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Carey is Chile's largest law firm, with more than 270 legal professionals. The team is comprised of highly specialised attorneys covering all areas of law and providing advice to multinationals, international organisations and some of the most important local companies. Carey's renowned Litigation and Arbitration practice assists its clients with the resolution of complex civil and commercial lawsuits, conflicts between shareholders, insolvency and reorganisation of companies, environmental and sanction procedures, crimi-

nal trials, construction and disputes related to concessions, among others. The practice also has extensive experience in national and international commercial arbitrations under the most diverse international regulations, as well as in investment arbitration. Carey's judiciary practice is one of the largest in the country, with a group of lawyers dedicated exclusively to litigation. Key practice areas include commercial litigation, national and international arbitration, insolvency, and environmental litigation.

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1. General

1.1 General Characteristics of Legal System

Chile follows a civil law system strongly influenced by the Spanish and French legal systems, specifically by the Napoleonic Code model.

Generally, judicial proceedings are adversarial and have been evolving from a system based on written submissions to one centered on oral arguments. Currently, criminal, labour, tax, and family procedures are based on oral arguments, whereas civil litigation remains essentially as a written system, except for oral arguments before the Court of Appeals and the Supreme Court.

1.2 Structure of Country's Court System

All courts and judicial agencies branch out from a single Judicial Power, forming a hierarchical system led by the Supreme Court, organised by territorial divisions and subject matter jurisdictions. The Supreme Court, located in Santiago and divided into four specialised courtrooms on a subject matter basis, has the directive, correctional and economical supervision of most courts (except, for example, the Constitutional Court). It has national jurisdiction and also acts as a Court of Cassation.

There are several regional circuits covering the territory, which internally include different court hierarchies. First instance courts may include one or more districts and in more populated districts are divided according to the matter over which they exercise jurisdiction (civil, family, criminal and labour law), whereas in rural or less populated areas they tend to exercise jurisdiction over various matters.

Courts of Appeal, on the other hand, are located in the main cities of the country (17 in total), acting as second instance courts in most matters when parties challenge the judgments of trial courts (exception: antitrust or constitutional matters).

We can also find courts with limited or special jurisdiction over certain matters, such as military, tax, antitrust and environmental issues, among others, and some governmental agencies that exercise jurisdiction as first instance courts in matters of their competence.

1.3 Court Filings and Proceedings

Court records are public in civil and commercial matters, whereas family proceedings and preliminary criminal investigations are kept private (except for the parties). For civil and commercial proceedings, public court records are accessible not only in the court where the proceeding is substantiated, but also on the official website of the Judicial Branch, with no procedure for protecting court filings and proceedings in general from public disclosure. Exceptionally, parties can request that the court limit public access to the court file,

and both the parties and third parties can refuse to exhibit documents that contain secret or confidential information. In some special proceedings, such as before the Antitrust Court, parties may request to not disclose part of documents that contains confidential information.

1.4 Legal Representation in Court

In general terms, it is required that any person who must appear in court in his own name or as the legal representative of another, must do so in the manner determined by law. A person who appears in court on behalf of another, in the performance of a mandate or in the exercise of a position requiring a special appointment, must exhibit the title that proves his representation.

If a foreign lawyer wants to practice as a lawyer in Chile, he/she must first carry out a validation process, regardless of the length of time that the assignment or work is expected to last. If the degree has been obtained in a country that has an international treaty with Chile regarding this matter, a process of recognition must be initiated before the Ministry of Foreign Affairs. If not, the degree must be revalidated at the University of Chile. In both cases, it is also necessary to obtain a subsequent habilitation by the Supreme Court, which must grant the title of lawyer. The foregoing does not include foreign lawyers who, like any other professionals, are hired to provide advisory services given their experience, skills and/or knowledge.

2. Litigation Funding

2.1 Third-party Litigation Funding

The issue of third-party funding is not regulated. As there are no particular rules or limitations on third-party funding, not being prohibited either by law for the parties or ethically for the attorneys, it is a permissible practice. However, there are no known cases where third-party funding has been involved.

2.2 Third-party Funding of Lawsuits

Considering that the subject matter is not regulated in Chile, in principle, all types of claims would be available for third-party funding. However, there are currently no professional funders in the Chilean market.

2.3 Third-party Funding for Plaintiffs and Defendants

Third-party funding is available to both the plaintiff and defendant. Please refer to **2.1 Third-party Litigation Funding**, above.

2.4 Minimum and Maximum Amounts of Third-party Funding

As there are no regulations on the matter, there is no minimum or maximum amount a third-party funder would fund. The matter would be open to negotiation.

2.5 Third-party Funding of Costs

As indicated above, there are no professional funders in Chile, and the practice is still relatively unknown.

2.6 Contingency Fees

Contingency/conditional fee arrangements are permissible. This is a matter that can be privately regulated in an attorney-client agreement.

2.7 Time Limit for Obtaining Third-party Funding

As Chile does not have applicable regulation on the matter of third-party funding, there are no time limits in this regard.

3. Initiating a Lawsuit

3.1 Rules on Pre-action Conduct

In general terms, no pre-action conducts or steps are required to file a lawsuit. It is not mandatory to issue or respond to a pre-action letter, or engage in alternative dispute resolution.

However, in civil litigation, to file an action for damages against a private health provider, the claimant must submit to a mediation process (even though it is not binding). The same pre-requirement is asked in the labour and family law fields. It is also not uncommon for pre-action letters to be exchanged in a commercial setting.

3.2 Statutes of Limitations

In Chilean law, the statute of limitations provides a substantive defense to a claim. There are several statutes of limitations that apply depending on the class of action and on a subject matter basis. Contract claims generally have a five-year statute of limitations counted from the date on which the obligation becomes enforceable, whereas torts have a four-year period counted from the date the offence occurred. It must also be noted that the statute of limitations in the case of requesting an enforcement proceeding is either one or three years, depending on the nature of the title. Also, commercial disputes generally have a statute of limitations of four years.

However, special rules apply, so a case-by-case analysis is always recommended. In family matters, for example, some actions have a one-year time bar. The statute of limitations is a defense which may be waived and cannot be imposed ex officio. Finally, there are special short-term statutes of limitations for collecting taxes and certain fees.

3.3 Jurisdictional Requirements for a Defendant

Chilean law allows both individuals and legal entities to be defendants subject to suits.

Because the Chilean Civil Procedure Code does not contemplate any specific rule that indicates the capacity required to be part of a trial, it is necessary to resort to the general rules, which allow one to conclude that the defendant has to be liable under the law, the legal ability of a person to acquire rights being sufficient. Thus, the general rule is that everyone is liable under the law, with some specified exceptions (ie, individuals with mental health issues, minors under the age of 18).

If the claimant directs his claim against a legal entity, the lawsuit must be duly served to its legal representative.

3.4 Initial Complaint

The initial complaint submitted by the plaintiff must be made in writing, and must comply with the following requirements set forth in Article 254 of the Chilean Civil Procedure Code, including:

- identification of the court where the claim is filed;
- name, address and profession of the plaintiff and the persons that represent him, and the nature of such representation;
- name, address and profession of the defendant;
- facts and legal grounds of the claim; and
- the petitions submitted to the court.

In effect, the claim must include a precise and chronological statement of all relevant facts and the law applicable to the case. In Chile, practitioners usually do not file documents along with their submissions but present all or most evidence at a later stage, during the evidentiary term.

The pleadings can be amended by the claimant in two exceptional cases: (i) once the claim has been served and before the defendant's response, the claimant can enlarge and amend the initial claim, but this enlarged or amended claim must be notified to the defendant, and the period to respond to the claim will begin on the date of this service of notice; (ii) if the defendant has responded the complaint, the claimant is not permitted to substantially change or modify the main cause of action of the trial, and can only enlarge and amend his action accessorially in the rejoinder.

3.5 Rules of Service

Chilean civil proceedings begin with the filing of an initial claim and its service of notice, which is carried out by court officials called *receptores*, but paid by the interested party. The period of time in which the notice must be served depends on the statute of limitations applicable to the case, and the service will act as an interruption to the statute of limitations.

In general terms, the first notice must be served in person. Exceptionally, the claim may be notified to the defendant's address under the following conditions: (i) the address of the defendant must be confirmed; (ii) the receptor must have sought the defendant at his address on two different days; and (iii) it must be confirmed that the defendant is in the jurisdiction where the proceeding takes place.

However, if the defendant's address is hard to locate, or the number of defendants complicates the serving of the claim, this objective may be achieved by means of service by publication (ie, by publishing the notice in a newspaper).

In the case that the party to be sued is outside of the court's jurisdiction, the notice must be made through a rogatory letter. Regarding lawsuits that affect parties located outside of Chile, the method of notification is governed by the laws of the country in which it should be carried out.

In any case, the defendant is entitled to dispute the court's jurisdiction through dilatory or preliminary objections, either in terms of subject matter or territory. However, this type of defense must be presented within the legal term available to respond to the claim (ie, to submit the statement of defense), and before taking any other action in the proceedings. In an ordinary proceeding, this objection must be resolved before any other issue and will suspend the proceeding until a decision is reached. In summary proceedings, on the other hand, this defense can be resolved in the final ruling, along with the other claims.

3.6 Failure to Respond to a Lawsuit

In the case of a civil claim, the Chilean justice system adopts the posture of the *ficta litis contestatio*, meaning that if the defendant does not respond to a lawsuit the facts will be deemed denied in what is considered a fictional response to the claim. If the defendant has been properly notified and refuses to appear or respond, the proceedings will continue with the absent defendant being automatically notified of each decision, with the possibility of a final and valid ruling being reached in this manner. However, the plaintiff has the burden of proving all the facts asserted in his claim, as the defendant's silence is not considered to imply a confirmation of the facts alleged by the claimant. The defendant can appear subsequently during the proceedings but will have to accept everything that has occurred up to the point of his intervention.

Different rules apply in the case of summary proceedings, where in the absence of the defendant from the first hearing and if plausible grounds are presented, the plaintiff may request provisional granting of the claim. Faced with the resolution that gives provisional access to the claim, the defendant may choose to appeal the resolution or to formulate opposition, but this does not suspend the enforcement of the resolution.

3.7 Representative or Collective Actions

Chilean law allows collective suits for specific matters, being first introduced into national legislation in 2004 for consumer protection (Law 19.946 of Consumer Protection). This proceeding has then been applied to other matters, such as unfair competition (Law 20.169 on Anti-Trust), and quality of construction (DFL 458 of Urban Planning and Construction).

The court must declare the admissibility of the collective action, when the following requirements are met: (i) the action has been deduced by a legitimised person to present this type of claim; (ii) the behaviour that is claimed affects a collective or diffuse interest.

In the case of consumer rights, an additional requirement exists, which demands that the potential number of affected consumers justify, in terms of costs and benefits, the procedural or economic need to submit their processing to the special proceeding for the protection of the collective or diffuse interest of consumers. The persons entitled to exercise consumer collective actions are: (i) the National Consumer Service; (ii) a consumer association; (iii) a group of consumers (at least 50 people) affected by the same interest.

The recent reform to the Anti-Trust Law made the proceeding for collective actions regulated in the Consumer Protection Law applicable to compensation claims for antitrust infractions, a matter that was also handed over to the jurisdiction of the Chilean Antitrust Court.

3.8 Requirement for a Costs Estimate

On this matter there are no legal requirements. However, in ethical terms, the Chilean Bar Association has issued certain rules in this regard, urging the negotiation of professional fees with the client in a free and fair manner, as soon as possible and making them appear in writing, without abusing their position of privilege to the detriment of the client, as well as obtaining an improper advantage from the possible situation or state of vulnerability.

As for the estimate of expenses, it is stated in the Chilean Bar Association's Code of Ethics that the lawyer must provide a reasonable estimate of the expenses that the client will incur, and if the expenses necessary for the development of the assignment exceed their initial estimate, the lawyer may not incur them without the client's authorisation.

4. Pre-trial Proceedings

4.1 Interim Applications/Motions

Under the Chilean Civil Procedure Code, it is possible to request an interim relief before trial. These injunctions are remedies usually used to prevent threatened injury, maintain the status quo, or preserve the subject matter of the litigation

during trial. The requesting party should show the urgency of the measure (*periculum in mora*) and enough evidence to sustain a *prima facie* case (*fumus boni iuris*). A bond shall be requested by the court, to cover damages resulting from an excessive or unjustified request.

4.2 Early Judgment Applications

The defendant can make a motion to dismiss at an early stage of the trial based only on certain procedural grounds such as settlement between the parties, lack of jurisdiction, statute of limitations, *lis pendens*, and *res judicata*.

The motion must be filed before or along with the defendant's response, parties can present evidence, and the court shall decide through an interlocutory judgment. This judgment can be appealed before the court of appeals but will not suspend its enforcement.

4.3 Dispositive Motions

Usually, defendants make dispositive motions based on procedural grounds such as settlement between the parties, lack of jurisdiction, statute of limitations, *lis pendens*, and *res judicata*.

4.4 Requirements for Interested Parties to Join a Lawsuit

According to the Chilean Civil Procedure Code, an interested party can file a motion to join an ongoing litigation in order to support the claimant or defendant's case, or an independent interest diverse from that of the original parties. A third party can also join ongoing proceedings, opposing original parties' interests. In all those cases, the third party should accept the current status of the proceedings.

In general, in order for a motion to join to be granted, the requesting party should prove his supportive, opposing or independent interest in relation to the interests of the original parties.

The final judgment issued by the court will have the same effects for the original parties as well as for the joint parties.

4.5 Applications for Security for Defendant's Costs

Generally, a defendant cannot file a motion to obtain a sum of money from the claimant as a security for the defendant's costs. However, if a claimant requests interim relief before the trial starts, a security bond shall be requested by the court to cover damages suffered by the opposing party resulting from an excessive or unjustified request.

4.6 Costs of Interim Applications/Motions

Under the Chilean Civil Procedure Code, the party that was completely defeated shall bear all litigation costs, including those related to interim motions. Nonetheless, courts may exempt a losing party from the payment of costs if they consider that it has litigated in good faith.

4.7 Application/Motion Timeframe

A party can request a motion on an urgent basis, explaining in the submission the grounds of such urgency. Particularly, in the case of interim reliefs requested before trial, courts usually take less time to resolve.

5. Discovery

5.1 Discovery and Civil Cases

Generally, discovery is not available in civil cases in the broad way that is permitted in common law countries (eg, England & Wales, Australia).

However, the Chilean Civil Procedure Code allows a party to request to the future opposing party certain evidence in order to prepare for the trial, such as affidavits related to the capacity of the future opposing party or production of documents in connection with the litigation. Also, parties may request the filing of certain evidence that is at risk of disappearing – for example, witness testimony and expert reports.

In both cases, the requesting party shall point out the future claim and briefly explain its grounds, as well as the need for the evidence requested to start the proceedings. Courts can only grant requests related to evidence specifically established in the Chilean Civil Procedure Code.

5.2 Discovery and Third Parties

It is not possible to obtain discovery from third parties not named as a future claimant or defendant.

However, it is possible to obtain documents from a third party during the trial, but only if the documents whose exhibition is requested are directly related to the case and are not secret or confidential.

5.3 Discovery in this Jurisdiction

Pre-trial discovery is not available in Chile except in certain cases explained in **5.1 Discovery and Civil Cases**, above.

During the proceedings, a party can obtain evidence from the opposing party by means of requests for production of documents, requests for admissions and depositions. In the case of production of documents, there are no detailed rules that govern disclosure, but only a general rule that mandates that documents whose exhibition is requested must be directly related to the case and not be secret or confidential.

5.4 Alternatives to Discovery Mechanisms

In civil litigation, after the discussion period (when the parties submit their written submissions) comes the evidence stage. During this stage, parties need to present all of their evidence, except documents that can be filed before, along with the written submissions.

A list of witnesses should be presented to the court within the first five days of the evidence stage. Their testimony will be taken in oral hearings at a later stage before a court's official, but not before the judge. Also, parties can present expert witness reports, which will have the same weight as a witness testimony.

Courts may appoint an independent expert if so requested. The expert will report directly to the judge and will file his report at a later stage during the trial.

The adversary must appear for personal deposition if so requested on a closed-ended questionnaire. Failure to appear at the deposition allows the judge to reach a negative inference on all topics covered by the questionnaire.

It is important to note that the Chilean Civil Procedure Code determines what evidence may be considered and the amount of importance that courts must afford to each of them. In other words, judges are forced to assess evidence according to the rules given by the Chilean Civil Procedure Code, and inobservance makes the final judgment void.

5.5 Legal Privilege

Chile recognises the concept of legal privilege. It is mainly covered in the Ethic Code of the Chilean Bar Association, the Chilean Civil Procedure Code, and the Chilean Criminal Code.

The most exhaustive regulation is contained in the Ethic Code of the Chilean Bar Association, which establishes the protection of all communications between the attorney and his or her clients from being disclosed without the permission of the client. This protection includes work product (Article 64). However, it should be noted that this regulation is mandatory only for attorneys who are members of the Chilean Bar Association (membership of which is voluntary).

On the other hand, the Chilean Criminal Code establishes as a criminal offence the disclosure of information protected by professional attorney-client privilege.

There is no distinction between external and in-house counsel.

5.6 Rules Disallowing Disclosure of a Document

In Chile, there are no other rules that allow a party to not disclose a document.

6. Injunctive Relief

6.1 Circumstances of Injunctive Relief

Under the Chilean law, it is possible to request an interim relief before trial and during the proceedings. These injunc-

tive reliefs are remedies usually used to prevent threatened injury, maintain the status quo, or preserve the subject matter of the litigation during trial. The requesting party should show the urgency of the measure (*periculum in mora*) and enough evidence to sustain a *prima facie* case (*fumus boni iuris*).

According to the Chilean Civil Procedure Code, injunctions available are open-ended and there is no taxative list. Nevertheless, the most common injunctions include freezing assets, protection of evidence, and desist orders related to certain contracts.

6.2 Arrangements for Obtaining Urgent Injunctive Relief

There are no specific rules on how quickly an injunctive relief can be obtained in urgent cases, only a rule that states that a party may obtain an interim relief without evidence for ten days based on urgent reasons.

6.3 Availability of Injunctive Relief on an Ex Parte Basis

It is possible to obtain injunctive relief on an ex parte basis in Chile.

6.4 Applicant's Liability for Damages

The requesting party can be held liable for damages suffered by the opposing party only if the injunction was requested before trial and the requesting party does not file a claim later on.

The applicant that requests interim relief before trial must pay a security bond to cover damages suffered by the opposing party resulting from an excessive or unjustified request.

6.5 Respondent's Worldwide Assets and Injunctive Relief

In Chile, it is not possible to obtain injunctive relief against a respondent's worldwide assets.

6.6 Third Parties and Injunctive Relief

An injunctive relief can be obtained against third parties if the object of the claim is in its possession. Also, an injunctive relief will affect third parties if it is included in a public record (real estate) or if the third party knew about the injunction (other goods).

6.7 Consequences of a Respondent's Non-compliance

The usual consequence if a respondent fails to comply with the terms of an injunction, such as freezing assets or issuing a desist order, is the annulment of the contract through which the respondent failed to comply.

7. Trials and Hearings

7.1 Trial Proceedings

In civil and commercial cases, proceedings are conducted mainly in writing. Hearings are exceptional and limited only to a few procedural measures. Generally, in civil proceedings, hearings are applied to evidentiary procedures, such as witness examination, and the naming and cross-examination of court experts. However, in superior courts the proceedings are mostly composed of oral arguments.

7.2 Case Management Hearings

Criminal, labour and family cases include a preliminary hearing that satisfies the purpose of filtering evidence and preparing the case for trial.

In civil proceedings, it is common for the court to summon the parties to a conciliation hearing, so that the judge may propose some settlement bases to facilitate an amicable settlement, thus avoiding the economic and procedural costs of a longer trial. As stated by the law, the court must summon the parties to conciliation once the discussion procedures have been exhausted, as long as there are facts on which evidence must be given. It constitutes an abnormal method of concluding the trial, because in response to the conciliation produced, by direct agreement of the parties, the trial does not end by the issuance of the final judgment. The conciliation initiative comes from the court, but the parties materialise it, specifying its content and scope.

7.3 Jury Trials in Civil Cases

Under Chilean legislation, jury trials are not available for any type of action or subject matter.

7.4 Rules That Govern Admission of Evidence

In Chile, civil proceedings are governed by a non-inquisitorial principle, which means that the parties bear the main burden of proof, and must provide all the evidence that they consider appropriate. Exceptionally, courts may order certain evidence *ex officio*.

The enumeration of means of evidence that the law makes is taxative – outside of those mentioned there are no others to prove a fact in trial. The Chilean Civil Procedure Code regulates the admissibility of the various means of evidence and its evidentiary value. The law specifically regulates the way evidence must be produced before courts for it to be effective.

All of these rules constitute the so-called rules of evidence, that outline which means of evidence are available, how they should be enforced in court, their evidentiary value, how judges must assess the evidence, and the preference that must be given to each of them when several are presented in the same trial.

7.5 Expert Testimony

Under Chilean law, in certain cases expert testimony is mandatory for the resolution of the case, while in other cases it is optional for the court to order it.

It is optional in the following cases: (i) when there are facts for which special knowledge of a science or art is needed in order to conduct an assessment; and (ii) when it is necessary to know the law regarding any foreign legislation. As a general rule, Chilean law cannot be proven by these means.

Expert testimony can be ordered *ex officio* in any stage of the trial, but the parties can only request it within the evidentiary period. In addition, parties may submit expert reports which will have the value of documentary evidence, and the experts who signed those reports must appear before the court as witnesses.

7.6 Extent to Which Hearings are Open to the Public

Although in civil proceedings hearings are private, the transcripts are included in judicial records which are open to public. In superior courts, on the other hand, oral arguments are public but no transcripts are available.

7.7 Level of Intervention by a Judge

The Chilean civil procedure system is governed by the dispositive principle, by virtue of which the parties are entrusted with both the encouragement of the judicial function and the contribution of the materials on which the judge's decision must be based. Thus, the intervention of the judge during a hearing or trial is minimal, he/she playing a passive role during the proceedings. As civil proceedings are conducted mainly in writing, in general most judgments or decisions will be reserved for the final verdict.

7.8 General Timeframes for Proceedings

Civil proceedings are generally lengthy, taking between four and six years on average if the second instance and the filing cassations before the Supreme Court are included. Before first instance courts, the trial may take up to three years, and up to another three years in the second instance; remedies before the Supreme Court may take from six to 12 months. This problem operates as an obstacle to the smooth-running operation of justice.

8. Settlement

8.1 Court Approval

During the proceedings, parties may settle directly without the court's approval by means of a contract. Alternatively, parties may file an agreement subject to the court's approval or the court itself can assist the parties in reaching a settlement.

8.2 Settlement of Lawsuits and Confidentiality

A settlement will be confidential only if it is reached directly between parties without the intervention of the courts. Otherwise, it will be public.

8.3 Enforcement of Settlement Agreements

Settlement agreements are binding contracts or final judgments – depending on the intervention of the tribunal – and therefore should be enforced as such in later proceedings.

8.4 Setting Aside Settlement Agreements

A settlement agreement may be set aside on the same grounds as any other agreement through civil proceedings seeking annulment of the agreement.

9. Damages and Judgment

9.1 Awards Available to a Successful Litigant

A judgment may award to a successful claimant or counter-claimant the declaration of a certain legal situation or right, specific performance, damages, or an injunction.

9.2 Rules Regarding Damages

There are no punitive damages available. The Chilean Civil Code has a comprehensive system of damages, including actual and expectation damages.

9.3 Pre- and Post-judgment Interest

In contract law, a successful party may collect interest before a judgment is entered from the date that the obligation becomes due and payable until the effective respondent's payment.

In torts, there is a debate as to when interest may be collected. Some lawyers hold that interest can be collected from the date that the damage was caused, while others state that collection may only begin following the date of the legal notice of the claim.

9.4 Enforcement Mechanisms for a Domestic Judgment

Domestic judgments may be enforced before the same judge that issued the decision or by another judge that ruled on a later litigation. The court should assist in the enforcement, with liquidation of sums, application of fines, and ordering police assistance if necessary.

9.5 Enforcement of a Judgment From a Foreign Country

A foreign judgment would be recognised and enforced by the courts of Chile without re-examination of the issues under the following circumstances:

- if there is a treaty with the country where the court which has rendered the judgments sits, such treaty will be applied;
- if there is no such treaty, the foreign judgment would have in Chile the same force which such foreign nation extends to judgments from Chilean courts;
- if the foreign judgment has been rendered by the courts of a country which does not enforce the judgments of Chilean courts, such judgment will not be enforced in Chile; and
- if the above provisions cannot be applied, foreign judgments would have the same force in Chile as the judgments of Chilean courts, although the procedural laws to which the proceedings of the case would have been subject to in Chile will not be taken into consideration.

In addition, foreign judgments would be recognised provided that they do not contain anything contrary to the laws and the public policy of Chile, that they are not in conflict with the national jurisdiction, that the defendant has been duly served process of the action or complaint and has not been prevented from availing itself, due to circumstances beyond its control, of its means of defense, and that the judgment is final and conclusive under the law of the country that the judgment comes from.

10. Appeal

10.1 Levels of Appeal or Review Available to a Litigant Party

The general rule in Chilean law is that most decisions issued by first instance courts are appealable before hierarchically superior courts, unless the law expressly denies this possibility. In most cases, the first instance court will continue to hear the case until its termination, including the enforcement of the final judgment. Exceptionally, the jurisdiction of the lower court will be suspended.

Aside from small claims, decisions issued by the courts of appeal generally may be challenged before the Supreme Court, under the limited “*Casación*” system, following the French model. The cassation is granted to annul a judgment only in the cases expressly indicated by law.

10.2 Rules Concerning Appeals of Judgments

In the case of the ordinary appeal, a generic requirement has been established for its filing, which is that at least one of the parties has been aggrieved as a result of the court's ruling. As a general rule, final and interlocutory judgments issued at first instance are appealable, and the appeal must be filed before the court that issued the ruling so that it is known by the hierarchically superior court.

Regarding the request for cassation, the requirements for its admissibility are much stricter, and will only proceed when

the cases expressly indicated in the law are verified. This extraordinary appeal remedy is of two types: (i) cassation in the merits, and (ii) cassation in the form. The request for cassation must be filed by the aggrieved party within the legal term before the court that has issued the judgment that is trying to be invalidated and before the court who must know of it according to the law.

10.3 Procedure for Taking an Appeal

The notice of appeal must be filed within the legal term of five days since the decision was duly served to the party filing the appeal. This term will be increased to ten days in the case of final judgments. The notice of appeal shall contain both the factual and legal grounds on which it rests and the specific petitions formulated. In oral proceedings the appeal may be formulated verbally, as long as the factual and legal grounds are indicated briefly and concrete requests are formulated, all of which shall be noted in the respective record.

For requests for cassation, the legal term is within 15 days after the date of notification of the judgment that is being appealed, except for minimum amount proceedings for which the legal term is five days. In case both types of “*casaciones*” want to be interposed, they must be filed simultaneously and in the same document, and for these purposes they will be processed and viewed together and resolved in the same ruling. If the appeal in the form is granted, the appeal in the merits will be deemed not presented.

10.4 Issues Considered by the Appeal Court at an Appeal

Ordinary appeals constitute the second instance in Chilean legislation, which means that the court that knows about it can appreciate the facts and the law freely, with very few limitations. This remedy makes possible the interposition of other resources, since it is the main manner to prepare the cassation appeal in the correct form; it is also linked to the cassation appeal in the merits, as it proceeds against non-appealable final judgments.

The general rule in civil matters is that the court of second instance cannot extend beyond what has been appealed nor can the second instance judgment be turned against the appellant, unless there is adhesion to the appeal. The Courts of Appeal may admit that the parties present evidence that they have not produced in the first instance, but witness testimony will only be allowed when it has not been rendered in said instance and regarding facts that do not appear in the produced evidence and that are considered by the court as strictly necessary for the successful resolution of the trial.

10.5 Court-imposed Conditions on Granting an Appeal

The court cannot impose any condition on granting an appeal, it can only verify that the legal requirements are fulfilled.

10.6 Powers of the Appellate Court After an Appeal Hearing

After hearing an appeal, appellate courts may grant or reject the appeal. In case the appeal is granted, the second instance court should issue a new judgment overruling the challenged decision. The general rule in civil matters is that the second instance court cannot extend beyond what has been appealed. There are, however, certain exceptions to this general rule:

- the court of second instance may hear all the defenses that were rejected in first instance and on which the judgment issued by the lower court has not been pronounced because of their incompatibility with the ones granted;
- the court can make declarations *ex officio* that, according to the law, are mandatory even when the appealed decision does not contain them (for example, its absolute incompetence, absolute nullity, implication, etc);
- the court can invalidate *ex officio* a judgment that does not contain all the decisions it should have; and
- when there is no decision regarding a claim or defense, the court can send the file back to the first instance court for the judge to complete the decision.

11. Costs

11.1 Responsibility for Paying the Costs of Litigation

Under the Chilean Civil Procedure Code, the party that was completely defeated shall bear all litigation costs, including court and attorney’s fees. Nonetheless, courts may exempt a losing party from the payment of costs if they consider that it has litigated in good faith.

A court’s official liquidates court and attorney’s fees to determine the cost that the defeated party must pay. This liquidation can be challenged before the court.

11.2 Factors Considered When Awarding Costs

Courts can only consider one factor established in the Chilean Civil Procedure Code when awarding costs, which is that the party that was completely defeated shall bear all litigation costs – otherwise, costs will be distributed between both parties. Also, if the court considers that the defeated party litigated in good faith, costs will be shared as well.

11.3 Interest Awarded on Costs

Interests are not part of the cost but are included in the amount of damages awarded.

12. Alternative Dispute Resolution

12.1 Views on ADR in this Jurisdiction

The use of alternative dispute resolution (ADR) mechanisms in Chile has increased greatly the last few years. Parties often include mediation in their agreements and arbitration clauses, which are legally binding and enforceable. At the same time, Chilean law has progressively incorporated opportunities for compulsory ADR – especially mediation – as a way to promote amicable solutions between parties and avoid court litigation.

However, there is no doubt that the most popular ADR in Chile is arbitration, which has grown along with the most important arbitral institution: the Arbitration and Mediation Centre of the Santiago Chamber of Commerce (CAM Santiago).

12.2 ADR Within the Legal System

The Chilean system promotes ADR mainly through private institutions and state agencies which provide mediation and arbitration supporting services. There is a mandatory conciliation hearing in civil litigation and compulsory mediation in some procedures, such as family law, labour law and tort claims brought by patients against health providers. The sanction if parties fail to comply with the mandatory mediation is that they cannot bring a future claim in connection with the dispute that should have been mediated.

It is important to point out that there is a new regulation – Law No 21.044 – which requires that disputes related to public concessions be arbitrated before a technical expert panel first, and then before an arbitral tribunal.

12.3 ADR Institutions

There are various well-organised and prestigious mediation and arbitration centres in the country. The most well-known institution is CAM Santiago – the Arbitration and Mediation Centre of the Santiago Chamber of Commerce (www.camsantiago.cl) – which also acts as an ICC representative in Chile.

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13. Arbitration

13.1 Laws Regarding the Conduct of Arbitrations

Chile has a dualist arbitration system. Domestic arbitration is regulated by the Chilean Civil Procedure Code and the Chilean Code of Court Organisation. International arbitration is covered by the International Commercial Arbitration Act (Ley 19.971), which closely follows the UNCITRAL Model Law from 1985.

Annulment, recognition and enforcement of foreign arbitral awards shall be made pursuant to Ley 19.971 and the New York Convention, of which Chile is a signature party. Recognition for foreign awards must be sought at the Supreme Court, following the exequatur proceedings, as in the case of foreign judgments. Domestic and international awards shall be enforced in courts, following the same procedure applicable to domestic judgments.

13.2 Subject Matter not Referred to Arbitration

There are some subject matters that are not arbitrable under Chilean law. Those matters are mainly related to family law, labour and consumer rights protection disputes.

13.3 Circumstances to Challenge an Arbitral Award

One of the main features of the Chilean International Commercial Arbitration Act (“ICA Act”) is the limited judicial intervention of the domestic courts over the arbitration proceeding, which means that remedies and grounds to challenge a foreign arbitral award are very limited. In fact, Article 34 of the ICA Act provides that the motion for annulment is the only method for setting aside an award, inhibiting the parties from using other remedies that are usually applied in domestic procedures to challenge awards.

13.4 Procedure for Enforcing Domestic and Foreign Arbitration

Domestic and international arbitration awards shall be enforced in courts, following the same procedure applicable to domestic judgments. The claimant should file a motion to enforce the award before a domestic court, requesting an order to freeze enough assets to pay the sum contained in the award or to force the respondent’s specific performance. The respondent can file a response only invoking certain defenses specified in the Chilean Civil Procedure Code. Evidence may be presented by the parties. The court should assist in the enforcement, with liquidation of sums, application of fines, and ordering police assistance if necessary.