/Carey

March 2023

RELEVANT PUBLIC LAW ASPECTS OF THE COMPREHENSIVE AND PROGRESSIVE AGREEMENT FOR TRANS-PACIFIC PARTNERSHIP

On Tuesday, February 21, 2023, Decree Nº318/2022 of the Ministry of Foreign Affairs was published in the Official Gazette, enacting the "Comprehensive and Progressive Agreement for Trans-Pacific Partnership" (CPTPP), which has entered into force as of that date.

The treaty seeks to promote the economic integration of the parties, generating a common framework for trade policy, government procurement, intellectual property, electronic commerce, investment, among others.

In matters of public procurement and principles of transparency and anti-corruption, the treaty, in general, maintains the criteria that have been applied in Chile and that have support in our legal and constitutional regulations. However, regarding the regime of state-owned enterprises, some novelties are introduced that complement the standards that have been in operation in our country.

We can report the following relevant aspects:

Government Procurement- Regulated in Chapter 15 of the Treaty

• **Reaffirms** public bidding as the preferred method of State procurement, while maintaining the duty to justify the use of another mechanism to select the Government's co-contractor (Article 15.4.4).
• **Encourages** each procuring entity to publish annually a notice of its future procurement plans (notice of planned procurement) (Article 15.7.6).
• **Does not allow** a State Party to impose as a condition that a supplier must have previous work experience in the territory of the State (Article 15.8.2.a).
• **Maintains** different modalities of contracting with the State, depending on the nature of the object of the contract or the circumstances (public bidding, selective bidding, multiple use lists, and restricted bidding; the latter three are equivalent to private

This news alert is provided by Carey y Cía. Ltda. for educational and informational purposes only and is not intended and should not be construed as legal advice.

Carey y Cía. Ltda.
Isidora Goyenechea 2800, 43rd Floor.
Las Condes, Santiago, Chile.
www.carey.cl

bidding, framework agreement, and direct contracting, respectively) (Article 15.9).
• **Reinforces** transparency and motivation criteria regarding the procuring entity's decision to contract with a supplier (Article 15.9.10).
• **Allows** procuring entities to conduct negotiations in a public bidding process whenever they have expressed interest or no bid is obviously the most advantageous (Article 15.11).
• **Maintains** the criteria of awarding the contract to the supplier that submits the most advantageous bid, adding that, if price is the only criteria, the most advantageous bid will be the one that submits the lowest price (Article 15.15.4).
• **Encourages** the participation of SMEs in public procurement by facilitating the provision of information through electronic means and the bidding conditions free of charge (Article 15.21).

State-Owned Companies - Regulated in Chapter 17 of the Treaty

• **Maintains** the criteria that State-Owned Companies must operate under market conditions (Article 17.4).
• **Grants** jurisdiction to the courts of a State Party over civil claims against enterprises owned by a foreign government based on a commercial activity carried out in its territory (Article 17.5.1).
• **Prohibits** parties from causing adverse effects to the interests of another state through the non-commercial assistance they provide (Article 17.6.1) and from causing damage to its domestic industries (Article 17.8.1).

Transparency and Anti-Corruption - Regulated in Chapter 26 of the Treaty

• **Strengthens** transparency criteria with respect to both regulations and administrative procedures (Articles 26.2 and 26.3).
• **Maintains** tribunals and procedures to review and correct administrative acts (Article 26.4.1).
• **Affirms** efforts to eliminate bribery and corruption in international trade and investment (Article 26.6.1).
• **Ensures** that legal persons found responsible for crimes affecting international trade or investment shall be subject to effective, proportionate and dissuasive sanctions, criminal or non-criminal (Article 26.7.3).
• **Enhances** the role of civil society groups in preventing and

combating corruption (Article 26.10.1).
• **Encourages** internal audit and accounting controls of private companies by States (Article 26.10.2).

Authors: Ignacio Gillmore; Carolina Baeza