

Private Equity

Contributing editor
Bill Curbow



2017

GETTING THE
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Private Equity 2017

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Bill Curbow

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Formation and terms operation

1 Forms of vehicle

What legal form of vehicle is typically used for private equity funds formed in your jurisdiction? Does such a vehicle have a separate legal personality or existence under the law of your jurisdiction? In either case, what are the legal consequences for investors and the manager?

Vehicles typically used in Chile as private equity funds are public investment funds (ie, local closed-end investment funds with shares listed in a local stock exchange (public funds)) and private investment funds (ie, local closed-end unlisted investment funds (FIPs)), both of which are regulated by Law No. 20,712 (the Funds Law).

FIPs are different from public funds because they are not subject to the Chilean Securities and Insurance Commission (SVS) supervision and have less than 50 shareholders that are not 'members of the same family' (those who maintain among them a certain degree of consanguinity or affinity relationship, and entities directly or indirectly controlled by each of those people are considered members of the same family).

Funds in Chile do not have a separate legal personality. However, a fund constitutes a separate estate, a pool of assets different to the assets of the management company (the Chilean equivalent to the general partner) and the assets of the individuals or entities that hold participation in it. Public funds and FIPs may be managed by the 'general funds administrators' (AGF), a special corporation that requires prior authorisation to be incorporated and to act as fund manager, while FIPs can also be managed by an unregulated closely held corporation (an FIP administrator), which does not require prior authorisation, but only to comply with certain reporting obligations with the SVS.

AGFs are subject to the following special rules:

- they need to be organised as special corporations for the unique corporate purpose of managing third party funds;
- they are subject to the provisions that regulate public corporations and are supervised by the SVS;
- they must include 'general funds administrator' in their names;
- they need to maintain a paid capital of at least 263 million Chilean pesos;
- they must issue a guarantee in favour of each of its managed funds to guarantee the fulfilment of its obligations; and
- after the lapse of one year starting from the authorisation for incorporation, AGFs must manage at least one operating fund with an equity of at least 263 million Chilean pesos and at least one institutional investor or 50 shareholders.

Investors are only responsible for the payment of their respective shares in the fund. AGFs and FIP administrators are responsible for their management decisions with respect to the funds.

2 Forming a private equity fund vehicle

What is the process for forming a private equity fund vehicle in your jurisdiction?

Public funds

A public fund is formed by the AGF by passing a resolution by its board of directors approving the by-laws of the fund. Once the by-laws have been approved by the board of directors of the AGF, the by-laws, along with other documentation established in SVS regulations, must be deposited in the SVS's Public Registry of Funds' By-laws.

The by-laws regulate, in general terms, the legal relation between the AGF, the fund and the shareholders. It must regulate the liquidity policy, the voting policy, the investment policy, the expenditure policy and the diversification policy of the fund.

Once the by-laws have been deposited in the mentioned registry, the shares issued by the public fund are deemed as registered before the SVS and, therefore, may be publicly offered in Chile.

FIPs

An FIP is formed by either an AGF or an FIP administrator by passing a resolution by its board of directors approving the by-laws of the FIP with no further formalities. However, a copy of the fund's by-laws is usually recorded with a Notary Public for certainty and evidence.

3 Requirements

Is a private equity fund vehicle formed in your jurisdiction required to maintain locally a custodian or administrator, a registered office, books and records, or a corporate secretary, and how is that requirement typically satisfied?

Management companies of funds must be corporations duly incorporated under the laws of Chile, with a registered office or domicile in Chile (needed for taxation purposes) and with corporate books and records (shareholders' register, minute books, etc). Management companies, as with every corporation, must have at least two shareholders. Additionally, FIPs and public funds need a registered office or domicile in Chile (which is normally the management company's domicile) and books and records, which are kept by the management company.

After the formation of a fund, the management company shall request a local tax ID for the fund from the Chilean internal revenue service.

4 Access to information

What access to information about a private equity fund formed in your jurisdiction is the public granted by law? How is it accessed? If applicable, what are the consequences of failing to make such information available?

Public funds

AGFs must disclose material information regarding themselves and the public funds they manage (along with information about the main characteristics of the public funds and their series of shares), truthfully, sufficiently and promptly, to the public fund's shareholders and the public in general.

Material information is such information that a person of good judgment would consider important for his or her investment decisions.

This information is delivered to the SVS and automatically posted on the SVS's website. Therefore, it is possible to check online public funds' by-laws, financial statements, material information, shareholders' register, etc.

The SVS may apply sanctions to AGFs for breach of disclosure obligations. Those sanctions include censure, fines of up to 394 million Chilean pesos (or higher amounts in case of relapse), and revocation of the AGF authorisation of existence.

FIPs

Although FIP administrators are reporting entities before the SVS, they do not have an obligation to disclose information about the FIPs they manage to the public in general. The information they are compelled to send to the SVS is only related to the identification of the FIP and its shareholders, the value of the contributions made by the shareholders to the FIP and the value of the FIP's assets. Additionally, the SVS may request further information to the management company in order to supervise compliance with the Funds Law in different matters.

5 Limited liability for third-party investors

In what circumstances would the limited liability of third-party investors in a private equity fund formed in your jurisdiction not be respected as a matter of local law?

In Chile, by general rule, management companies and funds' shareholders are not liable for funds' obligations. Chilean law does not expressly permit to disregard the limited liability of the fund to reach its management company or shareholders. Moreover, the 'pierce of the corporate veil' theory has been applied by courts in Chile only with respect to corporations, and in just a few exceptional cases (cases of fraud or abuse of right that has produced damages against a third party). However, since Chile is governed by civil law, such precedents are not binding for any court.

6 Fund manager's fiduciary duties

What are the fiduciary duties owed to a private equity fund formed in your jurisdiction and its third-party investors by that fund's manager (or other similar control party or fiduciary) under the laws of your jurisdiction, and to what extent can those fiduciary duties be modified by agreement of the parties?

Management companies conduct the management of each fund they manage under the name of such fund, at its shareholders' risk, and subject to the rules that specifically apply to each kind of fund.

Regarding public funds, responsibility for funds management is non-transferable. However, AGFs may grant special powers of attorney or engage external services (outsourcing) for the execution of certain acts, contracts or activities that may be deemed necessary for their business.

AGFs, as well as their directors, officers, managers and main executives, have a duty of care in relation to the management of a public fund. According to such duty, the Funds Law prescribes that they shall act with the degree of care ordinarily employed by people in their own businesses, in order to achieve the objectives set forth in the public fund's by-laws.

In addition to the duty of care, there is a duty of loyalty in relation to the management of a public fund. The management of a public fund must be carried out for the benefit of that fund, and every transaction related to the fund's assets must be made in the best interest of the fund.

These duties are defined by law and shall not be modified by agreement of the parties.

Regarding FIPs, although these fiduciary duties are not expressly imposed by law to FIP administrators, it could be said that they embody principles that should apply to the management of FIPs too, unless expressly modified or limited in the by-laws of the FIP.

7 Gross negligence

Does your jurisdiction recognise a 'gross negligence' (as opposed to 'ordinary negligence') standard of liability applicable to the management of a private equity fund?

As stated in question 6, the standard of liability applicable to the management of public funds and FIPs is an ordinary negligence standard.

8 Other special issues or requirements

Are there any other special issues or requirements particular to private equity fund vehicles formed in your jurisdiction? Is conversion or redomiciling to vehicles in your jurisdiction permitted? If so, in converting or redomiciling limited partnerships formed in other jurisdictions into limited partnerships in your jurisdiction, what are the most material terms that typically must be modified?

Some additional issues and requirements related to public funds and FIPs include the fact that funds cannot directly invest in water rights, industrial or intellectual property rights, mining concessions, real estate and vehicles of any kind. Additionally, they cannot directly develop commercial, industrial, real estate, mining, agricultural, exploration, exploitation or extraction of assets of any kind, insurance, reinsurance or intermediation activities or any other business involving the direct development of an industrial, professional, commercial or construction activity by the fund and in general, any activity directly developed by the fund different to investment or its complementary activities.

Additionally, the Funds Law requires that within a year from the incorporation of an FIP the FIP must have at least four unrelated shareholders each owning at least 10 per cent of the fund's shares (unless an institutional investor owns at least 50 per cent of the fund); and the management company and its related entities must not have more than 20 per cent of the fund's shares.

Chile does not permit the conversion or redomiciling of vehicles incorporated in other jurisdictions into Chilean public funds or FIPs.

9 Fund sponsor bankruptcy or change of control

With respect to institutional sponsors of private equity funds organised in your jurisdiction, what are some of the primary legal and regulatory consequences and other key issues for the private equity fund and its general partner and investment adviser arising out of a bankruptcy, insolvency, change of control, restructuring or similar transaction of the private equity fund's sponsor?

The Funds Law does not have any provision related to change of control or restructuring of the management company of a fund. However, once a change of control of an AGF has occurred, normally such event is informed by the AGF to the SVS and the public at large as a material event notice.

In the case of bankruptcy of an AGF, the fund's audit committee must call for a shareholders' meeting in order to elect a new AGF for the public fund or resolve its dissolution and liquidation.

Further, bankruptcy, insolvency, change of control, restructuring or similar transactions affecting shareholders of the fund may have adverse effects on the fund as a whole, by preventing the fund from meeting some of the requirements prescribed in the Funds Law for public funds and FIPs, for example the requirements related to the number of shareholders or dispersion of shareholders. If the mentioned shareholders' requirements are not met, the Funds Law prescribes different sanctions, such as the dissolution and liquidation of the fund (in the case of public funds) or tax consequences (in the case of FIPs).

Regulation, licensing and registration

10 Principal regulatory bodies

What are the principal regulatory bodies that would have authority over a private equity fund and its manager in your jurisdiction, and what are the regulators' audit and inspection rights and managers' regulatory reporting requirements to investors or regulators?

Public funds and AGFs are subject to SVS supervision. The SVS is responsible for overseeing compliance with laws, regulations, by-laws and other provisions that govern public funds and AGFs. Some of the SVS main audit and inspection rights are as follows:

- the right to review all of the transactions, assets, books, archives, accounts and documents of the supervised entities or activities and request the information and explanations it deems necessary for the fulfilment of its duties;
- the right to request the execution and submission of financial information whenever it deems necessary;
- the right to request any document, book or information necessary for supervision purposes;
- the right to audit persons or entities subject to its supervision; and
- the right to summon administrators, representatives, employees and advisers of supervised entities or persons to declare regarding any information the SVS deems necessary for its surveillance duties.

FIPs are not subject to SVS supervision, but FIP administrators have disclosure requirements and the SVS has the right to request information related to the fulfilment of legal regulation related to FIPs, public offerings and operations between FIPs and public funds managed by the same management company.

Apart from the audit and inspection rights granted to the SVS, other regulatory bodies involved in the inspection of public funds and FIPs are the Chilean Internal Revenue Service, the Financial Analysis Unit, the Chilean Central Bank and the Chilean Economic Development Agency (CORFO).

11 Governmental requirements

What are the governmental approval, licensing or registration requirements applicable to a private equity fund in your jurisdiction? Does it make a difference whether there are significant investment activities in your jurisdiction?

As mentioned, AGFs need an authorisation for incorporation issued by the SVS and, in addition, whenever they decide to incorporate a public fund, they must deposit the public fund's by-laws in the Public Registry of Funds' By-laws maintained by the SVS.

There are no government approvals, licensing or registration requirements for FIPs, but it is necessary for their management companies, if they are not AGFs, to be registered before the SVS as reporting entities.

It is important to consider that public funds and FIPs focused on venture capital may apply for financing programmes created by CORFO. These programmes offer resources in the form of long-term lines of credit to investment funds focused on companies in early stages or later venture capital stages.

Finally, there are no differences in Chile relating to the volume of the investment activities performed by the fund. Foreign funds investing in Chile will be deemed as foreign entities and subject to the same treatment as any other foreign investor. Raising capital in Chile by foreign funds shall be conducted privately (within the boundaries of the regulation of private offering of securities) or after registering such offering with the SVS.

12 Registration of investment adviser

Is a private equity fund's manager, or any of its officers, directors or control persons, required to register as an investment adviser in your jurisdiction?

Currently, no such registration requirements exist according to Chilean law.

However, commencing in July 2018, directors, officers, executives and managers working for AGFs will be required to take an accreditation exam measuring their knowledge in investment matters related to AGFs and public funds (regulation, risk management, economic and financial concepts, among other matters).

Chilean stock markets will be responsible for keeping a public registry listing the accredited individuals who pass the exam and achieve accreditation certificates.

13 Fund manager requirements

Are there any specific qualifications or other requirements imposed on a private equity fund's manager, or any of its officers, directors or control persons, in your jurisdiction?

For AGF requirements, see questions 1 and 3. For specific qualifications imposed on AGFs' officers, directors or control persons, see question 12.

14 Political contributions

Describe any rules – or policies of public pension plans or other governmental entities – in your jurisdiction that restrict, or require disclosure of, political contributions by a private equity fund's manager or investment adviser or their employees.

Private funding of election campaigns and political contributions in Chile is subject to the provisions of Law No. 19,884, which was amended in 2016. Since 2016, no legal entities with legal personality (apart from the state of Chile and political parties) can make political contributions. Therefore, AGFs and FIP administrators are not entitled to make political contributions.

Regarding political contributions made by individuals (investment advisers or employees of the management company), general limitations on political contributions apply. Briefly, there are limitations related to the amount of the political contributions and disclosure requirements. Additionally, foreign individuals and entities are not entitled to make political contributions (except for foreigners duly authorised to vote in Chile).

15 Use of intermediaries and lobbyist registration

Describe any rules – or policies of public pension plans or other governmental entities – in your jurisdiction that restrict, or require disclosure by a private equity fund's manager or investment adviser of, the engagement of placement agents, lobbyists or other intermediaries in the marketing of the fund to public pension plans and other governmental entities. Describe any rules that require a fund's investment adviser or its employees and agents to register as lobbyists in the marketing of the fund to public pension plans and governmental entities.

Lobbying activities in Chile are subject to the provisions of Law No. 20,730 (the Lobbying Act). According to the Lobbying Act, there are no specific rules or policies regarding the marketing of private equity funds to government entities or public pension plans.

Regarding lobbying, the general rules prescribed in the Lobbying Act apply to funds and management companies, as well as their agents, advisers and employees. In general terms, these rules aim to regulate the disclosure of lobbying and other private interest management activities, mainly by creating several public registries with information regarding meetings, audiences, gifts and travel, performed, given, made or received by certain specific public authorities.

16 Bank participation

Describe any legal or regulatory developments emerging from the recent global financial crisis that specifically affect banks with respect to investing in or sponsoring private equity funds.

The Chilean General Banking Law (Decree with Force of Law No. 3) lists all of the transactions in which banks can be directly involved. According to such list, banks cannot directly invest in or sponsor public funds or FIPs.

However, banks are expressly authorised to have, as a subsidiary, an AGF managing public funds.

There are no significant developments on this matter emerging from the recent global financial crisis.

Taxation

17 Tax obligations

Would a private equity fund vehicle formed in your jurisdiction be subject to taxation there with respect to its income or gains? Would the fund be required to withhold taxes with respect to distributions to investors? Please describe what conditions, if any, apply to a private equity fund to qualify for applicable tax exemptions.

According to Chilean tax law, public funds and FIPs are not considered as 'taxpayers', therefore, they are not levied with corporate tax on their received or accrued profits.

Notwithstanding the above, management companies are legally obliged to act on account and on behalf of the funds they manage, being lawfully required to comply with all administrative and tax obligations on their behalf, including the obligation to withhold, declare and pay taxes imposed on distributions made to their non-resident shareholders.

There are important exemptions in the case of capital gains earned by non-resident or resident shareholders of public funds having stock exchange presence (public funds frequently traded in the stock exchange), selling their shares in stock exchanges authorised by the SVS. If all the requirements prescribed by law are met, these capital gains are deemed non-taxable income.

18 Local taxation of non-resident investors

Would non-resident investors in a private equity fund be subject to taxation or return-filing requirements in your jurisdiction?

As a general rule, non-resident investors in public funds and FIPs are subject to withholding taxes on taxable profit distributions made to them by the fund and capital gains obtained by them from the sale of their fund shares.

Taxable profits distributions

As a general rule, non-resident shareholders are subject to a 35 per cent withholding tax on the taxable profit distributions made to them by a fund, with a tax credit for 65 per cent of the corporate tax paid by such profits at the level of the fund's portfolio companies, if any (tax credit can be 100 per cent of the corporate tax if the non-resident shareholder is resident in a country with which Chile has a valid treaty to avoid double taxation). However, non-resident shareholders of public funds are subject to a 10 per cent sole tax on the taxable profit distributions made to them by the fund, without any tax credit.

The corporate tax rate is 25.5 per cent in 2017 and 27 per cent from 2018 onwards.

Capital gains

As a general rule, non-resident shareholders are subject to a 35 per cent withholding tax on the capital gain obtained from the sale of its shares in a fund. Non-resident shareholders of public funds are subject to a 10 per cent sole tax on the capital gain obtained from the sale of its shares.

Capital reductions or liquidations qualify as non-taxable income. However, all cash flows must follow the imputation rules set forth in article 14B of the Chilean Income Tax Law (article 1 of Law Decree No. 824 of 1974), according to which distributions shall be firstly allocated to taxable income and then to non-taxable income.

Non-resident shareholders of public funds and FIPs are not required to file tax returns for taxable profit distributions, but they are required to file an annual tax return in the case of capital gains.

19 Local tax authority ruling

Is it necessary or desirable to obtain a ruling from local tax authorities with respect to the tax treatment of a private equity fund vehicle formed in your jurisdiction? Are there any special tax rules relating to investors that are residents of your jurisdiction?

It is not necessary to obtain a ruling from local tax authorities with respect to the tax treatment of public funds or FIPs. However, it might be desirable or useful if there are doubts about the applicable taxes to the specific transaction.

20 Organisational taxes

Must any significant organisational taxes be paid with respect to private equity funds organised in your jurisdiction?

There are no significant organisational taxes to be paid with respect to public funds or FIPs organised in Chile.

21 Special tax considerations

Please describe briefly what special tax considerations, if any, apply with respect to a private equity fund's sponsor.

Managing fees payable to management companies are generally subject to a 19 per cent value added tax (VAT), which is a tax that applies to habitual sales of moveable assets and services. However, the Funds Law establishes a VAT exemption for the part of the fee corresponding to non-resident shareholders.

Additionally, management companies' income derived from management fees or carried interests is subject to general taxation rules. Therefore, as management companies must be incorporated as corporations, they are subject to corporate tax plus final taxes when distributed to its shareholders.

In terms of situations in which the sponsor is one of the fund's shareholders, see question 18.

22 Tax treaties

Please list any relevant tax treaties to which your jurisdiction is a party and how such treaties apply to the fund vehicle.

Currently, Chile is a party to tax treaties with the following nations: Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Colombia, Croatia, the Czech Republic, Denmark, Ecuador, France, Ireland, Italy, Japan, Korea, Malaysia, Mexico, New Zealand, Norway, Paraguay, Peru, Poland, Portugal, Russia, South Africa, Spain, Sweden, Switzerland, Thailand and the United Kingdom.

Apart from these, Chile is a party to tax treaties with the United States and Uruguay. These treaties, however, have only been signed and are not yet in force as they are awaiting approval by the respective nations.

It is not clear whether tax treaties apply to public funds and FIPs as these are not considered as 'taxpayers'. However, the existence of a tax treaty will allow a non-resident shareholder of an FIP to use 100 per cent of the corporate tax as a tax credit for the payment of its withholding tax (instead of 65 per cent of the corporate tax paid, as stated in question 18).

23 Other significant tax issues

Are there any other significant tax issues relating to private equity funds organised in your jurisdiction?

One relevant tax issue related to public funds and FIPs is the special tax regime for funds meeting the following requirements:

- (i) for at least 330 continuous or discontinuous days during the year, 80 per cent of the fund's total value comprises the following:
 - foreign assets or securities, or both;
 - securities issued abroad by non-resident persons or entities; or
 - derivative contracts or similar agreements; and
- (ii) the fund's by-laws establish the following:
 - an investment policy consistent with the requirement established in (i); and
 - the obligation to distribute all the Chilean-source income, unless it is withholding exempted income.

If such requirements are met, foreign-source taxable profit distributions made by the fund to its non-resident shareholders will be tax free. Income arising from assets located in Chile will be levied according to the rules described above.

Selling restrictions and investors generally

24 Legal and regulatory restrictions

Describe the principal legal and regulatory restrictions on offers and sales of interests in private equity funds formed in your jurisdiction, including the type of investors to whom such funds (or private equity funds formed in other jurisdictions) may be offered without registration under applicable securities laws in your jurisdiction.

Offers and sales of FIP shares can be carried out by any means not involving a public offering. According to Chilean law, public offering is an offering that is addressed to the public in general or to certain specific categories or groups thereof. There is no need for registration under any applicable securities law in order to make private placements of FIPs shares.

Public funds, on the contrary, as publicly traded funds, need to deposit their by-laws in the SVS Public Registry of Funds' By-laws before making any public offering of their shares and are also required to list their shares in a stock exchange.

Regarding the type of investors to whom a fund is offered, public funds may be focused on the public in general or on qualified investors (who are, in general terms, investors fulfilling the requirements defined by the SVS in relation to market knowledge, transaction frequency and assets).

25 Types of investor

Describe any restrictions on the types of investors that may participate in private equity funds formed in your jurisdiction (other than those imposed by applicable securities laws described above).

As stated in question 24, some public funds may be focused specifically on qualified investors. In such cases, only individuals or entities that meet the SVS's requirements to be considered as qualified investors may participate as shareholders in such funds.

Apart from this restriction, the Funds Law does not include restrictions to participate in private equity funds (either formed as public funds or FIPs). However, there are specific restrictions imposed on certain entities. As an example, Chilean banks cannot directly invest in public funds or FIPs and there are also several restrictions for Chilean pension fund administrators (AFPs) to invest in private equity funds, although recent reforms are increasing the possibilities for AFPs to invest in private equity funds.

26 Identity of investors

Does your jurisdiction require any ongoing filings with, or notifications to, regulators regarding the identity of investors in private equity funds (including by virtue of transfers of fund interests) or regarding the change in the composition of ownership, management or control of the fund or the manager?

As mentioned in question 4, FIP administrators are compelled to send to the SVS information about any change in the composition of its ownership or management, as well as information about the identification of the FIP's shareholders and the value of the contributions made by them to the FIP. Finally, the SVS may request additional information to the FIP administrator in order to supervise compliance with the Funds Law in different matters.

Regarding public funds, it is also mandatory for AGFs to send information to the SVS regarding the identification of public funds' shareholders. Such information is made available by the SVS to the public in general through its website. Additionally, AGFs must send to the SVS and disclose to the public in general any material information regarding themselves and the public funds they manage. As information concerning changes in the composition of AGFs or public funds' ownership, management or control is likely to be considered as material

information, AGFs will likely be compelled to send such information to the SVS, which in turn will make such information available to the public in general through its website.

27 Licences and registrations

Does your jurisdiction require that the person offering interests in a private equity fund have any licences or registrations?

The Funds Law prescribes that the placement of public funds' shares may be made directly by the AGF or by securities agents or stockbrokers meeting the suitability and knowledge requirements established by law and the SVS (minimum age, capital and studies, registration in the SVS's register of securities agents and stockbrokers, guarantees, etc).

FIPs' shares are not publicly traded securities. Therefore, their shares are subject to private placements and there is no need for a special licence or registration for those who conduct the placement of their shares.

28 Money laundering

Describe any money laundering rules or other regulations applicable in your jurisdiction requiring due diligence, record keeping or disclosure of the identities of (or other related information about) the investors in a private equity fund or the individual members of the sponsor.

Anti-money laundering matters in Chile are mainly regulated by Law No. 19,913 (the AML Law). According to the AML Law, the Financial Analysis Unit (UAF) is the government agency responsible for the surveillance of compliance with the AML controls under such law and the UAF's general instructions.

AGFs are reporting entities according to the AML Law. Reporting entities are compelled to report to the UAF any suspicious operations or transactions they may detect in the conduct of their activities, and must maintain special registries of, and report such to the UAF, any cash transactions exceeding US\$10,000 or the equivalent in local currency, for at least five years.

For the purposes of such reporting obligations, AGFs must appoint a reporting officer who must submit suspicious transaction reports and cash transactions reports to the UAF.

Finally, AGFs shall develop compliance programmes aimed at preventing money laundering activities. Such compliance programmes must include the appointment of a compliance officer, a compliance manual including the AGF's anti-money laundering policies (eg, due diligence processes, ethical conducts, etc) and training sessions for all the AGF's employees.

Exchange listing

29 Listing

Are private equity funds able to list on a securities exchange in your jurisdiction and, if so, is this customary? What are the principal initial and ongoing requirements for listing? What are the advantages and disadvantages of a listing?

Public funds are essentially publicly traded funds. Therefore, public funds' shares must be listed in a stock exchange once the respective public fund's by-laws have been deposited by its AGF in the SVS's Public Registry of Funds' By-laws. Listing shares of public funds in the Chilean stock exchange does not impose major requirements beyond those imposed by the SVS.

FIPs are essentially private investment vehicles and hence FIPs' shares may not be publicly offered and therefore, are not able to be listed on a Chilean securities exchange.

30 Restriction on transfers of interests

To what extent can a listed fund restrict transfers of its interests?

Regarding public funds, although the extent of a permitted restriction on the transfer of shares is not completely clear, a conservative approach to this issue dictates that normal restrictions on the transfer of shares of a public fund are not permitted under Chilean law (the Funds Law

regulation prescribes that AGFs are compelled to register in the shareholders' register 'any transfer of shares submitted to them'). Further, because public funds are listed, when transfers are executed through a stock exchange, restrictions based on the type of investor are difficult to ensure before the closing of the transaction (once the identity of the counterpart of the transaction is known).

On the contrary, regarding FIPs, these restrictions are permitted to be included in their by-laws and are commonly used.

Participation in private equity transactions

31 Legal and regulatory restrictions

Are funds formed in your jurisdiction subject to any legal or regulatory restrictions that affect their participation in private equity transactions or otherwise affect the structuring of private equity transactions completed inside or outside your jurisdiction?

Apart from possible limitations included in each fund's by-laws, there are no legal or regulatory restrictions affecting public funds or FIPs' participation in private equity transactions.

32 Compensation and profit-sharing

Describe any legal or regulatory issues that would affect the structuring of the sponsor's compensation and profit-sharing arrangements with respect to the fund and, specifically, anything that could affect the sponsor's ability to take management fees, transaction fees and a carried interest (or other form of profit share) from the fund.

There are no legal or regulatory issues affecting the managing company for its compensation structure or profit-sharing arrangements.

The Funds Law only prescribes that, if the compensation of the management company is directly paid by the fund's shareholders, the payment shall be made by them at the time of the contribution or at the time of the redemption of the shares.

However, if the public fund or FIP has applied to any of the financing programmes offered by CORFO, there are limitations on the amount of the management companies' management fees. Additionally, any carried interest to which the management company is entitled, shall be paid at the time of the liquidation of the fund, after the principal and interests of the financing programme loan from CORFO have been paid, as well as the contributions made by the shareholders to the fund.

In the case the sponsor is one of the fund's shareholders, there are no legal or regulatory issues affecting its profit-sharing arrangements but, again, if the public fund or FIP has applied to any of the financing programmes offered by CORFO, on each occasion upon which the fund pays out dividends to its shareholders, it shall at the same time pay CORFO an amount equal to the amount that results from multiplying the debt to fund investment ratio by the amount paid out to the shareholders.

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