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LAW NO.20,600 ON ENVIRONMENTAL COURTS

On June 28, 2012, Law No.20,600 that creates Environmental Courts was published on the Official Gazette.

Environmental Courts are superior tribunals, subject to the Supreme Court's supervision, in charge of hearing and deciding on environmental disputes. Special courts follow a national trend as to creating courts in charge of reviewing complex and technical matters. In doing so, courts are not composed only by lawyers but also by specialists in other areas of expertise. In this case, Environmental Courts are composed of two lawyers and a scientist specialist on environmental matters.

Law No.20,600 created three Environmental Courts with jurisdiction over the national territory: the first tribunal situated in Santiago1, the second on Antofagasta 2, and the third one in Valdivia 3. The first tribunal will start functioning six months after the publication of the Law, that is, on December 28, 2012; the other tribunals will start twelve months after such publication.

Environmental Courts will have exclusive jurisdiction over controversies of environmental nature, specially the following:

(i) Actions to obtain the restoration of the damaged environment4;

(ii) Reclamations against the Bureau of the Environment's decisions;

(iii) Authorize the most burdensome measures taken by the Bureau such as facilities temporary closure, functioning stopping and temporary suspension of environmental approvals;

(iv) Authorize measures taken by the Bureau to protect the environment for imminent damage;

(v) Authorize the most burdensome sanctions imposed by the Bureau such as facilities temporary or definite closure, and environmental approvals revocation;

(vi) Reclamations against the executive Director of the

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Environmental Assessment Service and the Committee of Ministers`s decisions taken within the scope of the Environmental Impact Assessment System; among others.

Among the innovations introduced by Law No. 20,600, it is worth noting the figure of the amicus curiae or “court’s friend”. This is a new institution in Chilean law by which any individual or legal entity, that is not a part of a judicial procedure, of a recognized professional and technical expertise over a matter being known by the court, may provide its expert opinion invoking the public interest.

In terms of procedure, Environmental Courts function as a “unique instance” since their decisions are subject to appellation in exceptional cases 5, and their final ruling is only subject to nullity actions before the Supreme Court in restrictive circumstances.

With no doubt, the creation of specialized courts to decide on environmental matters is by itself, a milestone in our judicial system. However, it also entails several consequences for projects since from the courts start on, the Bureau of the Environment’s supervision and sanctioning powers will start being operative.

The creation of courts specialized on environmental controversies was the result of a political agreement that allowed the restructuration of Chilean environmental authorities by Law No.20,417 of 2010 6. Considering the wide range of supervision and sanctioning powers granted to the newly created Bureau of the Environment, it was agreed the suspension thereof until specialized courts that could counterbalance such powers were created. After a two-year legislative discussion, Law No.20,600 comes to end such process.

For illustrative purposes, Law No.20,417 confers the Bureau exclusive powers to supervise the compliance with projects environmental approvals, the measures of decontamination and prevention plans, the content of quality and emission standards, and management plans. Likewise, it is granted with powers to take on preventive measures in case of imminent damage to the environment.

In terms of sanctions, they were substantially increased with respect to what was established by Law No.19,300 or Framework Law on the Environment7. As that, the Bureau may impose sanctions that range from reprimands in writing and fines of up to 10,000 UTA

(US$9,700,000 app.), to facilities temporary or definite closure, and the revocation of the environmental approval.

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1 The First Environmental Tribunal will have jurisdiction over the Regions of Arica, Tarapacá, Antofagasta, Atacama and Coquimbo.

2 The Second Environmental Tribunal will have jurisdiction over the Regions of Valparaíso, Metropolitan of Santiago, General Bernardo O'Higgins, and Maule.

3 The Second Environmental Tribunal will have jurisdiction over the Regions of Biobio, La Araucanía, Los Ríos, Los Lagos, Aysén and Magallanes.

4 As opposed as the system established by Law No.19,300 or Framework Law on the Environment, by which both the action to repair the damaged environment and to recover the monetary damages caused were known by the same tribunal, Law No.20,600 confers Environmental Courts a declarative function to determine the damage to the environment and the measures required for its restoration, being regular courts in charge of determine monetary damages.

5 There can be appellate only those Environmental Courts' decisions that do not admit the claim, the one that open a period to prove the parties' allegations, and the one that terminates the procedure.

6 Law No.20,417 creates the Ministry of the Environment, the Sustainability Council of Ministers, Environmental Assessment Agency and the Bureau of the Environment.

7 Currently, Law No.19,300 establishes that sanctions for non-complying with the Environmental Law range from reprimands in writing and fines up to 500 UTM (app US$40,000) to the revocation of the environmental approval.

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