

CONSTRUCTION

Chile



Construction

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Quick reference guide enabling side-by-side comparison of local insights on foreign entry into the local market; licensing procedures; competition and bribery considerations; contract and insurance matters (including PPP and PFI; joint ventures; tort claims and indemnity); labour and closure of operations; rights to payment; force majeure and acts of God; dispute resolution mechanisms; environmental law; applicable investment treaties, tax treaties, currency controls, and revenue, profit and investment removal controls; and recent trends.

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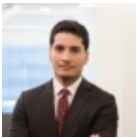
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LOCAL MARKET

Foreign pursuit of the local market

If a foreign designer or contractor wanted to set up an operation to pursue the local market, what are the key concerns they should consider before taking such a step?

In November 2019, after a series of social riots, Chile has initiated in-depth review of its political Constitution. On 4 September 2022, a project aimed at introducing radical structural changes was rejected by a public vote. Currently, a second constitution reform is being attempted, which might introduce significant modifications of the Constitution currently in force. The current constitutional draft will be submitted to a plebiscite in December 2023.

Additionally, the parliament is discussing changes to social security, labour, tax and natural resources law, and the government has also planned a series of strategic guidelines on these same topics.

The above-mentioned reforms could create changes in the legal framework of an operation. Thus, those who set up an operation in Chile should identify the applicable legal framework and possible bills that could affect their activities in advance.

Law stated - 06 September 2023

REGULATION AND COMPLIANCE

Licensing procedures

Must foreign designers and contractors be licensed locally to work and, if so, what are the consequences of working without a licence?

Foreign designers and contractors need not be licensed locally to work in Chile. Nevertheless, in order to participate in public works, designers and contractors must be part of the Contractor's Register of the Ministry of Public Works, which is comprised of the Register of Major Works and the Register of Minor Works.

To be admitted in either register, contractors must be previously accredited for the speciality required and prove a minimum level of experience, measured by the amount of work it has carried out.

Furthermore, according to article 18 of Decree No. 458 on the General Law of Urbanism and Construction, architects, civil engineers, construction engineers and civil constructors responsible for the drawings of a project must have a degree recognised by Chilean law. Those who act without a degree could commit a criminal offence pursuant to article 213 of the Criminal Code.

Law stated - 06 September 2023

Competition

Do local laws provide any advantage to domestic contractors in competition with foreign contractors?

Local law does not provide any advantage to domestic contractors in competition with foreign contractors. However, to register before the Contractor's Register of the Ministry of Public Works, or to participate in public bids, the contractors must certify professional degrees of their key personnel and previous experience. The homologation of these parameters often depends on the discretion of public servants and is perceived by foreign contractors as a de facto advantage for local contractors.

Competition protections

What legal protections exist to ensure fair and open competition to secure contracts with public entities, and to prevent bid rigging or other anticompetitive behaviour?

Protections to ensure fair and open competition to secure contracts with public entities are regulated in Law No. 19,886 on Public Procurement and Decree No. 250 of the Ministry of Finance . According to the legislation, all public bidding processes must be carried out through www.mercadopublico.cl , managed by the ChileCompra Directorate. By virtue of law, the procedure shall always be conducted with efficiency, transparency, publicity, equality, and non-discrimination, principles that aim to protect bidders.

Law stated - 06 September 2023

Bribery

If a contractor has illegally obtained the award of a contract, for example by bribery, will the contract be enforceable? Are bribe-givers and bribe-takers prosecuted and, if so, what are the penalties they face? Are facilitation payments allowable under local law?

Chile is ranked number 27 in the Corruption Perception Index prepared by Transparency International.

According to article 1682 of the Civil Code , when a contract is illegally obtained, it is unenforceable since every contractual relationship that aims at an illicit object is voidable and null.

In the case of bribery, both bribe-takers and bribe-givers could be prosecuted. On the one hand, article 248 of the Criminal Code establishes that the penalty for bribe-takers could be imprisonment, absolute temporary disqualification for public offices or positions, and a fine equal to the amount of the benefit requested or accepted. On the other hand, article 250 of the Criminal Code provides that a bribe-giver's penalty could be the same as is established for bribe-takers.

Finally, it is important to highlight that facilitation payments are not allowed under Chilean law; therefore, they could be considered a criminal offence according to articles 248 and 250 of the Criminal Code.

Law stated - 06 September 2023

Reporting bribery

Under local law, must employees of the project team members report suspicion or knowledge of bribery of government employees and, if so, what are the penalties for failure to report?

According to article 175 of the Criminal Procedure Code , public employees must report the crimes they become aware of in the exercise of their functions. Those who fail to report the crime could be punished with a fine of between one and four monthly tax units.

Regarding private workers of the project, there is no express obligation to report bribery of government employees. Nevertheless, they could be considered concealers if they are guilty of one of the causes established in article 17 of the Criminal Code.

Law stated - 06 September 2023

Political contributions

Is the making of political contributions part of doing business? If so, are there laws that restrict the ability of contractors or design professionals to work for public agencies because of their financial support for political candidates or parties?

The making of political contributions is not part of doing business in Chile. Nevertheless, it is not forbidden for people or companies to support political candidates. All donations are public and must be communicated to the Electoral Service.

Law stated - 06 September 2023

Compliance

Is a construction manager or other construction professional acting as a public entity's representative or agent on a project (and its employees) subject to the same anti-corruption and compliance rules as government employees?

According to Decree No. 75 MOP, which 'Approves the Regulation of Public Works Contracts', the construction professionals who represent the public entity are called 'fiscal inspectors' and are considered government employees. Thus, fiscal inspectors are subject to the same anti-corruption and compliance rules as any other government employee.

In particular, article 52 of Law No. 18,575 on Constitutional Organic Law of General Bases of the State Administration contemplates the principle of administrative probity (or integrity). According to that principle, all government employees must act with 'impeccable official conduct and an honest and loyal performance of the function or position, with the pre-eminence of the general interest over the private interest'. Also, article 42 of the same law states that the administrative bodies will be responsible for all the damages they cause for lack of service; it is the right of the state to pursue the same responsibility against the employee who commits it directly.

Law stated - 06 September 2023

Other international legal considerations

Are there any other important legal issues that may present obstacles to a foreign contractor attempting to do business in your jurisdiction?

There are no important legal issues that may present obstacles to a foreign contractor attempting to do business.

Law stated - 06 September 2023

CONTRACTS AND INSURANCE

Construction contracts

What standard contract forms are used for construction and design? Must the language of the contract be the local language? Are there restrictions on choice of law and the venue for dispute resolution?

The use of standard contract forms is not common in Chile. There is almost no practical experience with international

standard contracts (FIDIC or NEC). The public sector does not use them and rely on contracts adjusted to different sectorial regulations. The private sector does not resort to well-known standard contract forms. Notwithstanding the foregoing, some sporadic exceptional cases of unauthorised adaption of FIDIC contracts can be encountered in practice.

The most used delivery methods are design-bid-built for the traditional construction contract, as well as Engineering, Procurement and Construction (EPC) contracts. The prevailing pricing modality in Chile is the lump sum price, which is often used for EPC or even for common construction contracts. In this last scenario, if the employer's design is immature, it often leads to disputes as the contractor feels burdened with the additional costs caused by changes in design that it could not have foreseen when submitting its offer.

Contracts for public works are always drafted in Spanish. However, private agreements can be written in foreign languages, but an official translation could be requested by public entities. Additionally, in matters of public works, disputes are always resolved through the ordinary Chilean courts of justice, and the application of Chilean law is mandatory. Private parties are allowed to choose the form and venue for dispute resolution. Still, there are some restrictions to selecting the governing law of the contract since the courts have argued that the national law applies to all contracts that refer to assets located in Chile.

Law stated - 06 September 2023

Payment methods

How are contractors, subcontractors, vendors and workers typically paid and is there a standard frequency for payments?

Contractors, subcontractors, vendors and workers are typically paid through electronic payment. Exceptionally, they are paid through cheques or bank demand vouchers. Advanced payments of between 10 per cent and 20 per cent of the contract price are common. In those cases, the contractors must provide a financial security in the amount of the advanced payment received from the employer. The advanced payment is deducted from monthly payments until the amount is fully paid. At that moment, the employer must return the security on the advanced payment.

The frequency of payment is typically monthly. Nevertheless, the payment frequency depends on the agreed payment method (eg, there are contracts where payment is made against the accomplishment of milestones). Additionally, in the case of the public sector, there is a legal obligation to pay contractors and suppliers no later than 30 days after issuing the corresponding invoice. However, in practical terms, it is often claimed that this time limit is breached, which creates difficulties with the contractor's cashflow.

Also, it is possible to see contractual provisions that allows the contractor to declare the contract terminated due to owner's breach, but only after a 60-day delay in payment of the invoice issued by the contractor.

Law stated - 06 September 2023

Contractual matrix of international projects

What is the typical contractual matrix for a major project in your jurisdiction in terms of the contractual relationships among the various construction project participants?

The general rule in Chile is that owners contract directly with contractors, who subsequently contract with subcontractors. Moreover, depending on the contract procurement, supplies can be acquired directly by the owner or contractors. The figure of a nominated subcontractor is rather uncommon in Chile. The contractors are not responsible to the owner for its commercial obligations towards the subcontractors and suppliers. However, in some Common Law-

inspired contracts, to be paid by the owner, contractors must submit subcontractors' and main providers' statements that no outstanding debts are owned by the contractor.

Notwithstanding the above, it is essential to mention that according to Chilean law, the privity of contracts does not apply to labour relationships. In effect, article 183-A of the Labour Code treats contractors' workers as 'subcontractors' of the owner or client. Furthermore, article 183-B of the Labour Code establishes that the owner and contractor are jointly responsible for the compliance of the 'subcontractors'. The same rule applies to contractors concerning their subcontractors' workers.

In other words, the owner will be jointly responsible with the contractor for all the labour-related and social security obligations that this last one owes to its workers. As a result, the latter will be able to take legal actions against both the owner and the contractor to pursue these rights. The same principle applies in the subcontracting regimen; the contractor will be responsible for the obligations that the subcontractor has with its workers, as if these were its own workers. In this latter case, the owner will also respond for these claims when such liability cannot be enforced against the contractor or the owner.

In addition to the above, it is common practice in Chile that, in the event of subcontracting, the owner of the work requires the corresponding documentation from the contractor regarding compliance with labour and social security obligations with respect to subcontracted workers.

Law stated - 06 September 2023

PPP and PFI

Is there a formal statutory and regulatory framework for PPP and PFI contracts?

Chile introduced PPP in 1991, through Law 19.068 that modified the Ministry of Public Work's Decree No. 591 of 1982. This text was consolidated, coordinated and systematised by Decree with the Force of Law No. 164 of 1991, Public Works Concessions Law (currently contained in Decree No. 900 of 1996 of the Ministry of Public Works). Since that year, this has been considered a successful public policy in Chile. It is estimated that since that year, PPP projects provided for US\$27 million investment into the country's infrastructure includes the provision of public services such as public hospitals, roads and even prisons.

Currently, there is a formal statutory and regulatory framework for PPP, which is composed of the following laws:

- Decree No. 900 MOP – Public Works Concessions Law (Ley de Concesiones de Obras Públicas);
- Law No. 21,044 – General Directorate of Public Works Concessions (Dirección General de Concesiones de Obras Públicas); and
- Decree No. 956 MOP – Regulation for the Concessions Law (Reglamento para la Ley de Concesiones).

In September 2022, the President of Chile launched the 'Let's Invest in Chile Plan' strategy, which aims to increase investment by 5 percentage points by 2023. One of the main topics that this plan adopts is to promote public-private partnerships through an infrastructure plan of 52 projects and 43 bids, which will involve US\$13.258 million.

Law stated - 06 September 2023

Joint ventures

Are all members of consortia jointly liable for the entire project or may they allocate liability and responsibility among them?

Joint ventures are atypical figures in Chile; they do not have a specific legal regulation but are the result of contractual freedom and free will. As they do not constitute legal entities, joint ventures cannot be held civilly liable, but their members are liable for their contractual obligations. However, the consortium members can incorporate as a limited liability company or as a shareholding company and reduce their risk to the amount of their respective monetary contributions. In these cases, project owners usually require other members or their parent companies to agree on a joint and several liability or to provide parent company security bond.

Law stated - 06 September 2023

Tort claims and indemnity

Do local laws permit a contracting party to be indemnified against all acts, errors and omissions arising from the work of the other party, even when the first party is negligent?

According to article 1556 of the Civil Code, contracting parties could be indemnified for all damages, including consequential loss and loss of profit, 'whether arising from non-performance of the obligation, imperfect performance, or delay in performance'. Nevertheless, a party claiming compensation must diligently fulfil its own obligations under the contract. In this sense, article 1552 provides that in bilateral contracts, a party is not in default in the performance of an obligation (and therefore, it is not enforceable) if its co-contractor does not comply with its corresponding obligation or agrees to perform it in due time and form.

Law stated - 06 September 2023

Liability to third parties

Where a contractor constructs a building that will be sold or leased to a third party, does the contractor bear any potential responsibility to the third party? May the third party pursue a claim against the contractor despite the lack of contractual privity?

Article 18 of Decree No. 458 establishes that the owner or first seller of a construction shall be liable for all damages arising out of faults or defects in the building. This liability is without prejudice to the owner or first seller's actions against those responsible for the construction faults or defects that gave rise to the damage.

Law stated - 06 September 2023

Insurance

To what extent do available insurance products afford a contractor coverage for: damage to the property of third parties; injury to workers or third parties; delay damages; and damages due to environmental hazards? Does the local law limit contractors' liability for damages?

Currently, the most common insurance required by owners is the construction all risks insurance policy (CAR), which is subject to the general provisions on insurance entailed in the Commercial Code. Nonetheless, given that there are no legal provisions in respect of what a construction risk is, the scope of the insurance may vary.

Insurance generally covers material damage suffered by the beneficiaries because of activities executed during project construction, and includes machinery, person-hours, fixed expenses of the works and all direct and some indirect costs associated with the work. Given its nature, that insurance category covers a large range of matters such as machinery and process failures, fires and contingencies caused by nature. In addition, the insurance could also cover the contractor's general liability to third parties.

Another insurance commonly used in Chile is civil liability insurance. That insurance aims to protect the owner or contractor against claims from third parties who may suffer property damage or personal injury due to the construction activities. This category of insurance covers both legal expenses and indemnities.

Finally, Chilean law does not contemplate limits on contractors' liability for damages. Nonetheless, under the principle of 'autonomy of will', the parties can agree on a limit for the contractor's liability.

Law stated - 06 September 2023

LABOUR AND CLOSURE OF OPERATIONS

Labour requirements

Are there any laws requiring a minimum amount of local labour to be employed on a particular construction project?

Article 19 of the Labour Code establishes that 85 per cent of employees must be Chileans. However, employers are exempted from this restriction when they employ less than 25 workers.

Law stated - 06 September 2023

Local labour law

If a contractor directly hires local labour (at any level) for a project, are there any legal obligations towards the employees that cannot be terminated upon completion of the employment?

In general terms, Chilean labour law provides employers with great flexibility in the disposal of a labour force, being able to terminate labour relationships for 'company's needs' or 'business reasons' according to article 161 of Labour Code. Business reasons must be based on circumstances of a technical or economic nature, such as a change in market conditions, rationalisation or modernisation, which make it necessary to separate one or more workers.

Dismissal for business reasons gives entitlement to severance pay for years of service. Also, any dismissal or termination of labour relationship invoking the company's needs, the employer must give notice to the employee and send a copy to the Directorate of Work at least 30 days in advance, being able to avoid this formality if the indemnity that replaces the prior notice is paid, equivalent to the last monthly remuneration earned.

The payment of indemnity does not apply if the cause of dismissal is for the reasons mentioned in article 160 of the Labor Code: misconduct of the employee, causing damage to the company, unjustified abandonment of his or her duties, etc.

The Law No. 16,744 about 'Accidents at Works and Occupational Diseases' also establishes in article 79 that obligations related to work accidents and occupational diseases do not terminate upon completion of employment. Particularly, article 79 contemplates a general limitation period of five years from the date of the accident or the diagnosis of the disease. The limitation period is 15 years for cases of pneumoconiosis.

Notwithstanding the above in Chilean practice, direct construction workers usually receive short-term, project-based contracts.

Law stated - 06 September 2023

Labour and human rights

**What laws apply to the treatment of foreign construction workers and what rights do they have?
What are the local law consequences for failure to follow those laws?**

Chilean labour law applies equally to local and foreign construction workers. Therefore, all workers will have essentially the same rights, which are mainly dignified treatment, respect for physical and psychological integrity, the right to honour, and respect for their privacy.

According to the Labour Code, those employers that fail to comply with their labour obligations could be sanctioned with administrative fines or the closure of the establishment or operation. Notably, article 184-bis establishes the employer's obligation to inform and evacuate workplaces in the event of a risk to workers' health. The Labour Department supervises compliance with this obligation through labour inspectors, who are empowered to impose fines or suspend activities in accordance with Decree with Force of Law No. 2 of 1967 of the Ministry of Labour and Social Security.

Law stated - 06 September 2023

Close of operations

If a foreign contractor that has been legally operating decides to close its operations, what are the legal obstacles to closing up and leaving?

There are no significant difficulties for foreign contractors that want to close their operations in Chile. Nonetheless, they may be subject to the same requirements as local contractors. In particular, they must fulfil all their civil, labour and tax obligations before officially closing their operations.

Law stated - 06 September 2023

PAYMENT

Payment rights

How may a contractor secure the right to payment of its costs and fees from an owner? May the contractor place liens on the property?

It is not usual in Chile for the contractors to request guarantees from the owner to secure their payments. The invoices that have been issued on the IRS (www.sii.cl) platform and have not been objected to by the owner, can be enforced by the contractors in summary proceedings before the first-instance tribunals. Exceptionally, contracts authorise contractors to terminate the contract due to the owner's breach, but only after a 60-day delay in payment of the invoice issued by the contractor. The general rule is that those solicitudes must be presented before the local courts before filing a lawsuit.

Law stated - 06 September 2023

'Pay if paid' and 'pay when paid'

Does local law prohibit construction contracts from containing terms that make a subcontractor's right to payment contingent on the general contractor's receipt of payment from the owner, thereby causing the subcontractor to bear the risk of the owner's non-payment or late payment?

There is no express prohibition in Chilean law for including provisions like 'pay if paid' or 'pay when paid' in contracts. Hence, based on the principle of 'autonomy of will', a subcontractor could bear the risk of the owner's non-payment or late payment.

Law stated - 06 September 2023

Contracting with government entities

Can a government agency assert sovereign immunity as a defence to a contractor's claim for payment?

Government agencies cannot assert sovereign immunity as a defence to a contractor's claim in domestic contracts. Nevertheless, according to Decree No. 2,349 on International Contracts for the Public Sector, in international agreements, a government agency can assert sovereign immunity as a defence unless there is a waiver of immunity. Additionally, according to article 9 of Decree No. 2,349, any foreign state and its agencies or institutions may claim in Chile immunity from jurisdiction and execution on the same terms, extent and exceptions as recognised by its own legislation in favour of Chile and its agencies or institutions.

Law stated - 06 September 2023

Statutory payment protection

Where major projects have been interrupted or cancelled, do the local laws provide any protection for unpaid contractors who have performed work?

There is no special protection for unpaid contractors who have performed work. The only option for those contractors is to initiate a judicial or arbitral proceeding in order to claim their rights.

Notwithstanding the above-mentioned, Law No. 19,983 establishes a summary enforcement proceeding to claim the payment of not objected invoices submitted by the contractor. The summary enforcement is conducted by the first-instance tribunals. Article 2 establishes a term of 30 days to pay the unpaid balance of an invoice from the time it has been received, and the invoice is considered irrevocably accepted if it is not contested within eight days of receipt according to article 3. However, these proceedings are always held before local courts.

Law stated - 06 September 2023

FORCE MAJEURE

Force majeure and acts of God

Under local law are contractors excused from performing contractual obligations owing to events beyond their control?

Article 45 of the Civil Code regulates force majeure as an unforeseeable event that is impossible to resist. It operates as a disclaimer or exculpation that justifies non-performance of a party's contractual obligations. Nevertheless, even if a party can be discharged from liability, this will be at its own cost. That said, unless otherwise agreed by the parties, when force majeure occurs, contractors will usually receive an extension of time, but they will not receive any compensation for the cost incurred either during or as a result of the force majeure event.

Law stated - 06 September 2023

DISPUTES

Courts and tribunals

Are there any specialised tribunals that are dedicated to resolving construction disputes?

There are no specialised courts in construction law in Chile. All disputes that arise in public works shall be resolved through the civil courts. Depending on the matter of the conflict, it could be determined by the Office of the General Comptroller of the Republic, which is a supreme audit institution that controls the legality of administrative acts and safeguards the correct use of public funds.

An exception to the above-mentioned can be identified in PPP, where the Public Works Concessions Law establishes a so-called Concessions Technical Panel (TP), composed of two lawyers, two engineers and one professional specialising in economic or financial sciences. The TP issues 'recommendations' that are not binding on the parties. If the TP's recommendation is not followed or if one of the parties disagrees, the dispute can be submitted to an arbitral tribunal, appointed specifically for each concession contract.

Law stated - 06 September 2023

Dispute review boards

Are dispute review boards (DRBs) used? Are their decisions treated as mandatory, advisory, final or interim?

In recent years, dispute boards have been used in mining and energy construction projects. In the public sector, an expert commission was established to evaluate the incorporation of dispute boards in public works contracts. The project is currently under revision.

All the abovementioned cases contemplate the use and incorporation of DRBs; hence, their decisions are not mandatory.

Today, the inclusion of DRBs is slightly increasing due to the introduction of them of pilot-project developed by the private sector, but mostly in ad hoc manner. The standing mode is not yet valued by the local market. In the public sector, its introduction has been stopped by the current government.

Law stated - 06 September 2023

Mediation

Has the practice of voluntary participation in professionally organised mediation gained acceptance and, if so, how prevalent is the practice and where are the mediators coming from? If not, why not?

During the past few decades, professionally organised mediation has gained acceptance in the construction industry as a previous step to arbitration. Notwithstanding the above-mentioned, mediation practice is still reduced compared to arbitration, which is the preferred dispute resolution mechanism by the private construction industry in Chile.

Law stated - 06 September 2023

Confidentiality in mediation

Are statements made in mediation confidential?

Confidentiality in mediation shall be agreed upon between the parties. Article 13 of the Procedural Rules of Mediations of the Arbitration and Mediation Centre of the Commerce of Santiago (CAM Santiago) provides that mediation is confidential.

Law stated - 06 September 2023

Arbitration of private disputes

What is the prevailing attitude towards arbitration of construction disputes? Is it preferred over litigation in the local courts?

In the private sector, especially in complex and sophisticated projects, parties tend to agree on institutional arbitration as the final dispute resolution mechanism. CAM Santiago is Chile's leading local arbitral institution. According to CAM Santiago, almost 21 per cent of all cases relate to the construction sector.

One of the reasons that could explain the general use of arbitration in construction disputes is the excessive length of judicial proceedings before national courts, which usually take between five and seven years.

Law stated - 06 September 2023

Governing law and arbitration providers

If a foreign contractor wanted to pursue work and insisted by contract upon international arbitration as the dispute resolution mechanism, which of the customary international arbitration providers is preferred and why?

In the case of international contracts, the most popular institution chosen by the parties is the ICC International Court of Arbitration. No resistance to a hearing being held in a particular jurisdiction would typically arise. If the project is situated in Chile, it is common for the parties to agree on applying Chilean law.

Law stated - 06 September 2023

Dispute resolution with government entities

May government agencies participate in private arbitration and be bound by the arbitrators' award?

State agencies are subject to the principle of legality of article 6 of the Chilean Constitution, so the possibility of participating in arbitration and waiving their immunity from jurisdiction is subject to a law enabling the state to do so. Therefore, the general rule is that the state cannot participate in private arbitration, unless there is a norm that expressly authorises it. There are certain topics for which the law provides this authorisation.

In relation to international contracts, according to Decree No 2,349, government agencies cannot participate in private arbitration unless expressly authorised by the Ministry of Finance for international contracts, according to article 4. If this requirement is met, both the state and its agencies may submit to a foreign law and waive their immunity from jurisdiction by submitting to the jurisdiction of a foreign court or arbitral tribunal, in accordance with articles 1 and 2 of

the Decree. With respect to investments, the state will be able to submit to arbitration if a treaty ratified between Chile and the state of the investor's nationality exist, and that includes an arbitration clause.

An exception to the general rule can be found in PPP sector, since the law authorises ad hoc arbitration by specifically appointed arbitration commissions.

During the ratification of the CPTPP, Chile sought to renegotiate its terms on a bilateral level, by signing the so-called side letters aimed at excluding investor-state arbitration. Nonetheless, only two countries, New Zealand and Mexico, signed the side letter. After its ratification on 12 October of 2022 and its entry on force on 21 February of 2023, the CPTPP provides protection to investors from the 10 countries members of the treaty.

Law stated - 06 September 2023

Arbitral award

Is there any basis upon which an arbitral award issued by a foreign or international tribunal may be rejected by your local courts?

Article 36 of Law No. 19,971 on International Commercial Arbitration (which follows the UNCITRAL Model Law with few modifications) regulates the basis upon which a local court could refuse to recognise and enforce an arbitral award issued by a foreign or international tribunal.

No modifications or alterations have been to the model solution. The recognition of a foreign arbitral award or judgment is rendered, by way of an exequatur, by the Chilean Supreme Court. The first-instance tribunals are in charge of the enforcement. Article 34 of the same law applies to the annulment of international arbitral awards issued in Chile. No modifications or alterations have been to the model solution. No exequatur by the Supreme Court is required in that case.

Law stated - 06 September 2023

Limitation periods

Are there any statutory limitation periods within which lawsuits must be commenced for construction work or design services and are there any statutory preconditions for commencing or maintaining such proceedings?

The general rule for limitation periods can be identified in articles 2514 and 2515 of the Civil Code, which established a period of five years from the date on which the other party breached the contract.

Notwithstanding the above, article 18 of Decree No. 458 establishes the following limitation periods, which begin from the date the Municipal Works Directorate submitted the final reception certificate of the project:

- 10 years in cases of failures or defects that affect the foundations of the building;
- five years in cases of failures or defects in the materials; and
- three years in cases of failures or defects in the final details of the works.

Law stated - 06 September 2023

ENVIRONMENTAL REGULATION

International environmental law

Is your jurisdiction party to the Stockholm Declaration of 1972? What are the local laws that provide for preservation of the environment and wildlife while advancing infrastructure and building projects?

Chile is part of the Stockholm Declaration of 1972. The principal local law regarding the preservation of the environment and wildlife is Law No. 19,300 on the General Bases of the Environment, which regulates the right to live in an environment free of pollution and the protection of the environment, nature and wildlife.

To protect the environment and fulfil the principles of the Stockholm Declaration of 1972, Law No. 19,300 regulates environmental management instruments such as the strategic environmental assessment model, the environmental impact assessment system, public access to environmental information, liability for environmental damage, environmental control, and the Environmental Protection Fund, and Chile's environmental institutions.

The aim of Law No. 19,300 and other environmental regulations is to ensure the protection of the environment, the preservation of nature and the conservation of the ecological heritage. It also imposes certain obligations and requirements, the fulfilment of which is the responsibility of the project's owner during the assessment process.

Law stated - 06 September 2023

Local environmental responsibility

What duties and liability do local laws impose on developers and contractors for the creation of environmental hazards or violation of local environmental laws and regulations?

Currently, the construction of large-scale infrastructure projects requires obtaining an environmental qualification resolution (RCA), issued by an evaluation commission regulated in article 86 of Law No. 20,417. Companies interested in obtaining an RCA must submit to the Environmental Assessment Service either a declaration that environmental regulations have been met in every respect and that no additional measures are required, or an official environmental impact assessment.

In addition to the latter, recently it was enacted the law that modifies the Criminal Code and Law No. 20,393 about Criminal Responsibility of Legal Entities, which creates new environmental crimes and increases the penalties for certain economic crimes.

Law stated - 06 September 2023

CROSS-BORDER ISSUES

International treaties

Is your jurisdiction a signatory to any investment agreements for the protection of investments of a foreign entity in construction and infrastructure projects? If so, how does your model agreement define 'investment'?

Chile has entered into more than 50 Bilateral Investment Treaties. Chile has a long tradition of signing Bilateral Investment Protection and Promotion Treaties, as well as modern generation Free Trade Agreements. As an example, Chile is part of the 2002's Association Agreement with the EU, the 2003 Free Trade Agreement with the US and has recently ratified the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) in 2022, which

incorporates by reference and mutatis mutandis the Transpacific Partnership Agreement (TPP). Of the latter, Chile is the only country that has trade agreements with the other 10 member countries.

Most treaties include a broad definition of 'investment' as any kind of property made in accordance with the laws and regulations. The recently ratified CPTPP, in its article 9.1, defines investment as 'every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk'. The norms lists different forms of investments that should cover all kind of participation of foreign investors in construction and infrastructure projects, including, an enterprise; shares or stocks; turnkey, construction, management, production, concession, revenue-sharing and other similar contracts; licences, authorisations, permits and similar rights; among other forms.

Law stated - 06 September 2023

Tax treaties

Has your jurisdiction entered into double taxation treaties pursuant to which a contractor is prevented from being taxed in various jurisdictions?

Chile has entered into double taxation treaties with 25 countries from America, Europe and Asia, including Australia, Belgium, Brazil, Canada, Colombia, Croatia, Denmark, Ecuador, France, Ireland, Malaysia, Mexico, New Zealand, Norway, Paraguay, Peru, Poland, Portugal, Russia, South Korea, Spain, Sweden, Switzerland, Thailand and United Kingdom.

Law stated - 06 September 2023

Currency controls

Are there currency controls that make it difficult or impossible to change operating funds or profits from one currency to another?

Currently, there are no currency controls in Chile that make it difficult or impossible to change operating funds or profits from one currency to another. Nevertheless, it is important to consider that changes in currency are regulated by the Central Bank of Chile and must be done through the Formal Exchange Market. In this sense, article 49 of the Constitutional Organic Law No. 18.840 of the Central Bank states that the latter shall be empowered to impose restrictions on foreign exchange transactions carried out in the Formal Exchange Market. In particular, Chapter 14 of Compendium of International Exchange Rate Rules, issued by the Central Bank of Chile, regulates the procedures, deadlines, conditions and forms to be used by persons to provide the Central Bank with information on transactions, information on international exchange transactions, such as foreign exchange inflows and outward remittances.

Law stated - 06 September 2023

Removal of revenues, profits and investment

Are there any controls or laws that restrict removal of revenues, profits or investments from your jurisdiction?

Foreign investments are regulated by Law No. 20,848, which Establishes a Framework for Foreign Direct Investment in Chile and Creates the Respective Institutionalality . According to article 5, foreign investors have the right to transfer their net profits and capital abroad. Nonetheless, it can only be done once all the corresponding tax obligations have been fulfilled in accordance with local regulations.

UPDATE AND TRENDS**Emerging trends**

Are there any emerging trends or hot topics in construction regulation in your jurisdiction?

The Salar de Atacama, one of the most important lithium reserves in the world (represents the 85 per cent of Chile's lithium reserves), is in the hands of the state through Corfo (Production Promotion Corporation) and are exploited through lease agreements with SQM Salar and Albemarle, which are valid until 2030 and 2043, respectively. Given the expiration of one of the mining contracts in 2030, the government has considered 'essential and urgent to ensure the continuity of production activities in the Salar, to increase lithium production in a sustainable manner, and to ensure the entry of the State in the production cycle'.

Also, there is currently a draft bill that seeks to modify article 7 of the Mineral Code, which declares lithium as a non-concessionary substance. Because of this norm, lithium can only be exploited through the state, its entities or privately with an administrative concession or a special lithium operating contract. Therefore, the draft bill seeks to convert lithium into a concessionable mineral substance, thus creating space for the development of this new market through private entities and generating new opportunities for the construction industry in relation to the structuring of the production chain at the sites of operation. This notwithstanding, the president of Chile has stated that at least during his administration, he plans to oppose this project and reserve the lithium 'for all Chilean people'.

Other emerging topics that can be appreciated relate to the country's energy capacity. Modifications to the geothermal concession system are currently under legislative discussion. Geothermal projects are projects that enable the materialisation of large electricity projects. Thus, the new modification seeks to exempt certain projects from the concession system in order to facilitate and speed up their implementation, and therefore, impact on the country's electricity capacity.

Law stated - 06 September 2023

Jurisdictions

	Armenia	Concern Dialog Law Firm
	Australia	Holding Redlich
	Canada	Singleton Urquhart Reynolds Vogel LLP
	Chile	WAGEMANN Arbitration
	China	Shanghai JianLingChengDa Law Firm
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