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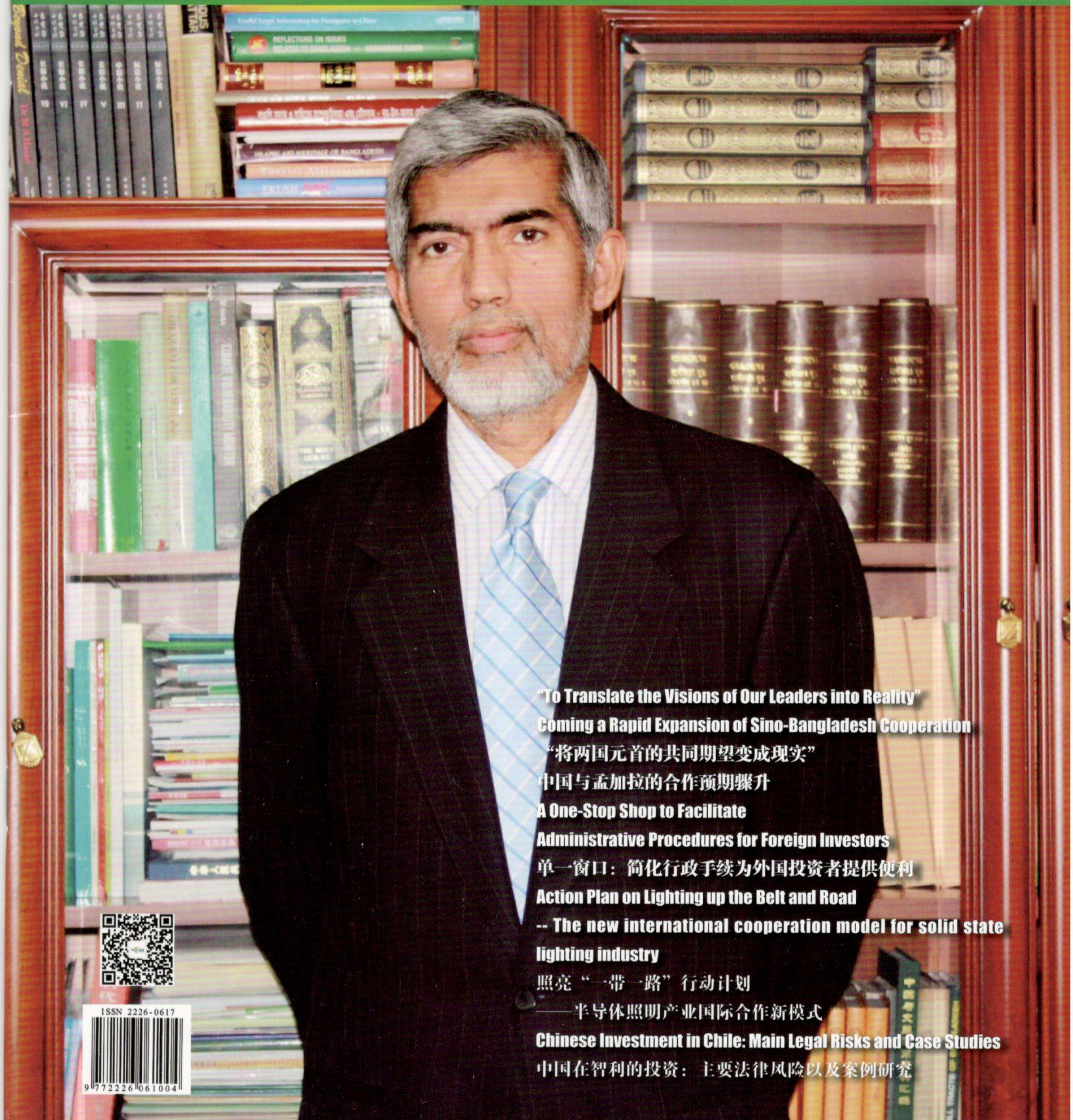

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Chinese Investment in Chile: Main Legal Risks and Case Studies
中国在智利的投资：主要法律风险以及案例研究

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CHINESE INVESTMENT IN CHILE: MAIN LEGAL RISKS AND CASE STUDIES

By Carey (Chile)

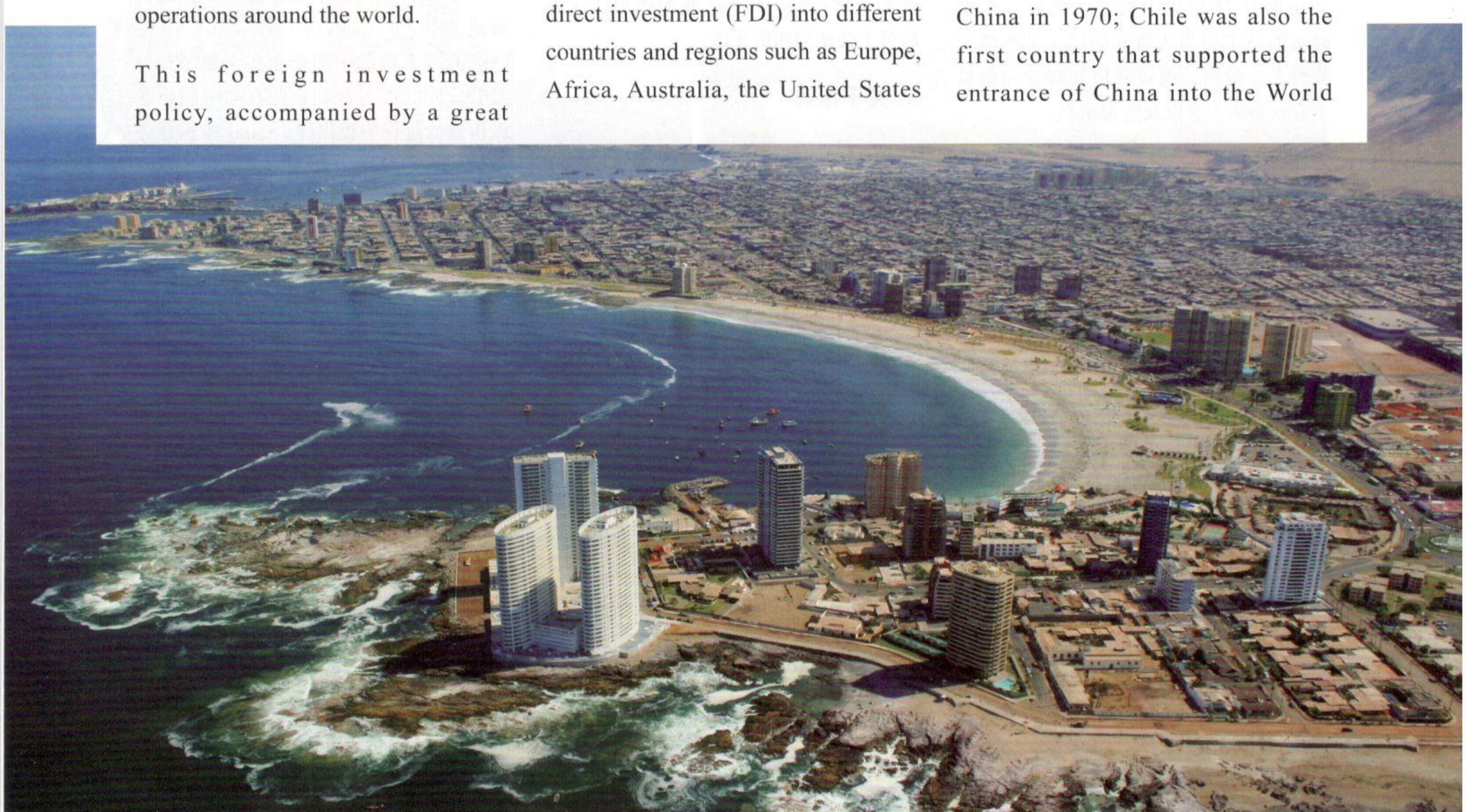
1. Overview

Since the implementation of the "Go-Out Policy" in 1999, the People's Republic of China (PRC) has been adopting several measures in order to assist Chinese enterprises in their effort to go abroad and expand their operations around the world.

This foreign investment policy, accompanied by a great macroeconomic development of China, the strengthen of several governmental measures and creation of new supporting institutions, increased experience of Chinese enterprises going abroad and foreign reserves, has resulted in an impressive growth of Chinese foreign direct investment (FDI) into different countries and regions such as Europe, Africa, Australia, the United States and Latin America.

Chinese FDI in Chile

The relationship between Chile and China is a strategic one for both countries. Chile was the first South American country that established formal diplomatic relations with China in 1970; Chile was also the first country that supported the entrance of China into the World



Trade Organization (WTO) in 1999; was the first country in the world that recognized China as a free market economy in 2004; Chile was the first individual country that subscribed a free trade agreement (FTA) with China in 2005; and, currently, China is the first trading partner of Chile and Chile the second of China in South America after Brazil. In addition, both countries have given the new special status of "strategic partnership" to their relationship, and China has been recently accepted in 2013 as an observer member of the Pacific Alliance. However, and despite the solid and close relationship, there has been a historic low Chinese ODI in Chile.

According to the public information available in the Chilean Foreign Investment Committee, between 1974 and 2013 the total Chinese foreign direct investment in Chile accounted US$116.2 million, representing a 0.12% of the amounts invested in the region. During the same period, the total stock of Chilean FDI in China (performed by more than 60 companies) accounted US$308 million.

Notwithstanding, in the last few years there have been several efforts to change this historic trend. During its visit to Chile in 2012, the ex-premier Wen Jiabao expressed to the former president Sebastián Piñera its personal commitment to increase the amount of Chinese FDI in Chile. In the same year, the Chilean Senate approved the supplementary agreement on investment of the FTA. In addition, during the CELAC meeting held in Beijing in 2015, Xi Jinping mentioned that China will invest US$250 million in the next 10 years in the Latin American and the Caribbean region.

2. Investment Deals and Case Studies

As mentioned above, Chinese FDI in Chile has been historically low.

According to the information provided in the China Global Investment Tracker[1], since 2005 China has performed the following operations in Chile :

Chinese Outbound Investment in Chile (2005-2014) [2]

Year	Month	Investor	Quantity in Millions (USD)	Share Size	Partner/Target	Sector	Subsector	Status
2005	February	Minmetals	$550	50%	Codelco	Metals	Copper	Successful
2008	September	Minmetals	$2,000	25%	Codelco	Metals	Copper	Failed
2009	December	Shunde Rixin and Minmetals	$1,910	70%	Not available	Metals	Steel	Successful
2010	June	State Grid	$1,200	10%	Quadra	Metals	Copper	Failed
2012	February	Xinjiang Goldwind	$190	N/A	Mainstream Renewable Power	Energy	NCRE	Successful
2013	January	SkySolar	$1,360	N/A	N/A	Energy	NCRE	Successful (undergoing)

Source: China Global Investment Tracker.

1 The China Global Investment Tracker, created by the American Enterprise Institute and the Heritage Foundation is a comprehensive dataset of Chinese investments and contracts (excluding bonds) worldwide, with details of successful and failed transactions valued at more than US$100 million.

2 Transactions valued at more than US$100 million.

A special reference should be made to the failed operation between the Chilean state owned enterprise Codelco (the biggest copper enterprise in the world) and Chinese Minmetals, in 2008. In March 2006, Codelco and Minmetals signed a long-term joint venture in order to develop the Gaby project, a new copper mine owned by Codelco. By means of the agreement, Codelco agreed to sell Minmetals 55,750 tons per year for the next 15 ones, and Minmetals made to Codelco and advanced payment of US$550 million. In exchange, and as a second part of the agreement, Minmetals had an option to acquire a stake of up to 49% in the copper mine.

However, in 2008 the second phase of the deal was indefinitely suspended. "In the spirit of long-term cooperation, Codelco and Minmetals decided to set aside and suspend indefinitely the rights and obligations under the Gaby option agreement", said Codelco in a press conference. The decision was mainly taken due to great opposition from Codelco's union and the copper employees' federation ("Federación de Trabajadores del Cobre"), stating that they would not allow the sale of a national asset considering that the agreement was executed when the copper price was below US$2/lb.

Regarding the other failed project, the joint venture between the Canadian company Quadra FNX Mining and the Chinese energy giant State Grid was neither successful. Quadra agreed to sell a stake of 10% in the company to State Grid in order to jointly develop the Franke copper mine and the Sierra Gorda project, but the parties were unable to complete a definitive agreement due to the fact that State Grid opposed to commit the funds until all the relevant permits were received.

Notwithstanding the aforementioned, in the last few years smaller acquisitions (less than US$100 million) are also being performed by Chinese investors in Chile in different sectors. Good examples of that, are the acquisition of part of the assets of the local vineyard Bisquertt by Chinese Cofco in 2010, in the amount of US$18 million, including a wine cellar and 350 hectares of land in the Colchagua Valley; and the recent strategic alliance between the Chinese company Joyvio (part of Legend Holdings group) and Chilean agribusiness company Subsole, that involved an acquisition of 5 farms to source blueberries, kiwi, walnuts, grapes and cherries in order to create

a platform to tackle the Chinese market.

Furthermore, in 2015 State Nuclear Power Investment Corporation (SPIC) successfully acquired Pacific Hydro Group from Australian IFM's group, operation that comprised the purchase of 19 operating energy assets (wind and hydro) in Australia, Brazil and Chile, deal valued at US$2.5 billion. SPIC is one of the five-largest power generation groups in China, with over 100 GW of installed capacity. This transaction marked a turning point in the Chinese FDI in Chile.

2016 has also a very active year for Chinese companies investing in Chile. Last May, the second biggest Chinese bank (and one of the largest in the world), China Construction Bank (CCB) obtained the authorization from the Chilean bank regulator (SBIF) to open a branch in Santiago. The bank mentioned that will focus in the assistance to Chinese enterprises doing business in Chile, especially in the mining and telecom industries. In addition, CCB Chile will act as the first RMB clearance bank in South America.

Another transaction in which Chinese companies have been actively taking part during this year is the purchase of a stake in one of the world's largest lithium producers: Sociedad Quimica y Minera (SQM). Chinese Ningbo Shanshan and Tianqi Lithium are currently in bid to buy the stake in sale in the Chilean company.

Finally, also mention the interest of Chinese infrastructure giants China Road and Bridge Corporation (CRBC) and China Harbor Engineering Corporation (CHEC) in the construction of the highway project Vespucio II.

3. Key Risks for Chinese FDI

Chinese investors have encountered several obstacles when trying to invest in Chile. Below, we have included some of the main risks that Chinese companies have to face when investing in Chile.

a.Structural Pitfalls

i. Limited role of the public sector.

The Chilean economy is almost a wholly privately driven one (there are just a few state owned enterprises operating in the economy). In this regard, the public sector usually just regulates and controls the participation of private companies in the economy, not having an active role as a player. This situation is very different from what we see in the Chinese economy, and may be a big challenge for Chinese enterprises when entering the Chilean market and understanding the real role of the State in the economy.

ii. Excessive competition in some investment opportunities.

Chile has been following a completely open public tender system for public projects in keys areas of the economy (i.e. public infrastructure) that has brought some entry barriers for new comers that do not have a broad experience and knowledge of the local market. Even though the system is completely open, transparent and competitive, it is usually not well understood by new Chinese companies that usually prefer government to government direct negotiations.

b. Internal Pitfalls

i. Permitting and Licensing.

The construction and operation of new projects requires several permits and licenses that can make the initial phase a really demanding one. We encourage Chinese companies to be assisted by advisors with local expertise to handle all these permits application.

ii. Environment, community opposition and protection of certain areas.

Environment

The Chilean Political Constitution guarantees every person the right to live in an environment free of contamination, constitutional right protected by the constitutional remedy called "recurso de protección". This has become the most common and effective way to bring the discussion and approval of new projects before the Chilean courts.

In addition, Chile has created a solid and complete environmental institution, establishing an effective administrative procedure called the environmental impact assessment system ("Sistema de Evaluación de Impacto Ambiental") in order to ensure that the investment projects comply with all the environmental regulations in force.

Community Opposition

Local communities have become one of the main factors when approving or rejecting a certain investment projects. Related to this, the protection and equal treatment of the ethnic and indigenous communities have also become a key issue, protection that has been materialized in several Chilean and international laws and regulations, being the most important the Act No. 19,253 (Protection, Promotion and Development of Indigenous, and Creation of the National Corporation of Indigenous Development) and the Convention No. 169 of the ILO.

Protected Areas

The protection of several Chilean areas ("áreas protegidas") has also been a sensitive issue when enabling the location of an investment project.

iii. Labor Risks.

The Chilean labor laws establish some limitations and requirements to foreigners working in Chile. When a company exceeds 25 employees, at least 85% has to be Chilean nationals (some exceptions may apply). Finally, the investor shall take into account that in Chile employees have the rights to organize unions and collective bargaining.

4. Investment Strategies

In connection with the above described potential risks, we intend to highlight the most important strategies to minimize them and guarantee the Chinese investor the success of its transaction and operations in Chile.

i. Initial Due Diligence and proper consultancy

Prior to the execution of the intended project, we strictly suggest to hire a local professional team (lawyers, consultants, financial advisors, etc.), to perform the corresponding initial investigation and feasibility study. We have seen that Chinese companies are usually reluctant to make these expenditures, or are very price sensitive, practices that could result in worst quality assistance and potential risks.

ii. Compliance with local regulations

Full compliance with local regulations will reduce the potential risks that could affect the transaction, and will prevent the company to be subject to sanctions, penalties or fines.

Moreover, strict compliance to local

regulations will reduce the time required to accomplish the operation and acquire relevant permits.

iii. Strong Community Work

Companies must establish a strong dialogue with local communities in order to share information and get to know both parties' needs. It is of key importance that the Chinese investor shares the benefits obtained from the project with the local people (in different forms of social contribution), so the latter supports the presence of the company in the region.

Finally, the investor must understand and embrace that the success of the project relies not only on the economic growth brought to the region but also on the social development of it.

iv. The Media Strategy

In Chile, the media (newspaper/magazines, television and radio) represents the main channel of information, communication and also supervision.

Hence, in order to guarantee the success of the investment project, the foreign company should have a strong communication strategy.

This requires to have a good relationship with the different stakeholders and also to develop a suitable message in order to inform of the project's benefits and potential risks, offering the right mitigation measures.

v. The Foreign Team Training Process

We recommend the foreign team that will be based in Chile to go through the relevant training process in order to interiorize the cultural and etiquette basic norms. In addition, it is strongly advisable to have the relevant Spanish capabilities.

5. About the author

Carey is Chile's largest Chilean law firm, with more than 230 legal professionals.

Carey is a full service firm. The corporate, litigation and regulatory groups include highly-specialized attorneys and practice areas covering all areas of law. Carey´s clients include some of the world's largest multinationals, international organizations, and some of the most important local companies and institutions.

Most of Carey´s partners and senior associates have worked in North America, Asia, and Europe, as foreign or regular associates with leading international law firms, or as in-house counsel for major corporations or international institutions.

Carey is the Chilean law firm that has the highest number of practice areas ranked as Top 1 in Chambers Latin America: Banking and Finance; Corporate, Mergers and Acquisitions; Labor; Energy and Natural Resources; Insurance; Intellectual Property; Projects; Tax and Telecommunications.

Due to the increasing trade relations between Latin America and China and the growing inflow of Chinese foreign direct investment to Chile, Carey created a China Desk to assist Chinese companies in their operations throughout our region, as well as to advise Chilean companies in their transactions in China. The members of Carey´s China Desk speak Mandarin and have in-country presence. In 2016, Carey Business Consultancy (Shanghai) Limited was established in Shanghai, China.

Carey has ample experience advising multinational companies in their outward investment activities, including mergers, acquisitions, joint ventures and strategic alliances, in project financing, in tax issues, in the compliance with local labor and environmental regulations, and in civil, commercial, criminal, labor, antitrust and tax disputes involving major multinational clients.

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