

# Chile

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## World Bank statistics 2011:

GDP  
\$248 billion  
  
Population total  
17.2 million  
  
Income level  
Upper middle income

## An overview of Chile's legal progress in the capital market and financial sectors

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During 2012 Chile has made substantial and long-expected legal changes in the capital market and financial sectors, namely (i) the creation of a new financial consumer protection agency called the 'Financial Sernac' (*Sernac Financiero*); (ii) the passing of a new regulation on private placement of securities; and (iii) the enactment of the revised Regulation on Stock Corporations.

### The Financial Sernac

On March 5 2012, Law No. 20,555 became effective. This law, also known as the Financial Sernac, modifies Law No. 19,496 on consumer protection rights, and is designed to grant the Chilean Consumer Protection Agency (Sernac) with additional authorities and powers in financial issues and to establish a more robust legal framework regarding the relationship between consumers and financial institutions that provide financial products and/or services (e.g., loans and credit cards, among others).

The Financial Sernac's main purpose, to enhance consumer rights protection, is reflected in the following key provisions:

(a) new consumer rights, among others (i) the right to receive information regarding the final cost of the respective financial product or service, which includes the right to know the equivalent annual burden (*Carga Anual Equivalente*) and be duly informed in writing of the reasons for the financial institution's denial to provide a service or product, (ii) the right to know, previously and publicly, the material conditions that the financial supplier provides in order to access the respective loan or other financial operations, (iii) the right for

a timely release of the sureties and for a settlement in full at debtor's sole request;

(b) new adhesion contract rules: (i) financial institutions must inform consumers, in simple terms, of payments and final costs of rendered goods and services, (ii) minimum content required for adhesion contracts of financial products, (iii) financial products suppliers must include in their adhesion contracts a summary sheet displaying the main clauses of the agreement. Also, the summary sheet must contain a price quote, in order to facilitate consumers comparison with products or services offered in other financial institutions; (iv) financial products suppliers cannot include tying arrangements in their adhesion contracts;

(c) creation of the Sernac Seal, which is granted to the adhesion contracts of banks and financial institutions, among others and represents full compliance from these financial institutions to consumer protection rights. This seal is intended to be a good guidance to consumers at the time of entering into an adhesion contract; and

(d) the creation of a new dispute resolution mechanism, which includes a mediator and financial arbitrator for claims that cannot be resolved by Sernac's consumer service.

The Financial Sernac is complemented by four regulations which came effective in July 2012, providing a detailed guidance on (i) information to bank or non-bank credit card clients; (ii) information to mortgage loan clients; (iii) information to consumer credit clients, and (iv) organisation and functioning of the awarding, maintenance and revocation of the Sernac Seal.

### New regulation on private placements

On late June, the Chilean Securities Exchange Commission (SVS) passed Generally Applicable Rule No. 336 (GAR No. 336), which provides, for the first time in Chile, a detailed guidance on when an offering qualifies as private placement and therefore is excluded from the application of Law No.

18,045 on Securities Market and from the oversight of the SVS (except for compliance verification of the requirements established in GAR No. 336).

This new rule generates a long-awaited clear distinction between public and private offerings, benefiting issuers that seek to raise capital without incurring in expensive and intrusive registration and disclosure procedures before the SVS.

GAR No. 336 provides that an offering of securities shall not be deemed as a public offering, when: (i) the offering is not carried throughout mass media. GAR No. 336 prohibits general solicitations or general advertising, meaning that security offering advertisements through the press, radio, television and internet, when publicly accessible in Chile -no matter where they are produced or released- shall eviscerate the private placement exemption; (ii) the offering is addressed to specific type of investors: (a) offers made exclusively to certain accredited investors, regardless of the number of addressees and (b) offers made to certain types of not more than 250 certain accredited investors, through one or more successive offers, within 12 months counted from the first offering. In this case 50 non-accredited investors may be included within the total 250 addressees. Notwithstanding, GAR No. 336 exempts from the prior condition the offering of securities with a unit value equal to or higher than 5,000 Unidades de Fomento (approximately \$226,000); and (iii) certain reporting and safeguard requirements are met, which must be fulfilled by the issuer or placement agent, as the case may be.

### New regulation on stock corporations

On July 6 2012, the new stock corporation regulation was published in the Chilean Official Gazette, being previously passed by the Ministry of Finance. This means that after 30 years, the regulation on stock corporations has been finally updated to reflect substantial amendments introduced in the past few years to the main legal frameworks related

with capital markets and corporate governance in general, i.e., laws No. 18,046 (Corporations Act) and No. 18,045 (Securities Exchange Act).

The primary goals of this amendment are (i) the introduction of greater flexibility to corporate governance according to the industry's pace, however always safeguarding the protection of all shareholders, (ii) the advancement of board of directors' regulations and exercise of shareholder rights, (iii) the reduction in operating costs of stock corporations, consequently reducing internal bureaucracy, and (iv) the simplification of corporate events such as mergers, transformations and split-up procedures, with full protection to the interests of the parties involved.

In connection with the greater flexibility of the stock corporation's legal framework, this new regulation facilitates communications with the company's shareholders, expressly allowing e-mail communications. Cost reductions are mainly expressed by the fact that closely held stock corporations may elect not to issue physical stock certificates.

The new regulation will come into force on October 5 2012.