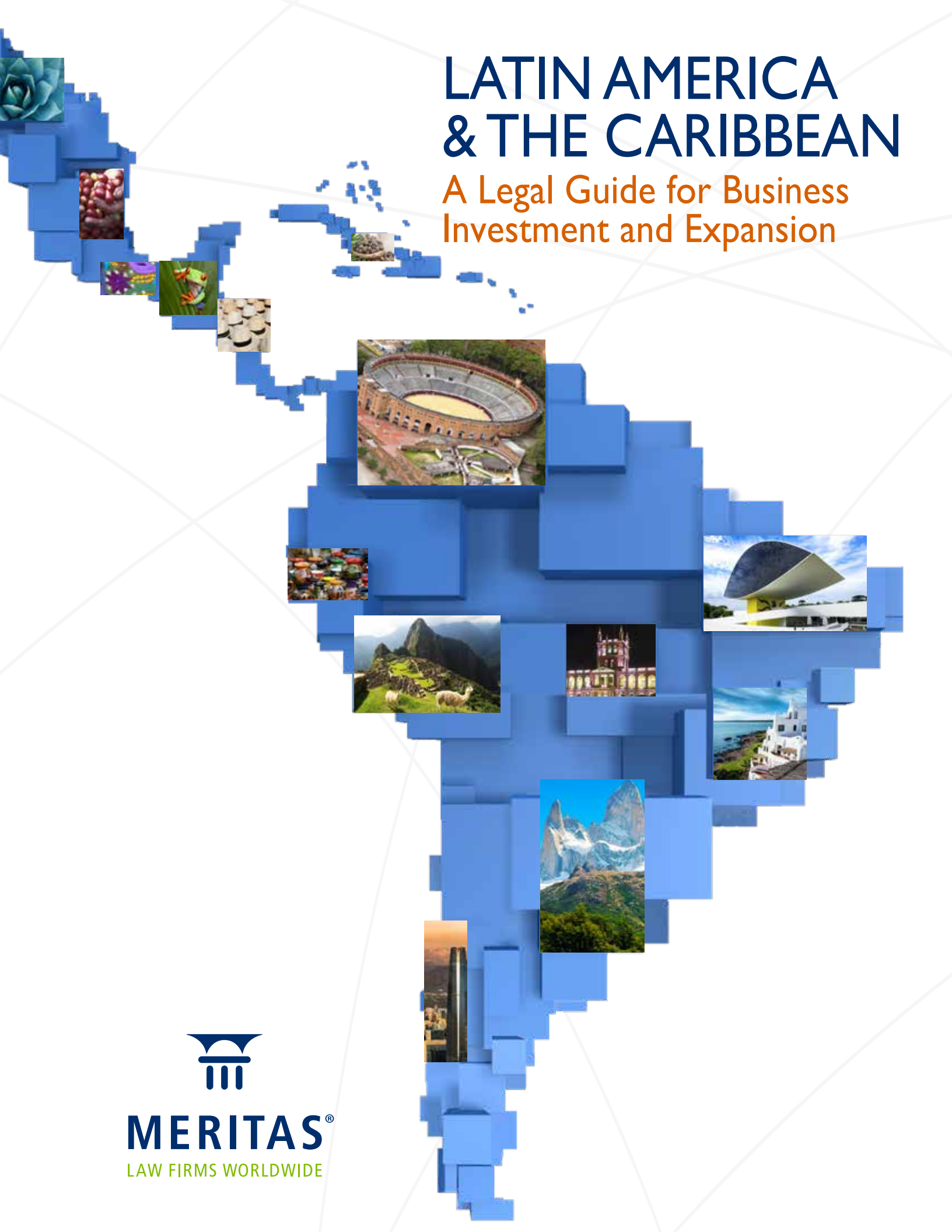


LATIN AMERICA & THE CARIBBEAN

A Legal Guide for Business
Investment and Expansion



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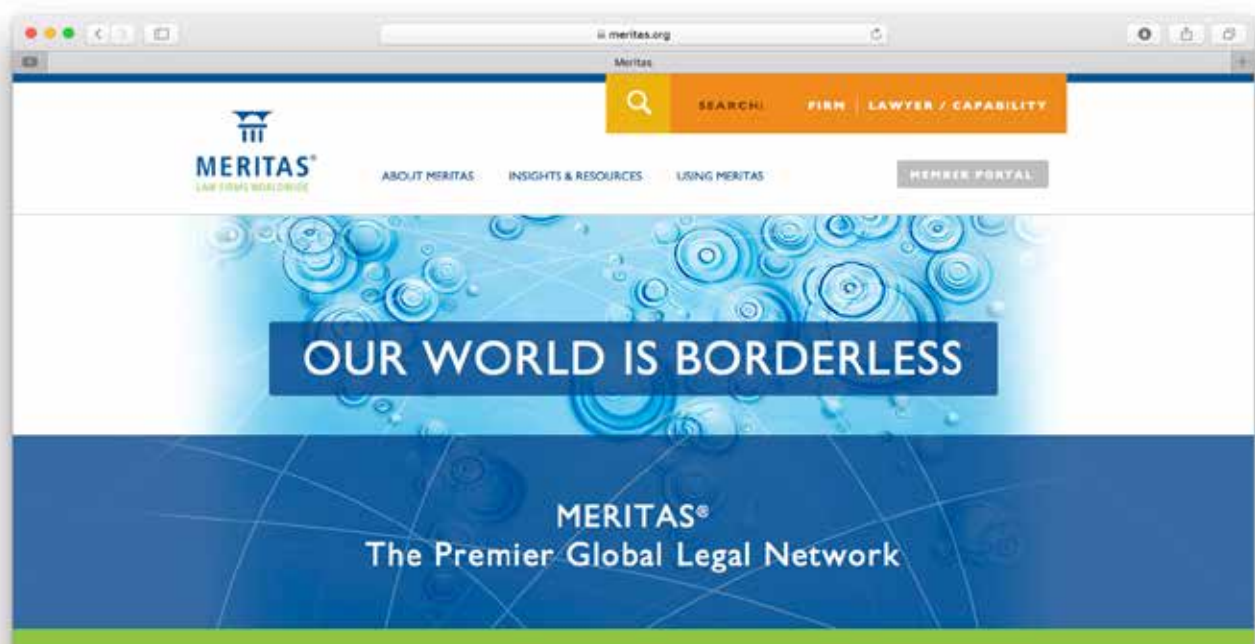
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CHILE

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CONTACT:

JOSÉ PABLO DULANTO
jpdulanto@nld.cl

PAULO LARRAIN
plarrain@nld.cl

+56 22 414 30 00
www.nld.cl



1. What role does the government of Chile play in approving and regulating foreign direct investment?

No governmental prior approval is needed in Chile to initiate or continue an investment from abroad.

Foreign investors are welcome in Chile and subject in all main aspects to the same rules, rights and obligations of domestic investors. Foreign investors can own up to 100% of a Chilean-based company, and there is no time limit on property rights. They have access to all productive activities and sectors of the economy, except for minor restrictions in certain areas such as coastal trade, air transportation and mass media.

There are two main foreign investment regulations to be considered when interested in investing in Chile:

(a) Law No. 20,848 (Framework Law for Direct Foreign Investment in Chile).

Law No. 20,848 in effect since January 1st, 2016, regulates investments of an amount equal or greater than USD5 million (or the equivalent in other foreign currency) made by any entity (both individuals and legal entities) domiciled abroad.

Pursuant to this law, there are six different methods to undertake a direct foreign investment in Chile: (i) in freely exchangeable foreign currency; (ii) tangible assets in all forms and conditions; (iii) reinvestment of profits; (iv) credits capitalization; (v) technology equity contributions; and (vi) credits

associated to foreign investment made by related companies. Additionally, an investment granting the foreign investor direct or indirect control of at least 10% of the target company's voting shares (or an equivalent percentage if the recipient company is not stock-based) is also considered direct foreign investment in Chile.

The main rights of foreign investors under Law No. 20,848 are:

- (i) Overseas repatriation at any time of the invested capital and profits, provided that tax obligations have been fulfilled.
- (ii) Access to the Foreign Exchange Market to liquidate currency and obtain necessary currency to repatriate the invested capital and profits.
- (iii) Right to not be arbitrarily discriminated against. The foreign investor is subject to the same legal regime applicable to local investors.
- (iv) Right to value-added tax (VAT) exemption in the import of capital assets.

(b) Chapter XIV of Foreign Exchange Regulations of the Chilean Central Bank.

This regulation applies to international exchange operations involving credits, deposits, investments and capital contributions from abroad, as long as the involved amount is not less than USD10,000. Basically, Chapter XIV establishes information requirements, which must be fulfilled by the investor vis-à-vis the Chilean Central Bank, when doing international exchange operations.

2. Can foreign investors conduct business in Chile without a local partner? If so, how does the Chile government regulate commercial joint ventures between foreign investors and local firms?

Foreign investors can conduct business in Chile without a local partner.

There is no governmental or legal regulation regarding joint ventures between foreign investors and local partners, either individuals or legal entities, so any such agreement is a matter that should be negotiated between the parties.

Among the main legal alternatives for foreign investors to structure a legal entity to conduct their business in Chile are:

(a) Limited Liability Partnership (Sociedad de Responsabilidad Limitada or LLP).

The liability of the partners is limited to the amount of their capital contributions and partnership interest may only be transferred with the consent of all partners by means of a public deed.

A LLP shall have at least two and not more than fifty partners who may be Chilean or foreign, individuals or companies.

(b) Stock Corporations (Sociedades Anónimas, S.A.).

Chilean corporations are governed by Law No. 18,046, as amended. Its capital stock is represented by shares, which may be transferred without any limitation. Shareholders' liability is limited to their capital contributions.

Stock corporations can be either open (listed), special or closed corporations. Corporations can voluntarily or by legal mandate register their shares in the National Securities Registry and fall under the supervision of the Chilean Superintendence of Securities (SVS).

Special corporations are expressly established by law (e.g. banks and insurance companies) and closed corporations are those that do not qualify either as open or special.

Stock corporations require at least two shareholders who may be Chilean or foreign, individuals or companies.

A board of directors manages a corporation. A minimum of three directors is required in closed corporations and a minimum of five directors in open corporations. Directors do not need to be shareholders and can be foreigners.

(c) Limited Liability Stock Companies (Sociedades por Acciones or SpA).

A SpA is a stock corporation that may be owned by solely one shareholder (Chilean or foreign individuals or companies) and its capital is divided into shares. There is significant flexibility in the choice of management structure, which shall be included in

the articles of incorporation of a SpA and in subsidiary to its bylaws they are regulated by the same laws as those governing stock corporations.

(d) Branches of Foreign Corporations (Agencias).

No governmental agency is required to approve or supervise its operation, except in the case of branches of foreign banks.

Branches are required to appoint a representative in Chile, granting him/her broad powers of attorney. They do not require a board of directors or other formalities for its management.

3. What laws influence the relationship between local agents and distributors and foreign companies?

There are no special laws in Chile which may influence the relationship between local agents and distributors and foreign companies.

The parties shall negotiate the terms and conditions of their relationship including the choice applicable law of the agreements regulating such relationship.

4. How does the Chilean government regulate proposed merger and acquisition activities by foreign investors and are there any areas of the economy where they are prohibited (e.g., natural resources, energy or telecommunications)?

Mergers and acquisitions are not subject to special regulations due to

the involvement of a foreign investor in the transaction (as understood by the Framework Law for Foreign Direct Investment in Chile).

Private individuals or legal entities are not allowed by law to become owners of some properties such as mines, other natural resources or lands next to the country's borders with other countries but may obtain the grant of a concession by the State for a reasonable period of time to recover the investment if made in such restricted areas. These limitations apply equally to national and foreign companies.

If the recipient of a foreign direct investment participates in an industry where the foreign investor is already participating through another company, competition law issues applicable to investors of any nationality may arise, either in the field of merger control or minority shareholding law.

5. How do labor statutes regulate the treatment of local employees and expatriate workers?

(a) Visas and Working Permits.

Expatriates or foreign employees can work in Chile once they have obtained a temporary visa which may be subject to an employment contract or not.

The temporary visa subject to an employment contract entitles its holder to perform remunerated activities exclusively for the employer with whom the employment contract is signed. This type of visa expires if

the employment contract is terminated and employer is obliged to pay the return tickets of the foreign employee and his/her family to their country of origin once the employment contract is terminated.

Expatriates may also apply for a temporary visa which entitles its holder to perform remunerated activities in Chile with no special requirements but to have an employment contract. This type of visa does not expire due to the termination of the employment contract and its holder may work for other employees during a term of one year (exceptionally it may be granted for two years).

Additionally, there are other kinds of temporary visas which allow expatriates and foreign employees to work in Chile, such as the MERCOSUR members' visa, the special visa for persons with relatives domiciled in Chile and others.

Family members (spouse, children and parents) are not allowed to work in Chile unless a separate visa is obtained.

Finally, after a certain period of time, holders of temporary visas may apply for permanent residence in Chile. Once permanent residence has been obtained, expatriates and foreign employees may freely work in Chile.

(b) Labor Contract.

Consent between the parties is legally enough for a labor contract to exist. Nevertheless, it is mandatory for the employer to put the contract in writing and provide the employee

with a copy of the same, within 15 working days after the employment relationship begins.

Labor contracts shall include certain mandatory provisions including (i) date and place; (ii) identity of the parties; (iii) term; (iv) services description and location; (v) remuneration, benefits and payment conditions; and (vi) work schedule.

(c) Schedule and Vacations.

Employees cannot work more than 45 hours per week, divided into five or six days and cannot work more than 10 hours each day. Additional time in excess of the 45-hour working schedule is considered as overtime and no employee can work more than 2 hours of overtime per day. However, these working schedule limitations and overtime rules do not apply to managers or other highly qualified employees.

Employees who have worked for an employer for one or more years are entitled to 15 working days (Monday to Friday) of vacation. Vacations are considered a right, must be used by the employee and cannot be compensated in money.

(d) Maternity Immunity and Maternity Leave.

Women are granted maternity immunity (*fuero*) from the time pregnancy is detected and until one year after the maternity leave expires.

Maternity leave is of six weeks prior to the expected date of birth and twelve weeks after delivery. There is

an additional optional twelve weeks of maternity leave that can be shared with the father.

(e) Termination of the Labor Contract.

The employment contract can only be terminated by legal causes established in the Chilean Labor Code. Such causes can be caused by the employee (as breach of the obligations undertaken in the employment contract) or not caused by the employee as *necesidades de la empresa* (termination due to company needs) or *desahucio* (dismissal with no cause).

Additionally, the labor contract may terminate by mutual agreement, resignation, expiration of the term or conclusion of the work or service purported.

6. How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?

Since 1975, the valid unit currency is the Chilean Peso.

Pursuant to the Central Bank Act, any person may freely engage in foreign exchange transactions. Such transactions include buying and selling foreign currency and any act and agreement that may have the effect of creating, amending, or extinguishing an obligation payable in such currency (even if no transfer of funds to or from Chile is actually involved).

For these purposes, foreign currency shall be deemed to mean banknotes,

bills or coins of foreign countries whatever their denomination or characteristics, and bills of exchange, checks, letters of credit, payment orders, promissory notes, drafts and any other document giving evidence of an obligation payable in such currency.

The effects of foreign exchange transactions entered into abroad for its performance in Chile, are subject to Chilean law.

Chile has two currency markets, (i) the Formal Exchange Market (“FEM”), and (ii) the Informal Exchange Market (“IEM”). The FEM is comprised of banks and other entities authorized by the Chilean Central Bank. The IEM is comprised of entities that are not expressly authorized to operate in the FEM, such as foreign exchange houses and travel agencies.

The exchange rate in the FEM shall be freely agreed between the contracting parties.

The Chilean Central Bank publishes daily the exchange rate of foreign currencies based upon the transactions made in the FEM in the immediately preceding business day.

Also, the Chilean Central Bank may decide, through a justified resolution, that certain transactions have to be conducted exclusively within the FEM.

7. What types of taxes, duties, and levies should a foreign investor in Chile expect to encounter?

(a) Income Taxes.

Individuals and entities (a) resident or domiciled in Chile are subject to taxation on worldwide income (with or without a Chilean source); and (b) neither resident nor domiciled in Chile are subject to taxation in Chile only with respect of items of income from a Chilean source (income derived from assets located or activities carried on in Chile).

Despite changes approved in 2014 which created the so-called deemed-dividend and partially integrated regimes, Chile’s income tax regime continues to be an integrated tax regime in the sense that with respect to dividends or profits distributions a credit may be taken by the recipient equivalent to all or part of the corporate tax paid by the entity first distributing the dividend or making the profit distribution.

Under the so called deemed-dividend regime, the business entity pays a corporate tax with a 25% rate. Each year a dividend is deemed to take place equivalent 100% of the taxable income which is attributed in the proportion decided by the shareholders or in the proportion of their capital participation if no shareholder’s decision takes place. Nonresident shareholders pay a 35% Dividends

Withholding Tax (DWT) and are entitled to credit the 25% Corporate Tax, under the deemed-dividend regime. Integration of the two layers of taxes is total.

Under the so called partially integrated regime, the business entity pays a 25.5% rate of Corporate Tax for 2017 and a 27% rate beginning 2018 onwards. Dividends taxation takes place only if an actual dividends or profits distribution occurs.

Nonresident shareholders pay a 35% DWT and are entitled to credit 17.55% of the 27% Corporate Tax, which is 65% of the tax paid. Integration between the two layers of taxes is therefore partially integrated.

The full tax burden on business income is therefore 44.45%, 27% paid by the business entity and 17.45% paid by the nonresident shareholder. Nonresident shareholders with residency in a country with which Chile has a tax treaty in force are able to credit 100% of the Corporate Tax and therefore in their cases the full tax burden remains at 35%. Up to 2019 signed tax treaties such as the ones with the US, China and Argentina are entitled to the full integration and if not in force by 2019 the partially integrated regime will be applicable to distributions or dividends paid to shareholders resident in those countries.

A Withholding Tax (WHT) is assessed on most offshore payments to a nonresident party as such payments

are deemed Chilean sourced items of income. The rates for the WHT vary depending on the nature of the payment. Tax treaties in force in Chile generally reduce the WHT rates and in some cases a 0% rate applies in absence of a permanent establishment in Chile.

Relevant Miscellaneous Issues on Income Tax.

1. Tax Losses or NOLs. Losses incurred in a given year can be carried forward for future exercises with no time limit and be absorbed with a tax profit. Carry back of NOLs is no longer accepted, that is, accumulated tax earnings may not be offset with a tax loss currently generated. However, dividends paid to a company with NOLs allow the fiscal reimbursement of the Corporate Tax paid on the profit distributed as dividend.

2. Depreciation charge on fixed assets. A tax deduction may be taken for depreciation of fixed assets as per a lineal method based on the useful life of the relevant asset as determined by the tax authority. An accelerated depreciation deduction is also accepted which results from depreciating considering one-third of normal useful life of the relevant asset.

3. Deduction of start-up expenses. A tax deduction is authorized for expenses incurred to create a company and begin a new business. Taxpayers are allowed to deduct them in the year in which they were incurred or in a period of up to six years in case of normal start-up

expenses or up to three years if incurred by a manufacturer. Intangible assets may not be amortized for tax purposes as a general rule.

4. Nondeductible Expenses Penalty Tax. Due to the integrated feature of Chile's tax regime, nondeductible expenses – personal consumption by the owners and other disallowed expenses – are subject to a penalty tax equivalent to the taxation that affects dividends and profits distributions. If the expenses may be related to the business owner, personal taxation affects the amount of the expenses with a 10% increase to the personal tax rate of the relevant shareholder. If the disallowed expenses may not be linked to a shareholder, a 40% penalty tax is payable.

5. Capital Gains Taxation. Capital gains on the sale of shares or quotas rights are subject to normal income taxation. If the seller is an individual, the personal tax computation will consider the years during which he/she held the shares. Shares acquired by February 1984 or before remain exempt from taxation as well as shares traded in the stock market provided that the acquisition as well as the sale is made in a stock market.

(b) Indirect Taxes.

Value-Added Tax (VAT) with a 19% rate is assessed on most sales of movable and real estate assets performed by a habitual seller and on services performed. Approximately 60% of total fiscal revenues arise from VAT collection.

The tax authority may grant a VAT exemption on the import of raw materials used for manufacturing of goods for export. Further, importation of fixed capital assets may also be exempt from the VAT provided that no longer than 12 months will take place until the relevant project will operate and begin selling or performing services and generating VAT fiscal debits.

As any VAT, the acquisition of assets in which VAT was assessed generates a VAT credit as such creditable against the VAT due (fiscal debit) on subsequent sales or performance of services subject to VAT. The VAT credit can be carried forward indefinitely until completely absorbed by future tax debits. Surplus of VAT credits arising from the acquisition of fixed assets, accumulated over a period of six consecutive months or more may be reimbursed upon request.

(c) Other Taxes.

Property Tax. Normally it is a yearly 2% and is assessed on the fiscal valuation of the relevant real estate. It varies according to type of property such as residential, agricultural or commercial.

Municipal Taxes. Commercial activities are subject to a Municipal Tax between 0.25% to 0.5% of the tax net worth of the company or business. Rates vary amongst municipalities. The Municipal Tax has a cap of 8,000 Monthly Tax Units (approx. USD 580,000.00.-).

8. How comprehensive are the intellectual property laws of Chile, and do the local courts and tribunals enforce these laws regardless of the nationality of the parties?

Chilean intellectual property laws protect a great variety of intangible assets that range from copyrights to trademarks, designs, trade secrets and patents domain names (NIC Chile regulations) and plant varieties. Likewise, Chile has subscribed and is a current contracting state in many international treaties and conventions for the protection of intellectual property rights such as the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS between WTO members) and the International Convention for the Protection of New Varieties of Plants (UPOV), among others.

Local courts and tribunals enforce these laws regardless of the nationalities of the parties, provided that legal requirements for the protection of intellectual property rights are met (e.g. previous registration before the Chilean Patent and Trademark Office – INAPI).

9. If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign investors?

In the case of commercial disputes in Chile, there is no legal ground to argue that international arbitration would be a more beneficial forum than local courts for dispute resolution to foreign investors.

Foreign investors may choose between local courts (including arbitration) or international arbitration. To determine which forum alternative would be more beneficial, a case-by-case analysis is recommended.

Foreign investors should be comfortable that Chilean courts would not give domestic investors a preferential treatment in case a dispute arises. Local courts are recognized as unbiased and independent. The same applies in case of a dispute to be resolved in a Chilean arbitration procedure. Having said that, when the counterpart is a governmental entity or a state-owned company, local courts tend to favor them in case of a dispute, but such situation affects both local and foreign investors in the same manner.

In terms of prompter enforceability, location of assets, familiarity of the court with local aspects of the dispute, cost, expertise and shorter times, arbitration in Chile is in most cases a better alternative for foreign investors than international arbitration.

In Chile, the most prestigious arbitration entity is the Santiago Arbitration and Mediation Center (CAM Santiago) which is a nonprofit institution founded and run by the Santiago Chamber of Commerce with the backing of the Chilean Bar Association and different areas of the Chilean Confederation of Production and Commerce.

CAM Santiago offers arbitration and mediation for the resolution of domestic and international disputes and provides a vast list of arbitrators with recognized experts. Since 2006, CAM Santiago extended its services to international commercial arbitration in order to resolve disputes in legal relations between parties from different countries, on the basis of its experience and the enactment of a Law of International Commercial Arbitration.

10. What advice can you provide for how best to negotiate or conduct business in Chile?

Chile is recognized as a good place to do business but before entering into any business in the country, as in any other place, a foreign investor should start by getting familiar with how to negotiate or conduct business in Chile. A trip to visit the country, checking the market and interviewing potential advisors is always recommended.

Chile is a compliant country in the sense that people take into consideration the rule of the law and regulations that are relevant for business. In that sense, we advise foreign investors to obtain legal advice from the beginning and prior to entering into agreements or conducting investments in Chile, especially on corporate, commercial and tax matters.

As initial considerations/steps for conducting business in Chile, we suggest the following:

(a) Choose the corporate vehicle to conduct the investment in Chile. This decision may involve different aspects such as timing, the company's management, capital, powers of attorney and tax considerations (Chile is a party to double taxation treaties with countries worldwide), among others.

(b) Obtain a Tax Identification Number or RUT (its Spanish acronym) from the *Servicio de Impuestos Internos* (Chilean Internal Revenue Service) as required for foreign investors.

(c) Initiate activities, which may imply opening a bank account and the request of permits or special licenses depending on the kind of activity.

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800 Hennepin Avenue, Suite 600
Minneapolis, Minnesota 55403 USA
+1.612.339.8680