trustee (rather than each lender acting separately) to enforce the loan documentation and collateral security and to apply the proceeds from the collateral to the claims of all the lenders?

Yes. Law No. 20,190 regulates the appointment of a collateral agent, which shall comply with certain formalities. This appointment requires the existence of at least two creditors and may require the authorities to manage the collateral as well as enforcement and release of the same in case of an event of default, among other duties and attributions.

5.2 If an agent or trustee is not recognised in your jurisdiction, is an alternative mechanism available to achieve the effect referred to above which would allow one party to enforce claims on behalf of all the lenders so that individual lenders do not need to enforce their security separately?

Although an agency collateral agreement is recognised in Chile, similar results could be obtained through the granting of special powers of attorney with the necessary authorities.

5.3 Assume a loan is made to a company organised under the laws of your jurisdiction and guaranteed by a guarantor organised under the laws of your jurisdiction. If such loan is transferred by Lender A to Lender B, are there any special requirements necessary to make the loan and guarantee enforceable by Lender B?

Yes. Under the Chilean Civil Code, it is necessary to duly notify the credit assignment to the debtor. Otherwise, the assignment cannot be enforced against the debtor.

Every credit assignment in which the debtor is the Treasury, or any governmental entity, must be notified to the President of the Defense of the State Council.

Regarding the guarantees, the Chilean Civil Code provides that assignment of credits encompasses assignment of guarantees securing the same, by operation of law.

6 Withholding, Stamp and Other Taxes; Notarial and Other Costs

6.1 Are there any requirements to deduct or withhold tax from (a) interest payable on loans made to domestic or foreign lenders, or (b) the proceeds of a claim under a guarantee or the proceeds of enforcing security?

- (a) As a general rule, interests paid by Chilean taxpayers to foreign lenders are subject to a 35% withholding tax. However, a reduced 4% tax rate is applicable to certain interest payments (see question 6.2). The above is notwithstanding the existence of double taxation treaties. The payment of interests by Chilean taxpayers to domestic lenders is not subject to withholding tax.
- (b) Payments of interest abroad upon enforcement of a guarantee could be subject to withholding tax depending on the reimbursement rights that the guarantor has against the main obligor.

6.2 What tax incentives or other incentives are provided preferentially to foreign lenders? What taxes apply to foreign lenders with respect to their loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

Interest paid to foreign banks or foreign financial institutions complying with the requirements set by Chilean tax legislation are benefitted by a reduced withholding tax rate of 4%. Interest payments to foreign individuals resident in a country where there is a tax treaty in place with Chile may also benefit from a reduced withholding tax rate.

Stamp tax applies to documents evidencing indebtedness for borrowed money, including loan documents, notes and bond issuances. The tax is applied over the principal amount of the loan and its current rate is 0.066% multiplied by the number of months-to-maturity of the loan, with a maximum of 0.8%. In case of loans payable on-demand, the applicable rate is 0.332%.

6.3 Will any income of a foreign lender become taxable in your jurisdiction solely because of a loan to or guarantee and/or grant of security from a company in your jurisdiction?

No, it will not.

6.4 Will there be any other significant costs which would be incurred by foreign lenders in the grant of such loan/guarantee/security, such as notarial fees, etc.?

Even though there are fees and translation costs, as explained in our answer above in question 3.9, they are not significant.

6.5 Are there any adverse consequences to a company that is a borrower (such as under thin capitalisation principles) if some or all of the lenders are organised under the laws of a jurisdiction other than your own? Please disregard withholding tax concerns for purposes of this question.

Under Chilean Income Tax Law, thin capitalisation rules are triggered when a Chilean-resident taxpayer pays interest or other financing

expenses (e.g. services, commissions, expense reimbursements) to a related party abroad under a reduced withholding tax rate from the 35%. Per the thin capitalisation rules, any interest (or similar) payments made abroad to a related party and attributed to excessive indebtedness are subject to a 35% tax. The withholding tax applicable to the payments made by the Chilean resident taxpayer can be used as a credit against such 35% tax.

A taxpayer will be deemed to have “excessive indebtedness” if its total indebtedness (related and non-related) is larger than three times its tax equity at the end of the corresponding year that payments were made to related parties.

7 Judicial Enforcement

7.1 Will the courts in your jurisdiction recognise a governing law in a contract that is the law of another jurisdiction (a “foreign governing law”)? Will courts in your jurisdiction enforce a contract that has a foreign governing law?

Yes, taking into consideration the existence of a connecting factor with the parties involved. However, according to article 16 of the Chilean Civil Code and article 105 of the Private International Law Code (the “Bustamante Code”), assets are governed by the *lex situs* (the law of the jurisdiction where the assets are located), thus assets of any kind located in Chile are governed by Chilean laws. In consequence, generally speaking, a choice of law of a court in Chile will be based on the *lex situs* of the charged assets.

7.2 Will the courts in your jurisdiction recognise and enforce a judgment given against a company in New York courts or English courts (a “foreign judgment”) without re-examination of the merits of the case?

Yes. Chilean courts would enforce an English/New York judgment, to the extent this judgment complies with a proceeding called “*exequatur*” which must be followed before the Chilean Supreme Court.

7.3 Assuming a company is in payment default under a loan agreement or a guarantee agreement and has no legal defence to payment, approximately how long would it take for a foreign lender to (a) assuming the answer to question 7.1 is yes, file a suit against the company in a court in your jurisdiction, obtain a judgment, and enforce the judgment against the assets of the company, and (b) assuming the answer to question 7.2 is yes, enforce a foreign judgment in a court in your jurisdiction against the assets of the company?

- (a) In general, disputes are resolved in first instance by a lower court, which may take from two to four years. Rulings and judgments of a lower court may be reviewed in second instance by a Court of Appeals, which may take from one to two years. Beyond that, some remedies may be claimed before the Supreme Court, which may take from one to two years. Therefore, a common civil proceeding may take up to eight years. In addition, enforcement of judgments is generally executed by means of an enforcement proceeding, which may take around one year.
- (b) The *exequatur* proceeding itself may usually take around six to eight months. Once the *exequatur* is obtained, the enforcement proceeding may usually take around one year.

7.4 With respect to enforcing collateral security, are there any significant restrictions which may impact the timing and value of enforcement, such as (a) a requirement for a public auction or (b) regulatory consents?

Yes. The enforcement of collateral security shall be made in Chile, before the competent Chilean court, in accordance with the rules for the so-called summary proceeding (*juicio ejecutivo*) contained in the Chilean Code of Civil Procedure. This procedure provides a very brief discussion stage, a stage of liquidation and subsequent public auction, which is held by auctioneers appointed by the court. This last stage can take a long time and the results of auctioned goods may be drastically different from the expected ones.

7.5 Do restrictions apply to foreign lenders in the event of (a) filing suit against a company in your jurisdiction or (b) foreclosure on collateral security?

No, they do not.

7.6 Do the bankruptcy, reorganisation or similar laws in your jurisdiction provide for any kind of moratorium on enforcement of lender claims? If so, does the moratorium apply to the enforcement of collateral security?

Yes. According to article 57 of the Chilean Insolvency Law, during a term of 30 days as of the legal notice of the reorganisation resolution which appoints a supervisor for the insolvency proceeding (“*Veedor*”), the debtor will have Insolvency Financial Protection (*Protección Financiera Concursal*), during which neither the declaration nor the initiation of a liquidation proceeding against the debtor can take place, nor individual foreclosures, any kind of executions or restitutions in lease trials may be initiated and, among others, all agreements executed by the debtor will maintain their effectiveness and payment conditions. Therefore, the guarantees granted may not be unilaterally terminated nor be enforced or foreclosed in advance, based upon the initiation of an insolvency proceeding as the cause of the same. The credits of a creditor that contravene this restriction will be postponed in payment until all of the creditors to whom the reorganisation agreement affects have been paid off, including creditors who are related parties to the debtor. This period may be extended under certain circumstances by up to 120 days.

7.7 Will the courts in your jurisdiction recognise and enforce an arbitral award given against the company without re-examination of the merits?

Yes. A domestic arbitral award may be enforced by the same arbitrator who rendered it, provided he/she is assisted by an ordinary court if the seizure of property, the use of police, etc., becomes necessary. 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, without re-examination of the merits.

8 Bankruptcy Proceedings

8.1 How does a bankruptcy proceeding in respect of a company affect the ability of a lender to enforce its rights as a secured party over the collateral security?

According to Chilean Insolvency Law, once a company has filed for a reorganisation plan upon insolvency, there is a temporary financial

protection for the insolvent company known as the “**Financial Protection Period**”. During this period, foreclosure procedures against the insolvent company, as a judgment execution of obligations, are suspended. New procedures cannot be started either. During this period, early termination of agreements are banned as well, and with them, the execution of the agreed guarantees.

8.2 Are there any preference periods, clawback rights or other preferential creditors’ rights (e.g., tax debts, employees’ claims) with respect to the security?

According to the Chilean Insolvency Law and the Chilean Civil Code, there is a scale of preference according to which debts are paid. The first class, which includes judicial costs, administration and liquidation fees, labour wages, compensation, severance payments and taxes, prefers all other credits. The second class includes the rights of the pledgee over the pledged asset. Mortgagees prefer every other credit, including first class credits, over the mortgaged asset; nevertheless, if there are not enough assets to cover the debts, the first class prefers the mortgagee over the mortgaged asset.

8.3 Are there any entities that are excluded from bankruptcy proceedings and, if so, what is the applicable legislation?

Banks are excluded, as there is a special regime of liquidation for them established in the General Banking Law. Public institutions, such as municipalities, ministries and others, and in general any governmental institution, are excluded from the Chilean Insolvency Law. In relation to funds, in Chile mutual, investments and pension funds are deemed a created patrimony that adopt an independent existence from their owner in order to serve a particular and autonomous purpose, which are not considered a legal entity. Their managers (corporations) might be declared insolvent.

8.4 Are there any processes other than court proceedings that are available to a creditor to seize the assets of a company in an enforcement?

No, there are not.

9 Jurisdiction and Waiver of Immunity

9.1 Is a party’s submission to a foreign jurisdiction legally binding and enforceable under the laws of your jurisdiction?

Yes, it is.

9.2 Is a party’s waiver of sovereign immunity legally binding and enforceable under the laws of your jurisdiction?

Yes, it is.

10 Licensing

10.1 What are the licensing and other eligibility requirements in your jurisdiction for lenders to a company in your jurisdiction, if any? In connection with any such requirements, is a distinction made under the laws of your jurisdiction between a lender that is a bank versus a lender that is a non-bank? If there are such requirements in your jurisdiction, what are the consequences for a lender that has not satisfied such requirements but has nonetheless made a loan to a company in your jurisdiction? What are the licensing and other eligibility requirements in your jurisdiction for an agent under a syndicated facility for lenders to a company in your jurisdiction?

There are no licence or permission requirements in Chile to perform lending operations.

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11 Other Matters

11.1 Are there any other material considerations which should be taken into account by lenders when participating in financings in your jurisdiction?

There are pre-payment mandatory regulations for local loans, but these regulations are not applicable to cross-border loans. Additionally, there is no interest rate limit for loans granted by foreign or international financial institutions or banks.

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