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Chile

IV. Chile

A. Foreign investment in Chile

Chile is a country that stands out due to the development of its strong institutional framework; it is one of the Latin American countries that offers the best standards in political, economic and social stability.

As evidence of this, Chile was the first – and is still the only – South American country that is a member of the OECD, which has 36 developed and emerging member countries.

Furthermore, in Chile there are different and attractive alternatives for foreign investment within different sectors: mining, infrastructure, aquaculture, energy (especially renewable energy), services, tourism and industry, among others. In the World Investment Report of the United Nations Conference on Trade and Development (UNCTAD) of 2017, Chile appeared within the first five main economies in receiving foreign investment in Latin America and the Caribbean, and is the Latin American country with the best place in the Global Competitiveness Index Ranking 2017–2018 issued by the World Economic Forum.

Besides local regulations that govern foreign investment, Chile has international policies in order to commit the country, with many others, to FTAs, investment promotion and protection agreements, and treaties for the avoidance of double taxation.

In addition, Chile is a member of the International Centre for Settlement of Investment Disputes, which provides facilities for conciliation and arbitration of international investment disputes.

i. Local rules in foreign investment

In general terms, these local rules have the purpose of, on the one hand, promoting the direct entry of foreign capital by giving investors certain assurances and benefits, and on the other hand, keeping the Chilean Central Bank informed of the entrance and repatriation of such investments.

Notwithstanding the foregoing, foreign investors shall enter their capital through an entity that is a part of the Formal Exchange Market (Mercado Cambiario Formal), which is integrated by commercial banks operating in Chile and also other entities expressly authorised by the Chilean Central Bank (eg, currency exchange companies and certain tourism companies, among others).

In broad terms, there are two main mechanisms for purposes of entering capital into the country: the first is the reporting system of Chapter XIV of the Central Bank Foreign Exchange Regulations ('Chapter XIV'), which offers a fast route to foreign investments over US$10,000, and the other is the foreign investment regulation rules in the Foreign Investment Framework Law, which entered into force on 21 January 2016, replacing the Foreign Investment Statute contained in Decree Law No 600 of 1974 ('Decree Law 600'), which ruled the matter to that date. The Foreign Investment Framework Law substantially grants to investors, among other guarantees, equal treatment compared with local investors and other tax benefits, in accordance with the recommendations of the OECD. This law only applies to investments for amounts over US$5m.

ii. Chapter XIV of the Central Bank FX Regulations

As stated above, this mechanism provides an easy alternative for foreign loans, deposits, investments and equity contributions over US$10,000 to enter the country because there is almost no intervention from the authorities. This mechanism requires the parties to inform the Chilean Central Bank of all foreign investments over the amount indicated above through a simple and standard form. In the case of foreign loans, for example, the information provided shall include some details about the borrower, the lender, the amount, terms, interest rates and purpose of the loan, guarantees, the schedule of payments and other special clauses. Once this form is received by the entity of the Formal Exchange Market, the latter reports it directly to the Central Bank.

With respect to the repatriation of investments, please note that under Chapter XIV, the investor may at any time repatriate the investment and the profits derived from it without any amount limitation, provided this remittance of foreign currency is conducted through a Formal Exchange Market entity and the Central Bank is informed.

iii. The Foreign Investment Framework Law

The main guarantees granted to foreign investors by the new Foreign Investment Framework Law, also contained in the former regulations of the Foreign Investment Statute, are related to the remittance of the invested capital and profits, access to the formal exchange market, the guarantee of no arbitrary discrimination and some tax benefits.

This regime is granted to the entry of foreign capital or assets owned by a foreign investor, or by a local company controlled by a foreign investor, for amounts over US$5m. It is also granted to foreign investments, over such amount, destined to acquire more than the ten per cent of a local company's equity.

Those who qualify as foreign investors, under the terms of the new Foreign Investment Framework Law, could obtain the corresponding certificate from the Agency for Foreign Investment Promotion to enter into the applicable regime for foreign investors.

The benefits granted to the direct foreign investment by the new Foreign Investment Framework Law are summarised as follows:

- foreign investors have the right to remit abroad the entered investment and the net profits obtained from it, at any time and without any amount limitation, provided there is prior compliance with all Chilean taxes and/or duties;
- foreign investors have the right to access the formal exchange market to sell their foreign currency to enter the capital into the country, and also to obtain the foreign currency needed to remit abroad the entered investment and their profits, at the exchange rate freely agreed between the parties;
- foreign investors have the right to VAT exemption on the importation of capital assets destined for the development of the foreign investment business in Chile, provided it fulfils the VAT Law requirements; and

- foreign investors have the right to be subject to the common legal regime applicable to local investors, without any arbitrary direct or indirect discrimination. This guarantee is fully supported by the Chilean Constitution, according to which all individuals in Chile are treated equally under the law, regardless of their nationality, domicile, residence or any other arbitrary criteria that the law or any authority may impose breaching these constitutional provisions.

Notwithstanding the above, the new Foreign Investment Framework Law will grant to foreign investors who may prefer to be subject to the former regulation granted by the Foreign Investment Statute contained in Decree Law 600, the opportunity to transfer foreign capital into Chile under the terms of Decree Law 600 within the period of four years, counted as of 21 January 2016.

Therefore, foreign investors would enter into a legally binding agreement with the State of Chile, under the regulation of Decree Law 600 for the purpose of bringing capital over US$5m to the country, under certain terms and conditions that are not allowed to be modified at the sole discretion of the state. Under this agreement, foreign investors shall bring their capital within a period of three years, and eight years in the case of mining projects, as a general rule.

This mechanism requires that the investor files an application form with the corresponding authority, including relevant information as to the amount and purpose of the investment in Chile, and also providing some information regarding the identity of the investor. If the investment is approved by the corresponding authority, a foreign investment agreement shall be subscribed before a notary public in Chile, between the foreign investor and the Chilean state. Notwithstanding the latter, foreign investors are allowed to enter funds on the same date that the mentioned application is filed, and allocate these amounts to the foreign investment agreement that will be executed. Under this legally binding agreement with the Chilean state, foreign investors have the right to be subject to a fixed income tax rate for a period of ten years counted from the beginning of the activities of the foreign investor. This period could be increased up to 20 years for some projects (ie, industrial and extractive investments of US$50m or more). Otherwise, the foreign investor could prefer to be subject to regular tax rates.

Foreign investors, who had already entered into a foreign investment agreement with the Chilean state under the Foreign Investment Statute contained in Decree Law 600, will fully maintain their rights and obligations granted by such agreements, provided they were subscribed before 21 January 2016.

a. Authorisations versus limitations or prohibitions

As a general rule, Chilean law does not provide any specific limitation or prohibition regarding the participation of foreign investment in the different areas of the national economy. In fact, the Chilean Constitution provides the right to develop any economic activity to all individuals, provided its corresponding regulations are duly fulfilled.

There are some minor restrictions or limitations for foreign investment; for example, in areas considered relevant to national sovereignty, such as the ownership of real estate at the borders of the country. In addition, the law has imposed some restrictions to the nationality of owners, directors and representatives in mass media businesses and the cross-border transport regime, and according to fishing law, there are other special requirements regarding the nationality and residence of those who operate aquaculture licences.

B. TREATMENT OF FOREIGN INVESTMENT IN INFRASTRUCTURE INITIATIVES AND PPP PROJECTS

In Chile, most public infrastructure, such as highways, tunnels, airports, public hospitals, schools, buildings, prisons and telecommunications services, among other projects, are built and operated through a concession system created in 1991, in virtue of which the Chilean Government and licensees are bound under a model of PPPs.

Under the PPPs model, the Chilean Government opens bidding processes to build, operate, repair and maintain public infrastructure needed in accordance with the public interests of the country. Once the projects are built and fully operational, the licensees are able to recover their investment and get profits over a long-term period, through the payments of the users of the project, or through a subsidy of the Chilean Government. Finally, the licensees transfer the public infrastructure to the state.

According to the Concessions Law, public biddings could be local or international; and the individuals and companies either local or foreign who fulfil the legal requirements, are allowed to participate in such biddings.

However, in order to enter into the concession agreement with the Chilean Government, foreign licensees, as well as local licensees, shall incorporate a Chilean company with the exclusive corporate purpose of executing, repairing, maintaining and operating such public infrastructure.

C. TREATMENT OF FOREIGN INVESTMENT IN MINING ACTIVITIES

Mining activities in Chile are regulated by the Constitution, the Constitutional Organic Mining Law, the Mining Code and other specific regulations.

According to the Chilean Constitution, the state is the absolute and exclusive owner of all mines, despite the property rights of individuals or companies over the real estate where those mines are situated. The surface land will be subject to legal obligations and limitations in order to facilitate the exploration, exploitation and profits of such mines.

There are no differences in the treatment of local and foreign investment in mining based on the constitutional principle of no arbitrary discrimination. Therefore, individuals and companies are able to claim for an exploration or exploitation mining concession, regardless of their nationality, domicile, residence or any other arbitrary criteria. However, there are some minor restrictions on foreign investors who are nationals of bordering countries regarding applying for mining concessions located on the border of the country.

Along the same lines, local and foreign investors shall comply with the same legal obligations in the execution of mining concessions, such as payment of mining licences, compliance with mining safety regulations and environmental obligations, among others.

In general, exploration and exploitation concessions can be granted for private individuals or companies over all mineral resources permitted by the law, with the exception of liquid or gaseous hydrocarbons (oil and gas), lithium and deposits of any type located in the sea under Chilean jurisdiction or located in areas deemed by law to be important for national security. Those mineral resources not subject to the concession system can be explored and exploited directly by the state or its companies, or by administrative concessions or special operation contracts.

Surface clay, artificial salt pits, sand, rock and other materials used directly in construction are ruled by the common law or special provisions set forth in the Mining Code to this effect; therefore, they are not considered mineral substances and not subject to the mining concession system described in this section.

Mining concessions are granted by the civil courts through a non-discretionary process, once the investor has fulfilled the requirements established by the Mining Code. Such a judicial award will have the duration and shall set the rights and obligations that the Constitutional Organic Mining Law indicates.

Exploration mining concessions are granted for two years. The concessionaire may request an extension for two additional years, provided that he or she releases half of the surface originally granted. Then, the owner of such an exploration concession can apply preferentially for an exploitation concession, being in such case entitled to extract the mineral resources within the limits of such an area for an indefinite period.

d. Treatment of foreign investment in real estate (rural and urban properties)

As a general rule, there are no differences in the treatment of local or foreign investment in acquiring real estate in Chile based on the constitutional principle of no arbitrary discrimination. Therefore, local and foreign individuals or companies who may invest in real estate shall comply with the same regulations based in the fact that no governmental authorisations are required in this regard.

There are, however, some restrictions. For example, and as mentioned above, real estate located in border zones may not be acquired by foreign individuals from the neighbouring countries or by companies located in such border countries, with more than 20 per cent of its equity owned by entities of the same country. In these cases, the Chilean President could exempt the foregoing prohibition, through a supreme decree.

e. Treatment of foreign investment in agribusiness activities

According to the general rules stated above, there is no special treatment for foreign investors in agribusiness activities compared with local investors. The tax benefits used by participants in this area of the economy are available to both types of investor.

Actually, foreign investors have been very important in the development of the agribusiness industry, which includes wine, fruit and other products, and is also related to processed food, fishing and farm fishing, and the industry of dairy products, meat and olive oil.

The Mediterranean climate of Chile, with wet winters and warm summers, and its other natural conditions, offers the best scenario for this sector of the economy. This natural advantage allows year-round production, which jointly with the protection given by natural barriers such as the desert, mountains and ice fields, makes Chile appear to be one of the countries with the best phytosanitary conditions to develop an agricultural and export business.

In the public services industry, there is no difference in the treatment of local or foreign investment in Chile. As described in relation to PPP projects, local and foreign entities are allowed to participate in public biddings to provide public services.

Regarding the services provided by private companies to government entities, the Supply and Services Agreements Law establishes that local and foreign entities are allowed to enter into supply and services agreements with the Chilean state, provided they comply with some legal requirements, and it only distinguishes between different procedures depending on the amount of each agreement. In the case of major amounts, that provision of services will be awarded through public bidding; in other minor agreements, through private bidding; and in some cases, Chilean Government entities will be allowed to enter into direct contracts with the suppliers of such services. In any of these scenarios, the candidates should be able to secure the seriousness of the offer, and the chosen suppliers also to secure the accurate and timely fulfilment of the obligations under the contract, according to the specific requirements established on the basis of the bid.

Notwithstanding the foregoing, as well as in PPP projects, as a general rule, foreign suppliers shall incorporate a Chilean company or an agency of the foreign company, with the exclusive corporate purpose of executing such an agreement.

B. Rendering of public services

i. General framework

The rendering of the public services system in Chile has changed several times throughout the last couple of decades, thus 'making Chile one of the first countries in introducing libertarian economic reforms regarding public services'.

The economic world crisis in 1929 made politicians distrust the capitalist model, and several Latin American governments, including the Chilean Government, opted for an interventionist state. During the 1920s and 1930s, the Chilean state assumed a controlling role and reorganised the country's economy by creating a welfare state model.

This new model promoted the creation of various state enterprises dedicated to providing and overseeing several public services. By 1973, all (100 per cent of) public services were controlled by state companies.

By the beginning of 1974, the economic model was reformed in order to minimise the state's excessive intervention in matters of national economy. Thus, at the beginning of 1982, several privatisation reforms were applied to healthcare, the housing sector, pension funds, telecommunications and the electrical industry, among others.

The existence of several natural monopolies made it necessary to establish strong regulatory frameworks before the privatisation of those companies.

Currently public services are mostly provided by private companies that operate under specific laws and regulations, and are subject to supervision and control (mainly through public agencies).

New institutions, such as area-specific agencies (*superintendencias*) were established under this model (ie, Superintendency of Banks), with the objective of supervising and enforcing regulations and laws.

Finally, unlike in other Latin American countries, Chile does not have a single entity regulating the rendering of public services. Instead, each industry is regulated by a specific legal framework that is established and controlled by a certain institution.

ii. Governmental monopoly versus private initiative

The current institutional structure of public services in Chile is characterised mainly by the participation of private companies operated by strictly private criteria. This is explained by the objective of the regulatory framework, which is to stimulate entry to those potentially competitive market segments and ensure open access to all competitors. However, in those markets where competition is definitively not possible, fees, quality conditions and even technical norms are established using other means.

This is strictly related to the Subsidiarity Principle established in the Chilean Constitution of 1980, by which state intervention in markets is neatly delimitated. Although the Constitution does not give a definition for this principle, it can be explained as the recognition of the supremacy of the human person above the state, and therefore, the right of individuals to create intermediate groups through which society is structured (ie, companies). In this regard, there is a 'negative perspective' of the principle, which aims to assign to the state those functions that are not possible to delegate, such as foreign affairs, administration of justice and national defence, among others, and a 'positive perspective', by which the state is allowed to provide, fulfilling certain requirements, some services or activities aimed at the common welfare, and that private organisations fail to provide.

This principle is outlined in economic terms in Article 19 No 21, where the Chilean Constitution notes that '[t]he State and its organisms may develop either corporate or business activities and engage in them provided a law of qualified quorum authorises them to do so'. Those activities executed by state companies must be ruled by common law, applicable to any private entity, except for legal exceptions, also provided by a law of qualified quorum.

iii. Limitations and/or prohibitions to private parties in the rendering of public services

The rendering of public services by private parties in Chile has no major limitations or prohibitions.

The Chilean Constitution establishes in Article 19.21 the right to develop any economic activity, provided it obeys moral conduct, public order and national security, and it respects the norms that regulate it.

The regulatory legal framework establishes different prohibitions and limitations specific to each industry.

The General Law of Telecommunications establishes a regime of public concessions. This law states that (Article 21), only companies incorporated under Chilean Law may hold telecommunication concessions. Also, as a prohibitory statute, this law states that individuals who have been convicted for a simple crime or felonies that qualify for jail sentences of more than three years and a day in prison may not act as presidents, directors, general managers, administrators and legal representatives of telecommunication companies.

The General Law of Electrical Services defines a set of rules for public concessions, setting forth that (Article 13) concessions in the electrical field may only be awarded to Chilean citizens and corporations formed under the country's laws. However, they may not be awarded to limited joint-stock partnerships.

The Public Ports Industry Law establishes a regime of public concessions, which is developed further in Decree No 140 from the Ministry of Public Works. Decree No 140 (Article 8) states that individuals who have been convicted for a simple crime or felonies that qualify for jail sentences of more than three years and a day in prison shall not be considered eligible bidders, nor the non-rehabilitated bankrupt or representative. These causes shall not be applicable after two years since the end of compliance of the conviction.

According to the Supply and Services Agreements Law (Article 4), in order to subscribe to an agreement with any public entity, there are also certain prohibitions; this is the case in which providers are condemned for anti-union practices, condemned for infringement of a worker's fundamental rights or have been convicted by specific crimes related to this matter, within a two-year period.

In relation to antitrust regulation, Decree Law 211 set forth (Article 26 d) that, in collusion cases, the Antitrust Tribunal may impose, among other sanctions, the prohibition to enter agreements with any public entity for a maximum period of five years since the final judgment was enforceable.

C. Real estate

Chilean Law guarantees private property, and grants the owner the right to freely dispose of this property, including the right to sell, assign or transfer it in any form; lease; constitute limitations and encumbrances; assign the right to use and occupy it; or give it as security to a third party. These matters are mainly regulated in the Chilean Constitution and the Chilean Civil Code, in addition to applicable particular regulations depending on, for example, the involved industry, use and geographic area.

i. Rural properties: limitations for private parties

The main limitations to private parties regarding rural properties are:

a. The Indigenous Peoples Act

Law No 19,253 provides that indigenous land may not be disposed of, attached, encumbered or acquired through adverse possession, except in favour of indigenous communities or individuals belonging to the same ethnic group. Nevertheless, they may be subject to liens upon authorisation by

the National Agency for the Furtherance of Indigenous Peoples (Corporación Nacional de Desarrollo Indígena ('CONADI')). These liens cannot include the home of an indigenous household and the land it needs to survive.

The quality of 'indigenous land' is accredited through an inscription in a public registry, which is handled by CONADI.

Land belonging to 'indigenous individuals' may be leased, conveyed under bailment or assigned to third parties for their use, enjoyment or administration for a maximum of five years, but land owned by 'indigenous communities' cannot be subject to those acts.

In any case, this indigenous land, with the prior consent of CONADI, may be exchanged for non-indigenous land that has comparable commercial value, duly ascertained; the latter will then be deemed to be indigenous land and the former will no longer enjoy this status.

B. Border territory

Decree No 1,939 establishes limitations on the acquisition of real estate or state property in border areas.

Article 6 of the decree states that 'public lands located at a distance of 10 kilometres, measured from the border, can only be obtained in ownership, leasing or any other title, by Chilean naturals or Chilean legal entities. This provision applies as well to State property located to 5 kilometres of the coast'.

In addition, Article 7 of the aforementioned decree sets forth a prohibition on nationals of countries bordering Chile (ie, Argentina, Bolivia and Peru) to acquire ownership and other rights or possession of state property situated wholly or partly in areas of the country declared as 'border territory' under Decree with Force of Law No 4 of 1967 of the Ministry of Foreign Affairs, except in cases previously authorised by the supreme decree of the President of the Republic of Chile, based on considerations of national interest. This prohibition extends to companies or legal entities with headquarters in a neighbouring country, or whose capital of 40 per cent or more is owned by nationals of any of such country, or whose effective control is exercised by the latter.

C. Access to beaches

Article 13 of Decree No 1,939 provides that the owners of adjoining land with sea beaches, rivers or lakes must provide free access to them for tourism and fishing purposes, provided that no other roads or public pathways are available for that purpose. However, determination of the access is not arbitrary, but should be defined by the competent regional governor (*intendente*) after hearing the owners, lessees or tenants of the land.

D. Minimum subdivision

Decree No 3,516 provides in Article 1 that agricultural property may be freely divided by its owners, but the resulting batches must not be less than 0.5 hectare. However, this limitation does not apply in specific cases as detailed in the same article.

The infringement of this provision is subject to the absolute nullity of any act or contract granted in contrary. A fine of 200 per cent of the fiscal value (for real estate tax purposes) could be applied by the competent municipality court.

ii. Urban properties: limitations for private parties

The main limitations for private parties regarding urban properties are those resulting from urban planning and zoning regulations, which are established mainly in the General Urbanism and Construction Law and its Ordinance, and in the different types of planning instruments.

A. The General Urbanism and Construction Law

The General Urbanism and Construction Law (Ley General de Urbanismo y Construcciones (LGUC)) is the general regulation that contains the principles, roles, powers, responsibilities, rights, sanctions and other norms that apply to public entities, professionals and private parties in relation to urban planning, urbanisation and construction that is executed within the country.

B. The General Urbanism and Construction Ordinance

The General Urbanism and Construction Ordinance (Ordenanza General de Urbanismo y Construcciones (OGUC)) contains the regulations of the LGUC referring to administrative procedures, urban planning, land urbanisation, construction, and technical standards for the design and construction that are required to execute such activities in the country.

C. Territorial planning instruments

According to the LGUC, urban planning is the 'process conducted in order to direct and regulate the development of urban centres in relation to the national, regional and communal policies for socio-economic development'. Urban planning is conducted at three levels of action: national, inter-communal and communal. Each territorial planning instrument shall have its own area of jurisdiction in relation to a geographic area and to the specific matters covered by said instrument.

Territorial planning instruments or zoning plans may determine the permitted uses of land for a specific area, and what uses of land are excluded or prohibited in that area (zoning classification). Territorial planning instruments also determine the regulatory framework applicable to constructions executed within the specified area.

There are six types of uses, which may be applicable simultaneously within a given area, as determined by the territorial planning instrument: residential, equipment, productive activities (industries), infrastructure, public spaces and green areas.

In order to determine which zoning classification applies to a specific land, a Certificate of Previous Information may be requested from the corresponding municipality, which will identify the area or sub-area where the land is located, and the applicable regulatory framework according to the respective territorial planning instrument.

The only manner to change the permitted uses of land (zoning classification) established in a territorial planning instrument for a specific piece of land is by means of an amendment to the applicable territorial planning instrument.

iii. Expropriation events

Article 19 No 24 of the Constitution states that:

> 'Nobody can, in any way, be deprived from his/her ownership, the underlying asset or any of the attributes or essential faculties related to the ownership, except by virtue of a general or special law qualified by the legislature that authorizes its expropriation by reason of public benefit or national interest. Anyone whose ownership has been expropriated is enabled to claim before the ordinary courts about the legality of the expropriation act and shall have in any event the right to receive compensation for patrimonial damage effectively suffered, which will be defined by mutual agreement or by the above-mentioned courts in a final judgment pronounced in accordance with the law'.

Based on the foregoing, any real estate is subject to the possibility of being expropriated by a public benefit or national interest cause, according to Decree No 2,186, which establishes the specific expropriation requirements and its conditions. Consequently, prior to acquiring real estate, it is necessary to review the existing expropriation projects of the municipality, the Housing and Urban Service, and the Ministry of Public Works.

As provided in the Constitution, in the case of an expropriation, the Chilean state shall compensate the affected owner, who will have the right to file a complaint before the Chilean courts if he/she considers that the offered compensation is not fair.

D. Development of ample/integrated capital markets and joint activities between Latin American countries

i. Merger of stock exchanges: attempts versus realities

The Republic of Chile currently has three stock exchanges: Bolsa de Comercio de Santiago, Bolsa de Valores (Santiago Stock Exchange); Bolsa de Corredores, Bolsa de Valores (Brokers Stock Exchange); and Bolsa Electrónica de Chile, Bolsa de Valores (Electronic Stock Exchange). In Chile, the stock exchanges were formed as open corporations. Thus, a possible merger of stock exchanges would be regulated by Law No 18,046 (the Corporations Act).

There have been no merger plans between different stock exchanges existing in Chile. Nor have there been any formal intentions to merge with other Latin American stock exchanges.

Notwithstanding, the São Paulo Stock Exchange (BOVESPA) acquired in 2015 about eight per cent of the Santiago Stock Exchange. This acquisition has prompted debate as to how important it is to move forward with regional stock exchange integration to improve their competitiveness.

ii. MILA market: current results and expectations

The MILA market is the first multinational stock market integration initiative without any mergers or corporate integration at a global level, and initiated using only technological tools, along with the adaptation and standardisation of the regulations on trading in capital markets and the custody of securities in the four countries. The initial idea was to move forward as much as possible with the integration without having to make any legislative changes. MILA began operating on 30 May 2011, with the involvement of Chile, Colombia and Peru. Since August 2014, Mexico has also been incorporated to MILA.

The purpose of MILA is to increase the international exposure and profile of the markets that integrate it, as well as broaden the offer of products and opportunities for local and foreign investors, originating more liquid, visible, attractive and diversified securities markets.

Part of this initiative has consisted in the mutual recognition of public offer securities issued in each country, thus making possible the free trading of shares by order routing through the brokers of the participating exchanges of Chile (BCS), Colombia (BVC), Peru (BVL) and Mexico (BMV) to the markets of origin.

One of the most important characteristics of MILA is the fact that none of the exchanges sacrifices their independence or regulatory autonomy. However, the premise of the participating markets is to jointly achieve growth in a context of complementarity.

Likewise, all MILA transactions are performed in the respective local currency, and with book-entry through the local broker; thereby providing easier international transactions with this tool.

Currently, MILA is number one in Latin America, with over 700 listed companies in total in the four countries, the largest market in Latin America following Brazil in terms of market capitalisation, and number three in terms traded volumes, making it one of the most attractive markets in the region. In addition, several investment funds follow this market, and indices have been created in relation to it: S&P MILA Andean 40, S&P MILA Pacific Alliance Financials, S&P MILA Pacific Alliance Industrials, S&P MILA Pacific Alliance Composite, S&P MILA Pacific Alliance Select, S&P MILA Pacific Alliance Select Mexico Domestic and DJSI MILA Pacific Alliance.

The total traded volume in the MILA market in May 2018 was US$178.8bn. The BMV represented 79.05 per cent (US$138.7bn), followed by the BCS with 10.84 per cent (US$24.9bn), then the BVC with 8.08 per cent (US$12.5bn) and the BVL with 2.03 per cent (US$2.6bn)

Although in 2016 MILA planned to incorporate the negotiation of fixed income securities in the stock markets of Member Countries, as well as new indices for the quotation of energy and mining sectors, so far those plans have not materialised.

Among the main challenges for MILA are the incorporation of credit risk agencies and the adoption of rules that will lead to operational and regulatory harmonisation.

iii. Pacific Alliances: governmental action and proposed treatment and agreements

The Pacific Alliance is a regional integration initiative whose member states are Chile, Colombia, Mexico and Peru. The Pacific Alliance was created on 28 April 2011.

The Pacific Alliance is a strategic platform that seeks to achieve a deep integration of services, capital, investment and movement of people. It is an open and non-exclusive integration process, consisting of countries with related visions of development, and that promote free trade as a driver for growth. It is a dynamic initiative with high business potential.

It is focused on modernity, pragmatism and political will to establish an initiative to address the challenges required by the international economy. It offers competitive advantages for international business, with a clear focus on the Asia Pacific region.

As a whole, the Pacific Alliance constitutes the eighth largest economy and represents the seventh largest exporting entity worldwide. In Latin America and the Caribbean, the block represents 37 per cent of GDP, concentrates 52 per cent of total trade and attracts 45 per cent of direct foreign investment that flows to the region.

The Pacific Alliance has competitive advantages in the following industries: mining, forestry, energy, agriculture, automotive, fishing and manufacturing, among others.

It is an effective environment of cooperation that promotes innovative initiatives in areas such as free mobility of people; preservation and respect for the environment; creation of a network of scientific research on climate change; academic and student exchange; cultural promotion; integration of securities markets; opening of joint commercial offices and participation in fairs and exhibitions in shared space; improved competitiveness and innovation of micro, small and medium-sized enterprises; and tourism.

The following are some of the milestones achieved by the Pacific Alliance:

- on 24 August 2012, the General Rules of the Platform for Academic and Student Mobility (Reglamento General de la Plataforma de Movilidad Estudiantil y Académica) that seeks to grant up to 100 scholarships per year for undergraduate and postgraduate studies conducted in one of the Member Countries, as subscribed in Chile;
- in September 2012, the promotion agencies of all member states opened a joint Trade Office in Turkey;
- on 21 May 2013, Peru removed the requirement of a temporary visa for business travellers for nationals of Mexico, Colombia and Chile;
- on 22 May 2013, during the 7th Pacific Alliance Summit, the Agreement for establishment of the Cooperation Fund of the Pacific Alliance (Acuerdo para el establecimiento del Fondo de Cooperación de la Alianza del Pacífico), which allows the joint development of projects in various areas, was signed;
- on 19–20 June 2013, in Cali, Colombia, the I Business Matchmaking of the Pacific Alliance (I Macrorrueda de Negocios de la Alianza del Pacífico) was performed, where 700 exporters and

importers from all four countries were involved, closing business transactions for an aggregate of US$3.8bn;

- on 23–24 August 2013, in Santiago de Chile, the first meeting of the Ministers of Finance of the Pacific Alliance was held, where issues such as fiscal and tax exchange information, customs matters, treatment of and restrictions on capital flows, coordination in international financial bodies, regulatory and tax rules for capital markets and volatility in public debt markets were analysed, among others;
- on 26 August 2013, the conclusion of negotiations on the trade component was announced, waiving tariffs on 92 per cent of the products immediately and the remaining eight per cent gradually. This was part of the comprehensive agreement included in the Additional Protocol to the Framework Agreement;
- on 10 February 2014, the Additional Protocol to the Framework Agreement was signed;
- on 10–11 June 2014, the II Business Matchmaking Pacific Alliance was performed;
- on 20 July 2015, the Framework Agreement of the Pacific Alliance came into force;
- on 1 May 2016, the Additional Protocol to the Framework Agreement of the Pacific Alliance came into force. The protocol agreed 100 per cent trade liberalisation (92 per cent of that tariff immediately applicable and eight per cent over a period to 2030); and
- on 2 June 2017, Decision No 1 guidelines applicable to the associated states of the Pacific Alliance. In the guidelines, the associated state concept was defined. Australia, Canada, New Zealand and Singapore have begun negotiations to become associated states. This category will allow the generation of more investment, tourism and employment opportunities.

In connection with small and medium-sized enterprises (SMEs) of the Pacific Alliance, the Entrepreneur Capital Fund of the Pacific Alliance has been created, with support from the Inter-American Development Bank Multilateral Investment Fund (IDB-MIF) to facilitate the financing and investment in SMEs and entrepreneurships in the Pacific Alliance.

Furthermore, an SME Regional Observatory was also created as a virtual information platform, which systematises and disseminates support programmes, statics, studies and research on current status of the entrepreneur ecosystem and the development of micro and SMEs.

In the Cali Declaration (30 June 2017), the Presidents instructed that analysis should be conducted, in coordination with the private sector, to project a strategic vision for 2030 on the Pacific Alliance.

The aim is to give a boost to the mechanism to remain an open platform with concrete results despite the backdrop of an increasingly protectionist world.

E. Offshore vehicle providers in Latin American countries

i. General concept: legal framework and scope of general activities

Law No 20,712 on the management of third-party funds and individual portfolios came into force on 8 May 2014 (the 'Third-Party Funds Law'), with the aim of transforming Chile into an exporter of financial services, particularly by turning Chile into a preferred domicile for funds with a LatAm strategy.

To encourage foreign investment in Chilean funds, the Third-Party Funds Law provides several tax incentives. Before the Third-Party Funds Law was enacted, foreign (ie, non-resident) investors participating in closed-end Chilean funds had to pay a tax at a rate of 35 per cent on capital gains that resulted from such investments. In replacement of the current and higher withholding rates, a withholding tax rate of ten per cent on capital gains and dividends will now apply (the 'ten per cent Flat Tax').

In addition, net benefits, dividends and capital gains paid to foreign investors are exempt from the ten per cent Flat Tax, provided the locally registered fund has invested primarily in non-Chilean assets.

Indeed, the income and capital gains tax exemption for foreign investors will apply provided the following conditions are met: (1) no less than 80 per cent of the fund's portfolio should be invested abroad in those securities described by the Third-Party Funds Law; and (2) said percentage should be fulfilled at least during a period of 330 continued or discontinued days in a calendar year. Capital gains from the transfer of the shares of the fund are eligible for the exemption, provided these requirements were fulfilled during the two years preceding the transfer of title.

None of these tax exemptions apply to foreign shareholders investing in private investment funds (ie, non-registered funds, in Spanish *fondos de inversión privados* (FIPs)). In this case, the current 35 per cent tax burden on capital gains and dividends (with the corporate tax credit in the latter case) will remain in force.

As to the VAT applicable to commissions owed to fund managers at a 19 per cent rate, it should be noted that it will not be levied on those fees charged to foreign investors.

The above exemptions (capital gains, dividends and VAT) are designed to create an incentive for foreign fund sponsors to choose Chile as a domicile for their funds with a LatAm strategy and to use local asset management capabilities.

International Bar Association
4th Floor, 10 St Bride Street
London EC4A 4AD, United Kingdom
Tel: +44 (0)20 7842 0090
Fax: +44 (0)20 7842 0091
Email: member@int-bar.org
www.ibanet.org