

GOVERNMENT SUBMITS BILL OF TECHNOLOGY AND KNOWLEDGE TRANSFER

On Monday, April 1st, 2024, the Chilean Government introduced in the Chamber of Deputies a bill which aims, on one hand, to establish regulations to facilitate and promote the transfer of technology and knowledge and, on the other, to enable and stimulate the creation and development of science and technology-based companies (“EBCT”) from higher education institutions.

The bill mainly regulates the following matters:

Promotion of technical and scientific research in higher education institutions

The bill establishes that one of the essential functions of higher education institutions (“IES”) is research and determines that it is a duty of the State to promote projects related to research, creation and transfer and exchange of technology and knowledge.

It also provides that the State shall encourage the protection and transfer of technology and knowledge in projects generated from public funds, for the development of both social and market objectives.

National Repository of Scientific and Technological Knowledge and Information

The bill creates a National Repository of Scientific and Technological Knowledge and Information (Repositorio Nacional de Conocimiento e Información Científica y Tecnológica) (“Repository”), under the responsibility of the National Agency of Research and Development (“ANID”), to collect, classify, preserve, promote, and spread scientific and technological knowledge existing in the country.

The Repository will contain:

- Background information on applications and public funds awarded by ANID and Corfo to scientific and technological based innovation and research projects.

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- Information, datasets, publications and scientific or technological works incorporated by ANID or third parties; and
- Information to identify applications and registrations of industrial property rights, plant varieties and works protected by intellectual property rights in the national territory, existing in the databases of the National Institute of Intellectual Property, the Agricultural and Livestock Service, the Department of Intellectual Rights, and in foreign countries, if any.

Academics involved in research activities financed totally or partially with public funds must deposit a copy of the final version accepted for publication and the research data in the Repository within 60 days from the date of publication.

In any case, the Repository must observe and comply with the current regulations on industrial and intellectual property, in order to protect the intangible assets of its owners.

Promotion of open science

The bill defines the concept of “open science” and establishes the duty of the State and IES to promote it and actively contribute to it, within its autonomy scope, through open access to scientific publications, data and codes related to such activity.

Creation and participation of EBCTs by IES

It sets forth that IES may create or participate on EBCTs developed based on results generated by research, and that these companies may enter into technology transfer acts, against payment or free of charge, and sign administrative contracts.

It also provides that the EBCTS will determine in their act of incorporation, the percentage of intellectual and industrial property rights or business secrets that will be owned by the IES and the distribution of their royalties or dividends.

Finally, the bill introduces specific rules to eliminate the legal restrictions that public and private IES currently face to create or participate in EBCTs.

Participation of academics in EBCT

Academics participating in research activities may request authorization from the IES to participate in the EBCT. This

participation will be an exception to the administrative inabilities and incompatibilities established in Law No. 18,575.

Ownership of industrial and intellectual property rights over research results financed with public funds

The beneficiaries of public funds destined to the financing of scientific or technological development projects may request the protection of the results susceptible of protection through industrial or intellectual property rights, having to inform such circumstance to the National Agency of Research and Development. If they do not take measures to protect such rights, or if they do not report their interest in doing so, the results will become part of the public domain and will be included in the Repository.

Amendments to other regulations

- The bill amends Law No. 17,336 on Intellectual Property to (i) expressly recognize the notion of work created by commission, establishing that the economic rights over it will belong to the person who has commissioned it, and (ii) provides that the purpose of the registration of the assignment of rights in the Department of Intellectual Rights is to make this act effective against third parties.
- It derogates provisions of Executive Law Decree No. 33 of 1981 of the Ministry of Public Education, which creates the National Fund for Scientific and Technological Development and establishes rules for the financing of scientific and technological research^[1].
- Incorporates in Law No. 20,285 on Access to Public Information a new cause for secrecy or reserve, when the disclosure affects intellectual and property rights or trade secrets.

On the other hand, the bill orders the issuance of a regulation within six months from the entry into force of the law, to regulate the Repository and the way in which academics must officialize their intention to protect the intellectual property resulting from their research.

Finally, according to the bill, the law that finally approves it will enter into force on the first day of the sixth month following its publication.

[1] The bill establishes the derogation of “paragraphs 2, 3, 4 and 5” without indicating the article in which these paragraphs would be contained. Due to the logic of the bill and its context, we consider that the correct reference should be Article 9 of Executive Law Decree No. 33/1981 of the Ministry of Education.

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