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The 'Trends & Developments' sections give an overview of current trends and developments in local legal markets. Leading lawyers analyse particular trends or provide a broader discussion of key developments in the jurisdiction.

Trends & Developments

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Managing partner **Jaime Carey** co-heads the tax group. In addition to tax matters he specialises in mergers and acquisitions, financing and general corporate law. Member of the International Bar Association (IBA). He has previously held the positions of Chair of the Latin American Forum and Co-Chair of the Corporate and M&A Section, and is presently Member of the Taxation Committee, Member of the Management Board, Treasurer of the IBA and Treasurer of the Legal Practice Division of the IBA. He is a frequent lecturer in legal seminars, meetings and conferences both in Chile and abroad.



Partner **Pablo Iacobelli** co-heads the corporate/mergers & acquisitions group. His practice is focused on the areas of corporate law, mergers and acquisitions, joint ventures, securities, foreign investment and insurance. He is a frequent lecturer in legal seminars, meetings and conferences both in Chile and abroad.



Partner **Salvador Valdés** co-heads the corporate/mergers & acquisitions group. He represents Chilean and international clients in mergers and acquisitions, joint ventures, financings, securities offerings, derivatives transactions, and corporate restructurings. Valdes has expertise in the acquisition and restructuring of infrastructure projects related to water utilities, toll roads, healthcare and energy projects.



Partner **Cristián Eyzaguirre** co-heads the firm's corporate/mergers & acquisitions/capital markets group. His practice consists chiefly of representing local and foreign clients in various kinds of mergers and acquisitions transactions, including tender offers, private equity and asset acquisitions, joint ventures, securities regulation and corporate governance. He has had articles published in a number of periodicals.

Carey is Chile's largest full-service law firm. The firm has a leading M&A practice that has been involved in many of the major M&A deals in Chile in the last two decades. Lawyers advise international clients looking to do business in Chile and are notable for their experience in international business issues and cross-border transactions. Many of Chile's largest companies and institutions also number among the firm's clientele.

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Political Overview

After a four-year centre-right government headed by Mr Sebastian Piñera and following a sweeping electoral victory, on 11 March the centre-left wing candidate and former President Ms Michelle Bachelet returned as President of Chile for a new

term. With a majority in both legislative chambers, she has announced several bills to implement her programme, including an ambitious tax bill and very complex educational reform. At the same time, her coalition is in the process of securing consent for a broad constitutional reform, which includes radical changes to the election system.

Despite having a majority in the legislative bodies, the magnitude of these reforms has forced the Government to obtain a broader consensus that should lead to further discussion and thus more moderate changes.

The coming years will be a period of important changes for Chile, with great opportunities for local and foreign investors to make the best of the new scenario that will be faced by the country.

Market Conditions

Although the forecasts for the Chilean economy for 2014 and 2015 have decreased (the GDP growth forecast as surveyed by the Central Bank of Chile in July was 2.9 for 2014 and 3.8 for 2015, with a slight increase in inflation and in unemployment), there is still relevant activity in connection with mergers and acquisitions due to several factors: (i) consolidation processes in certain industries, such as fishing and banking (ie, the merger between Corpbanca Bank and Itaú Bank); (ii) opportunities due to the relative weakness of the Chilean peso compared to the US dollar (making Chilean assets' price more attractive for foreign investors); and (iii) companies with financial difficulties but good fundamentals, among others. Likewise, a foreseeable shortfall of energy supply opens up opportunities for investors in the generation and transmission of energy fields, with several projects currently under development and construction.

The backdrop of such M&A activities remains a country with a stable regulatory framework and solid institutions. Chile continues to offer an attractive business environment; it was the first South

American economy to join the OECD, is party to dozens of free trade agreements (including with the United States, the European Union, Mexico, South Korea and Brazil), and has one of the strongest reputations in the region for business development. All of the aforementioned make Chile a strong player and highly sophisticated platform for investment in Latin America.

Tax Reform

Currently, a tax reform bill is being discussed in Congress, and is expected to become law in September 2014. The stated goals of this reform are to collect an additional USD8.2 billion of revenue to invest in education and to improve income distribution among Chileans. If enacted, the tax reform would be the most substantive tax law change of the past 30 years in Chile. Some of the changes in connection with corporate tax, dividends paid to non-resident tax payers, capital gains and the ability to fund investments in Chile with shareholder-loan structures are discussed below.

According to the bill, Corporate Tax will increase from the current 20% to 27%, progressively over four years. The taxable basis of corporate income tax is to be broadened. Goodwill in excess of the fair market value of assets will not be amortisable (currently it can be amortized over ten years). Furthermore, taxpayers may choose between the above-mentioned regime, and an integrated regime with a corporate tax rate of 25%, but taxed on an accrual basis at the shareholder's level (or an "attributed" basis, using the Tax Reform terminology).

Dividends paid to non-resident shareholders will be levied a 35% tax, less a tax credit generally for 65% of the corporate income tax rate.

Capital gains realised by resident individuals or non-resident taxpayers on the disposition of shares in Chilean companies may presently qualify for a sole capital gains tax of 20%. The proposed bill eliminates this benefit, and levies the capital gain with personal tax and withholding tax, as applicable, from 2017. In the case of resident individuals, the personal income tax rate would be equal to the taxpayer's average marginal rate over the investment holding period, and in the case of non-residents, a 35% withholding tax.

The Tax Reform proposal restricts the ability to fund investments in Chile with shareholder-loan structures that currently qualify for a reduced 4% (v 35%) withholding tax on interest payments: the 3:1 debt-to-equity limit would be tested on the aggregate of related-party and third-party debt (currently, only related-party debt is counted); the 3:1 debt-to-equity limit would be tested annually, in lieu of a one-off test that is currently applied upon the disbursement of each loan; and the 35% surtax is levied, in addition to interest, on all charges and fees linked to excessive indebtedness. The new thin-capitalisation rules will enter into force in 2015.

Merger Control

Chile does not have a mandatory pre-merger control notification system. In October 2012 the National Economic Prosecutor's Office (FNE) issued the "Internal Concentration Operation Guidelines" (the Guidelines), establishing a voluntary proceeding before the FNE and certain thresholds for the FNE's internal review using the Herfindahl-Hirschman Index (a transaction that does not exceed certain thresholds will have no potential antitrust effect). Although the Guidelines are not mandatory, recently they have been used as the basis for voluntary filings requesting the Antitrust Court's (TDLC) clearance for certain transactions, and the initiation by the parties to such transactions of voluntary proceedings before the FNE. We foresee that such voluntary filings before the FNE (based on the Guidelines) will be common until Chile enacts a mandatory pre-merger control filing, which is one of the recommendations of the latest report from the OECD on "Assessment of Merger Control in Chile" published in July 2014.

Changes to the Insolvency Rules

In October of 2014 the current bankruptcy law will be replaced by a new statute that creates a new reorganisation and liquidation regime for both corporations and natural persons. The main purposes of this new act are: (i) to ease the negotiation and approval of the debtor's reorganisation agreements; (ii) to improve the creditors' recovery rate in insolvency procedures, creating a more effective and efficient procedure; and (iii) to regulate the effects of cross-border insolvency procedures. This new law favours reorganisation over liquidation; in pre-

bankruptcy agreements protection for the debtor during the reorganisation process will increase.

Also, for the first time in Chile, regulations regarding cross-border insolvency have been adopted, providing as a general principle that all creditors, Chilean or foreign, shall have the same rights regarding an insolvency proceeding and with respect to creditor participation in those proceedings. These new provisions will undoubtedly be of help for foreign investors, as they facilitate the cooperation between the insolvency institutions and courts of Chile and foreign countries.

New Law on Funds

In May 2014 a new statute (the Unified Law on Funds) came into effect to strengthen Chile's position as a platform for the management of financial assets across the region. The new regulation provides a common framework and simplifies the legislation on investment funds, mutual funds and investment funds of foreign capital in order to simplify and make their legal and regulatory framework consistent.

The Unified Law on Funds includes tax incentives, such as a tax exemption for foreign nationals investing in funds that hold more than 80% of their assets outside Chile, as well as mechanisms to reimburse value added tax paid by foreign nationals in Chile.

Private Equity

In recent years, private equity in Chile has grown significantly: as of the end of 2012, there were approximately 37 investment funds with estimated investments of USD600 million, and 24 management firms. Seventeen of these funds are private equity funds with investments of about USD342.6 million, and 20 funds correspond to venture capital funds with investments of about USD256.8 million.

New players entered the market and others consolidated their interest in the country with new acquisitions. Among the new sponsors that have arrived is Actis, an international firm that focuses its investments in Africa, Asia and Latin America. Actis invested USD290 million in Aela Energía, Chile's largest wind and solar energy project, which is projected to increase the country's renewable energy capacity by 3.6%.

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The bigger players are managed both by foreign entities (such as Advent or CVC) and by some regional players (such as Linzor Capital Partners or Southern Cross Group). Other key sponsors in the country are Blackstone, Quilvest, Brookfield, KKR, Danaher, Bain, Altor and Partners Group. These funds use local feeder funds to raise capital,

mainly from institutional investors. Other key local players include Aurus, BTG Pactual, Larraín Vial, Independencia, IM Trust and Moneda Asset Management. The size of most funds (private equity and venture capital) is between USD15 million and USD40 million.

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