

Construction and Projects: Overview (Chile)

by [Rafael Vergara](#), [Oscar Aitken](#), [Juan Francisco Mackenna](#), [Juan Pablo Stitchkin](#), [Manuel Alcalde](#), [Manuel José Barros](#), [Juan Pablo Vukasovic](#), [Eduardo Alcaíno](#), [Santiago Aitken](#), [Alan Blanche](#), [Santiago Edwards](#), and [Isidora Villalobos](#), [Carey](#)

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This Practice Note gives an overview of construction and projects law and practice in Chile.

In an evolving construction and projects sector, practitioners must frequently navigate a complex list of regulations and negotiate contractual arrangements. To do this, they must stay up-to-date with the latest developments and be aware of the various procurement arrangements, transaction structures, and financing options.

This note is intended to provide a guide to these issues in Chile, considering the main trends, major projects, and common practices within the local and international construction markets. It discusses the usage of standard forms of contracts, the allocation of risks, and summarizes the legal framework governing employment, health and safety, and environmental issues.

Each project is individual and will require consideration of its own specific issues. This note is therefore intended to be a starting point for a practitioner in this area and does not replace the need for consultation with local legal advisers.

Construction and Projects Sector Overview

Main Trends

The main trends in construction and projects over the last few years continue to be the development of desalination plants projects, and in the last year, either new mining projects or existing mine expansion projects.

In addition, there has been an increasing number of battery energy storage system (BESS) projects, which have attracted investment as a supplement to solar and wind turbine generator projects.

Major Projects

The most significant deals by volume are:

- Energy projects.
- Desalination projects.
- Public private partnership projects (such as highways).

Some of the most relevant projects in these fields are:

- Desalination plant for the mining process of Radomiro Tomic (Codelco) with a maximum production capacity of 1,956 liters per second (l/s).
- Desalination plant for both industrial use and drinkable water on Quintero's bay, with a maximum production capacity of 1,000 l/s (Patria).
- The construction of the Chacao bridge which will join the island of Chiloé with the continent and will be the longest suspension bridge on South America at a total of 2,750 metres.
- Minera Centinela's expansion project, Proyecto Nueva Centinela, which involves, among other related infrastructure, the construction of a new concentration plant (with a nominal capacity of 95,000 tons of ore per day), which is expected to increase copper production by 144,000 tons per year and extend the mine's life for at least 30 years.
- The Minera Los Pelambres operational adaptation project for increasing its desalinization capacity so that over 90% of the water used in the mining process is desalinated or recirculated water. It also considers a new concentrate transport system.
- The development of Minera Arqueros Project, located in Coquimbo Region, which involves the construction of a new underground mine, a concentration plant with a capacity of 1.8 million tons per year, and a tailing deposit.
- The development of Piscicultura Canal de Chacao (Cermaq), a salmon plant under a recirculating aquaculture system in the Los Lagos Region, whose production is estimated at 14 million smolts per year.

Common Procurement Arrangements

Local Projects

Most local projects are structured between a developer (owner) and a contractor (a single company or a construction firm) under:

- Pure construction arrangements, under which the owner provides the design and the contractor performs the procurement and construction.
- Engineering, procurement, and construction (EPC) schemes, under which the employer hires a contractor to provide all design, materials, and construction services.

Most contracts are structured as a turnkey lump sum, in which the contractor takes the project to completion for a fixed price. However, depending on the nature of the project, they might be structured differently, such as:

- Design and supply, under which the contractor provides the design and procurement, but does not perform any construction work.
- Balance of plant contracts, under which a contractor provides all work other than certain specific tasks, such as supply of main equipment.

Engineering, procurement, and construction management contracts (EPCM) are also common, particularly in mining projects. Under EPCM contracts, a contractor is engaged to provide design services, procurement activities (as owner's agent), and construction management of the owner's contractors (as an agent).

Less common (but growing in importance) are build, own, operate, and transfer contracts (BOOTs). Under BOOTs contracts, private parties enter into contracts for the contractor to build (at its own risk) a project, operate it for a certain period, and then transfer it to the owner.

Finally, some companies are evaluating the use of collaboration agreements.

International Projects

International projects usually have a full EPC lump sum structure, due to the requirements of international project finance. However, in the last few years, we have seen exceptions to this general rule where some projects have been structured with multiple contracts and under different procurement structures.

Common Transaction Structures

Local Projects

Depending on whether project finance is in place or not, local projects will vary. Generally, project finance projects are structured through SPVs. Other projects that are financed through commercial lending may be just structured directly through the sponsor. However, there is no general rule.

International Projects

Transaction structures are similar to those used in local projects. However, as they commonly require specialized construction and engineering knowledge and good financial status, international joint ventures (between different contractors) are very common.

Almost every project is developed by a special purpose vehicle.

Financing of Projects and Security

Local Projects

Projects are mainly financed through:

- Company equity.
- Capital market transactions (either through public offerings or debt instruments).
- Bank loans (corporate and project finance lending).

The sources and methods of financing in Chile do not differ substantially from those found in international markets. For example, project finance is regularly used in Chile to finance the construction of major infrastructure projects.

Generally, lenders are:

- Commercial foreign banks.

- Export credit agencies and international financing agencies.
- Development finance institutions and local banks.

Project finance structures vary depending on the type of project being financed.

Security and Contractual Protection

Security and contractual protections required by funders vary depending on the type of project and financing structure proposed by the developer. Non-recourse project finance is standard in project development.

Security

Funders typically require, to ensure the correct and timely execution of works and the performance of warranty obligations by contractors:

- Pledges over project assets.
- Bank bonds payable on demand, issued by high credit level banks.
- Standard security packages.

Contractual

Funders typically protect their investment by requiring the developer to comply with the minimum conditions on the project contracts.

Standard contractual protections include:

- Time bars against claims.
- Step-in-rights (typically, a right for the funder to step-in and take over the developer's role in the contract, if the developer commits a serious and unremedied breach).
- Liquidated damages clauses (both for delay and performance) (that is, pre-determined damages to be paid on certain breaches).
- Minimum insurance requirements.
- Indemnities.

International Projects

International projects are usually financed under project finance models, although there is no rule of thumb and therefore some projects are structured through equity contributed by the international company through a local branch.

Standard Forms of Construction Contract

Local Projects

Standard forms are not generally used for project development. However, market practice within major infrastructure projects has led to a de facto standardization of certain key clauses (for example, securities and arbitration) within typical construction contractual arrangements (notably within EPC contracts).

PPP Projects

Public Private Partnerships (PPPs) are regulated by law [DFL No. 164 of 1991](#). The state, through the Ministry of Public Works (or a specific public service within the government), makes a public call to tender for the concession of public works. If the project stems from a private initiative that is approved by the public authority, the entity submitting the idea receives certain benefits in the evaluation of its tender, such as additional points that will be added to the entity that presented the private initiative in the qualifications of its offer.

All PPPs and related contracts are standard forms previously issued by the Ministry of Public Works. To be eligible, the private entity must usually be registered in the contractor's registry of the Ministry of Public Works.

International Projects

Bespoke contracts are usually used, although occasionally International Federation of Consulting Engineers (*Fédération Internationale Des Ingénieurs-Conseils*) (FIDIC) and New Engineering Contract (NEC) contracts are used.

See [Practice Note: Overview, FIDIC Forms of Contract](#) and [Practice Note: Overview, NEC4 suite of contracts](#).

Contractual Provisions

Contractors' Risks

Risk allocation varies depending on the nature of each project and contract. However, generally most risks are allocated to contractors. These risks include:

- Soil conditions.
- Construction permitting (that is, obtaining most construction-related permits).
- Weather conditions.
- Subcontracting and outsourcing of risks.
- Unexpected market conditions.
- Force majeure.

However, sophisticated parties often allocate risks for each party based on a cost-effectiveness analysis, usually depending on which party is best suited to mitigate this risk.

Change in laws risk is sometimes shared between the parties. For example:

- Excluding certain matters, for which the contractor will have no right to compensation (for example, labour, tax, construction, or environmental matters).
- Through an escalated range of costs to be borne by the contractor and gradually shared with the owner.

Design liability extension depends on the nature of the project. It is more common in EPC contracts, while less common in construction contracts where the owner provides all or part of the design.

Performance securities are usually managed through a payable at sight bank bonds (*boleta bancaria pagadera a la vista*) or a guarantee insurance policy payable on demand.

Excluding Liability

In project contracts, liability is usually limited and certain types of damages are excluded. Limitations generally include:

- Monetary caps on damages.
- Exclusion of consequential damages.
- Carve outs or exceptions to these exclusions and limitations.

Caps on Liability

Parties usually agree a cap on liability. Particularly in international projects, overall liability is usually capped as a percentage of the contract price (varying depending on the nature of the contract). It is also common to limit liquidated damages to a percentage of the contract price.

Liabilities resulting from the following are typically not capped:

- Willful misconduct.
- Gross negligence.
- Indemnity obligations related to third party claims (for example, IP violations and labor and security-related claims).

Force Majeure

The parties may agree to exclude a specific event. The usual exclusions include:

- Earthquakes under an agreed magnitude. Because of their frequency throughout Chile's history, earthquakes have been considered by national courts as a foreseeable event and therefore not constitutive of force majeure, although the magnitude at which an earthquake may be considered as force majeure or not is not agreed on.
- Adverse climate conditions.
- Labor strikes.

Material Delays

Depending on which party bears the risk or fault for the delay, material delays are usually covered by:

- Liquidated damages provisions.
- Obligations to recover delay time (including the preparation of recovery schedules).
- Acceleration rights (that is, the right of the owner to require the contractor to accelerate the works, usually by agreeing the acceleration price through a change order).
- Extension of time and change order or variation provisions.
- Prolonged force majeure provisions.
- Early termination.

Variations

Variations to the works are typical on any construction project, and are usually addressed by contractual provisions that establish the procedure under which variations are proposed, negotiated (for time and cost), and executed. It is fairly common to include variation provisions, to minimize cost negotiations and determine how the cost, profit, and overheads are going to be calculated (for example, cost plus provisions).

Other Negotiated Provisions

Other heavily negotiated provisions include:

- Advances on payment and price.
- Insurance policy limits and sub-limits.

Depending on the project, some provisions containing risk allocations (such as permits or ground conditions) are also heavily negotiated.

Rights of Third Parties Under Contracts

Third parties, who are not parties to the contract, cannot enforce its terms.

Architects, Engineers, and Construction Professionals

Selection and Appointment

Architects, engineers, and other construction professionals are usually selected by companies (both by owners and contractors) based on technical capabilities and proven experience in the field, usually through direct hiring or tender processes (for example, request for proposals (RFP)). Construction professionals (particularly architects and engineers) must hold university degrees, duly recognized in accordance with applicable Chilean laws.

Depending on the selection procedure and characteristics of the role or services required, professionals are formally appointed through:

- An employment contract (becoming permanent or temporary employees).
- A services agreement (becoming a subcontractor or services provider).

Professionals' Contracts

Negotiated Provisions

Although the most heavily negotiated provisions vary, depending on the type of professional and the nature of the services required, they are often those regarding:

- Warranties.
- Intellectual property.
- Indemnification rights.
- Limitation of liability.

Caps on Liability

Liability for damages of construction professionals is usually capped. The cap range is usually from 10% to 20% of the contract price.

Payment for Construction Work

Methods of Payment

The main methods of payment for construction work in the local market are:

- Monthly payments for the effective physical progress of the works in the month immediately prior to the payment.
- Payment based on milestones, where the contractor is entitled to payments only when it achieves a milestone set out in the contract.

These methods are often combined with an advance payment to secure neutral cash flow to the contractor.

Securing Payment

Payment delays are usually secured by contract provisions that set interest rates and, in the case of material delays in payment, the right of the contractor to suspend the works and terminate the contract early. No materialmen or mechanic's liens are available in Chile (where a supplier may have a legal lien over the assets delivered under the relevant contract). When the owner is a special purpose vehicle in a medium or large project, an owner-parent guarantee may be requested.

Subcontractors

Generally, a contractor can engage subcontractors, but remains directly liable to the project owner for the subcontractor's performance.

It is common for general contractors to include back-to-back clauses in their contracts with subcontractors, to ensure that the contractor is liable to pay only if it has been paid by the project owner.

In large projects, main contractors must novate/assign subcontracts to the owner in case of early contract termination.

Licensing

Before

Generally, construction projects require a construction permit from the respective municipal works director, before the execution of any work.

Some projects require an environmental permit, which is obtained through the Chilean Environmental Assessment Service. Other specific permits may be required, depending on the project's nature.

Complex projects may require multiple permits. This is always a sensitive matter that should be carefully considered and negotiated.

Generally, contractors do not need to obtain any special licenses or consents to carry out projects. However, to be eligible to participate in or bid for public projects, the bidder must be registered in the Contractors Registry of the Ministry of Public Works. Further, a few state-owned companies are free to engage in private tenders or even direct negotiations. However, these state-owned companies usually require contractors to be registered in their internal registries, or in public registries, to tender. In addition, a pre-qualification process may apply.

Further, construction professionals (such as architects and engineers) must comply with certifications and obligations imposed by law to practise their professions.

International professionals must validate their qualifications with the competent entities in Chile before performing their professional services in Chile.

During

Projects must comply with and maintain the permits obtained before the execution of work, and obtain additional permits, such as:

- Crane permits.
- Zoning permits.
- Environmental-related authorizations.
- Hydraulics permits.

Projects are also subject to inspections from the relevant authority.

On Completion

Certain construction works need a municipal reception certificate, certifying that the project meets the design and technical requirements previously approved in the building permit. This is obtained after a final inspection by the relevant authority.

Projects Insurance

Compulsory Insurance

The general rule is that insurance policies are contracted voluntarily. There are a few mandatory insurance policies, including very basic vehicle third party insurance and statutory worker's compensation insurance, but no mandatory projects insurance.

Non-Compulsory Insurance

It is customary for construction companies to maintain the following types of insurance (whether under contract or voluntarily):

- Construction and Erection All Risk (C/EAR) and Operational All Risk (OAR), covering property damage and third-party injury or damage claims.
- Cargo insurance, covering damages to freight while it is being transported.
- Liability insurance, which should cover:
 - employer's liability, for contractors and subcontractors;
 - environmental liability (if applicable for the construction project); and
 - cross-liability.

Employment Laws

The main employment laws relevant to projects are:

- The Labor Code, particularly regulations on subcontracting (Articles 183 A–E).
- Law No. 16,744 on work-related accidents and professional diseases (particularly Article 66 bis).
- Supreme Decree No. 594, regarding basic sanitary and environmental conditions in the work site.
- Supreme Decree No. 76, which establishes regulations for the application of Article No. 66 bis of Law No. 16,744, regarding safety and health management at the work sites.

Health and Safety

The main health and safety laws are:

- Law No. 16,744.
- Supreme Decree No. 594, regarding basic sanitary and environmental conditions in the work site.
- Supreme Decree No. 76, which establishes regulations for the application of Article No. 66 bis of Law No. 16,744 regarding safety and health management at the work sites.

Other regulatory provisions may apply to certain specific type of projects, including the Mining Safety Regulations (*Reglamento de Seguridad Minero*).

Environmental Issues

Environmental Assessment

The Environmental Impact Assessment System (SEIA) in Chile is a regulatory framework established under the Environmental Law (Law No. 19,300) to evaluate projects or activities that may significantly impact the environment. Among the project types requiring entry into the SEIA are real estate developments exceeding certain magnitudes or those that may affect protected areas. Through this system, proponents must submit either an Environmental Impact Statement (DIA) or an Environmental Impact Assessment (EIA), depending on the complexity and potential environmental effects of the project. The SEIA ensures that environmental, social, and cultural impacts are identified, assessed, and mitigated before project approval. It involves public participation, inter-agency coordination, and the issuance of an Environmental Qualification Resolution (RCA), which outlines the conditions under which the project may proceed.

Air

The applicable law is Supreme Decree No. 39/2012 of the Ministry of the Environment, Regulation on the Establishment of Prevention and Decontamination Plans.

Currently, there are about 16 prevention and decontamination plans referring to specific air pollutants present in certain areas within Chile. Additionally, there are numerous other emissions and quality standards referring to specific air pollutants and noise emission regulations.

Water

The applicable law is Decree with Force of Law No. 1.122/1981, Water Code.

In addition, there are numerous other quality standards and other regulations referring to water, such as local regulations for the drinking water supply and sewage wastewater treatment and final disposal.

Waste

The applicable laws are:

- Decree with Force of Law No. 725/1967, Sanitary Code.

- Decree No. 594/1999, Regulation on Basic Sanitary and Environmental Conditions on Workplaces.
- Supreme Decree No. 148/2003, Regulation on Hazardous Waste Management.

Noise Emissions

The applicable law is Decree No. 38/2011, Regulation of noise emissions generated from the sources indicated.

Sustainable Development

There are no special legal requirements imposed on new buildings regarding carbon emission or climate change standards. However, it is not unusual for project owners to voluntarily comply with certain certified sustainability standards, such as Sustainable Building Certification (*Certificación Edificio Sustentable*) (CES) issued by the Chilean Construction Institute or Leadership in Energy and Environmental Design (LEED) issued by the United States Green Building Council.

Carbon Emissions or Other Targets

Chile has signed several international bilateral and multilateral agreements and protocols concerning climate change, which establish standards and targets that must be complied with, such as:

- The Vienna Convention on Depleting Substances of the Ozone Layer (Supreme Decree No. 719/1989).
- The Montreal Protocol (Supreme Decree No. 238/1990).
- The Climate Change Agreement (Supreme Decree No. 123/1995).
- The Kyoto Protocol (Supreme Decree No. 349/2004).
- The Paris Agreement (Supreme Decree No. 30/2017).

Article 8 of Law No. 20,780 establishes an annual tax levied on air emissions of carbon dioxide (CO₂), particulate matter (PM), nitrogen oxides (NO_x), and sulfur dioxide (SO₂), applied to facilities whose emission sources release 100 or more tons of PM annually or 25,000 or more tons of CO₂ annually. Within this framework, there is an Emissions Compensation System through which taxpayers may offset their taxable emissions by implementing projects aimed at reducing emissions of the same pollutant.

In 2022, the Framework Law on Climate Change was published in Chile to address climate change challenges to achieve greenhouse gas emissions neutrality by 2050, and to comply with international covenants entered into by Chile, including the UN Framework Convention on Climate Change.

Prohibiting Corrupt Practices

Rules

Corrupt business practices and bribery are addressed in Chilean legislation. The Corporate Criminal Liability Act (Law No. 20.393) (CCLA) and Economic Crimes Law (Law No. 21.595) (ECL) are of particular relevance in the projects sector.

Systematization of economic crimes. The ECL came into force on 17 August 2023 and included a classification of offenses related to business activities under the category of "economic crimes," making several offenses subject to a series of rules and penalties that are specific to them. Likewise, the ECL restricts the application of alternative sanctions to these types of offenses, ensuring that those who commit economic crimes serve their sentences by means of effective custodial punishment.

The systematization consists of four categories of offenses:

- First category: offenses that, under any circumstances, will be considered as economic crimes. For example, collusion, stock exchange offenses, offense of providing false information to the Financial Market Commission, commercial bribery, offense of abuse of majority position in the board of directors, and falsification of balance sheets.
- Second category: offenses that will be considered economic crimes to the extent that they are committed:
 - in the exercise of an office, function, or position in a company; or
 - for the economic or other benefit of a company.

For example, fraud, threats, tax and customs fraud and violations, IT offenses, murder and injury, fraudulent alteration of public instruments, and offenses against intellectual and industrial property.

- Third category: offenses committed by public officials, in which someone within a company has intervened (as perpetrator or accomplice) or when they bring some benefit (of any nature) to a company. For example, bribery, tax fraud, breach of confidence offenses, and unlawful enrichment.
- Fourth category: in general, embezzlement and money laundering offenses.

The ECL only includes offenses committed in the development of activities of medium or large enterprises, excluding micro and small enterprises.

Incorporation of new crimes and offenses. The ECL introduces a series of new offenses into the legal system, including the addition of a new title to the Criminal Code, "Attempts against the environment". There are six new environmental offenses, with penalties ranging from 61 days to five years of imprisonment for crimes of mere danger (*de mero peligro*), and up to ten years of imprisonment for crimes that generate damage (*de daño*). Additionally, mandatory fines ranging from 120 Monthly Tax Units (*Unidad Tributaria Mensual*) (UTM) (about USD7,985) to UTM120,000 (about USD7,985,579) are established. UTM is a value unit used for the calculation of taxes, fines, and other fees, which adjusts monthly based on inflation.

Among these new environmental offenses, there are offenses that:

- Penalize specific conducts (for example, omission of an environmental impact assessment).
- Protect certain ecosystems (for example, extraction of water in areas of temporary reduction or water scarcity).
- Penalize general violations against the environment (for example, the crime of environmental pollution and the offense of negligent or imprudent pollution).

The ECL also introduces modifications regarding money laundering. It includes the environmental crimes referred to above, offenses under the Hunting Law, offenses under the Forestry Law, and offenses under the Convention on International Trade in Endangered Species of Wild Flora and Fauna.

New penalties and sanctions, and strengthening of custodial sentences. The ECL incorporates a system of "fine days," which consists of multiplying the average daily net income of the convicted person by the number of days of the conviction. Another innovation of the ECL is the confiscation of profits, which applies to all convictions for economic crimes. Additionally, a prohibition on concluding contracts with the state can be imposed, and disqualification from holding public positions or offices, and from holding managerial positions or serving as a director.

A new system of mitigating and aggravating circumstances is established for those who commit economic crimes, based on two factors:

- **Culpability:** this depends on the position held by the person in the organization (the higher the hierarchy, the higher the penalty) and the manner of acting in that position (higher intervention, higher penalty).
- **Extent of the damage:** the generation of damage or harm and the efforts to mitigate it influence the assessment of the penalty.

The ECL reduces the eligibility for non-custodial alternative criminal sanctions, to promote the effective enforcement of custodial sentences.

Modifications to the CCLA. The CCLA imposes criminal liability on legal entities for conduct amounting to a predicate offence. The ECL introduces a range of key modifications to the CCLA, including:

- A significant expansion of the catalog of crimes recognized as predicate offenses, increasing the number from 20 to over 200.
- The identification of individuals who can trigger criminal liability for legal entities.
- The introduction of new penalties and sanctions.
- Modifications to the Crime Prevention Model system and its requirements.

Further, the CCLA imposes criminal liability on legal entities, if:

- The predicate offense is perpetrated within the scope of the legal entity's activities. The law no longer requires that the crime be committed solely in the legal entity's own interest.
- The predicate offense is committed by or with the involvement of certain individuals (those who hold a role, position, or function within the company or, those who provide services to the company, managing its affairs with third parties, with or without representation).
- The commission of the predicate offense is favored or facilitated by the lack of effective implementation of a Crime Prevention Model. If the legal entity has effectively implemented an adequate Crime Prevention Model before the commission of the offense, it will not be criminally liable for the offense committed within the scope of its activity. The effectiveness and adequacy of the Crime Prevention Model should be assessed by the court on a case-by-case basis.

Penalties

Individuals can face fines and imprisonment, depending on the crime committed. For example, for the crime of bribery of a public official, imprisonment ranges from 541 days to three years and the fine corresponds to the requested or accepted benefit

(if it's a monetary benefit, the fine will be equal to the amount of money given to the public official). For the crime of money laundering, imprisonment ranges from five years to 15 years and a fine of UTM200 to UTM1,000.

The following penalties can be imposed on legal entities:

- Dissolution of the legal entity or cancellation of its legal personality.
- Temporary or perpetual prohibition on entering into contracts with governmental entities.
- Partial loss or absolute prohibition of governmental benefits.
- Day Fines.
- Confiscation of profits
- Other accessory penalties, such as publication of an excerpt of the judicial decision in the Official Gazette.

Further, if it determines the absence or insufficient implementation of a Crime Prevention Model, the court can require the legal entity to be subject to a Supervisor, whose role is to control the implementation, improvement, or functioning of Crime Prevention Models, with its main focus being preventing the commission of new offences.

Bankruptcy or Insolvency

The treatment of creditors under Chilean insolvency law is based on the principle of equal treatment of creditors (*par condicio creditorum*), which is a public policy principle that governs Chilean insolvency law. Chilean insolvency law protects foreign creditors that intervene in a proceeding before a Chilean court, providing them with the same rights as Chilean creditors of the same category.

The main insolvency proceedings are reorganization of the company and liquidation of assets. A creditor's rights in these proceedings depends on the sort of proceeding and the particular circumstances of each credit or debt.

In the case of a debtor's bankruptcy, by virtue of the declaration of liquidation, all debts become due (regardless of the originally agreed maturity date). The determination of the amount to be paid out to each creditor is established under the rules in the Civil Code and the insolvency law (law No. 20,720). Generally, credits are divided into five classes, each of which takes precedence of payment over the next (such as taxes and employee wages, depositary beneficiary credits, pledger credits, mortgagor credits, and ordinary credits). In turn, creditors of each class are also divided into sub-classes, each of which takes precedence over the next.

Dispute Resolution

Laws on Dispute Resolution

There are no construction-specific dispute resolution laws.

Under general Chilean law, projects located in Chile executed by contractors resident in Chile will be resolved by national courts according to general civil law procedures. The Chilean civil procedure provides for multiple procedures to escalate the dispute to superior courts, which may lead to procedures lasting multiple years (even over a decade).

Type of Outcome

There are no construction-specific dispute resolution laws.

National court judgments are binding on the parties to the dispute. However, for a judgment to be final and binding, all procedural steps must be resolved by the respective tribunal, or no further procedural steps can be taken because the opportunity to use them has ended.

Enforcement

There are no construction-specific dispute resolution laws.

Under general Chilean law, final and binding rulings are enforceable through national courts, under an enforcement procedure.

Dispute Resolution Methods

Arbitration is the preferred dispute resolution method.

Aside from arbitration, conciliation is the most common alternative dispute resolution (ADR) method.

Multi-tiered clauses including direct negotiations, mediation, and dispute boards have also gained recognition and acceptance within construction contracts and have become more commonly used as dispute resolution mechanisms.

Courts and Arbitration Organizations

Local parties usually include contract clauses providing that the arbitration is conducted using the service and procedure of the [Arbitration and Mediation Center of the Santiago Chamber of Commerce](#) (*Centro de Arbitraje y Mediación de la Cámara de Comercio de Santiago*) (CAM Santiago). The arbitrations are under Chilean law and based in Chile.

Foreign parties often insert contract clauses providing for arbitration at the [International Chamber of Commerce \(ICC\) International Court of Arbitration](#), usually under Chilean law and based in Chile.

Ordinary courts deal with litigation matters. There are no special courts to deal with construction disputes.

Tax

Tax Issues in Construction Projects

The following taxes typically arise on projects:

- Value added tax (VAT) on construction and import of equipment, at a rate of 19%.
- Income tax on foreign developers, at a total rate of 35% on net income (for residents of countries with a tax treaty signed with Chile). Foreign entities from countries with no mutual tax treaty could be liable for rates of up to 44.45%.
- Property tax on real estate, calculated according to the fiscal valuation of the property (considering the constructions). The property tax rate varies depending on whether the real estate is classified as agricultural or non-agricultural. A portion of the fiscal value may be exempt from property tax.

Mitigating Tax

There are legal provisions that can improve a project's tax efficiency, particularly from a VAT perspective. For example, there are VAT reliefs for certain type of imports and an early cash refund process on VAT borne during the construction phase.

Certain projects involve selling goods or providing services that are subject to VAT, but when these projects require a long construction phase they may not be expected to generate VAT debits for a long period, making it impossible for VAT to be recovered or offset using the credit-debit mechanism. In these cases, the VAT Law (Legal Decree No. 825) offers two primary mechanisms to mitigate this issue:

- A special early VAT refund process for investments in fixed assets.
- A VAT exemption for the import of capital goods.

These mechanisms are designed to support the cash flow needs of large-scale or long-term projects (see [Tax Incentives](#)).

Tax Incentives

There are some tax incentives to construction activities related to the use of VAT, under which the owner of the project can recover the VAT from fixed assets in an accelerated form or opt for VAT exemptions for imported fixed assets:

- **Early VAT refunds.** Taxpayers subject to VAT who have accumulated unused fiscal credit for two or more consecutive tax periods (originating from the acquisition of tangible goods intended to become part of their fixed assets) may apply those accumulated credits to offset other fiscal taxes. Alternatively, they can request a refund of the unused VAT credit from the Chilean Treasury Office (Article 27 bis, VAT Law).
- **VAT exemption for imported capital goods.** There is a VAT exemption for the import of capital goods (Article 12, letter B, No. 10, VAT Law). This mechanism allows certain investors to avoid paying VAT on imported equipment and materials used in eligible investment projects. To qualify, the project must involve the acquisition, construction, or importation of fixed assets with a total investment of at least USD5 million and must be subject to Chile's Environmental Impact Assessment System (*Sistema de Evaluación de Impacto Ambiental*).

The exemption applies to natural or legal persons residing or domiciled in Chile, foreign investors, or companies receiving foreign investments. Additionally, the investment project must be related to one of the following industries: mining, industrial, forestry, energy, infrastructure, telecommunications, or research and development, including medical or scientific endeavors, among others.

Developments and Reform

There are currently proposals to expedite the process to obtain construction permits (bulletin No. 15534 of 2023). Additionally, a proposal for a framework law on sectorial permits is being discussed in congress (bulletin No. 16566 of 2024), which aims to expedite the process to obtain permits for investment projects.

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