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NEW DUCT LAW'S REGULATION AND TECHNICAL RULE

On April 23, 2018, Supreme Decree 167 of the Ministry of Transportation and Telecommunications (dated September 15, 2016), which regulates the ways and conditions to guarantee the freedom of choice in the contracting and receiving of telecommunications services in private estates, buildings and co-owned real estate (the "Regulation"), was published. Also, on April 27, 2018, Exempt Resolution 766 of Subtel (the Undersecretary of Telecommunications), which establishes the technical rule of the Regulation (the "Technical Rule"), was published.

The publication of both regulations is intended to enforce and apply the provisions of Law No. 20,808, which protects the freedom of choice of cable, internet and telephone services, also known as "Duct Law", by establishing the minimal conditions of construction and design that allow for free access to telecommunications services by owners or lessees of units in private estates or building projects, formed by multiple alienable or of exclusive ownership units, whether or not subject to the real estate co-ownership regime (such as buildings and condominiums), and by units in existing buildings.

Both regulations combine established regulatory and technical standards so the units located in the abovementioned projects may support multiple services from multiple telecommunications operators, in optimal quality and continuity conditions, allowing users to freely choose between them and, in the case of existing buildings or condominiums, their owners or lessees may choose between two or more operators. Thus, the main regulated matters may be summarized as follows:

• Registry of Real Estate Projects:

The Regulation requires the creation of a new web-based real estate project registry that telecommunications service providers can access for detailed information that will allow them to expand their networks to new users. Compliance with this registration will be a requirement for the municipal final approval of projects.

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• Telecommunications Project:

The regulations establish that real estate projects must include a telecommunications plan, that includes the design and construction of, “the necessary capacity for multiple telecommunications operators to provide their services to the relevant units of the private estate or building, under equal conditions…”. The plan must be verified by an authorized telecommunications planner, who will issue a report regarding the installations once the works are completed satisfactorily.

• Internal Telecommunications Network:

The Internal Telecommunications Network, which must be part of every telecommunications project and be dedicated exclusively to telecommunications services, is defined and regulated. Telecommunications service providers must make equitable use of such networks, without making alterations, interventions, hindering or obstructing other providers’ installations. Likewise, technical specifications are established for the internal network’s physical infrastructure and for telecommunications services with access to wired or wireless networks, in order to ensure appropriate services are available to users.

• Protocol for Access to Existing Buildings and Condominiums:

The regulations include a special regime for existing buildings and condominiums, due to the difficulties that requiring them to modify their internal telecommunications networks would have involved. Thus, use and access to shared installations, feasibility and procedures for installation or extension of internal and/or external telecommunications networks and dispute resolution were regulated.For example, they establish the right for every owner or lessee of a unit to require the administrator or owner to execute the necessary works in order to guarantee their right to choose between at least two providers in the contracting and reception of telecommunications services. In order to ensure that multiple options are available to customers, exclusivity agreements executed with a particular telecommunications provider are unenforceable against unit owners or lessees. When the access requires the performance of works over shared property, that qualify as an extraordinary shared expense, approval by an extraordinary meeting of co-owners would be required.

Likewise, new telecommunications services providers are guaranteed the right to use external installations of buildings and condominiums that allows their access regardless of the ownership and nature of the property over which such installations are located, to the extent that such use does not affect the provision of already existing services. In case of doubt regarding the feasibility of using such installations, the regulations require that potential new providers offer alternatives to solve or mitigate risks. If there is no agreement, whether for technical or economic reasons, the dispute must be submitted to ex aequo et bono arbitration.

The Regulation, as well as its Technical Rule, will enter into force on September 3, 2018, aiming to promote competition and participation of a larger number of telecommunications providers, in a market sector that was stagnant due to technical and contractual restrictions.

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