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Doing Business in Chile

By:

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INDEX OF SUBJECTS

1. Chile at a Glance

1.1 Presentation of Information

In general, the information presented, including laws and regulations, is in effect as of March 31, 2006. This report contains information of general interest and does no purport to constitute legal advice. For legal advice on matters of Chilean law you should consult Chilean counsel.

In this document, references to "U.S.$" are to United States dollars, references to "Ch$" are to Chilean pesos, references to "UF" are to *Unidades de Fomento*, references to "UTM" are to *Unidades Tributarias Mensuales* and "UTA" are to *Unidades Tributarias Anuales*.

The UF is an indexed unit of value which is adjusted daily to reflect the previous month's inflation (determined in accordance with the variation of the consumer price index).

The UTM and UTA are units determined by law and continually updated, which serve as measures or reference points for tax purposes. The UTM is the monthly unit, and the UTA is the annual unit.

When converting Chilean peso figures to United States dollar figures we will use the *dólar observado* rate, which is calculated by taking into account the previous business day's transactions in the formal foreign exchange market and published by the Central Bank.

Throughout this document, we will use the conversion rates of each of the United States dollar and UF applicable as of March 31, 2006. As of such date, one UF equaled U.S.$33.95 and Ch$17,915.66; and one United States dollar equaled Ch$527.70.

For the UTM, we will use the rate applicable to March 2006, i.e. one UTM equaled U.S.$59.59 and Ch$31,444; and for the UTA, we will use the rate applicable for 2005, i.e. one UTA equaled U.S.$717.93 and Ch$378,852.

1.2 Geography and Demography

Chile is located along the southwestern coast of South America, stretching approximately 4,300 km (2,666 miles) distributed among continental land, myriad islands, including the renowned Easter Island, and the polar icecap in the South. Chile's natural borders comprise the Andes Mountains, which dominate its landscape all along the eastern border; the Pacific Ocean, which contributes to Chile's mild climate, on the western border; Antarctica in the South; and the Atacama Desert in the North. Bordering countries include Argentina and Bolivia in the East and Peru in the North.

Chile's official language is Spanish, which coexists with other Native languages still in use, such as the *mapudungún* (or *mapuche* language spoken in some areas of the Center-South), *aymara* (spoken in some northern areas) and *rapa nui* (spoken in Easter lsland). Besides, most tourism professionals and employees speak English, and some of them German and French.

The population, according to the last 2002 census, is 15,116,435 inhabitants, with a density of 19.9 inhabitants per square meter. According to the latest studies of the National Institute of Statistics, the average age is 31.22 years old and life expectancy is 77.4 years (80.4 for women and 74.4 for men). According to the same census of 2002, 70.0 percent of the population is Catholic; 15.10 percent is Protestant; 8.3 percent professes no religion; and other religions are practiced by 4.4 percent. In Chile, there are no cultural or religious influences or prohibitions on the way businesses are conducted.

Chile is divided into twelve regions, numbered from North to South, and a Metropolitan Region of Santiago in the Center of the country. Each region is divided into provinces, which in turn are divided into *comunas* or boroughs. Santiago is the capital of Chile and concentrates most of the economic, administrative, cultural, commercial, industrial and political activities of the country. It is characterized by Mediterranean climate, with regular temperature variations between summer and winter. Rain occurs mainly between April and September (autumn and winter), and very scarcely in summer. The annual average temperature is 14º Celsius. The average is 9º Celsius in winter, but it can go as low as -2º Celsius; and 22º Celsius in summer, although it may sometimes be higher than 30º during this season. According to the 2002 census referred to above, apart from Santiago, with 4,668.473 inhabitants, the main cities of Chile are: Antofagasta, with 318,779 inhabitants; Concepción, 216,061; Temuco, 245,347; Viña del Mar, 286,931; Valparaíso, 275,982; and Puerto Montt, 175,938.

Chile's climate and natural resources vary as dramatically as its territory. Indeed, the North is predominated by dry and arid climate conditions and it is marked by the presence of abundant mineral reserves, as copper, molybdenum, iodine, iron and lithium, among others, as well as a developing agriculture industry focused mainly on tropical fruits. The central zone has a Mediterranean climate, characterized for its mild wet winters and long dry summers, which offers ideal conditions for vineyards, while the Center-South provides fertile agricultural soil with extensive forestry and hydroelectric resources at higher altitudes. The South is characterized by areas of heavy rainfall and fundamental natural resources can be found in there, like petroleum and gas, while far south fjords provide excellent conditions for fishing and tourism.

This multiplicity of geographic zones permits an enormous potential for economic activities linked to Chilean natural resources.

Indeed, Chile is the world's leading copper producer. According to the July 2005 yearbook published by the Chilean Copper Commission, Chile has a 37.5 percent share in the worldwide mine production of copper, 13.1 percent in the worldwide smelter production, 18.1 percent of the worldwide refined production and 62.3 percent of the worldwide production of SX-EW copper, all of which correspond to the leading position in their respective production. Likewise, Chile is the main exporter of copper of the world, reaching a share of 47.5 percent. Moreover, in 2006 the United States Geological Survey ("USGS") reported that Chile had the largest copper reserves in the world, at 29 percent of the currently economically extractable reserves and 38 percent of total reserves. Copper is Chile's main export earner. In fact, according to the Central Bank, in 2005, copper exports represented 43.8 percent of the total Chilean exports. Although, the state-owned copper company, *Corporación Nacional del Cobre* or Codelco, is the largest producer and exporter of copper, this has not deterred foreign mining firms from being drawn to invest in Chile given its advantageous conditions.

Another relevant participant of Chilean mining industry is molybdenum, a metal used primarily as an alloying agent in steel, cast iron and superalloys to enhance material properties, including strength, toughness and corrosion resistance. There are few viable substitutes for molybdenum in its major applications. Molybdenum is mainly found naturally in conjunction with sulphide minerals of other metals, mainly copper. In 2006, the USGS reported that Chile accounted for 28.1 percent of the world production and possessed 13 percent of the world's reserves.

Other significant minerals are iodine, for which Chile represents 62 percent of the world production and 60 percent of the world's reserves; and lithium, with 40 percent of the world production and 73 percent of the world's currently economically extractable reserves.[1]

Besides, the extensive Chilean coastline has positioned Chile as a fishing and fish farming powerhouse, whose strengths and competitive advantages lie in the rich fisheries extant within its 200-mile economic exclusion zone. According to ProChile, the State agency in charge of promoting Chilean products abroad, in 2004, the combined fish-farming and industrial fishing capture stood at over five million tons –four percent of the world total-, earning Chile the seventh place among world fishing nations. Also in 2004, industrial fishing brought in 64.9 percent of the capture, inshore fishers brought an additional 22.7 percent, and fish farmers provided 12.5 percent.

Chile is an internationally-acclaimed producer of fine wines and spirits. Chile's wine valleys possess the right mix of soil, sunlight, temperature and humidity conditions to grow grapes yielding world-class wines, year in and year out. Chilean wines are world leaders in terms of volume, sales, and international recognition. According to ProChile, Chilean wine sales are diversified among more than 80 countries. According to the International Organization of Vine and Wine (*Organisation International de la Vigne et du Vin*), Chile is the world's largest exporter of fresh grapes, 11th largest producer of wine and fifth largest exporter of wine.

Finally, according to ProChile, Chile has 250,754 hectares of timberlands certified by the National Forestry Corporation. Overall, 1,735,516 hectares are managed under ISO 14001 Environmental Management standards. Chilean forest and lumber products are exported to more than 100 different countries. In addition to logging companies, the members of the Chilean forest industry include lumber mills, particleboard manufacturers, construction suppliers, furniture makers, and pulp and paper mills. The industry's foremost source of supplies is the *radiata* pine, which in 2004 provided 88 percent of industry needs. *Radiata* pine and eucalyptus plantations take up nearly 2.2 million hectares, about 2.8 percent of the country's entire land surface. Forestry is Chile's second-largest industry, with sales in 2004 of U.S.$3.3 billion.

Chile has an efficient transportation system, good communications services, world-class seaports, airports and logistical infrastructure to connect the geographic distances that exist between Chile and other business centers throughout the world. Since the mid-1990's, the private sector has participated actively in the development of public infrastructure in the form of concessions. These public-private partnerships have not only delivered rapid progress, but also freed fiscal resources for other social priorities, while opening up new opportunities for foreign and local investors. Between 1995 and 2004, investors committed more than U.S.$7 billion to 48 concession projects, including the PanAmerican highway, provincial airports, urban toll roads, prison infrastructure, public transportation in Santiago, railways and trade infrastructure, among others. For example, under these concessions programs, a new toll road was built linking the city of Santiago with its

[1] Source: 2006 Report of the United States Geological Survey.

international airport. The new *Costanera Norte* toll road, which started operations in April 2005, has reduced journey times between the airport and the main business and residential neighborhoods of eastern Santiago to 20 minutes, down from approximately 50 minutes.

Chile's telephony and internet markets are highly competitive. International companies, such as Delta Air Lines, Air France, Hewlett Packard, Citigroup, and BBVA, among others, have chosen Chile as the location for their Latin American call centers and software development centers. Chile is connected to three international fiber optic networks, and has one of Latin America's highest fixed and mobile telephony, computer, and internet penetration rates. Despite this progress in telecommunications infrastructure, operators continue to identify opportunities for new investments in Wireless Local Loop (WLL), 3G Mobile Telephony, Local Multi-Distribution System (LMDS), *Ruta* 5D (Public-sector broadband network), IP Networks, Digital Television, Digital Audio Broadcast (DAB) and High Altitude Platforms (HAPs).[2]

Finally, it is worth noting that according to the Economist Intelligence Unit's 2005 Worldwide Quality of Life Index, Chile has the best quality of life in Latin America and the Caribbean. Factors as health, freedom, unemployment, family life, climate, political stability and security were included in the study.

1.3 Political System

1.3.1 Summary of Recent History

With the exception of the period between 1973 and 1989 and very short periods in the mid 20's and mid 30's, since the early 19th century, some years after its independence from Spain, Chile has been governed democratically.

In 1970, Salvador Allende, heading a Marxist coalition, was elected President of Chile. In September of 1973, Allende's presidency came to an end with a military coup led by Army General Augusto Pinochet.

Between 1973 and 1980, a military government ruled the country. In 1980, a new Constitution was enacted, which provided for the continuity of the military government until 1989. General Pinochet was appointed President and ruled with a Military Junta, which acted as legislative power, through 1989.

As provided by the Constitution, in 1988 a plebiscite was held in which President Pinochet failed to secure the support of a majority of the votes, obtaining only 44 percent. In this event, the Constitution provided for open elections to be held a year after. As a result, at the end of the following year presidential and parliamentary elections took place and a center-left coalition, the *Concertación por la Democracia* led by Patricio Aylwin, of the Christian Democrat party, was elected to government.

The *Concertación* has governed since then. After Patricio Aylwin (1990-1994), came the government of Eduardo Frei of the Christian Democrat party (1994-2000) and then the government of Ricardo Lagos of the Socialist party (2000-2006). Just recently, Michelle Bachelet (2006-2010),

[2] Source: Chilean Foreign Investment Committee

also of the Socialist party, was elected into office as the first woman President in the history of Chile.

The principal economic reforms and free market policies adopted during the years of military rule have enjoyed wide support and have thus been maintained during the succeeding governments of the *Concertación*.

1.3.2 The Constitution and Political System

The Constitution of 1980 has been amended a few times since its enactment but its fundamentals have remained unchanged and enjoy wide support. The latest reform was made in 2005 and, among other things, it reduced the Presidential term from six to four years and it eliminated institutional Senators which included former Presidents who were Senators for life, and other Senators appointed by the President or elected by certain institutions such as the Supreme Court.

The main pillar of the Chilean legal system is the Constitution. All citizens and public powers are subject to the Constitution and its legal order, conformed by a hierarchy of norms, starting from constitutional laws through decree laws and delegated laws, among others. Perhaps the most important contribution of the Constitution of 1980 resides in its section devoted to "Constitutional Rights and Duties," whereby the rights, liberties, and equalities that the Constitution guarantees to all persons are regulated. Many of such rights, liberties, and equalities are safeguarded through the *Recurso de Protección* (Protection Action), a specific legal action intended to afford an effective and expedite protection of such specific constitutional rights, liberties, and equalities. The Constitution also establishes the *Recurso de Amparo* (Habeas Corpus).

The principal purpose of the *Recurso de Protección* is to enable the superior Courts of justice to redress, in a swift manner, any unlawful action or omission by any third person, whether a public or private person, affecting or threatening to affect any such protected rights. The *Recurso de Protección* has proven successful in safeguarding constitutional rights such as property rights. A special action, the *Recurso de Amparo Económico* (Economic Habeas Corpus) safeguards the right to freely develop any economic activity following the rules provided therefor by the law.

From the standpoint of a foreign investor, the above translates into foreign investments in Chile being safeguarded not only by laws of general application but also by an expedite constitutional remedy.

The Chilean political system is divided into three clearly differentiated and independent powers. The Executive power is headed by the country's highest authority, the President of the Republic. Consistent with Chilean history and tradition, a guiding principle has been to afford significant powers to the President of the Republic, who is both the Head of State and the Head of Government. The President holds office for four years and cannot be reelected for a second consecutive term. The President designates the Ministers, who are only responsible to the President.

The legislative branch is represented by the National Congress, comprising the Chamber of Deputies (120 members) and the Senate (38 members), with legislative and supervisory powers. All the members are elected by universal, free, equal, direct, and secret voting under the terms established by law.

The third governmental power is the Judiciary, in charge of administrating justice independently from the other branches of government. The principle of jurisdictional unity is the basis of the organization and operation of the Courts of the country. The Chilean judicial system is historically divided into three levels: Supreme Court, Courts of Appeals and tribunals of first instance. The Constitution and the Organic Code of Courts set forth the characteristics, attributes and the requirements to become a member of, each level. The highest court is the Supreme Court, made up of 21 members one of whom is elected as President by his peers every two years. Supreme Court justices must be Chilean, lawyers, and are elected by the President of the Republic from a list of five names submitted by the Supreme Court, including the longest running member of the Courts of Appeals and other four nominees which are selected from the best qualified members of the Courts of Appeals or lawyers who have exercised the profession in the private sector for at least 15 years. The election of the President of the Republic must be approved by two thirds of the Senate. Chile has 17 Courts of Appeals with jurisdictions over one or more provinces. The Court of Appeals justices and public prosecutors of these Courts are selected by the President of the Republic, who chooses them from a list of three names submitted by the Supreme Court. These justices must be Chilean, lawyers, and have some experience with the judicial system.

Chile has a unitary judicial system, with the final instance lying exclusively in the Supreme Court which has jurisdiction over the whole country. Judicial decisions do not create mandatory precedents and are only enforceable in the particular case in which they have been pronounced, and the Supreme Court generally has no attribution to abstain from deciding upon matters within its competence. Arbitration proceedings are permitted, except in certain matters as criminal or labor controversies, and the awards of arbitration tribunals may be enforced through the Ordinary Courts. Forced arbitration is provided for certain matters, such as conflicts between partners or shareholders of a company.

The review of the constitutionality of laws is vested on the Constitutional Tribunal which performs an *ex ante* review of constitutional questions regarding bills before they become law, among other things, and an *ex post* review through the inapplicability action (*Recurso de Inaplicabilidad*). This action is filed when a legal precept is considered unconstitutional. As any judicial decision, the decision by the Constitutional Tribunal declaring a legal precept unconstitutional is limited to the specific case reviewed, so that the legal precept itself is not repealed but only declared inapplicable to the case reviewed. However, the constitutional reform of 2005 introduced a public action whereby the Constitutional Tribunal can declare unconstitutional a legal precept that has previously been declared inapplicable, thereby repealing the legal precept.

There is no restriction in the law to submit civil or commercial agreements or relations to foreign laws or jurisdiction, or to arbitration proceedings outside Chile, provided that there are some contacts with the jurisdictions which laws are selected and provided, further, that Chilean law will apply on issues of public policy. For the validity and enforceability of such submission as well as the enforcement in Chile of foreign judgments, please see Chapter 19 on “Enforcement of Foreign Judgments.”

1.4 The Chilean Economy

1.4.1 A Brief Overview of Chile’s Recent Economic History

As most countries in South America, by the late 1930's Chile sought to reduce the country's dependence in international trade by implementing import-substitution industrialization policies designed to protect and foster domestic industry and discourage imports by introducing high tariffs and other trade barriers. The role of the State in the economy expanded through the acquisition of existing companies or by the creation of new ones. This process accelerated and reached its peak during the 1970-73 socialist government, when the economy effectively collapsed. Most of the largest Chilean companies, including banks, insurance companies, major manufacturing companies, wholesale distribution companies and some retail companies, as well as farms, were taken over, in many cases expropriated, by the State. This direct participation and involvement of the State in the economy led to a catastrophic situation with high fiscal, trade balance and balance of payments deficits, hyper-inflation, price controls for most products and subsidies of all sorts.

The Chilean economy has undergone a substantial transformation since 1974 following the implementation of free market policies and the introduction of structural reforms initially implemented by the military government. Government subsidies were substantially reduced, price controls gradually relaxed and finally eliminated, exports were strongly promoted, import duties severely reduced and non-tariff barriers mostly eliminated, thus opening the economy to foreign trade.

The active role of the State in the economy was substantially reduced and a process of privatization of State-owned companies and assets was implemented, which included sensitive areas such as communications and energy, but excluding the State copper mining company. The State assumed a subsidiary role in the economy and the task of making the public sector more efficient, bringing the public sector budget under control and providing a framework for the development of business and the operation of the private sector. Efforts were made to develop the domestic capital markets to encourage savings and contribute to a better allocation of resources, to deregulate most activities and to integrate the Chilean economy with the international markets.

The introduction and implementation since 1974 of all these economic policies and reforms laid the foundations for Chile's successful economic performance record, characterized by sustained GDP growth led by exports, low inflation, improved fiscal performance and good trade and current account performances.

All these economic policies that had proved so successful have been maintained by the governing coalition, the *Concertación*, since it came into office in March 1990.

1.4.2 Basic Structure and Figures of the Chilean Economy

Chile is one of Latin America's most open, stable and attractive markets, recognized for its macroeconomic stability, full operative markets, openness to trade and international investment. During the last three decades, the Chilean economy has been driven by free market principles, with control over monetary and treasury policies, a liberal and agile financial market, a strong orientation towards exports, a privatization policy and a promotion strategy to attract foreign investments. With a policy-driven strategy that has focused on building sound macroeconomic fundamentals and strong institutions, promoting competition, and with a vast network of free trade agreements with other countries, Chile has been considered by the Economist Intelligence Unit (published by "The Economist" magazine) as the best country in Latin America and one of the world's best countries to conduct business for the next five years, ranking 19th among 60 economies. In fact, the image of Chile abroad as a safe and attractive place to invest and conduct business has been improved and

solidified by the latest international indexes which have consistently placed Chile first in Latin America and among the leading countries in the world.

As to competitiveness, the Institute for Management Development's 2005 World Competitiveness Yearbook identifies Chile as the most competitive country out of 60 economies around the world; and the World Economic Forum in its 2005-2006 Growth Competitiveness Ranking of the Global Competitiveness Report, classified Chile emerged as the most competitive country in Latin America, taking overall 23rd place out of 117 economies.

As to risk rating, Fitch Ratings, in March 2005, raised Chile's long-term foreign-currency sovereign rating from A- to A; Moody's Investors Service, in February 2005, increased the outlook on Chile's Baa1 foreign-currency credit rating from stable to positive; and since January 2004, Standard & Poor's has held its long-term foreign-currency sovereign credit rating for Chile at A. In all cases, Chile is the highest-ranked Latin American country.

As to country risk, Chile's has continued to drop and on March 7, 2005, reached an historic low of 57 basis points over US Treasuries, reflecting investor confidence in the country's economic and financial prospects.[3] Likewise, according to the 2005 Risk Ranking, published by the Economist Intelligence Unit, Chile is one of the world's lowest-risk countries.

As to transparency and other political indicators, Transparency International's 2005 Corruption Perceptions Index, ranked Chile as Latin America's most transparent country, taking the 21th position out of a total of 159 economies; and the 2004 Governance Indicators published by the World Bank, which cover 209 countries and territories, ranked Chile 24th worldwide in control of corruption, 28th on government effectiveness, 48th in political stability and 12th in Regulatory Quality.

Finally, as to economic freedom, Chile has the freest economy in Latin America and the Caribbean, according to the 2005 Index of Economic Freedom, published jointly by the US-based Heritage Foundation and The Wall Street Journal, in which Chile ranked 11th among 155 countries; and the 2005 Economic Freedom of the World Rating, published by Canada's Fraser Institute ranked Chile 20th position in the Index of 127 economies.

Except for the year 1999, which registered negative growth of -0.8 percent as a result of the impact of the Asian economic crisis, Chile's economy has sustained continuous growth since 1986. More recently, the Chilean economy finished 2004 with growth of 6.1 percent and a similar economic growth, 6.3 percent, for 2005[4]. Early forecasts for 2006 and 2007 predict growth of 5.5 percent and five percent, respectively.[5]

According to the International Monetary Fund, World Economic Outlook Database, April 2005, the nominal per capita income for Chile is U.S.$6,272 and U.S.$11,537 using purchasing power parity (PPA) calculations. The monetary unit is the Chilean peso. Currency is available at banks, foreign exchanges offices, stockbrokers and broker-dealers, and no special documents are required for minor purchases. Although a sharp income inequality persists, extreme poverty rate is less than 18 percent.

[3] Source: Chilean Foreign Investment Committee
[4] Source: Central Bank of Chile
[5] Source: Central Bank of Chile

Inflation rates have come down to single digits over a decade ago and remained there. Inflation has not exceeded five percent since 1998. Chile's independent Central Bank currently pursues a policy of maintaining inflation between two percent and four percent. Chile registered an inflation of 2.4 percent in 2004 and 3.7 percent in 2005[6], and is expected to see a 3.1 percent increase in 2006 and three percent in 2007[7]. Most wage settlements and spending decisions are indexed, reducing inflation's volatility.

Unemployment rates of six to seven percent in the mid-90's rose to 9.7 in 1999 as a result of the impact of the Asian economic crisis and is just now receding. At the end of 2005, the unemployment rate was 8.1 percent.[8]

In 2005, copper represented 43.8 percent of Chile's export revenues (down from 76 percent in 1970); agriculture and fish represented 6.3 percent; mining products other than copper represented 10.8 percent; and industrial products represented 34.9 percent (in which, foodstuffs accounted for 12 percent, chemical products 7.2 percent, forestry 4.6 percent, wine 2.2 percent and cellulose and paper 4.2 percent). Total export revenues for 2005 amounted to U.S.$39,536.1 million.[9]

In 2005, 23.3 percent of Chile's exports were to the European Union; 16.2 percent were to the United States; 15.6 percent were to Latin American countries; 11.8 percent were to Japan; 11.6 were to China; and 21.5 percent were to other countries.[10]

According to the 2004 World Investment Report, published by the United Nations Conference on Trade and Development (UNCTAD), the stock of Foreign Direct Investments in Chile reached 65 percent of GDP in 2003, up from just 33.2 percent in 1990. By comparison, in 2003 the average world figure reached 22.9 percent and that for developing countries was running at 31.4 percent.[11]

[6] Source: National Institute of Statistics
[7] Source: Central Bank of Chile
[8] Source: Central Bank of Chile
[9] Source: Central Bank of Chile
[10] Source: Chilean National Customs Service
[11] Source: Chilean Foreign Investment Committee

2. Foreign Exchange and Foreign Investment

2.1 Foreign Exchange Regulations

Under the law governing the Central Bank of Chile (the "Central Bank Act"), any person may freely enter into foreign exchange transactions. Foreign exchange transactions are defined under the Central Bank Act as any purchase and sale of foreign currency and, generally, any act or agreement that creates, amends or terminates an obligation payable in any foreign currency, regardless of whether there are any actual transfers or remittances from or to the country.

However, under the Central Bank Act, the Central Bank is empowered to require that certain foreign exchange transactions be reported to it or that they be effected in the "formal foreign exchange market." The formal foreign exchange market is exclusively composed of the banks established in Chile and the exchange entities, stockbrokers and broker-dealers authorized for that purpose by the Central Bank. The transactions which must be made in the formal foreign exchange market can be made with foreign currency acquired in such market or not. The Central Bank Act also restricts and imposes certain conditions on foreign exchange transactions, such as the obligation to return and convert foreign currency, impose a mandatory deposit "*encaje*," and others, for a period of time not to exceed one year, but which may be indefinitely renewed at the end of such period for equivalent one-year periods (on *encaje* see Section 2.2 below).

Pursuant to the current rules imposed by the Central Bank under its Compendium of Rules on Foreign Exchange (the "Compendium"), there are no restrictions on foreign exchange transactions. The Central Bank does require the reporting of certain foreign exchange transactions and that certain foreign exchange transactions be effected exclusively in the formal foreign exchange market.

Chapter XII of the Compendium governs the investments, deposits and credits (each as defined therein) that Chilean resident individuals or legal entities -except for banks- may make or grant abroad. Pursuant to these rules, the investments, deposits or credits made or granted abroad, as well as those transactions made in respect of funds invested, deposited or credited shall be informed to the Central Bank regardless of whether the funds related thereto are remitted to Chile. The remittance of funds from abroad, or payments made from Chile, in respect of investments, deposits or credits shall be made through the formal foreign exchange market.

Chapter XIV of the Compendium governs credits, investments and capital contributions (each as defined therein) in excess of U.S.$10,000 that were originated abroad, except for those made by local banks. The transactions subject to these rules shall be informed to the Central Bank and settled through the formal exchange market, unless the foreign currency is used directly abroad in which case only reporting is required.

Both in the case of Chapters XII and XIV of the Compendium, the transactions made prior to April 19, 2001 shall continue to be governed by the provisions applicable thereto which may differ from the rules in effect from time to time.

2.2 Foreign Investments Regulations

Foreign investments in freely convertible currency which purpose is to (i) pay or increase the capital of companies in order to increase the productivity of goods and services or (ii) acquire shares or rights in existing companies to participate in its management, may be brought into Chile either under the Central Bank Act or the Foreign Investment Statute ("Decree Law 600"). Although investments made under the Central Bank Act may be restricted from access to the formal exchange market if adverse macroeconomic conditions so demand, investment made under Decree Law 600 shall always be granted with the right to access the formal foreign exchange market to repatriate capital and profits. The remittance of funds is free of any taxes, duties or charges up to the amount of the investment made. Capital gains over such amount shall be, however, subject to the general tax regime.

While Decree Law 600 provides that capital invested thereunder may not be repatriated earlier than one year from the time the investment is made, the Central Bank Act has no such restriction. Under both Decree Law 600 and the Central Bank Act profits may be freely remitted abroad at any time at the discretion of each investor.

Whereas pursuant to Chapter XIV of the Compendium foreign investments made thereunder shall be reported to the Central Bank, foreign investments made under Decree Law 600 require the approval of the Foreign Investment Committee (the "FIC") or of the FIC's Executive Vice President. The approval process typically takes one month (though preliminary approvals are obtained in one or two days).

The FIC is chaired by the Minister of Economy, and comprised of the Minister of Finance, the Minister of Foreign Affairs, the Minister of Planning, the Minister with competence in the relevant investment area and the President of the Central Bank.

Under Decree Law 600, the minimum investment amount for a new project is U.S.$5 million (or its equivalent in other foreign currency) for investments consisting of foreign currency or associated credits. The minimum amount is U.S.$2.5 million (or its equivalent in other foreign currency) for investments made in the form of tangible assets, technology and capitalization of profits or credits. It is worth noting that the FIC may modify the aforesaid minimum amounts. Projects submitted to the FIC's consideration must involve a ratio between equity and associated credits of up to 25/75. Under the Central Bank Act, only investment projects of at least U.S.$10,000 (or its equivalent in another foreign currency) or more are eligible.

Investments under Decree Law 600 may be brought in freely convertible foreign currency, tangible assets, technology that may qualify as capital, loans associated to a foreign investment and capitalization of foreign loans registered with the Central Bank or of profits entitled to be remitted abroad. In the case of foreign currency, investors may execute their foreign exchange operation only once the foreign investment contract has been executed. Notwithstanding the foregoing, investors may request an authorization to exchange their currency immediately when submitting the corresponding application. Investments in any form other than foreign currency require the foreign investment contract be duly executed. The Central Bank Act provides that investments thereunder may only be made in freely convertible foreign currency, which may be brought into Chile or used abroad to pay the corresponding investment, or in shares or equity rights of foreign companies.

Certainly Decree Law 600 affords the best legal protection available in Chile to foreign investors, as their rights and privileges are secured by an investment contract entered into with the Republic of Chile which cannot be unilaterally be modified by the State. These foreign investment

contracts are governed by Chilean law and are subject to the jurisdiction of Chilean Courts. Investors may however request at any time the amendment of the contract for the purposes of increasing the amount of the investment or changing its purpose. The foreign investors may further assign the rights conferred by the investment contract to another foreign investor. The alternative provided to foreign investors by the Central Bank Act has traditionally been based only on an administrative resolution issued by the Central Bank and, consequently, is to some extent more vulnerable.

Furthermore, Decree Law 600 guarantees to foreign investors additional protection such as a non-discriminatory and non-discretionary treatment *vis-à-vis* domestic investors. Decree Law 600 provides that foreign investors and the local companies receiving the investments made by them are subject to the general provisions of law applicable to domestic investors and that no discrimination, neither direct nor indirect, may be made against them. Nevertheless, it provides that regulations may be enacted to limit the foreign investors' access to local financing.

Also, Decree Law 600 grants to foreign investors the possibility of benefiting from an invariable income tax regime and, in certain cases, from special devices particularly designed for project financing purposes. Decree Law 600 grants foreign investors the right to elect to be subject to a ten-year invariable overall income tax regime of 42 percent. Since the current income tax rates, in the aggregate, impose a lower tax burden, this special tax regime is presently not attractive to existing foreign investors.

The special devices particularly designed for project financing purposes are basically applicable to industrial or extractive projects, including mining projects, of U.S.$50 million or more and typically consist of a possible extension of the ten-year invariable overall income tax regime for a total period of up to 20 years and maintenance for the same period of time of the rules and regulations regarding the determination of income taxes and the free exportation of goods as in effect upon the execution of the relevant investment contract.

Effective January 1, 2006, the Income Tax Act (defined below under Chapter 4 on "Tax Considerations") introduced a special tax on mining activities (see also Section 15.2.4.2 on "Mining Tax"). The law which amended the Income Tax Act also amended Decree Law 600 to set forth an alternative tax invariability regime, whereby a foreign investor who plans to invest an amount equal to or higher than U.S.$50 million, may be granted the following rights for a period of 15 years: (i) invariability of the referred special tax on mining activities, (ii) not to be affected by any new taxes, royalties or other tax burdens specifically levied upon mining activities, and (iii) not to be affected by amendments to the amount or manner of calculation of mining exploitation and exploration licenses. These rights must be expressly requested by the foreign investor, and they are incompatible with the regular tax invariability regime described in the two previous paragraphs.

Even though neither Decree Law 600's invariable income tax regime nor its special devices particularly designed for project financing purposes may be applicable to a particular investment project, Decree Law 600's investment contract and special protection against discriminatory treatment *vis-à-vis* domestic investors make it the most advisable structure for a foreign individual or company wishing to carry on business in this country.

In the past certain types of investments were subject to a mandatory deposit (*encaje*) with the Central Bank. Although *encaje* is no longer required it may be reinstated at any time as deemed necessary by the Central Bank in an amount of up to 40 percent of the investment although any such

reinstatement will only apply to foreign investments when the relevant funds are brought into Chile subsequent to the time of such reinstatement. Until June 26, 1998, investments made in Chile the purpose of which was other than paying or increasing the capital of companies to increase the productivity of goods and services or acquiring shares or rights in existing companies to participate in its management, were subject to *encaje* of 30 percent with the Central Bank. This deposit had to be made in United States dollars, did not gain interest and had to remain with the Central Bank for a period of one year. The *encaje* was gradually reduced in a couple of stages until it reached 0 percent on September 17, 1998. Even if the *encaje* is reinstated, please note that an alternative device designed to mitigate the financial burden of this deposit requirement was available until September 17, 1998. In fact, the Central Bank permitted avoidance of the deposit requirement by giving the investor the possibility of paying a charge equal to the interest that would have accrued over the amount that would have been otherwise subject to the deposit requirement at the 12-month LIBO interest rate plus three percent.

3. Investment Vehicles

3.1 Introduction

Chilean law contemplates two main legal entities that may serve as investment vehicles: the corporation (*sociedad anónima*) and the limited liability company (*sociedad de responsabilidad limitada*). In addition, investors may also opt to create a general partnership (*sociedad colectiva*), a silent partnership (*asociación o cuentas en participación*), a limited partnership (*sociedad en comandita*), or a branch of a foreign corporation.

This chapter focuses on the main features of both close and public corporations, including, among others, their rules of incorporation, managerial structures, shareholders' rights and minorities protections. Special consideration is also given to the provisions governing tender offers. This chapter also describes certain relevant aspects of limited liability companies, such as their formation, management and transfer of ownership rights. Finally, the main features of the general partnership, the silent partnership, the limited partnership and the requirements for creating a branch of a foreign corporation shall also be addressed below.

3.2 Corporations

3.2.1 Public vs. Close Corporations

Pursuant to the Corporations Act (the "Corporations Act"), public corporations are those (a) having 500 or more shareholders; (b) where at least ten percent of its subscribed equity capital is held by at least 100 shareholders, excluding those whom individually or acting through other persons or entities, hold more than such ten percent; or (c) which have voluntarily registered its shares in the Securities Registry held by the Superintendency of Securities and Insurance (the *Superintendencia de Valores y Seguros*, "SVS"). Corporations not meeting these requirements are close corporations. Any corporation may voluntarily submit itself to the provisions applicable to public corporations, and those pretending to make public offering of its securities shall first register themselves in the Securities Registry.

In case a public corporation ceases to comply with the criteria set forth above at any given point in time, it shall continue to be subject to the obligations imposed on public corporations. However, the corporation may no longer be subject to such obligations if it has not complied with said criteria for at least six months and a decision to the contrary is passed at a duly convened extraordinary shareholders' meeting with the affirmative vote of at least two-thirds of all the issued and outstanding shares of stock with right to vote of said corporation. In such a case, dissenting shareholders shall have appraisal rights in the terms described in Section 3.2.6 on "Appraisal Rights with Respect to Corporate Reorganizations".

Except as otherwise stated, all of the rules described herein below apply to both public and close corporations.

3.2.2 Incorporation

To establish a corporation at least two shareholders are required. A public deed incorporating the company and containing its by-laws shall be executed. Such deed shall include the following references:

(a) name, profession, and domicile of the shareholders;

(b) name and domicile of the corporation;

(c) the corporate purpose;

(d) the duration, which may be indefinite;

(e) the corporation's equity capital and the number of shares into which it is divided;

(f) rules relating to the management of the corporation;

(g) the date on which the annual fiscal year shall end;

(h) distribution of profits;

(i) rules governing its liquidation;

(j) the rules of arbitration by which potential disputes among the shareholders shall be governed;

(k) the appointment of an interim board of directors; and

(l) any other matters the shareholders may agree upon.

An excerpt of the aforementioned public deed must be recorded in the Commerce Registry and published in the Official Gazette. No further governmental authorization is required. As a general rule, there are no restrictions regarding the nationality of the shareholders nor residency requirements and it is not necessary to appoint an agent domiciled in Chile. Likewise, as a general rule, there are no minimum capital requirements, but it is advisable that the capital amount selected be in accordance with the corporate purpose.

When an investor subscribes for issued shares he implicitly accepts the corporation's by-laws and any agreements adopted at shareholders' meetings. Following subscription, the shares are registered in that investor's name, even if not paid for, and the investor is treated as a shareholder for all purposes, except with regard to the receipt of dividends and the return of capital, provided that the shareholders may, by amending the by-laws, also grant the right to receive dividends or capital distributions. The investor becomes eligible to receive dividends and/or returns of capital once he has paid for the shares, and, if he has paid for only a portion of such shares, he is entitled to receive a corresponding pro rata portion of the dividends declared with respect to such shares, unless the corporation's by-laws provide otherwise. If an investor does not pay for the shares for which he has subscribed on or prior to the date agreed upon for payment, the company is entitled to auction the shares on a stock exchange, and collect the difference, if any, between the subscription price and the price received at auction. However, until such shares are sold at auction, the investor may continue to exercise all the rights of a shareholder, except for the right to receive dividends and

returns of capital. Authorized shares and issued shares that have not been paid for within the period fixed by the extraordinary shareholders' meeting for their payment, which in any case cannot exceed three years from the date of the shareholders' meeting that authorized the increase in capital, are canceled and are no longer available to be issued.

3.2.3 Preemptive Rights

The Corporations Act provides that whenever a corporation issues new shares it must offer its existing shareholders the right to purchase a sufficient number of shares to maintain their existing percentage of ownership in the corporation. Under Chilean law, preemptive rights are exercisable or freely transferable by shareholders during a period of 30 days following the grant of such rights. During such period and thereafter, the corporation is not permitted to offer any unsubscribed shares for sale to third parties on terms that are more favorable than those offered to its shareholders. In public corporations, this restriction stands for a period of 30 days following the expiration of the preemptive rights period, but afterwards the corporation is authorized to sell unsubscribed shares to third parties on more favorable terms if such sale is made on a stock exchange.

3.2.4 Management

A. Board of Directors

Corporations are managed by a board of directors composed of at least three members, in case of close corporations, and of at least five members, in case of public corporations, except for public corporations having a market capitalization of not less than UF1,500,000 (U.S.$50,925,696.42), in which case the board shall be composed of at least seven members, as explained below. The board of directors represents the corporation in general, except with respect to those matters which pursuant to Chilean law or the corporation's by-laws are to be resolved by a shareholders' meeting, either ordinary or extraordinary, as described in letter D below.

Under the Corporations Act, the members of the board of directors are all elected at a shareholders' meeting. Staggered elections of the board of directors are not permitted. The members of the board of directors may be re-elected.

The quorum for a meeting of the board of directors is the absolute majority of the directors that compose it, and agreements are adopted by the absolute majority of the attending directors with right to vote. In case of a tie, the person chairing the meeting has a casting vote unless the by-laws provide otherwise. Pursuant to Article 44 of the Corporations Act, all acts and contracts that a corporation enters into with one or more of its directors (including their spouses and relatives up to a certain level of kindred), or entities related with any director or those other persons, shall be entered into within prevailing market conditions, require the prior approval of the board of directors, and resolutions with respect thereto shall be informed at the next shareholders' meeting. Additionally, in case it is not possible to determine whether the terms and conditions of a specific transaction are within prevailing market conditions, the board of directors may, without the vote of the interested director, decide whether to approve or not the same, or appoint two independent experts who shall prepare a report to that effect. Upon receiving the report, the board shall inform the fact in writing to the shareholders and shall make the report available to the shareholders for their comments for the next 20 business days. The board may only resolve the matter once such period has elapsed, unless shareholder(s) holding at least five percent of the issued and outstanding

shares of stock with right to vote request such matter to be decided in an extraordinary shareholders' meeting by the affirmative vote of two-thirds of all of the issued and outstanding shares of stock with right to vote. The Corporations Act further provides that in case of a related transaction involving the sale of the business, of all of the assets and liabilities, or of all of the assets of a corporation, the controller or any person related with the former, shall disclose to the board of directors all the data, documentation and the like which were provided to foreign regulators and stock exchanges.

The Corporations Act provides that any public corporation having a market capitalization of not less than UF1,500,000 (U.S.$50,925,696.42) shall have a board of directors composed by at least seven members and shall create a directors' committee composed of three members, the majority of which shall be elected without the vote of the controlling shareholder. This majority requirement though, is only required in case minority shareholders are able to elect at least two members of the board. In case the minority shareholders are not able to elect two members of the board of directors or are not able to elect any member, the board would still need to create this committee, the majority of which in this case will not be independent from the controller. Among the duties of the directors' committee is to review the related party transactions referred to above.

B. Directors' Liability

The Corporations Act provides, in general terms, that directors shall be jointly and severally liable for the damages caused to the corporation or its shareholders by willful misconduct or negligence. Any provision in the by-laws or in a shareholders' agreement exempting or limiting this liability of the directors shall be null and void. In addition, the directors shall be jointly and severally liable among them and with the corporation for damages and fines arising out of a breach of the Corporations Act, its regulations, the by-laws or the rulings of the SVS.

The directors elected by a group of shareholders shall have the same obligations that other directors have towards the other shareholders and the relevant corporation and, therefore, cannot act against the interests thereof on the basis of instructions received from such group of shareholders.

Specifically, the Corporations Act forbids directors from:

(a) proposing amendments to the by-laws, agreeing on the issuance of securities or adopting policies or decisions not in furtherance of the corporate interest but made in the interest of the director or related third parties;

(b) preventing or hindering investigations into such director's liability or that of the officers of the corporation;

(c) inducing managers, officers, workers, account inspectors or auditors to render irregular accounts, to disclose false information or to conceal other information;

(d) submitting to the shareholders irregular accounts or false information or concealing from them essential information;

(e) borrowing corporate funds or assets or using corporate assets, services or credits for personal benefit or for the benefit of relatives, principals or of related companies, without the prior approval of the board of directors in accordance with the law;

(f) using for personal benefit or for the benefit of related third parties, against the interests of the corporation, any commercial opportunities made known to the director by reason of his position; and

(g) in general, performing any illegal acts or acts which are contrary to the by-laws or the corporate interest or using the director's position to obtain undue personal advantages or advantages for related third parties against the interests of the corporation.

C. Officers

The board shall appoint a general manager, who shall act as the chief executive officer of the corporation, and such other officers as the board considers appropriate.

Although the authority conferred upon the general manager or other executive of a corporation may be limited, it is worth noting that pursuant to the Corporation Act the judicial representation of a corporation pertains to its general manager with not only the ordinary judicial powers, but also, as a matter of law, with extraordinary powers. Extraordinary judicial powers include the authority to abandon an action filed, to accept the complaint of the opposing party, to answer interrogatories, to waive the right to appeal or exercise other remedies and legal terms, to settle, to agree to submit a matter to arbitration, to grant arbitrators the power of arbitrators not bound by law and to collect and receive. In addition to this judicial representation, the general manager may be granted other powers to represent the corporation, as it may be deemed appropriate.

D. Shareholders' Meetings

As mentioned in letter A above, the decision making process of a corporation is held at the board level, except in cases where a resolution passed at the shareholders' meeting level is required according to the Corporations Act or the corporation's by-laws.

Normally, shareholders' voting rights are unlimited and they can be exercised by the relevant shareholder at will. Pursuant to Article 30 of the Corporations Act, however, shareholders shall exercise their corporate rights considering the rights of the corporation and of the other shareholders. This provision sets forth a construction principle which may be used by minority shareholders when dealing with a decision of the majority shareholders adopted at a duly convened shareholders' meeting which is so arbitrary and harmful that might be considered passed by the majority shareholders with the illegitimate (i.e. legal in face but illegal in substance) intent of damaging the corporation or the minority shareholders.

Shareholders' meetings are either ordinary or extraordinary. Ordinary shareholders' meetings are held once a year during the first four months of each year; and extraordinary shareholders' meetings are held at any time, according to the corporate needs. Generally, matters are decided by the simple majority of all of the issued and outstanding shares of stock with right to vote attending the meeting. However, in public corporations, the unanimous vote of all of the issued and outstanding shares is required for distributing dividends for an amount below 30 percent of the corporation's annual net profits, provided there are no accumulated losses. If there are no net profits in a given year, the corporation can elect, but is not legally obligated, to distribute dividends out of retained earnings.

Amendments to the corporation's by-laws and the cure of formal vices in those amendments, can only be approved by the affirmative vote of the simple majority of the issued and outstanding shares of stock of the corporation with right to vote. The following matters, however, can only be resolved at a duly convened shareholders' meeting, by the affirmative vote of two-thirds of the issued and outstanding shares of stock of the corporation with right to vote:

(a) the conversion of the corporation into some other type of entity; the division of the corporation, or its merger;

(b) the amendment of the corporation's duration, if provided for in the by-laws;

(c) its liquidation in advance;

(d) the change of the corporate domicile;

(e) the reduction of its equity capital;

(f) the approval of equity contributions in kind and the valuation of assets other than money;

(g) the amendment of the powers bestowed on the shareholders' meetings and the limits on the powers of the board of directors;

(h) the reduction of the number of members of the board of directors;

(i) the transfer of 50 percent or more of the corporation's assets, including or not its liabilities; the approval or amendment of any business plan that includes transfer of assets for an amount higher than the mentioned 50 percent;

(j) the manner upon which the corporation's profits shall be distributed;

(k) the granting or creation of guarantees or liens securing third parties' obligations other than that of subsidiaries (in which case the decision by the board will suffice);

(l) the redemption of shares issued by the corporation under certain circumstances;

(m) the decision on whether to close a public corporation in case the requirements set forth in Section 3.2.1 on "Public vs. Close Corporations" cease to be met;

(n) the approval of related transactions in the cases described in letter A above;

(o) others provided in the by-laws; and

(p) the cure of formal vices in the incorporation of the corporation or an amendment to its by-laws related to any of the matters referred in the preceding letters.

On the other hand, as long as a corporation is subject to the Pension Fund's Act, the affirmative vote of 75 percent of all the issued and outstanding shares is required for the amendment, among others, of the provisions establishing:

(1) ownership concentration limits;

(2) that the board shall manage the corporation always within the limits set forth by the investment and financial policy annually approved by the shareholders' meeting;

(3) the approval of the investment and financial policy by the ordinary shareholders' meeting, and the amendment thereof by an extraordinary shareholders' meeting;

(4) that the transfer or creation of liens over assets declared as "essential" in the investment and financial policy shall be decided in an extraordinary shareholders' meeting; and

(5) voting limit setting forth that no shareholder may vote more than a given percentage of all of the issued and outstanding shares of the corporation (not considering the series of shares being voted).

3.2.5 Creation of preferred shares

If a corporation wants to issue preferred stock, the shareholders of such corporation, acting at an extraordinary shareholders' meeting shall approve the creation of a preferred series of shares, which resolution shall be passed by shareholders representing two-thirds of the issued and outstanding shares of stock of the series affected by the creation of the preferred series. The same quorum is required for any resolution which purpose is to amend or eliminate the preference.

The resolution which creates, increases or reduces a preference grants appraisal rights to the dissenting shareholders of the series adversely affected by such creation, increase or reduction, as explained in Section 3.2.6 on "Appraisal Rights with Respect to Corporate Reorganizations".

A. Restrictions as to the preferences

Preferred series of shares shall have a duration, after which they convert into common shares. As a general rule, there is no restriction as to the duration of the preferred series and we are aware of public corporations where the duration is 50 or even 100 years. However, with respect to companies which make public offering of its shares, the Corporations Act provides that the duration of the preference may not exceed five years if the same entails a preeminence in the control of the corporation. The term may of course be extended, but such an amendment will again grant to dissenting shareholders the appraisal right referred to above.

Preferences shall not consist of the right to receive dividends unless such dividends are paid out of net profits obtained in the relevant fiscal year or retained earnings from previous fiscal years. Likewise, neither preferred nor common shares may be completely precluded from the right to receive dividends.

Finally, preference shall not consist of the right to have more than one vote per share. However, the SVS has approved the by-laws of a newly incorporated company with a preferred

series of shares consisting of one share, a common series consisting of 99,999,999, and where the preferred series has the right to appoint two out of nine directors.

B. Series of shares with limited voting rights

If there are series of shares with no voting rights, such shares shall not be counted for purposes of quorum. The same rule applies with respect to shares with limited voting rights in those matters where the shares do not have voting rights. These series of shares shall acquire full voting rights if the corporation does not comply with the preferences granted to the same.

3.2.6 Appraisal Rights with Respect to Corporate Reorganizations

The approval by a shareholders' meeting of any of the matters listed below entitles dissenting shareholders to tender their shares to the corporation and be bought-out of the corporation. These matters are:

(a) the conversion of the corporation;

(b) the merger of the corporation;

(c) the transfer of 50 percent or more of its assets;

(d) the granting or creation of guarantees or liens securing third parties' obligations as described in Section 3.2.4.D on "Shareholders' Meetings";

(e) the creation of preferences for a series of shares or the increase or reduction of exiting preferences; provided, however, that only the dissenting shareholders of the relevant series shall be entitled;

(f) the cure of formal vices in the incorporation of the corporation or any amendment to the by-laws granting such right;

(g) the decision to close a public corporation once the requirements set forth in Section 3.2.1 above cease to be met; and

(h) any other matter mentioned in the by-laws.

Under Article 69-bis of the Corporations Act, the right to be bought-out of a corporation is also granted to shareholders (other than pension funds that administer private pension plans under the Pension Funds Act, as defined in Section 13.5.1 below), under certain terms and conditions, if a public corporation were to become controlled by the State of Chile, directly or through any of its agencies, and if two independent rating agencies downgrade the rating of its stock from the first class as a result of certain actions specified in Article 69-bis undertaken by the public corporation or the State of Chile that negatively and substantially affect the earnings of the corporation. Shareholders must exercise their appraisal rights by tendering their shares to the corporation within 30 days of the date of the publication of the new rating by two independent rating agencies. If the appraisal rights are exercised by a shareholder invoking Article 69-bis, the price paid to the dissenting shareholder shall be the weighted average of the sales price for such corporation's shares as reported in the relevant stock exchanges for the six-month period preceding the publication of the

new rating by the two independent rating agencies. If the SVS determines that the shares are not actively traded on a stock exchange, the price shall be their book value. The price must be paid within 60 days from the expiration of the 30-day period for the tendering of the shares.

In addition to the foregoing, any person acquiring two-thirds or more of the shares with right to vote in a public corporation shall make, within 30 days following such acquisition, a tender offer for the remaining shares at a price not lower than the higher of the one which would correspond to shareholders exercising appraisal rights. If the acquirer does not comply with this obligation, minority shareholders shall have appraisal rights.

For the purposes of appraisal rights, dissenting shareholders shall be those who voted against any of the above matters at the relevant shareholders' meeting and those who did not attend the meeting but indicated their disagreement by delivering a notice in writing to the corporation within 30 days from the date of the shareholders' meeting that passed such resolution. In case of public corporations, the value per share to be paid to the dissenting shareholders is the market value. For this purpose, the Corporations Act distinguishes between shares which are actively traded in stock exchanges within the meaning of General Rule 103 and those shares which are not. In case of shares which are actively traded in stock exchanges, the value per share shall be the weighted average trading price of the shares during the two months preceding the day of the shareholders' meeting which originates the appraisal right. If the shares are not actively traded, their market value will then be considered to be equal to their book value. Finally, in case of close corporations, the value per share to be paid to the dissenting shareholders is the book value. According to the regulations of the Corporations Act, the book value is determined by dividing the paid-in capital of a company (plus its reserves and profits and minus losses) by the total number of its issued and outstanding shares.

Under the Corporations Act it is optional for dissenting shareholders to exercise their appraisal rights.

3.2.7 Other Minority Shareholders' Rights

In addition to the provisions referred to above, the Corporations Act provides that shareholder(s) holding ten percent or more of all the issued and outstanding shares may request the corporation (acting through its chairman) to summon an ordinary or extraordinary shareholders' meeting in order to discuss and/or resolve the matters described by such shareholder(s). Such shareholders' meeting shall be held within 30 days after the request is made. Additionally, shareholder(s) holding five percent of all of the issued and outstanding shares of a given corporation may request the summoning of an extraordinary shareholders' meeting to decide upon related party transactions in case such shareholder(s) is of the opinion that the transaction is not within prevailing market conditions or in case the opinions given by the different independent experts differ substantially.

The annual report of public corporations shall include an accurate and truthful summary of the comments and proposals made, with respect to the conduction of the corporation's businesses, by shareholder(s) holding ten percent or more of the corporations' shares of stock, in case such shareholder(s) so require(s). Additionally, any information delivered by the board of a public corporation to its shareholders in connection with the summoning to any shareholders' meeting, proxy solicitations or explanation of board's decisions shall include the relevant comments and proposals made by such ten percent shareholder(s).

Furthermore, a corporation's annual report, balance sheet, inventory, corporate books and external auditors' reports, shall be made available to all shareholders for a period of 15 days prior to the date of the shareholders' meeting. The same information shall be made available with respect to the corporation's subsidiaries. Certain information, however, may not be made available to shareholders in case three-fourths of the board decides, based on the ongoing status of negotiations, that such a disclosure may harm the corporation's interests.

Finally, minority shareholders of public corporations are also protected by certain provisions regarding tender offers, as described in Section 3.2.8 below.

3.2.8 Acquisition of Public Corporations

A. Filing requirements

Except when the target is a public corporation, no filings, publications or notices are required when acquiring a Chilean corporation. If the corporation is publicly traded, certain filings, publications and notices may be required depending on its actual intent and objectives, as summarized below.

B. Intent to obtain control

Filings and publications

Article 54 of the Securities Market Act (the "Securities Act") makes it mandatory for any person or entity directly or indirectly seeking to take control of a public corporation, regardless of the acquisition vehicle or procedure, and including acquisitions made through direct subscriptions or private transactions, to publicly disclose the intention of taking control in advance. The provisions of this Article 54, however, do not apply when the acquisition is being made through a tender or exchange offer (See letter C of this Section for a description of the filings applicable to tender and exchange offers).

The notice shall be given to the target company, to every company controlling or controlled by the target corporation, to the SVS and to the stock exchanges on which the targeted securities are listed and, additionally, must be published in two national newspapers. Publication of the notice must be made not less than ten business days before the date on which the transaction is to be completed and, in any event, as soon as negotiations aimed at taking control of the target corporation have commenced by delivering information and documents of the target corporation.

Although the content of the notice and its publication have been extensively determined by the SVS in General Rule 104, the basic requirement is that it contains the price offered for the shares and all other material elements of the transaction.

Failure to comply with the requirements contained in Article 54 of the Securities Act or General Rule 104 of the SVS would not affect the validity of the transaction, but the shareholders of the target corporation or other interested parties can claim damages, besides any administrative sanctions that may be imposed by the SVS.

In addition to the foregoing, Article 54A of the Securities Act requires that within two business days following the completion of the transactions pursuant to which a person has acquired control of a public corporation, a publication shall be made in the same newspapers where the notice referred to above was published and notices shall be sent to the same persons mentioned in the preceding paragraphs.

Article 200 of the Securities Act prohibits any shareholder that has taken control of a public corporation to acquire, for a period of 12 months from the date of the transaction that granted control, a number of shares equal to or higher than three percent of the outstanding issued shares of the target without making a tender offer at a price per share not lower than the price paid at the time of taking control. Should the acquisition from the other shareholders of the corporation be made on the floor of a stock exchange and on a pro rata basis, the controlling shareholder may purchase a higher percentage of shares, if and when permitted by the regulations of the stock exchange.

Control

The Securities Act defines control as the power of a person, or group of persons acting pursuant to a joint action agreement, to direct the majority of the votes in the shareholders' meetings of the corporation, or to elect the majority of members of its board of directors, or to influence the management of the corporation significantly. "Significant influence" is deemed to exist in respect of the person or group holding, directly or indirectly, at least 25 percent of the voting share capital, unless:

(a) another person or group of persons acting pursuant to a joint action agreement control, directly or indirectly, a stake equal to or higher than the percentage controlled by such person;

(b) the person or group does not control, directly or indirectly, more than 40 percent of the voting share capital and the percentage controlled is lower than the sum of the shares held by other shareholders holding more than five percent of the share capital; and

(c) in cases where the SVS has ruled otherwise, based on the distribution or atomization of the overall shareholding.

According to the Securities Act, a joint action agreement is an agreement among two or more parties which, directly or indirectly, own shares in a corporation at the same time and whereby they agree to participate with the same interest in the management of the corporation or in taking control of the same. The law presumes that such an agreement exists between:

(a) a principal and its agents;

(b) spouses and relatives up to certain level of kindred;

(c) entities within the same "business group;" and

(d) an entity and its controller or any of its members.

Likewise, the SVS may determine that a joint action agreement exists between two or more entities considering, among others, the number of companies in which they participate and the

frequency with which they vote identically in the election of directors, appointment of managers and other resolutions passed at shareholders' meetings.

According to Article 96 of the Securities Act a "business group" is a group of entities with such ties in their ownership, management or credit liabilities that it may be assumed that the economic and financial action of such members is directed by, or subordinated to, the joint interests of the group, or that there are common credit risks in the credits granted to, or securities issued by, them. Pursuant to the Securities Act, the following entities are part of the same business group:

(a) a company and its controller;

(b) all the companies with a common controller and the latter;

(c) all the entities that the SVS declares to be part of the business group due to one or more of the following reasons:

- a substantial part of the assets of the corporation is involved in the business group, whether as investments in securities, equity rights, loans or guaranties;
- the company has a significant level of indebtedness and that the business group has a material participation as a lender or guarantor;
- when the controller of the entities mentioned in letters (a) and (b) above is a group of persons, and the company is one of the members of such group, and there are grounds to include the company in the business group; and
- when the controller is a group of persons, if the company is controlled by a member of the controlling group and there are grounds to include it in the business group.

As it may be concluded from the previous paragraphs, whether a person or group of persons have the intent to take control of a public corporation, whether they will acquire such control after one or more transactions or whether there is a joint action agreement between two or more persons, is a factual matter that has to be analyzed on a case by case basis. Special attention should be given in this analysis to the final intention of the person or group of persons, as the SVS could integrate all the transactions carried out by a person or group of persons over a period of time when determining whether a violation to Article 54 has occurred.

C. Tender offers

Definition

The Securities Act defines a tender offer as an offer made to the public at large for the acquisition of shares or convertible securities of a public corporation, in which the offeror makes an offer to the shareholders of the public corporation to acquire all or a percentage of their shares within a given period of time. Title XXV of the Securities Act applies to mandatory and voluntary tender offers.

Mandatory tender offers

Title XXV of the Securities Act provides that the following transactions shall be carried out through a tender offer:

(a) the offer which allows a person to take control of a public corporation;

(b) the offer that any person shall make for all the outstanding shares of a public corporation upon acquiring two-thirds or more of its shares of stock with right to vote. This offer shall be made at a price not lower than the price at which appraisal rights may be exercised (that is, book value if the shares of the company are not actively traded within the meaning of General Rule 103 of the SVS or, if the shares of the company are actively traded, the weighted average price at which the stock traded during the two months immediately preceding the acquisition). If the controlling shareholder does not make this purchase offer within 30 days following the date of acquisition of two-thirds or more of the shares of stock with right to vote of a public corporation, the remaining shareholders are entitled to exercise appraisal rights according to the provisions of the Corporations Act; and

(c) the offer that any person shall make for a controlling percentage of the shares of a operating public corporation if such person intends to take control of the holding company (whether listed or not) controlling such operating corporation, to the extent that the operating corporation represents 75 percent or more of the consolidated assets of the holding company.

The offeror must address the offer to all the shareholders of the target corporation or to all the holders of a given security or series of shares. Except as required in (b) above, the offer may be limited to a specific type of securities, a specific series of shares or a given number of shares, but the securities or shares tendered must be acquired from the shareholders on a pro rata basis. In addition to the foregoing, when the target has different series of shares and one series has preeminence in the control of the corporation, any person making an offer to purchase shares of the series with preeminence in the control shall make an offer for the same percentage of shares of the other series.

Exceptions

Even if within the scenarios described in (a), (b) or (c) above, the provisions of Title XXV do not apply to the acquisition of the following shares:

(a) those issued by a public corporation as a result of a capital increase that would allow the acquirer to take control of the issuer;

(b) those acquired from the controller of a public corporation, provided that the shares are quoted in the stock exchanges and that their sale price is paid in cash and is not substantially higher than their market price. The term "substantially higher than the market price" has been defined by the SVS as a price that is equal to or higher than ten percent over the market price;

(c) those resulting from a merger;

(d) those acquired *mortis causa*; and

(e) those acquired in forced sales.

In addition, there is an exception for acquisitions made pursuant to shareholders agreements registered with a public corporation prior to the enactment of Title XXV.

Information

Every tender offer must be announced publicly and a prospectus made available to all interested parties.

The tender offer must be made public by the offeror by means of a notice published in two national newspapers the day before the date on which the offer comes into effect.

The prospectus must address, among other matters, information regarding the offeror, its business and controllers; an indication of the shares or securities to be acquired and the minimum percentage to be purchased through the tender process, if applicable; the acquisition price and terms of payment; the period for which the offer will remain open; details of the offeror's stake in the target company, if any; the way in which the acquisition is to be financed; events that would cause the offer to be revoked; and any other information that the SVS may consider relevant. General Rule 104 of the SVS has extensive requirements about the information to be included in the prospectus.

In order to assure the transparency of the transaction, the SVS is vested with the power to request that the offeror provide additional information aimed at giving the public all essential information concerning the acquisition of the shares of the target company in a truthful, sufficient and timely manner. The SVS may suspend an offer for up to 15 days, renewable for another 15 days, if the offeror fails to provide the information required. If at the end of this term the required information has still not been made available, the SVS may cancel the offer.

Term and competitive bids

A tender offer must be in place for not less than 20 and not more than 30 days after notice thereof has been published, provided that if a depositary entity is a shareholder of the target corporation the offer shall be in place for 30 days. The offer may be extended once for a term of not less than five and not more than 15 additional days. The extension of an offer must be made public before the initial term has expired, by means of a notice published in the same newspapers in which the original offer was published.

The law permits competitive offers to be made during a tender offer period, by publishing the competitive tender offer notice not later than ten days before the expiration of the initial offer period.

Within three days following the expiration of the initial offer period, the offeror must publish the result in a notice carried in the same newspapers in which the offer was originally published. At the same time, the result must be reported to the SVS and the appropriate stock exchanges.

The date of the acquisition will be the date on which the result is announced.

Revocability of the offer and of the tendered shares

Although in principle tender offers are irrevocable, the offeror may set forth certain objective conditions, which failure to occur would render the offer ineffective. These conditions must be clearly stated in the notice to the public and in the prospectus.

The shareholders of the target corporation that have tendered their shares may always withdraw their acceptance while the term of the offer is in force. The shareholders who tendered their shares may also withdraw their acceptance until publication of the notice of a successful result, if the offeror fails to publish the notice of result within three days following the end of the offer period.

Amendment of the offer

During the term of the offer, the offeror may only amend the offer to increase the price offered for the shares or the number of shares it intends to acquire. Any increase in the purchase price shall also benefit those shareholders who tendered their shares prior to the price increase.

Once the term of the offer expires, the offeror is barred from making any new offer for a period of 20 days.

Parallel transactions; integration period

While the tender offer is in force, the offeror shall not enter into negotiations with third parties outside of the tender offer process.

For a period of 90 days prior to the date on which the offer comes into effect and 120 days subsequent to the publication of its outcome, the offeror must not, directly or indirectly, acquire shares under more favorable price conditions than those expressed in the offer. If the offeror does so, the shareholders who have sold their shares under less favorable conditions will be entitled to claim recompense from the offeror and any party benefiting from those conditions.

Defensive tactics

Title XXV also imposes a set of obligations on the target corporation and its board of directors, aimed at protecting the interests of the shareholders of the corporation, the integrity of the assets of the corporation and the seriousness of the process in general.

Along these lines, the law requires that, unless the SVS decides to the contrary, during the term of the tender offer, the target corporation shall not:

(a) acquire its own shares;

(b) create any subsidiary;

(c) dispose of assets that represent more than five percent of its total assets; and

(d) increase the corporation's leverage by more than ten percent of its total indebtedness existing immediately prior to the making of the offer.

Likewise, within two business days from the date of the publication of the tender offer notice, the corporation must provide the offeror with a list of its shareholders including their names, addresses and size of holdings.

Lastly, each board member must issue a written report evaluating the tender offer for the corporation's shareholders. In it, each director must declare any interest she or he may have in the transaction, and any relationship with the controller of the corporation or the offeror. These reports shall be made available to the public at large along with the prospectus. Copies must also be handed to the SVS, the stock exchanges, the offeror, and the person in charge of the organization of the offer, if applicable, within five business days following the publication of the tender offer notice.

Simplified rules

The SVS has waived some of the requirements mentioned above in cases of offers made for the acquisition of up to five percent of the outstanding shares issued by a public corporation.

D. Acquisition of ten percent or more of a company.

Article 12 of the Securities Act makes it mandatory for any person or entity directly or indirectly holding ten percent or more of the capital stock of a corporation whose shares are registered in the Securities Registry of the SVS, or acquiring ten percent or more through a stock purchase or otherwise, to disclose to the SVS and to each stock exchange on which the corporation's stock is listed, any purchase or sale of shares of the corporation, whether direct or indirect, within two stock exchange business days. The members of the board of directors, the general manager, the senior officers and managers of the corporation must also disclose any purchase or sale of stock within the same term.

Any shareholder who has acquired ten percent or more of the shares of a company must also report if the acquisition is aimed at taking control or if made only for investment purposes.

3.3 Limited Liability Companies

Limited liability companies ("LLC") are legal entities distinct from the individuals or entities that create or are part of them and which main feature is to limit the liability of the partners in respect of the LLC's obligations to each such partner's paid contribution to the LLC's capital. Put differently, partners shall not be personally liable for the obligations of the LLC in favor of third parties.

Although similar to corporations in being a legal entity separated from the partners and in respect of the formalities required for their creation, LLCs differ in much from corporations, particularly in respect of the rules governing management, distribution of profits and transfer of rights, as described herein below.

3.3.1 Formation

At least two individuals and/or legal entities are required to organize an LLC, who shall execute a public deed specifying:

(a) name and domicile of the partners;

(b) name of the LLC;

(c) appointment of partners in charge of the management and of the use of the LLC's name;

(d) capital contributions that each of the partners' make, whether such contribution consists of cash, credits or any other asset; the value of contributions consisting of personal property or real estate and the valuation procedures applicable in case such assets were not valued;

(e) purpose of the LLC;

(f) distribution of profits and losses;

(g) duration;

(h) amount each partner may withdraw each year for personal expenses;

(i) rules governing liquidation;

(j) the rules governing disputes among the partners;

(k) domicile; and

(l) any other matters the partners may agree upon.

As required for corporations, an excerpt of the aforementioned public deed must be recorded in the Commerce Registry and published in the Official Gazette. No further governmental authorization is required for the formation of an LLC either.

Controversies among partners arising out of the LLC agreement shall be submitted to arbitration. The arbitrator shall be appointed by the interested parties or, absent their agreement in that regard, by the competent court.

As a general rule, there are no restrictions regarding the nationality of the partners or requiring that any foreign partners have residence in or appoint an agent domiciled in Chile. Likewise, as a general rule there are no minimum capital requirements, but it is advisable that the capital amount selected be in accordance with the company's purpose.

3.3.2 Management

The management of an LLC may be freely allocated by the partners thereof. The managerial authority may be vested upon one or more partners, upon a board of directors composed of partners and/or third parties, or upon a third party.

The partners shall appoint a general manager and such other officers as the partners deem appropriate.

3.3.3 Distribution of Profits

Under the Limited Liability Companies Act, there are no restrictions in connection with the distribution of profits, which may be freely apportioned by the partners in the LLC agreement. Absent an agreement regarding the apportionment of profits, they will be distributed in proportion to each partner's contribution to the LLC's capital.

3.3.4 Transfer of Rights

The transfer of a partner's quota rights in an LLC can only be effected by amending the LLC agreement, which amendment requires the consent of all of the partners of such LLC; otherwise, the transfer will have no effect.

3.3.5 Non-Competition

It is worth noting that the partners shall not engage in a business that competes with the LLC's business without the other partners' consent, which cannot be unreasonably withheld. This restriction may be expressly waived in the LLC's by-laws.

3.4 General Partnerships

General partnerships (*sociedades colectivas*) are legal entities distinct from the individuals or entities that create or are part of them, in which the liability of the partners is unlimited. General partnerships can be civil or commercial depending on their purpose.

3.4.1 Formation

The Civil Code (the "Civil Code") provides no formalities for the organization of civil general partnerships. Nevertheless, for purposes of evidence of existence, they require to be in written form.

The Code of Commerce (the "Code of Commerce"), on the other hand, requires for the organization of commercial general partnerships, a notarial deed and the registration of an excerpt thereof in the relevant Commerce Registry. All amendments to the organization deed must comply with the same formalities.

The organization deed must contain the following:

(a) full name and domicile of the partners;

(b) name of the general partnership;

(c) appointment of the partners in charge of the management and of the use of the partnership's name;

(d) capital contributions made by each partner, whether in cash, accounts receivable or in kind, and the manner to appraise such contributions in case no value is assigned thereto;

(e) purpose of the partnership;

(f) distribution of profits and losses;

(g) duration;

(h) amount each partner may withdraw each year for personal expenses;

(i) the rules governing liquidation;

(j) the rules governing disputes among the partners;

(k) domicile of the partnership; and

(l) any other matters the partners may agree upon.

3.4.2 Liability

The partners of civil general partnerships are liable for the obligations of the partnership before third parties in proportion to their respective contributions, and the portion of the insolvent partner shall proportionally increase the liability of the remaining partners. The partners of commercial general partnerships are jointly and severally liable for the obligations of the partnership before third parties.

3.4.3 Management

Civil general partnerships may be managed by one or more of the partners, whether provided in the organization deed or by a document executed later. If appointed in the organization deed, such appointment is of the essence of the partnership, unless expressly stated otherwise, and the manager(s) may not resign except in cases provided in the organization deed or accepted unanimously by the partners, and may not be removed except in cases provided in the organization deed or when found incapable or untrustworthy to manage the partnership. In all other cases, the resignation or removal results in the termination of the partnership. If nothing is expressly provided in the organization deed or in a document executed later, the management of the partnership corresponds to each of the partners, individually considered.

Commercial general partnerships are managed in accordance with the provisions of their by-laws. If nothing is expressly provided in the by-laws, the management of the partnership corresponds to each of the partners, individually considered.

In both cases, when the management corresponds to each of the partners, any partner may oppose to acts or contracts intended by any of the other partners. If, despite the opposition, the act or contract is carried out with third parties in good faith, the partners are bound by such act or contract, notwithstanding their right to be compensated by the acting partner.

3.4.4 Transfer of Rights

As a general rule, no transfer of a partner's rights in a general partnership may be effected without the other partners' unanimous consent.

3.5 Silent Partnerships

The Code of Commerce contemplates an alternative structure that may serve as investment vehicle: the silent partnership (*asociación o cuentas en participación*, or association), which, in some cases, has proved convenient for doing business in Chile. The Code of Commerce defines the association as a contract pursuant to which two or more merchants take an interest in one or more commercial transactions, whether simultaneous or continuous, that only one of them (the administrator) performs in his own name and under his own personal credit, subject to the obligation of accounting for his participation and dividing with the other participants the profits and losses as agreed or, otherwise, in proportion to their respective interest. This special legal structure is essentially private, does not create a new legal entity, or have a name, domicile, or capital separated from the administrator who acts for it.

Under both the commercial and tax laws in effect in Chile, the administrator who acts for the association is deemed the sole owner *vis-à-vis* third parties and tax authorities and, therefore, they have legal recourse against such administrator alone for any contractual liability and tax consequences deriving from his participation. In turn, such administrator is the only party in interest in all actions against third parties and tax authorities and is the only one who can bring such actions unless such right is formally assigned to one or more of the other participants.

In the absence of specific contractual provisions governing the relationship among the participants themselves, the rules governing general partnerships shall be applied.

3.6 Limited Partnerships

The Code of Commerce defines a limited partnership (*sociedad en comandita*) as a company organized between one or more persons who undertake to make a specific contribution to the company ("Limited Partners") and one or more persons who commit themselves to manage the company, whether personally or through their appointees, and in their own name ("General Partners").

3.6.1 Types of Limited Partnerships

The Code of Commerce distinguishes between Simple Limited Partnerships and Stock Limited Partnerships.

A Simple Limited Partnership is formed by the contribution of a fund furnished by one or more Limited Partners, or by such Limited Partners jointly with the General Partners. In a Stock Limited Partnership, capital contributions are represented by shares of stock and furnished by Limited Partners whose names do not appear in the partnership's organization deed and by-laws.

3.6.2 Formation

A simple Limited Partnership is organized by means of a notarial deed with the same contents as required for general partnerships, an excerpt of which must be registered in the relevant Commerce Registry.

Stock Limited Partnerships have a two-step organization process, which can be accomplished in one act or in two separate acts. First, it requires a notarial deed and registration in the same conditions as the Simple Limited Partnership. However, the partnership is not effectively organized until the entire capital is subscribed and each partner has contributed at least one fourth of its committed contribution, which must be evidenced by a statement of the General Partner made by means of a notarial deed attached with a list of all subscribers, the status of their respective contributions and the by-laws.

In Limited Partnerships, the names of the Limited Partners must not appear in the name of the partnership nor in the excerpt of the organization deed. If a Limited Partner allows or tolerates the appearance of his or her name in the name of the partnership, he or she shall be liable for the partnership's obligations in the same terms as a General Partner. In Stock Limited Partnerships, additionally, the names of the Limited Partners must not appear in the organization deed.

Limited Partners are prohibited from contributing their ability, credit or personal work, as these are exclusively contributed by General Partners.

According to Article one of the Securities Act, Stock Limited Partnerships are subject to the regulations of the Securities Act when they publicly trade their shares. Also the Stock Limited Partnerships are subject to the referred regulations, when (i) at least ten percent of their subscribed capital belongs to a minimum of 100 stockholders, excluding those who individually or through other persons or entities exceed such percentage, or (ii) they have 500 stockholders or more.

3.6.3 Liability

General Partners are jointly and severally liable pursuant to all commitments made and losses sustained by the Partnership. Limited Partners are only liable up to the amount they committed to contribute to the Partnership.

3.6.4 Management

The management of a Limited Partnership is vested exclusively upon the General Partner(s). Limited Partners are completely restricted from participating in such management. The Code of Commerce sanctions any Limited Partner who violates this prohibition by depriving such Limited Partner of the above-referred limited liability privilege. Accordingly, any such infringing Limited Partner shall become jointly and severally liable, together with the General Partners, for all of the Limited Partnership's losses and commitments, whether previous or subsequent to contravening the requirement not to intervene in the Limited Partnership's management.

Limited Partners may hold meetings to discuss and decide matters other than those related to the management of the Limited Partnership. In Stock Limited Partnerships, the Limited Partners' meeting must elect a Surveillance Board composed by at least three Limited Partners, which is in charge of inspecting the Limited Partnership's books and records, present to the Limited Partner's meeting an annual report and the proposal for the distribution of profits, and is entitled to summon Limited Partners' meetings and cause the dissolution of the Limited Partnership.

3.6.5 Transfer of Rights and Shares

In Simple Limited Partnerships, a Limited Partner may transfer its rights but not the authority to examine the Limited Partnership's books and records. In Stock Limited Partnerships, a Limited Partner may transfer its shares only after two-fifths of their value have been contributed to the Limited Partnership.

3.7 Branches

A foreign corporation may organize a local branch in Chile. The requirements to establish a branch are quite simple, and basically consist of producing and filing with a local notary public:

(a) documentation evidencing the due organization, existence and good standing of the relevant foreign corporation pursuant to the laws of the country where it was incorporated, which documentation shall include legalized copies of the articles of incorporation and by-laws of the foreign corporation, and a certificate issued by the competent authority of such country as to the incorporation and good standing of such corporation; and

(b) the appointment of the local representative thereof, with ample powers and authority.

The local representative so appointed shall then execute in Chile a public deed setting forth:

(a) the name under which the foreign corporation shall operate in Chile, and the purpose of the branch;

(c) that the foreign corporation knows the Chilean laws and regulations by which the operations of the branch shall be governed;

(c) that the assets of the branch shall be subject to Chilean laws and shall respond for the obligations undertaken by the branch in Chile;

(d) that the foreign corporation shall keep liquid assets in Chile to meet its obligations in Chile;

(e) the capital of the branch and the time-period and manner in which such capital shall be brought into Chile; and

(f) the Chilean domicile of the branch.

An excerpt of the documentation filed with a Chilean notary public and of such public deed described herein above shall be recorded with the Commerce Registry and published in the Official Gazette.

There are no minimum capital requirements nor governmental authorization necessary to register any local branch.

Branches of foreign corporations have no separate legal existence from that of the foreign corporation that established such branches.

Branches of foreign corporations do not require any special governmental authorization to act in Chile, are subject to the same laws and regulations applicable to Chilean companies and, therefore, must carry out their activities and operate their businesses in the same terms and conditions as locally-owned companies.

4. Tax Considerations

4.1 Introduction

As a general rule, individuals or entities domiciled or resident in Chile, regardless of their nationality, are subject to income tax on their worldwide income.

For purposes of Chilean law, an individual is considered a Chilean resident if the individual has resided in Chile more than six consecutive months in one calendar year, or a total of more than six months in two consecutive fiscal years. To date, the fiscal year coincides with the calendar year. An individual is domiciled in Chile if such individual resides in Chile with the purpose of staying in Chile (such purpose to be evidenced by circumstances such as the acceptance of employment within Chile or the relocation for the individual's family to Chile).

Foreign individuals or entities not domiciled or resident in Chile are not subject to Chilean taxes, except for Chilean source income. As a general rule, income is deemed to be of Chilean source when it derives from assets located in Chile (e.g. real estate, personal property, shares issued by a Chilean corporation, etc.) or activities carried out in Chile.

4.2 Taxation of Individuals and Entities Domiciled or Resident in Chile

4.2.1 Individuals

The general rule is that the taxpayer is the one responsible for determining the amount of taxes due. However, there are some situations in which it is the Internal Revenue Service (*Servicio de Impuestos Internos*, the "IRS") itself who undertakes such a procedure, and in other occasions the law and even a judge is responsible to do so.

Individuals are required to pay an Overall Income Tax ("Overall Income Tax") on their worldwide income. The Overall Income Tax is a progressive tax with rates ranging from 0 percent to 40 percent. In connection with the profits that individuals receive from entities domiciled in Chile, individuals are allowed to use as a tax credit the 17 percent First Category Tax ("First Category Tax") paid by the corresponding entity, if any (see Section 4.2.2.A below).

Individuals also pay taxes on their dependent work-related income ("Second Category Tax") with rates ranging from 0 percent to 40 percent, which must be withheld by the employer. The amount of this tax is calculated based on an individual's dependent work-related monthly earnings minus social security contributions.

As a general rule, Chilean residents are not subject to wealth taxes. Please note, however, that real estates are subject to a "territorial tax" (*impuesto territorial*) which is calculated based on the value of the real estate. The use of vehicle such as automobiles, motorcycles and trucks, on the other hand, is levied by a municipal tax. Such tax (*permiso de circulación*) is paid every year and is calculated based on the value of the vehicle.

Finally, the taxable base concerning individuals depends on the nature of the income which is subject to Second Category Tax. For dependent workers, the taxable income consists of the amount received by the worker according to the employment agreement, minus mandatory contributions paid by the employer, such as health and retirement pensions, and income exempted from tax by law. For independent workers, which are subject to the Overall Income Tax, the net taxable income consists of the amounts received during the fiscal year, after deducing all necessary expenses. This deduction can be carried out through two alternative methods: the taxpayer may choose to pay (i) taxes according to the rules of the First Category Tax, case in which simplified accounting must be kept, or (ii) taxes that are calculated based on deemed expenses, according to which mechanism taxpayers may deduct from the gross annual income an amount of up to 30 percent thereof, with a ceiling of 15 UTA (U.S.$10,768). Needless to say, taxpayers who adopt this last system don't need to keep any accounting.

Foreigners, on the other hand, are subject to taxes in Chile only on their Chilean source income during the first three years of residence. At the end of this period, foreigners may apply for an extension of such term. After the original three-year period, or its extension, has lapsed, foreigners are subject to taxes in Chile on their worldwide income, as if they where Chilean residents. All income received by foreigners (whether received in Chile or abroad) for the services rendered in Chile is deemed income of Chilean source.

4.2.2 Entities

A. Corporate income tax.

Most companies are required to pay First Category Tax on their annual accrued income at a rate of 17 percent.

Corporations, limited liability companies and branches must pay taxes on their net taxable income (calculated on the basis of the accrual method of accounting, as a general rule). In this respect, there are certain matters that may be highlighted: (a) there are no restrictions on the carrying forward of any tax losses; (b) assets and liabilities are adjusted to reflect changes in Chilean inflation; (c) under certain conditions, imported or new tangible assets may be depreciated by one-third of their normal economic life; (d) dividends or profits from other Chilean companies are not subject to taxes; and (e) a tax credit may be granted with respect to foreign taxes paid on certain types of foreign source income.

Under certain circumstances, some activities (e.g. agricultural, mining and transportation) pay taxes on the basis of deemed income, unless a corporation carries them out.

Entities are required to prepare tax financial statements for each fiscal year and each April must file tax returns for the preceding year. In addition, entities shall make monthly interim payments on account of the First Category Tax, and pay and declare the Value Added Tax ("VAT") and Additional Withholding Taxes (see Section 4.3.1 on "Additional Withholding Tax") withheld during the preceding month. Finally, local entities shall keep a taxable profit fund ledger (the *Fondo de Utilidades Tributables*, "FUT") that tracks the entity's income and its tax situation. The FUT is used to calculate taxes and the tax credits that may be available at the time profits are distributed by such entity to its partners or shareholders, as the case may be.

B. Profits distributed to individuals or entities not domiciled or resident in Chile.

(a) Distributions of profits by, and withdrawals of profits from, an entity other than a corporation such as limited liability companies or permanent establishments (see Section 4.3.2 below), are subject to Additional Withholding Tax at a rate of 35 percent to the extent that the profits distributed or withdrawn correspond to "taxable income" as registered in the company's FUT (as of December 31 of the previous year). On the other hand, if the FUT of limited liability companies or permanent establishments is negative, profits distributed abroad will not be subject to Additional Withholding Tax, which will be deferred until the fiscal year in which the FUT of such limited liability companies or permanent establishments registers taxable profits, unless such distribution could be applied to the non-taxable profits ledger available (the *Fondo de Utilidades No Tributables*, "FUNT") and not be subject to withholding taxes.

Please note that any amounts remitted abroad by a limited liability company in excess of its FUT (as of December 31 of the previous year) is subject to a provisional 20 percent withholding tax on the amounts remitted abroad. In this case, the amount so withheld will be used as a tax credit against the Additional Withholding Tax that may be applicable if at the end of the fiscal year in which such remittance is made, the FUT of such limited liability company is positive. Conversely, if at the end of such fiscal year the limited liability company does not have taxable profits, the foreign partners will be entitled to a refund of the provisional tax withheld.

(b) Distributions of profits by a corporation are always subject to Additional Withholding Tax at a rate of 35 percent. In addition, dividends distributed by a Chilean corporation are subject to the following order of attribution: (i) any dividend distributed must be credited against taxable profits (from the oldest to the newest) as recorded in the FUT as of December 31 of the year prior to the date on which the dividend is paid; (ii) if no taxable profits exist as of December 31 of the preceding year, or if the amounts paid exceed the taxable profits recorded in the FUT as of such date, the dividend paid or the portion not fully covered by such taxable profits, as the case may be, are credited against the FUNT. No withholding applies on the amounts qualified as non-taxable income; and (iii) if non-taxable profits are available as of December 31 of the year prior the date on which the dividend is paid, or if the dividend paid exceeds the non-taxable profits available as of such date, the tax situation of the amounts not covered by the non-taxable profits, if any, is determined as of December 31 of the year in which the dividend is paid, following the same rules of attribution referred to above. However, in this case, a 35 percent provisional withholding must be applied on the amount distributed, against which a deemed First Category Tax credit is granted. If as of December 31 of the year in which the dividend is paid, no taxable profits exist, the Chilean corporation has to refund the First Category Tax credit on behalf of the shareholders who received the dividend.

As explained in letters (a) and (b) above, a credit is given for the First Category Tax paid by the local entity, if any. This credit, however, does not reduce the Additional Withholding Tax on a one-for-one basis because it also increases the tax base on which the Additional Withholding Tax is calculated.

The example below illustrates the effective Additional Withholding Tax burden on a cash dividend received by a foreign investor, assuming an Additional Withholding Tax rate of 35 percent, an effective First Category Tax of 17 percent, and a distribution of 100 percent of a local company's net income that is distributable after payment of the First Category Tax:

Company taxable income	100
First Category Tax (17% of Ch$100)	(17)
Net distributable income	83
Dividend distributed by local company	83
Additional Tax	
(35% of the sum of Ch$83 plus Ch$17 First Category Tax paid)	(35)
Credit for First Category Tax	17
Net Additional Withholding Tax	(18)
Net dividend received	65
Effective dividend Additional Withholding Tax rate	21,69%

Decree Law 600 grants holders of foreign investments that have registered their investment projects under its provisions, the option to waive the application of the aforementioned ordinary income tax regime and benefit instead from an overall fixed income tax regime. Decree Law 600 provides that investors may include in their investment contracts a clause providing that they shall be subject, for a period of ten years from the commencement of operations, to an overall fixed tax rate of 42 percent on taxable income. The ten-year term may be extended to 20 years for industrial and extractive projects valued at over U.S.$50 million. Since current income tax rates impose, in the aggregate, a lower tax burden, the special tax regime afforded by Decree Law 600 is presently unattractive to foreign investors. The foreign investor who has opted for a fixed tax rate may irrevocably waive the right to the fixed rate at any time. Thereafter, the foreign investor will be subject to the general tax legislation. See Chapter 2 on "Foreign Exchange and Foreign Investment".

C. Capital gains.

(a) Shares of close corporations or public corporations which are not significantly traded on stock exchanges.

Gains resulting from the sale or contribution of shares purchased prior to January 31, 1984 are exempt from taxes as long as the seller or taxpayer is not customarily engaged in the purchase and sale of securities. In addition, to benefit from this exemption, the sale of such shares should not be made between related parties. The parties to a transaction would be deemed related under the Income Tax Act (the "Income Tax Act") when the purchaser is a company and the seller is a partner or shareholder in a close corporation, holds ten percent or more of the stock in an open corporation, or has an economic interest in one of those companies.

Gains resulting from the sale or contribution of shares purchased after January 31, 1984 that have been held for a period of one year ore more are subject to a single income tax of 17 percent; provided that the sale of such shares is not made between related parties and provided, further, that the seller is not customarily engaged in the purchase and sale of securities.

In all other cases, gains resulting from the sale of shares purchased after January 31, 1984 are fully taxable. Therefore, such gains will become subject to a 17 percent First Category Tax that must be declared and paid by the seller. Upon payment or distribution of such gains to Chilean residents individuals, they will be subject to Overall Income Tax. On the other hand, if such gains are remitted or distributed abroad to non-resident individuals or entities, a 35 percent Additional

Withholding Tax will be levied. Please note, however, that in both cases a tax credit will be given for the First Category Tax already paid.

Gains are defined as any amounts exceeding the original price at which the shares concerned were purchased, adjusted by local inflation.

(b) Shares of public corporations which are significantly traded on stock exchanges.

Capital gains obtained from the sale and disposition of shares of Chilean public corporations which are significantly traded on stock exchanges are exempted from taxes if the sale or disposition is made on a local stock exchange or any other stock exchange authorized by the Superintendency of Securities and Insurance (the *Superintendencia de Valores de Seguros*, "SVS"), or in a tender offer process, provided that the shares have, in turn, been acquired at the stock exchange or in a tender offer, in a placement of newly issued shares, or as a result of the exchange of convertible bonds.

This exemption does not apply in the event of the transfer of controlling interests of a public corporation, except if such transfer is completed in a tender offer process or at a Chilean stock exchange without exceeding market price plus ten percent - 15 percent, as determined by the SVS.

Likewise, capital gains obtained by foreign institutional investors (as this term is defined in the Income Tax Act), such as mutual funds, pension funds and others, from the sale through a Chilean stock exchange, a tender offer or any other system authorized by the SVS of, among others, shares of public corporations that are significantly traded in stock exchanges, are exempt from capital gain taxes.

For purposes of benefiting from such exemption, the foreign institutional investor must comply with the following requirements, among others:

(i) it must be organized abroad and not be domiciled in Chile;

(ii) it must be a foreign institutional investor that complies with the requirements defined by a regulation issued with the prior report of the SVS and the IRS, which report, as of the date hereof, has not been issued;

(iii) it must not participate, directly or indirectly, in the control of the issuers of the securities in which it invests and not hold, directly or indirectly, ten percent or more of such corporation's capital or profits;

(iv) it must execute an agreement in writing with a Chilean bank or securities broker in which the intermediary is responsible for the execution of purchase and sale orders and for the confirmation, at the time of the respective remittance, that such remittance relates to capital gains that are exempt from income tax in Chile or, if they are subject to income tax, that the applicable withholdings have been made; and

(v) it must register in a special registry with the IRS.

If the foreign investor does not qualify as an institutional investor which complies with the foregoing requirements and other set forth in the Income Tax Act, then any capital gains will be

subject to Chilean taxes. Despite this exception, any other income (different from capital gains) from Chilean source will always be subject to Chilean taxes.

(c) Equity rights.

Capital gains determined as explained below would be added to any other taxable revenue of the seller and, as such, subject to 17 percent First Category Tax that must be declared and paid for by the seller. Upon payment or distribution of such gains to Chilean residents individuals, they will be subject to Overall Income Tax. On the other hand, if such gains are remitted or distributed abroad to non-resident individuals or entities, a 35 percent Additional Withholding Tax will be levied. Please note, however, that in both cases a tax credit will be given for the First Category Tax already paid.

According to Ruling No. 744 issued by the IRS on March 2, 2006, in order to determine the capital gain, it is necessary to distinguish whether or not the seller is bound to keep complete accounting pursuant to Chilean applicable tax rules:

(i) if the seller is bound to keep complete accounting, in order to determine whether or not there is a capital gain that may be subject to income tax in Chile, it is necessary to deduct from the sale price the original acquisition price of the ownership rights as reflected in the last annual balance sheet of the company (pro rata share of the seller in the company's equity capital) duly adjusted to reflect consumer price index variation between the last day of the second month prior to the beginning the corresponding fiscal year and the last day of the month prior to the balance sheet (or the last day of the month prior to the acquisition of the ownership rights and the last day of the month prior to the balance sheet if the ownership rights were acquired in the same year in which they are sold), adjusted upwards or downwards based on the increases or reductions in the recipient company's tax equity as determined according to Article 41 No.1 of the Income Tax Act; and

(ii) if the seller is not bound to keep complete accounting in Chile, in order to determine whether or not there may be a capital gain subject to income tax in Chile, it is necessary to distinguish:

(x) if the parties to the sale are not related to each other, the sale price should be compared against the tax value of the ownership rights sold. In other words, the taxable basis will be, in this case, the difference between the price at which the ownership rights are sold and the tax value of such rights. For this purpose, the tax value will be equal to the pro rata share of the seller in the company's book value (as determined for tax purposes according to Article 41 No.1 of the Income Tax Act) adjusted to reflect local inflation between the last day of the month prior to the balance sheet and the last day of the month prior to the sale of the ownership rights. Such amount shall be adjusted upwards or downwards based on increases, withdrawals, or reductions of capital occurred between the date of the last balance sheet and the date of the sale, adjusted to reflect consumer price index variation. The tax cost also includes taxable retained earnings in the company which rights are transferred; and

(y) if the parties to the sale are related to each other, the taxable basis will be the difference between the sale price and the acquisition cost of the ownership rights being sold, adjusted upwards or downwards based on subsequent increases or reductions of capital, adjusted to reflect consumer price index variation.

(d) Ability of the tax authorities to reassess the price established by the parties.

The IRS has the authority to conduct an appraisal of the shares or ownership rights being sold, whenever the price agreed upon by the parties is not within prevailing market prices. Because companies other than public corporations do not usually have readily available market quotations, prevailing market prices must be construed as reasonable commercial value, assessed in accordance with common business practices.

A "tax rollover" (business reorganization process) may be carried out in Chile without the risk of such an assessment, to the extent that the requirements of Article 64 of the Tax Code (as supplemented by Circular Letters Nos. 68 and 45 issued by the IRS) are complied with. In general, Article 64 provides that the IRS is not entitled to assess the value at which any assets, whether tangible or intangible, are contributed into a company within a business reorganization process, provided that the relevant transaction has a "legitimate business reason." The transaction shall be effected by means of a capital increase in an existing company or the incorporation of a new entity, and the capital contribution should not result in cash flows to the recipient company. In addition, the assets must be contributed or recorded in the recipient company at the same tax or financial value as recorded in the contributing company. Consequently, a "tax rollover" should not have tax consequences in Chile to the extent that the assets are contributed at their tax value and all the above-mentioned requirements are met.

Unfortunately, neither the law nor the IRS have defined the extent and scope of the expression "legitimate business reason." In this regard, the IRS has expressly pointed out that the existence of a "legitimate business reason" is a factual circumstance that can only be determined on a case-by-case basis. In addition, the IRS has expressly stated that a "tax rollover" could never consist of, or imply, a mechanism or instrument implemented with the sole purpose of evading taxes. Moreover, it is important to consider that in recent years, the IRS has made important efforts to persuade and encourage Chilean Courts to look for the "true intention" underlying a given transaction, instead of just focusing on the legality of each of the acts or steps taken in connection therewith.

4.3 Taxation of Individuals and Entities not Domiciled or Resident in Chile

As explained above, individuals and entities not domiciled or resident in Chile are not subject to Chilean taxes, except for income of Chilean source. The general rule is that an income is considered to be of a Chilean source when it arises out of goods located in Chile (e.g. real estate, personal property, shares issued by a Chilean corporation, etc.) or activities carried out in Chile. Individuals and entities not domiciled or resident in Chile are taxed on their Chilean source income with Additional Withholding Tax.

If a foreign individual or entity not domiciled or resident in Chile has an agency, branch or other permanent establishment in Chile, then such agency, branch or permanent establishment would be subject to Chilean taxes.

4.3.1 Additional Withholding Tax

Individuals and entities domiciled or resident in Chile making payments to individuals or entities not domiciled or resident in Chile, which payments constitute Chilean source income under the Income Tax Act, are required to withhold the applicable Additional Withholding Tax and declare and pay such tax to the Treasury General (the "Treasury General") within the first twelve days of the month following the withholding. In addition, a special ledger must be kept to record the Additional Withholding Taxes so withheld, including the name and address of the person for whose benefit the withholding was made, along with annual affidavit filings.

Additional Withholding Taxes and the rate thereof shall be determined on a case-by-case basis, as it depends on the type of payment, the payer and the payee, among other factors. As a general rule, however, the rate of the Additional Withholding Tax is 35 percent, but there are multiple exceptions. Certain particular cases are as follows:

(a) *Royalties*: Royalty payments to individuals or entities with no domicile or residence in Chile are usually subject to Additional Withholding Tax at a rate 30 percent as a single income tax. A company paying a royalty, however, may only deduct such payments as expenses to the extent that the aggregate amount of the royalties paid do not exceed four percent of the gross revenues of such company derived from the sale of goods or the rendering of services within its line of business, unless such payment are subject to a 30 percent tax in the payee's jurisdiction. Please note, however, that this four percent limit would not apply if between the payee and the payor there is not, or has not been, a direct or indirect relationship in the capital, control or administration of one another in the relevant fiscal year.

(b) *Software*: With respect to the tax treatment afforded to software, it is necessary to distinguish the physical support from the intellectual support. The physical support is subject to (i) customs duties at a rate of six percent, applied over the goods' customs value (see Section 4.4.1 below); and (ii) VAT equal to 19 percent. With respect to the intellectual support, it is necessary to distinguish "canned" software from "tailor-made" software:

(i) any amounts paid or credited to individuals or entities with no domicile or residence in Chile for the use of canned software is subject to Additional Withholding Tax at a rate of 30 percent, as single income tax; and

(ii) any payments made to individuals or entities with no domicile or residence in Chile for tailor-made software are subject to withholding tax at a rate of 20 percent, as single income tax.

(c) *Fees for copyrights and edition rights*: Payment of fees for copyright and edition rights to individuals or entities with no domicile or residence in Chile are subject to Additional Withholding Tax at a rate of 15 percent as a single tax.

(d) *Interests on loans, deposits or the like*: Interest payments to individuals or entities with no domicile or residence in Chile are usually subject to Additional Withholding Tax at a rate of 35 percent. However, if certain conditions are met the rate is reduced to four percent. For instance, the rate is four percent with respect to interest paid on (i) deposits denominated in foreign currency payable on demand or time deposits; (ii) loans granted by international or foreign banks or financial institutions ("Foreign Loans"); (iii) deferred purchase price of goods imported under the system of deferred payments ("Vendor Financing"); (iv) bonds or debentures issued in foreign currency by companies established in Chile ("Bonds"); (v) bonds or debentures issued in foreign currency by the

Republic of Chile or the Central Bank of Chile; and (vi) the instruments referred to in (i), (iv) and (v) above issued or denominated in Chilean pesos.

Nonetheless, interest payments on the excess of Foreign Loans, Bonds or Vendor Financing from parties related to the debtor, as defined in the Income Tax Act, that would otherwise qualify for the referred four percent Additional Withholding Tax rate, will be subject to a 35 percent Additional Withholding Tax rate if the aggregate amount of Foreign Loans, Bonds or Vendor Financing from such related parties exceed three times the net worth of the debtor (thin capitalization rules).

(e) *Services rendered in Chile*: Payments to individuals or entities with no domicile or residence in Chile for services rendered in Chile are usually subject to Additional Withholding Tax at a rate of 35 percent, unless the services are paid to foreign individuals for scientific or technical, cultural or sport activities, in which case the rate is 20 percent.

(f) *Services rendered abroad*: Payments to individuals or entities with no domicile or residence in Chile for services rendered abroad are usually subject to Additional Withholding Tax at a rate of 35 percent as a single tax, except for engineering services and technical assistance which are subject to Additional Withholding Tax at a rate of 20 percent as a single tax. Certain services are exempted from Additional Withholding Tax.

(g) *Insurance premiums on goods and property permanently located in Chile*: Insurance premiums paid to entities not organized in Chile are subject to Additional Withholding Tax at a rate of 22 percent as a single tax. Certain insurance premiums are exempted from Additional Withholding Tax.

(h) *Reinsurance premiums on goods and property permanently located in Chile*: Reinsurance premiums paid to entities not organized in Chile are subject to Additional Withholding Tax at a rate of two percent as a single tax.

4.3.2 Agencies, branches or other permanent establishments in Chile

Although there is no legal definition of permanent establishment, except for certain Double Taxation Treaties (*Tratados de Doble Tributación Internacional*) entered into by Chile and other countries, the IRS by means of Ruling No. 2,205 dated June 5, 2000 has indicated that a permanent establishment consists on the establishment of an office or branch which assumes the complete representation of the foreign entity and carries out a formal activity, and which is able to close transactions according to the terms indicated. On the contrary, if the attorney is appointed only to carry out specific activities which do not pertain to the line of business of the foreign entity (e.g. collect dividends or refer clients) no permanent establishment would exist. Needless to say, the above-mentioned ruling allows the tax authorities to exercise certain discretion when determining whether or not there is a permanent establishment in Chile.

An agency, branch or permanent establishment is subject to First Category Tax at a rate of 17 percent on its Chilean source income.

If the books and accounting records do not allow the tax authorities to determine the actual Chilean income of the foreign entity, the IRS may determine such income by (i) applying to the gross income of the Chilean operations, the ratio between net income and gross income of the

entity's headquarters (determined pursuant to the Income Tax Act), or (ii) applying to the assets of the Chilean operations, the ratio between the net income and assets of the entity's headquarters. The foregoing is without prejudice of the ability of the IRS to apply any of the deemed income assumptions contained in the Income Tax Act.

Amounts remitted or distributed abroad are subject to withholding tax as explained under Section 4.2.2 above.

4.4 Other Taxes

4.4.1 Customs Duties Tax

Imports of goods into Chile are generally subject to a six percent customs duty. The import of used assets is subject to a 50 percent surcharge over the applicable customs duty, except for those used assets eligible for deferred payment of customs duties, in which case the general rule applies.

Imports of goods into Chile are generally subject to 19 percent VAT. VAT is levied on the CIF value of the goods imported, increased by the amounts payable as customs duty.

Notwithstanding the foregoing, reduced *ad valorem* rates apply, in some cases down to 0 percent, as a result of the provisions of free trade agreements entered into between Chile and Mexico, Canada, the United States, the European Union, South Korea, among others, or as a result of commercial agreements that may be in effect, for example, with the Mercosur. In other words, any goods whose origin qualifies for the purposes of the relevant free trade agreement or commercial agreement would benefit from a special preferred treatment provided therein, by being subject to a reduced *ad valorem* or simply being exempt from the same.

Imports are governed, among other principles, by the so-called "freedom rule" set forth in Article 88 of the Central Bank Act, which guarantees that all kind of goods may be freely imported into Chile by any person. Any restriction to the import of goods can only be imposed by a special law, subject to super majorities in Congress.

To date, the import of capital goods included in a List of Machinery and Equipment issued by the Ministry of Economy is exempt from VAT to the extent that it forms part of an investment project approved under Decree Law 600. This exception is also applicable to the importation of goods included in a list of machinery and equipment which are not manufactured or otherwise produced in Chile in sufficient quantity and quality that are part of a domestic investment project considered to be of interest to this country by joint resolution from the Ministry of Economy and the Ministry of Finance.

Chilean law contemplates the possibility of deferred payment benefits with respect to customs duties in connection with the purchase of capital goods such as machinery, equipment and other similar items dedicated directly or indirectly to the production of merchandises or services or to their marketing. Only capital goods whose production capacity does not disappear after first usage, are eligible, provided, however, that such goods have a depreciation period of at least three years. Payment of customs duties may be deferred in these circumstances over a maximum of seven years provided that some requirements are met.

4.4.2 Municipal License

The carrying out of lucrative activities in an office space involves the payment of a municipal license, the value of which is calculated on the basis of the paid-up capital of the company concerned or of the branch in Chile, as the case may be. Municipalities may set the annual rate raging from 0.25 percent to 0.5 percent, but the amount of the license may not be less than one UTM (U.S.$59.59) or more than 8,000 UTMs (U.S.$476,720).

4.4.3 Value Added Tax

A 19 percent VAT is levied, in broad terms, on the price of:

(a) sales and other contracts whereby moveable property is transferred, provided such transactions are deemed customary for the seller (it is assumed that a transaction is customary for a given entity if it is within its line of business);

(b) services rendered which may be deemed commercial, industrial, financial, or pertaining to mining, construction, insurance, advertising, data processing and other business activities; and

(c) imports.

As a general rule, the seller or service provider is liable for declaring and paying the VAT. The amount of such tax, however, is added to the price of the goods or services. As a consequence, it is actually the buyer who bears the tax, although the seller is the taxpayer according to the law (*contribuyente de derecho*). Exceptionally, when the seller is not domiciled in Chile or when it is for any reason difficult for the IRS to control and enforce seller's compliance with its tax obligations, the buyer is liable for withholding and paying VAT.

The VAT charged by a company on its sales or services is called a "VAT Debit," while the VAT borne by a company on purchases of goods or services is called a "VAT Credit." In general, an entity deducts its VAT Credit from its VAT Debit each month and files a tax return paying only the balance, if any. If in any given month VAT Credits exceed VAT Debits, the difference may be carried forward and added to the VAT Credit of the following month and so on.

4.4.4 Inheritance and Donations Tax

A progressive tax applies on the net value of property transferred upon the death of the decedent or by way of gift during the donor's lifetime. The Inheritance and Donations Tax Act states that every allocation has a specified tax rate that ranges from one percent to 25 percent depending on the amount involved, the purpose of the transfer or gift, and the family relationship between the donor or decedent and the beneficiary. The tax (the "Inheritance and Donations Tax") must be paid within two years from the death of the decedent or from the date on which the gift is granted.

In both cases, if no relationship exists between decedent or donor and beneficiary, the beneficiary should be regarded as third party and, therefore, a 40 percent surcharge would increase the applicable rate.

These rates are applied onto the net value of each allocation, according to an inventory of assets, which must include all the assets of the decedent that are located in Chile as well as those located abroad. Nevertheless, successions of foreigners relating to assets located abroad shall be added to the inventory only if the acquisition of those assets was made with funds of a Chilean source. The tax paid abroad concerning assets included on the inventory can be used against the total taxes due in Chile; however, the Inheritance and Donations Tax actually due could not be lower than the tax that would have been applied should only the Chilean assets had been added to the aforementioned inventory.

4.4.5 Stamp Tax

Unless an exception is applicable, a stamp tax is levied on documents containing a money credit agreement or "credit operations" (e.g. foreign and domestic loans, whether or not evidenced by promissory notes; bonds; notes; the deferred purchase price of goods imported under the system of deferred payments, etc.). The stamp tax is currently equal to 0.134 percent of the principal of the loan for each month or fraction thereof between the granting of the same and its maturity, with a ceiling of 1.608 percent of the capital thereof. On the other hand, checks and the protest of bills are subject to a fixed stamp duty. Instruments and documents payable on-demand or issued at sight, as well as documents evidencing credit operations which are due and payable only after a previously agreed fixed term has expired (to the extent such term is not greater than five months), are subject to a 0.67 percent of the principal of the loan.

Exceptions may be available depending on the identity of the borrower or the purpose of the loans, but are quite rare.

As exception, loan or credit operations coming from abroad are levied with stamp tax by their mere recording on the accounting records of the debtor.

4.5 Transfer Pricing

The rules regarding transfer pricing contemplated in the Income Tax Act are aimed at enabling the IRS to make well-founded objections, i.e. using information that, according to logical reasoning, analysis and agreement, makes it possible to assign a different value to the transfer and to the amounts collected or paid among related companies in case any of such companies is incorporated abroad.

The concept of transfer pricing includes those charged for the purchase of goods, services rendered, technology transfer, as well as the temporary granting of the use or possession of patents and trademarks.

The referred rules on transfer pricing apply, among other cases, if a company incorporated abroad participates directly or indirectly in the management, control or capital of a company incorporated in Chile, or vice versa. Such rules also apply if the same persons participate directly or indirectly in the management, control or capital of a company incorporated in Chile and a company incorporated abroad. In addition, for the purposes of "price transfers," the law presumes that such relation exists with regard to companies that have entered into exclusivity agreements, joint action agreements, preferential treatments, financial or economic dependence or trust deposits. The same

presumption applies in the case of transactions made with companies incorporated in any of the countries or territories included in a list prepared by the Ministry of Finance, stating those locations referred to as "tax havens" or preferential tax systems that are harmful, according to the criteria of the Organization for Economic Co-operation and Development.

For the above purposes, the competent regional office of the IRS may make well-founded objections against the prices charged between parties that are related in the terms described in the preceding paragraph, if such prices differ from normal market prices among non-related entities. As reference basis can be considered the following parameters:

(i) reasonable profitability taking into consideration the particulars of a given transaction;

(ii) production costs plus a reasonable profit margin;

initially, prices are determined considering both reasonable profitability and production costs, comparing the prices charged between related companies with those of non-related companies with respect to similar transactions and conditions. For these purposes, it is important to consider, among other things, the characteristics of the asset or service, the type of transaction and the economic environment.

With regard to the production cost plus a reasonable profit margin, the acquisition price of the asset, according to authentic documentation, can be used as basis, adding the costs incurred and an estimated profit margin, using as basis equal or similar transactions among independent companies; and

(iii) prices of assets acquired from an associated company and resold to third parties, minus the profit margin observed in similar transactions with or among independent companies.

For these purposes, resale price shall mean the price of a product sold to an independent company and acquired by the seller from an associated company. This resale price is reduced by a resale price margin, which covers sale costs, operational expenses and an adequate profitability.

The resale price margin may be obtained from comparable non-controlled transactions, based on, for example, purchases of similar assets by reseller from independent companies, sales of similar assets by the related provider to independent companies located in the same or other markets, within or outside its tax jurisdiction, or sales of similar assets by independent companies to other independent companies.

Should the seller or service provider not carry out such transactions with independent companies, the regional IRS office may make well-founded objections against the prices, considering the values of the respective products and services in the international market. For such purposes, the regional office must request a report from the National Customs Service the "National Customs Service"), Central Bank of Chile or other entities having such information.

It is important to note that taxpayers must maintain a register containing the data of the persons with which they carry out transactions or in which they participate, in the terms described

above, maintaining both this register and the documentation evidencing such transactions at the IRS's disposal.

4.6 Double Taxation Treaties

Some of the rules set forth above may be affected by the double taxation treaties entered into by Chile. The income tax treaties for the avoidance of double taxation currently in force are those with Argentina, Canada, Mexico, Brazil, Norway, South Korea, Ecuador, Peru, Spain, Poland, Croatia, Denmark, Sweden and the United Kingdom. The recently signed treaties with Russia, Malaysia, France, New Zealand, Ireland, Portugal and Paraguay have not yet been ratified by the Chilean Congress.

Regarding this matter, it is important to point out that most double taxation treaties are based on the Organization for Economic Co-operation and Development directions, except for the one signed with Argentina, which is based on the Andean Pact (*Pacto Andino)*.

Although treaty shopping is not an issue that has been expressly addressed in the above-mentioned double taxation treaties, the principle that those treaties cannot be used or construed in such a manner as to provide benefits not contemplated or not intended thereby, is embedded in several provisions thereof.

4.7 Tax Elusion vs. Tax Evasion

As stated before, the bureau in charge of the surveillance and enforceability of Chilean tax laws and regulations is the IRS. Tax evasion is fiercely punished in Chile, with penalties ranging from fines to even imprisonment. In fact, in recent years the IRS has adopted a more determined and aggressive approach against tax evasion, in an effort to maximize tax collection. Moreover, the IRS has made important efforts to persuade and encourage Chilean Courts to look for the "true intention" underlying a given transaction, instead of just focusing on the legality of each of the acts or steps taken in connection therewith, arguing that on tax matters "substance shall always prevail over form."

Although Chilean tax law has not clearly established the difference between tax evasion and tax elusion, the majority of Chilean scholars define tax evasion as the performance of fraudulent conducts that are aimed at (i) obtaining the assessment of a lower tax than would otherwise be due, or (ii) hiding or altering the amount of taxable operations already performed, or (iii) dodging the particular taxes that must be paid. On the other hand, tax elusion is defined as the use of lawful strategies which avoid meeting the circumstances that trigger a particular tax. Such use is not illegal since it employs the elements granted by the law. Based on the foregoing, we may conclude that the main difference between tax elusion and tax evasion is given by the lawfulness of the mechanisms employed to avoid the payment of the relevant tax.

In this regard, it is important to consider that all acts, contracts or agreements in contravention of the law (*fraude a la ley*) are null and void under Chilean law, which invalidity needs be sanctioned by a court judgment before the statute of limitations of ten years have elapsed from the date the voidable act, contract or agreement was executed.

Pursuant to Chilean scholars, the requirements to be met in the case of tax evasion are the following:

(i) the filing of incomplete or false tax returns, the omission of accounting books or book entries, the alteration of balance sheets or inventories, the undue use of supporting documentation, or the employment of any other fraudulent proceeding;

(ii) that the actions mentioned above are aimed at (a) obtaining the imposition of a lower tax, (b) hiding or altering the amount of taxable operations already carried out, or (c) dodging the tax which must be paid; and

(iii) direct fraud, i.e., the intention of (a) altering the amount of taxes or (b) dodging the taxes that must be paid. The existence of this requirement cannot be presumed and shall be demonstrated by legal evidence.

In recent years important amendments aimed at hindering and deterring tax evasion have been introduced to the Income Tax Act. Such amendments included, among others, broadening the definition of Chilean source income, limiting the amount a Chilean company could borrow from related entities in order to eliminate a well spread practice used to reduce the Additional Withholding Tax rate from 35 percent to four percent rate, and imposing important restrictions to the use of accelerated depreciation.

In addition, anti-tax evasion measures comprise new limitations to the use of tax accumulated losses. In general, tax losses incurred by a company in any given year may be deducted from such company's retained earnings, or be carried forward to the next year. Should such profits may be still not large enough to absorb all such company's tax losses, the balance may be used to offset the profits of the next immediately succeeding year and so on.

If a company undergoes a change of ownership or change in its profit distribution method, it will be prevented from deducting tax losses incurred prior to such a change from any income accrued or received after such event, provided that,

(a) as a result of the referred change of ownership or profit distribution method, or within the twelve-month period preceding or following thereof, the company has changed its line of business or has broaden it as to include other lines of business, unless it has effectively kept its main line of business; or

(b) at the time of the change of ownership or profit distribution method, the company (i) did not have capital assets or other assets related to its line of business sufficient to develop its commercial activities; (ii) did not have assets which value is proportionate to the value of the ownership rights or shares of stock acquired; or (iii) started receiving income only from its participation, whether as partner or shareholder, in other companies or from profit-reinvestment.

For this purpose, a change of ownership is deemed to exist in any given year, whenever the new partners or shareholders acquire or complete to acquire, whether directly or indirectly through related companies, at least 50 percent of the ownership rights, shares of stock or equity participation in another company.

5. Labor Matters

5.1 Introduction

In general, the Labor Code (the "Labor Code") rules individual employment agreements and legal benefits for employees, trade unions and collective bargaining agreements, as well as the special labor jurisdiction and legal procedure applicable to judicial actions.

Additional legislation exists in connection with social security and health insurance, regulations for welfare and the pension system.

5.2 The Employment Agreement

Employment agreements are governed by the Labor Code. The Labor Code defines the employment agreement as a contract by which the employer and the employee are reciprocally committed: the employee to render personal services under dependence and subordination to the employer, and the employer, in turn, to pay a certain remuneration to the employee for the services thus rendered. Whenever such a relationship exists *de facto* between two persons, the Labor Code assumes that an employment agreement exists between them, even if no written evidence of such agreement can be produced.

The employment agreement must be set forth in writing within a period of 15 days from the first day in which the employee starts to work and, must contemplate, at least, such matters as: place and date of execution of the employment agreement; name of employer; name, nationality and birth date of the employee, as well as the date of initiation of his or her work; description of the nature of the services and place or city where the services must be rendered; amount of the salary or remuneration agreed, and payment system; length and distribution of daily working hours, except when the employer has a shift system in place, in which case its own internal regulations shall apply; and the term of the employment agreement.

If no written contract is produced within the referred 15-day term, the employer shall be punished with a fine of one to five UTM (U.S.$59.59 to U.S.$297.9). If the employee refuses to sign, the employer may send the written contract to the *Inspección del Trabajo* (the government agency in charge of labor compliance). If the employee maintains his refusal to sign, he may be fired without compensation, unless he provides evidence that the written contract does not reflect the conditions in which he was hired. If the written contract is not signed in the referred 15-day term and the employer does not exercise its right to send it to the *Inspección del Trabajo*, then the law presumes that the stipulations of the agreement are those alleged by the employee. In the latter case, the employer shall bear the burden to prove otherwise.

5.3 Nationality of Employees

In case of companies with more than 25 employees, at least 85 percent of the employees hired by any one employer must be Chilean, which percentage shall be calculated as a fraction of their total labor force in Chile. This restriction, however, does not apply to foreign technical experts that cannot be replaced by Chilean workers and, therefore, such category of foreign employees is excluded from the percentage mentioned above. For these purposes, those foreigners whose

husband, wife, or children are of Chilean nationality (or who are a widow or widower of a Chilean citizen) are considered Chileans. Similarly, foreigners with residence in Chile for more than five years are also considered Chileans for the purpose of this special rule.

5.4 Remunerations

In the Labor Code, remuneration is understood to be any payment of money or in kind that the employee receives from his employer pursuant to an employment agreement. The following items, among others, are considered remuneration: salary in cash, payment for overtime, commissions over sales or purchases, or over such operations which the employer performs with the employee's collaboration, participation bonuses or a proportion of profits; and voluntary bonuses. Employees must also be paid for any overtime worked with a 50 percent premium over the regular salary.

The monthly amount of remuneration must be equal to or higher than the minimum monthly salary, that currently is stated at Ch$127,500 (U.S.$241.62). Part time work must be remunerated proportionately.

Employers are obliged to keep accounting books and which obtain profits or net returns in their businesses, have the obligation to pay annual bonuses to their employees.

The Labor Code offers to the employer the option of paying the annual bonus as a proportion of the net returns obtained in its business (a proportion that must be equal to or higher than 30 percent of the net returns obtained in its business) or, alternatively, paying to the employee 25 percent of the total annual remuneration of such employee. In this last case, however, the bonus cannot legally exceed 4.75 minimum monthly salaries (U.S.$1,150), unless the employer and the employee have agreed to a higher amount. As a matter of fact, this last alternative has become widespread practice in the labor market.

Remunerations are to be paid as stated in the employment agreement in local currency, though a part may be paid in kind, and for periods not exceeding one month. It is worth noting that the Central Bank may authorize foreign investors access to the formal exchange market for the payment of salaries in foreign currency.

The employer must deduct from the remuneration any taxes, social security and health insurance contributions, unemployment insurance, trade union payments according to current legislation on the subject, mortgage payments due for purchase of housing units and any contributions to pension funds or public institutions which may be applicable under the circumstances. See Section 5.7 for further details.

As a general rule, regular working hours shall not exceed 45 hours per week, distributed in no less than five days and no more than six days, from Monday through Saturday. Furthermore, a regular working day cannot exceed ten hours, and shall include at lunch break of at least 30 minutes, which shall not be considered when calculating the hours worked.

An employee who has worked for at least one year for the same employer shall have 15 working days (without considering, for these purposes, Saturday as a working day) as paid vacations. In other words, for each year worked with the same employer, an employee can take a 21 calendar days vacation period.

5.5 Termination

In Chile, employment agreements can only be terminated in the cases and manner provided by the Labor Code. The cases for termination provided by the Labor Code are:

(a) mutual agreement;

(b) resignation of the employee, with at least 30 days of anticipation;

(c) death of the employee;

(d) expiration of the term of the employment agreement;

(e) conclusion or completion of the work or service that gave origin to the employment agreement;

(f) *force majeure* or acts of God;

(g) expiration, in cases specifically indicated by law and referring to faults incurred by the employee or by the employer in the performance of their respective duties;

(h) needs of the enterprise, such as those required for the rationalization or modernization of systems, fall in productivity, changes in market conditions or the national economy that make the separation of one or more employees necessary; and

(i) unilateral termination by the employer of employees having authority to represent their employer, such as managers, assistant managers, agents or attorneys-in-fact, and, in general, employees who enjoy the exclusive confidence of the employer.

Generally, if the grounds for termination are those described in (a) to (e) of the preceding paragraph, the employee has no right to severance payment. However, if the employee does not agree with the ground on which termination was based, the employee can file suit for improper dismissal before a labor court. The employer has the burden to prove that the ground for termination existed. If the employee succeeds in the claim, the employee shall be entitled to the severance payment explained below, increased up between 30 percent to 100 percent.

If the employment contract is terminated pursuant to letters (h) or (i) of the paragraph above, and the employment relationship lasted without interruption for at least one year, the employee shall be entitled to a severance payment equal to 30 days of remuneration per year of service (or fraction in excess of six months), if rendered without interruption to the same employer which is terminating the employment agreement. This severance payment has a limit of 330 days of remuneration. The maximum limit does not apply, however, to employees hired before August 14, 1981.

If the employment relationship terminates for any of the causes stated in (h) and (i) above, the employer shall give the employee a 30-day advance notice before material separation. Notice is not required, however, when the employer pays to these employees an indemnity in cash equivalent to the last monthly remuneration.

Severance payment is calculated on the basis of the last monthly remuneration, which for these purposes has a legal ceiling of UF90 (U.S.$3,055.5) even though parties may agree on a higher severance payment.

Please note that the aforementioned rules set forth the minimum rights an employee is entitled to upon discharge. The parties may agree, individually or collectively, on better severance benefits.

Employment agreements of union leaders and pregnant women cannot be terminated except with the approval of a court. And Courts can only approve the termination of an employment agreement in these cases if the relevant contract's term has expired, if the required services have been completed or if the relevant employee has incurred in certain specific unlawful conducts.

Upon termination of an employment agreement there are other payments that may correspond, whichever the cause for termination. Such payments are the proportional vacations and the legal annual bonus, payments that may or may not apply depending on each case.

5.6 Sexual Harassment

Since 2005, sexual harassment is a cause for termination of employment, being considered as a fault for purposes of letter (g) of Section 5.5 above.

Pursuant to the procedure for the investigation and sanction of sexual harassment, the affected employee can take a claim in writing to the management of the employer or to the *Inspección del Trabajo* (the government agency in charge of labor compliance). The law establishes a procedure depending on where the claim is filed, which includes an investigation by the employer of the facts founding the complaint, the adoption of protection measures, and the presentation of the conclusions or comments of the labor authority. The applicable sanctions that may be imposed include dismissal and fines.

The employee who falsely invokes sexual harassment could be subject to civil liability and other general legal actions.

5.7 Social Security and Insurance

Social security payments are charged to employees and consist of fixed contributions paid for retirement pension, disability insurance and surviving dependent insurance. Also, the payment of health insurance contributions according to the health system the employee has chosen to be affiliated to must be deducted from the remuneration to which the employee is entitled.

A. Pension.

Each employee shall save ten percent of his monthly remuneration not exceeding UF60 (U.S.$2,037) in an individual account administered by a pension fund, to finance his retirement plan (men at 65, women at 60 years old). The employer shall withhold such ten percent, with the above limit of approximately U.S.$204, from the employee's monthly remuneration and deposit it in the respective pension fund to be credited in his personal capitalization account. An additional

percentage is also withheld to pay for disability insurance and the fees of the relevant pension fund manager. This amount varies but it is around an additional 2.5 percent.

B. Health insurance contributions.

The employer shall also withhold seven percent of the employee's monthly remuneration not exceeding UF60 (U.S.$2,037) to finance a private or state health insurance plan. The employer shall withhold such seven percent, with the limit of approximately U.S.$143, from the employee's monthly remuneration and pay it to the respective health care provider.

c. Unemployment insurance.

During the first 11 years of employment, the employer shall withhold 0.6 percent of the employee's monthly remuneration not exceeding UF60 (U.S.$2,037) to fund an Individual Unemployment Account, from which withdrawals may be made by the beneficiary as unemployment benefits. The employer (and not the employee) shall contribute with 2.4 percent of the monthly remuneration of the respective employees, not exceeding UF60 (U.S.$2,037), to the same unemployment insurance system.

d. Insurance against work accidents.

The employer (and not the employee) shall pay a compulsory insurance against work accidents and occupational diseases. The premium equals 0.95 percent of the taxable remuneration of each employee. Nonetheless, this percentage may be higher in the case of companies or activities involved in abnormal degrees of risk and danger.

5.8 Unions and Collective Bargaining

To establish a union in a company that has more than 50 workers, a minimum of 25 workers that represent at least ten percent of the total number of the company's employees is required. If the company has 50 or less workers a union may be established with only eight workers representing more than 50 percent of the total number of employees. Nevertheless, and regardless of the percentage that the workers may represent, a union can be established with 250 or more workers of the same company.

Considering that the right to establish or join a union belongs to the workers, the employer cannot force its employees to establish or join a particular union. It would be an unfair labor practice for a company to interfere in the choosing of a union to represent its workers.

A company may not engage in any activity to restrain, limit or coerce its employees in the exercise of their self organization rights.

Since membership or non-membership cannot be imposed as a condition of employment, a company may not engage in any discrimination on account of membership or participation in union activities nor interfere, restrain or coerce any employee to join or withdraw membership from any labor organization.

Unions are managed by a board of directors which has a different number of representatives according to the number of union members. For instance, for a union that has between 25 and 249

members, the board of directors shall be conformed by three representatives out of which one shall be appointed president, one secretary and the last one treasurer.

The scope of the bargaining unit is defined in the law and is generally restricted to a company and its unions (including transitory associations of workers for the purpose of bargaining). Only through mutual agreement among the parties may collective bargaining embrace more than one company and unions belonging to different employers.

The right to collective bargaining is granted in the Constitution and the labor statutes. The following workers are, however, excluded from this right: a) workers subject to apprenticeship contracts, temporary workers and those hired for a particular and definite work, task or assignment; b) managers, executives, agents and officers provided that all of them have general powers of administration; c) employees empowered to hire and lay off workers; and d) workers that according to the internal organization of the company occupy upper positions of authority and inspection, provided that all of them have decisive powers over the company's policies and productive or trading process. Please note, however, that the *Dirección del Trabajo* (government agency in charge of labor matters) has a restrictive criteria on the application of these legal provisions.

The collective bargaining starts with the submission of a project or draft of a collective agreement by one or more unions or bargaining groups of the same company. Any union of a company, plant or facility may submit a collective agreement project. Bargaining groups not organized as a union may also present collective agreement projects provided that such a group meets the numbers and percentages required for the establishment of a union.

All the negotiations between an employer and its different unions or bargaining groups shall take place at the same time, unless it is otherwise agreed by the parties. The unions may, at their option, either jointly present a common collective agreement project or present one or more projects embracing one or more unions or bargaining groups.

The Labor Code expressly sets the limits within which collective bargaining must take place as well as the matters subject to collective bargaining. In this regard, there are considered to be matters of collective bargaining those referring to wages and other monetary and fringe benefits and, in general, common conditions of employment. Those matters that restrict or limit the employer's authority to organize, direct and manage its business and those matters not related to the company cannot be subject to collective bargaining.

In general, the length of bargaining cannot exceed 45 days. At the end of this 45 days term, workers have two options:

(a) carry on the negotiations with the agreement of the employer; or

(b) vote on whether to reject or accept the last employer's proposal or go to strike.

If the employer believes that it will be unlikely to reach an agreement, it shall make a final proposal seven days before the expiration of the 45 days term. Provided this final proposal is timely made and that it basically grants the workers their existing benefits plus consumer price index escalation, if workers still decide to go on strike, the company will have the right to hire replacements from the first day the strike is made effective. During the strike, the workers have the right to individually go back to work after the fifteenth day following the date when the strike is

made effective. If the employer does not make such final proposal on time, he can only hire replacements upon the fifteenth date following the date when the strike begun and, on the other side, workers may only individually go back to work after the thirtieth day following the date when the strike was made effective or, upon the fifteenth day following the employer's submission of its final proposal, whichever is first.

Once the strike has been approved and made effective, the employer may temporarily close all or part of its operations (lockout). However, the lockout can only be declared by the employer when the strike affects more than 50 percent of the total number of employees of the company or plant, or if the strike causes the paralyzing of imperative activities for the employer's operations regardless of the percentage of workers on strike.

Needless to say, the company may not interfere with or force the employees to accept the employer's last proposal. Notwithstanding the above, the company may always inform the workers of the advantages and benefits of its last offer.

6. Immigration

Visas

The Chilean immigration laws provide that all foreigners coming into the country shall obtain a visa from the competent authority.

Two different types of visa are available for business people:

(a) a temporary-resident visa; and
(b) a working visa.

Temporary-resident visas are granted to foreigners with family links or business interests in Chile or to foreigners whose residency in Chile may qualify as useful or advantageous to the country (typically, businessmen coming into Chile for business purposes for a period longer than 90 days). Foreigners holding this type of visa may undertake all kinds of lawful activities within Chile. Temporary-resident visas are granted for a one-year period, renewable at the end thereof for another year. At the end of the second term, a permanent-residence visa shall be requested by the interested party in order to be able to remain resident of Chile.

On the other hand, working visas are only granted for a maximum two-year period, renewable at the end thereof, for an equivalent two-year period. Nevertheless, at the end of the period a permanent-residence visa may be requested. The purpose of this type of visa is to enter Chile to fulfill the stipulations of an employment agreement.

In order to obtain a working visa, the following conditions must be considered:

(a) the institution, individual or company acting as employer shall have domicile in Chile;

(b) the foreign employee shall enter into an employment agreement with the relevant institution, individual or company. If executed in Chile, this employment agreement shall be executed by the employer and the employee (or a lawful representative of the employer and the employee) before a notary public. But if this contract is executed abroad, it shall be executed before the Chilean Consul sitting in the city where the same is executed. Once executed, it shall then be legalized with the Ministry of Foreign Affairs in Santiago;

(c) in the case of technicians or other specialized professionals, their capacity shall be evidenced with a true and accurate copy of their university titles, which shall also be legalized with the Chilean Consul and then with the Ministry of Foreign Affairs in Santiago. Otherwise, evidence of their capacity shall be submitted to the authorities by means of special working certificates or other supporting documentation;

(d) that the employee's profession, activity or services are indispensable or necessary for the development of Chile. Please note that for these purposes (even though unusual) a written report may be requested by the authorities from the relevant professional or technical local association or any other local authorities;

(e) that the profession, activity or services that the foreign employee will perform in Chile are not dangerous or otherwise perilous for the national security; and

(f) the employment agreement's terms and conditions regarding the services shall be within standard labor and social security practices.

With regard to the procedure, such may be carried out before the Ministry of Foreign Affairs, if the foreigner is abroad, or before the Ministry of Interior, if the foreigner is in Chile. The advantage of the former procedure is the fact that it is less time consuming.

While the foreign business person is abroad, the steps to obtain his temporary-resident visa or working visa, as the case may be, can be carried forward in Chile, with the Ministry of Foreign Affairs. Once approved by said Ministry, a cable or other similar communication is immediately sent to the relevant Chilean Consul. The visa thus obtained gives the foreigner a ninety-day term, after the granting thereof, to enter the country. Nonetheless, the term of the relevant visa will start only upon actual entrance into Chile.

On the other hand, if the foreigner is in Chile, (i.e. with a tourist visa) the procedure will be carried forward with the Immigration Department of the Ministry of Interior. Despite its delay, this procedure requires the actual presence of the foreigner who will suffer in person the consequent bureaucratic procedures.

Finally, it is important to underline that family members of the foreign business person will be granted the same visa obtained thereby, although it will not allow remunerated activities.

7. Data Protection

7.1 Introduction

The basic principle of protection of personal data is formulated in Article 19 number 5 of the Constitution which guarantees to all persons the inviolability of any form of private communication. Private communications and documents may only be intercepted, opened or inspected in the cases and forms determined by the law.

The Personal Data Protection Act (the "Personal Data Protection Act"), governs the treatment and management of personal data of identified or identifiable individuals in data banks and registries by both public agencies and private persons or entities.

In addition, several laws and regulations set restrictions and limitations to the access and disclosure of private information.

7.2 Personal Data Protection Act

7.2.1 Treatment and Management of Personal Data

According to the Personal Data Protection Act, any person can engage in the treatment and management of personal data, as long as it complies with the following rules:

(a) the treatment of personal data must be authorized in writing by the owner of the relevant information, authorization which may be revoked (with no retroactive effect) at any time;

(b) before any requirement to retrieve personal data, by means of an electronic net, the identity of the persons requiring such information, the purpose of the request and the type of information transmitted must be left on record;

(c) all personal data which storage has lost legal basis must be eliminated; which is found to be mistaken, inaccurate, equivocal or incomplete must be amended; and which accuracy cannot be proven or which effectiveness is doubtful must be blocked;

(d) all persons working, or who have worked, in the treatment and management of personal data must keep full confidentiality of the same;

(e) all personal data must be used exclusively for the purpose for which it was collected; and

(f) "sensible data" cannot be subject to treatment, unless expressly authorized by the law, the owner or for the purpose of obtaining health benefits. "Sensible data" means, with respect to a person, the physical or moral characteristics of such person, and facts or circumstances of such person's private life and intimacy, such as personal habits, racial background, political opinions, religious beliefs, physical and mental health and sex life.

Please note, however, that no authorization from the owner of personal data is required in the following situations: (i) information generated by or collected from sources accessible to the public, of an economic, financial, banking or commercial nature, (ii) information contained in lists regarding a category of persons limited to indicating the affiliation of a person to such category, its profession or activity, its education, address or date of birth, (iii) information which is required for direct response commercial communications or direct sales of goods and services, and (iv) treatment made by a private company for its own use or the use of its associates or affiliates, to determine tariffs, with statistical or other purposes for its own general benefit, of data related to its associates or affiliates.

7.2.2 Rights of the Owner of Personal Data

In general, the owner of personal data is entitled to demand from any person engaged in the treatment and management of personal data, to reveal any information pertaining to the former kept in the relevant data bank, and to amend, block or cancel such information, when applicable , at no cost. These rights cannot be curtailed by any covenant or agreement.

7.2.3 Commercial and Financial Data Banks

Persons engaged in the treatment of personal data may disclose economic, financial, banking or commercial information, when such information is evidenced by protested bills of exchange, promissory notes or checks, or referred to breaches of commercial, mortgage, bank or government loans, and other obligations determined by the President of the Republic by Executive Decree. In no event, can public utility debts be disclosed.

Information on a specific obligation cannot be disclosed after five years from the date in which such obligation became enforceable, nor after such obligation has been fully paid or otherwise discharged.

7.3 Other Data Protection Rules

Chilean laws contain several provisions which seek to prevent or restrict the disclosure or revelation of public or private information. Below are some of the most important of these provisions:

- Article 247 of the Criminal Code punishes public officials and professionals who reveal information to which they have access or with which they have been entrusted.

- Articles 42 and 43 of the Code of Commerce provide that Courts cannot order the disclosure and general recognition of commercial books, save in the cases of a universal succession, community of assets, liquidation of companies and bankruptcies; and that the partial exhibition of books shall be conducted in the place where they are kept and in the presence of the owner or the person commissioned thereby, and shall be limited to the entries that have a direct connection with the matter in dispute and to a precise inspection in order to establish that the books have been kept with the required regularity.

- Article 154 of the Banking Act provides the rules of secrecy for banking transactions.

  See Section 13.2.10 on "Banks – Confidentiality" below.

- Article one of the Bank Checking Accounts and Checks Act, provides that a bank shall maintain the activity in the checking account and balances of its clients in strict secrecy from third parties and may only provide this information to the drawer or whomever has been expressly authorized thereby, or to the Courts. See Section 13.2.10 on "Banks – Confidentiality" below.

- Article 255 of the Code of Military Justice punishes whoever discloses all or part of, delivers, or communicates to unauthorized persons secret plans, maps, documents or writings that are of interest to the national defense or security of Chile; or communicates or discloses data or news taken from such plans, maps, documents or writings.

- Article 13 of the Public Administration Act, and Articles 6 and 7 of the Executive Decree No. 26, on the Reserve of Public Documents, establish the types of documents that public agencies and officials are authorized to maintain in secrecy, the conditions to reject disclosure requests from private individuals and the procedure to oppose such rejection.

- Article 154 bis of the Labor Code provides that the employer must keep confidentiality with respect to all the personal information of its employees gathered as a result of the labor relationship.

- Article 360 of the Civil Procedure Code exempts priests, lawyers, notaries and medical doctors from the obligation to appear as witnesses in civil trials. The same principle is recognized in broader terms for any professional who, on the basis of his or her profession has been entrusted with certain information, by Article 303 of the Criminal Procedure Code.

8. Consumer Protection Act

8.1 Introduction

The principal rules for the protection of the rights of consumers are contained in the Consumer Protection Act (the "Consumer Protection Act").

The Consumer Protection Act, among other things, sets forth the rights and obligations of suppliers and consumers, governs their relationship, describes the conducts that are considered infringing of the rights of consumers, and establishes a procedure for consumers to seek the reparation of their injured rights. The rights granted by the Consumer Protection Act to the consumers may not be waived in advance.

The Consumer Protection Act also governs the following acts and activities:

(a) acts which, according to the Code of Commerce or other legal provisions, are mercantile for the supplier and civil for the consumer;

(b) commercialization of tombs and burial plots;

(c) acts or contracts whereby the supplier undertakes to provide the consumer or user with the use or exploitation of a real estate for determinate periods, whether continuous or not, not longer than three months, provided that they are delivered furnished for vacation or tourist purposes;

(d) education contracts (only certain provisions of the Consumer Protection Act apply);

(e) sales of housing by construction companies, realtors and public agencies, except for claims related to construction quality; and

(f) acts executed on occasion of the hiring of health-related services (except for medical attention, health insurance matters, certification of providers and other matters governed by health specific laws and regulations).

8.2 Main Rules

8.2.1 Consumers and Suppliers

Under the Consumer Protection Act, "consumers" are defined as the persons or entities which, by virtue of any non-gratuitous act, acquire, use or enjoy, as end-users, goods or services; and "suppliers" are defined as persons or entities, whether public or private, regularly engaged in producing, manufacturing, importing, constructing, distributing or commercializing goods, or rendering services, to end-users, in exchange of a price or tariff.

8.2.2 Product Liability

In specific cases, in addition to seeking damages, consumers are granted the right to choose between the reparation of a product at no cost, its replacement or a refund of the price paid. This applies when any product, due to defects in its fabrication, elaboration, materials, parts, components, substances, ingredients, or quality, is not entirely fit for its intended use or for that specified by the supplier in its advertising. It also applies when any product has latent defects that make its customary use impossible.

The rights set forth in the preceding paragraph must be exercised against the seller of the relevant product within a three-month term from the date the consumer received the product. This three-month term may be extended but never curtailed by a product's warranty. Should the seller of a defective product be bankrupt, out of business or in a similar situation, the consumer may request that the defective product be repaired or replaced by its manufacturer or importer, indistinctly.

8.2.3 Adhesion Contracts

Adhesion contracts must be legible and written in Spanish. Also, adhesion contracts may not include terms that (i) exclusively grant to one of the parties the right to modify or suspend an adhesion contract; (ii) provide for price increases or additional charges for ancillary services that consumers may not accept or reject in each case and that have not been consigned specifically and separately; (iii) make the consumer liable for the consequences of deficiencies, omissions or administrative errors, for which the consumer is not responsible; (iv) defects or set the burden of proof in detriment of the consumer; (v) contain blank spaces; (vi) contain exemptions of liability against consumers in a manner capable of depriving consumers from using a product or service for the essential purpose for which it was intended; or (vii) are against good faith, by causing a material imbalance in the rights and obligations pertaining to the parties under the contract. These terms are annullable and shall produce no effect whatsoever.

8.2.4 False and Misleading Advertising

The Consumer Protection Act provides that the following conducts constitute an infringement to the rights of consumers: (i) advertising or publicity on a product or service which is inductive to error or deception on its components, properties, characteristics, price, warranty conditions or environmental advantages; (ii) advertising or publicity on a product or service which causes confusion on consumers regarding the identity of companies, activities, products, brand names, trademarks or symbols; and (iii) lack of, falseness in, or concealment or manipulation of, the labeling of products.

8.2.5 Consumer associations

These are organizations whose purpose is, among other things, to protect, inform and educate consumers. Their authority includes representing individual as well as collective and diffuse interests of consumers before jurisdictional and administrative authorities and to participate in the process of setting tariffs in certain basic services.

8.2.6 Electronic contracts

The Consumer Protection Act addresses contracts entered into by electronic means or where the acceptance of offers made via catalogs, notices or any other form of communication at a

distance. These types of contracts entitle the consumer to terminate the same after ten days. Moreover, the law provides that no consent will be deemed to have been formed if the consumer has not previously had "clear, comprehensible and unequivocal" access to the general conditions of the same. The law also provides that the relevant provider shall inform in an unequivocal and easily accessible manner the steps that must be followed to actually enter into such contract.

In order to address the problem of spam, the Consumer Protection Act provides that any marketing or promotional communication sent by electronic mail must comply with a number of requirements including a valid address where the receiver can request the suspension of the messages.

8.3 Collective Actions

Provided certain requirements are met, actions arising out of a breach of the Consumer Protection Act can be exercised in benefit of collective or diffuse interests (*interés colectivo o difuso*). The first are defined as the actions promoted in defense of rights common to a determined or determinable group of consumers, contractually bound to a provider. The latter are defined as the actions promoted in defense of an undetermined group of consumers whose rights have been affected. These actions can only be exercised by the *Servicio Nacional del Consumidor* (the government consumer protection agency, "SERNAC"), consumer associations or a group of consumers of at least 50 persons with a common interest affected. Once the trial is initiated, any consumer may become a party of the trial, however, as long as the proceeding is pending, such party cannot sue individually based on the same facts.

In case the action is declared inadmissible, it can only be brought individually. If requested by a party to the trial, the judge can declare the lawsuit reckless (*temeraria*) and eventually impose fines on the responsible parties and disciplinary sanctions on the lawyer.

Once the action is declared admissible, an add is published calling all those who feel their rights have been affected to become a party to the trial. The results of the trial will cover anyone affected whether or not they become a party to the trial. However, in general, once the publication is made no person can bring an action against the defendant based on the same facts.

The principle of protecting the rights of consumers in their relationship with providers or companies is reinforced in provisions such as those governing settlements and desistance. Any settlement reached during the trial, is subject to the approval of the judge. In the event the party desists from the trial, the SERNAC is notified and can decide to become a party to the trial.

The judgment will be made known to anyone affected by the same facts so as to be able to claim within a certain term the payment of damages or the relevant repairs. During the same term, rights to sue for civil liability in a separate trial can be reserved. In such a trial, the existence of the breach is not discussed. The lack of such reservation will preclude the party from bringing another action based on the same facts. The new trial will be limited to determining the amount of damages.

The procedure where collective or diffuse interests of consumers or users is involved and the right to request damages under such procedure is made applicable to all activities of production, manufacture, importation, construction, distribution and marketing.

9. Intellectual Property

9.1 Legal Framework

Chile's industrial property system is principally set out in the Industrial Property Act (the "Industrial Property Act") and its corresponding regulations (the "Industrial Property Regulations"). In December 2005, substantial revisions to the Industrial Property Act and its Industrial Property Regulations came into effect (the "IP Amendment").

Chile's intellectual property rules are essentially set out in the Intellectual Property Act (the "Copyright Act") and its corresponding regulations, both of which in fact refer to copyright and related rights only.

Chile is a party to or applies the rules of the following relevant international treaties:

(a) Paris Convention for the Protection of Industrial Property (the "Paris Convention");

(b) Berne Convention for the Protection of Literary and Artistic Works (Paris Act);

(c) Convention Establishing the World Intellectual Property Organization;

(d) Convention for the Protection of New Varieties of Plants (1978 Act);

(e) Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms;

(f) Inter-American Copyright Convention;

(g) International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations;

(h) Nice Classification Agreement (although Chile is not a party);

(i) Agreement on Trade-Related Aspects of Intellectual Property Rights;

(j) Universal Copyright Convention (Geneva Act);

(k) Nairobi Treaty on the Protection of the Olympic Symbol;

(l) WIPO Copyright Treaty; and

(m) WIPO Performances and Phonograms Treaty.

Chile is also a member of *Asociación Latinoamericana de Libre Comercio* (ALALC), associated partner of *Mercado Común del Sur* (MERCOSUR) and member of Asia-Pacific Economic Cooperation (APEC).

In addition to these conventions, Chile has recently signed free trade agreements with the European Union and the United States, among others, both of which contain intellectual property related provisions and create certain obligations. Under the free trade agreement with the United States, for instance, certification and sound marks should be included in Chilean legislation. Also, an enhanced protection should be given to well-known marks. Border measures are dealt with as well, all of which is consistent with recently enacted, local legal provisions. The text of such agreements, including those with the European Union (Chapter VI - regarding Intellectual Property) and with the United States (Chapter 17 - regarding Intellectual Property), can be reviewed at or downloaded from www.direcon.cl (available in English).

According to the Constitution, international treaties sanctioned by Congress have the same hierarchical status as regular laws. Local Courts must decide on possible inconsistencies between local law and the rules contained in such treaties; usually, the more recent or specific regulation will prevail.

9.2 Industrial Property

As explained above, only very recently has the IP Amendment come into effect, which is why many of the ongoing industrial property registration processes are still governed by the Industrial Property Act in force until before the IP Amendment. Therefore, when necessary this chapter will refer either to the rules of the Industrial Property Act until prior to the IP Amendment or as revised by the IP Amendment, as the case may be.

9.2.1 Trademarks

9.2.1.1 Unregistered Marks

Under the original text of the Industrial Property Act, owners of unregistered marks had virtually no rights, with the very limited exception of the right of a prior applicant to oppose applications for confusingly similar marks filed by others after his own. Further exceptions were sometimes made under certain circumstances for notorious trademarks, pursuant to the regulations of the Paris Convention. Also, the Industrial Property Regulations provided for the possibility of challenging a prior trademark application in case the later applicant could prove being the true creator of the applied mark. Finally, in case two or more people were using the same unregistered mark, the first applicant was not allowed to start infringement actions against the other users until the expiration of a 120-day term after the registration date (the IP Amendment extended this term to 180 days).

The IP Amendment added new rights for unregistered marks, based on use: according to the revised text, a trademark shall not be admitted for registration if it is confusingly similar to a mark that is already in active use by another person or entity within Chilean territory.

Since the circumstances that prevent registration are also the grounds for trademark annulment, it follows that if a person or entity can prove active use of a mark at a time preceding the date on which another person or entity applied for it (and later on obtained registration), the user will be entitled to file an annulment action against the holder of such registration.

The revised text does not specify any duration of such use; it simply requires that the mark is in actual and effective use in Chile prior to the date on which somebody else files an application for an identical or confusingly similar mark.

In both of the above cases (i.e., registration is prevented via an opposition or invalidated via an annulment action) the user of the mark (plaintiff) must himself apply for registration of the mark within 90 business days as from the date of the favorable decision. If the user fails to do so, the mark will again be publicly available and the priority regarding new applications for the same mark will revert –during the subsequent 90 business days– to the person or entity affected by the rejection or invalidation.

9.2.1.2 Other Effects of Use

Under the IP Amendment, use may furthermore support an application for a mark that could otherwise be rejected due to not being inherently distinctive, in case such use has allowed the mark to gain distinctiveness within the national market.

Still, use is not a requirement for obtaining or maintaining ownership of a trademark. It is thus not necessary to file applications in Chile based either on use or on intent-to-use of a mark. Conversely, lack of use does not give way to cancellation of a granted registration.

9.2.1.3 Ownership and Scope of Registered Trademarks

In Chile, any national or foreign person or entity that has the general ability to acquire and exercise rights is entitled –be it personally or through an agent– to apply for and own a trademark registration. Foreign applicants must, however, appoint and act through a local representative bestowed with sufficient authority.

Under the Industrial Property Act, a trademark is any sign that can be displayed graphically and is capable of dstinguishing products, services, or industrial or commercial establishments, within the market. Such sign can consist of words (including a person's or entity's name), letters, numbers, figures, images, graphics, symbols, combinations of colors, and any combination of the aforesaid. It is worth noting that novelty is no longer part of the definition of a trademark in our country: the IP Amendment consolidated distinctiveness as the single most important aspect thereof.

The nature of the products or services to be covered by the mark is not an element that may form an obstacle against obtaining its registration.

Although no reference is made to sounds or non-traditional marks, they are subject to registration under the IP Amendment provided that they can be graphically represented and are not excluded from protection (see exclusion list below).

Trademark registrations that cover products, services or industrial establishments (e.g. factories) are valid for the entire Chilean territory. In contrast, registrations of trademarks for commercial establishments (e.g. stores) are valid only for the administrative region(s) in which the establishment is located. (Trademarks for industrial establishments and commercial establishments are a special kind of mark provided for by the Industrial Property Act.)

The list of elements that currently cannot be protected is long:

(a) coats of arms, flags or other emblems, names or acronyms of any State, of international organizations and of state public services;

(b) technical or scientific denominations in regard to the object to which they refer, the name of plant varieties, common denominations recommended by the World Health Organization and those indicative of therapeutic action;

(c) the name, pseudonym or portrait of any person, unless under consent given by such person or its heirs, if deceased. However, the names of historic characters can be registered provided at least 50 years has elapsed since their death and it does not affect their honor. However, the names of persons cannot be registered when in violation of letters (e), (f), (g) and (h) herein below;

(d) trademarks that reproduce or imitate official guarantee control stamps or signs adopted by a State without authorization; and those that reproduce or imitate medals, diplomas or distinctions awarded in national or foreign exhibitions whose registration is requested, by someone other than who obtained them;

(e) expressions or signs used to indicate genre, nature, origin, nationality, source, destination, weight, value or quality of the goods, services or establishments; those that are generally used in trade to designate a certain type of good, service or establishment and those that are not distinctive or describe the goods, services or establishments to which they refer;

(f) those that are misleading or deceitful as to origin, quality or genre of the goods, services or establishments, including those belonging to different classes where the coverage relates to, or indicates, a connection to the respective goods, services or establishments;

(g) trademarks that are identical or graphically or phonetically similar to others registered abroad to distinguish the same goods, services or commercial or industrial establishments liable to create confusion and provided they enjoy fame or notoriety in a sector of the public that usually consumes those goods, demands those services or has access to those commercial or industrial establishments in the country of origin.

If a registration is rejected or cancelled for this cause, the holder of the well-known trademark registered abroad must apply for the registration of the trademark within 90 days. If not, the trademark may be applied for by anyone and the person whose application was rejected or registration cancelled shall have priority within the following 90 days from the date of expiration of the right of the holder of the well-known trademark.

Likewise, trademarks registered in Chile that enjoy fame and notoriety may impede the registration of other identical or similar signs applied for to distinguish different and unrelated goods, services or commercial or industrial establishments provided, on the one hand, that the latter have some type of connection with the goods, services or business or industrial establishment distinguished by the well-known trademark and, on the other, that it is likely that said protection will harm the interests of the holder of the well-known

registered trademark. In this case, the fame and notoriety shall be determined in the pertinent sector of the public that usually consumes those goods, demands those services or has access to those commercial or industrial establishments in Chile;

(h) those that are the same as or graphically or phonetically similar to, others already registered or pending registration for identical or similar goods, services or commercial establishments in the same class or related classes and liable to create confusion.

This cause will also be applicable to unregistered trademarks that are truly and effectively being used in the national territory prior to an application for registration. If a registration is rejected or cancelled for this cause, the user of the trademark must apply for the registration thereof in a period of 90 days. If not, the trademark may be applied for by any person, having the person whose trademark was rejected or cancelled, priority to register, within 90 days following the expiration of the user's right. Notwithstanding the provisions indicated in the first subparagraph of this letter, the Industrial Property Department may accept trademark coexistence agreements provided they do not violate the rights previously acquired by third parties or are not misleading to the consumer public;

(i) the shape or color of the goods or packages as well as the color itself;

(j) geographical indications and appellations of origin legally protected in relation to the object they protect; and

(k) those contrary to public policy, morality or good customs, including the principles of fair competition and business ethics.

9.2.1.4 Procedure

Applications for trademarks must be filled out in Spanish in the forms supplied by the Trademark Office of the Industrial Property Department (the "Trademark Office"), and must include the mark and classes to be applied for, a description of the relevant goods or services, and ten labels, when applicable. Recent regulations have allowed for electronic filing of trademark applications. It is mandatory that a legalized power of attorney accompany each application. All documents in foreign languages must be translated into Spanish. The applicant must provide the Trademark Office with the proposed Spanish translation of a foreign language trademark. If priority is claimed to a foreign trademark application or registration, the corresponding certified priority documentation must also be submitted within 90 business days as from the filing date.

9.2.1.5 Examination

A trademark application is normally examined twice: for the first time, shortly after filing, in order to verify if the application meets formal requirements, and if the products or services have been correctly classified. If the first examination is favorable to the applicant, then the application has to be published in the Official Gazette within the next 20 business days, for opposition purposes.

If the first examination is adverse to the applicant, then a reconsideration petition may be filed within a 30 business day term. The Head of the Industrial Property Department decides this

petition. There is no term for this, but in practice it usually takes approximately four weeks. If the rejection is sustained, then an appeal may be filed within 15 business days.

The second examination is effected prior to registration and once the opposition term has expired (regardless of the fact that oppositions may have been lodged or not) and is aimed at verifying if, indeed, all conditions for admittance to registration are met. The final decision is normally rendered within eight weeks after the expiration date of the opposition term, provided that there is no opposition. In case of rejection, an appeal may be filed within 15 business days.

9.2.1.6 Opposition

Following first examination and if the application is not rejected, the Trademark Office will order publication of the mark in the Official Gazette. Starting on the date of publication, third parties have a 30 business-day term for filing oppositions. Oppositions will typically be based on one or more of the circumstances that, according to law, make a mark unfit for registration (please refer to the list above).

No opposition will be allowed after expiration of the opposition term. Even though it is possible to file a brief arguing that the application is not registrable due to certain reasons, the Trademark Office normally does not take those briefs into consideration.

Evidence is normally filed after the applicant has answered the opposition, within a special 30 business-day term granted by the Trademark Office for doing so. Under certain conditions, this term can be extended once for another 30 days.

A final decision is normally rendered several months after the filing of the opposition brief. The parties may file an appeal against the final decision within 15 business days.

Co-existence agreements may be accepted by the Trademark Office.

9.2.1.7 Registration

Registration is granted after the second examination, provided that the term for opposition lapsed without dispute, or that all oppositions have been rejected by the Trademark Office or by the Industrial Property Court of Appeals, the latter in case an appeal was filed in the course of the opposition proceeding. For registration to be granted, the pertinent mark must comply with the definition of trademark indicated above, and must not fall into one or more of the categories of non-registrable marks also listed above.

If the application is accepted for registration, a registration tax must be paid within 60 business days from the date of the final decision. The registration date is the date of payment of such registration tax. The registration certificate is issued approximately three months after the date of registration.

9.2.1.8 Cancellation/Surrender by Mark Owner

The trademark owner can surrender registration just as he can surrender most rights under Chilean law. However, in practice, owners usually just wait for the registration to expire without renewing it.

9.2.1.9 Invalidation (Trademark Annulled by Trademark Office Because Incorrectly Registered)

The basis for seeking annulment of a trademark registration is the existence of a registration granted in contravention to the exclusions listed above.

An invalidation or annulment action brought by a third party –on the grounds of incorrect registration– is possible according to Chilean law. This action should be served to the defendant within the five year term that starts on the registration date. In the case of registrations obtained in bad faith, the five year limitation does not apply and the action can be brought at any time after the granting of the registration.

9.2.1.10 Marking

Trademarks must be displayed along with the words "*Marca Registrada*," the letters "M.R.," or the sign ®. Failure to include this marking will prevent the owner from pursuing a criminal action for infringement at a later date.

9.2.1.11 Duration

The duration of a trademark is ten years as from the date of registration. Registration is renewable and use is not required for renewal.

9.2.2 Patents

9.2.2.1 Procedure and Timeframe

Applications for patents must be made in Spanish in the forms supplied by the Patent Office of the Industrial Property Department (the "Patent Office"), and must include: (a) an abstract; (b) specifications; (c) claims; (d) drawings, if applicable; and (e) a power of attorney.

If the applicant is not the inventor, the patent application must be assigned to the applicant, and the name of the inventor must be stated as well. Both the power of attorney and the assignment document must be legalized with a Chilean Consul, if executed abroad.

In case priority under the Paris Convention is claimed, a certified copy of the priority document must be filed within 90 working days as of the filing date of the Chilean application. The results of any search reports and examinations carried out by foreign patent offices regarding the parent patent application must be submitted in support of the Chilean application. With the exception of search reports and cited documents, which may be filed either in Spanish or English, all documents in foreign languages must be translated into Spanish.

It is possible to file the application without one or more of the mentioned requirements. Missing documentation must be filed within 60 days of the deadline fixed by the Patent Office in a preliminary examination. Otherwise the application will become abandoned.

The patent application must be published in the Official Gazette and, immediately after publication, will be open to public inspection. A third party may lodge an opposition within 45

business days from the date of publication. Within the next 45 business days, the applicant must answer any opposition filed.

The Patent Office will appoint an examiner for the application. The examiner's report is normally issued within ten to 12 months from the date of publication, if no opposition has ensued.

The entire registration process takes approximately two to three years. Oppositions may cause a great delay in certain cases.

9.2.2.2 Subject Matter and Patentability

Inventions are defined as solutions to technical problems posed by industrial activity. The subject matter can be a product or a process, or something related to the aforesaid.

Inventions are patentable if they are new, involve an inventive step and are industrially useful. An invention is new when it is not anticipated by prior art, which shall be understood as everything disclosed to the public anywhere in the world, by publication in a tangible form, sale, marketing, use, or other means, before the date of filing of the application in Chile or of the foreign priority application, if duly claimed. An invention has inventive step if for a person having ordinary skills in the relevant art, the invention does not appear to be obvious or an evident result from the state of the art. Finally, an invention is industrially useful when its object can, in principle, be produced or used in some kind of industry.

The following matters will not be considered inventions and thus will be excluded from patent protection:

(a) discoveries, scientific theories and mathematic methods;

(b) plants and animals, except microorganisms that comply with general conditions of patentability. Plant varieties shall have only the protection provided for in the Rights of Breeders of New Plant Varieties Law. Processes for the production of plants and animals which are essentially biological, cannot be patented either, with the exception of micro-biological processes. For this purpose, an essentially biological process is one which consists entirely of a natural phenomenon, such as crossing and selection;

(c) systems, methods, economic, financial or commercial plans and principles, business plans or plans of simple verification and supervision; and those that refer to pure mental or intellectual activities or gambling matters;

(d) methods for the surgical or therapeutic treatment of the human or animal body, as well as diagnostics methods applied to the human and animal body, except for the products destined to put one of such methods in practice;

(e) the new use, change of form, change of dimensions, change of proportions or change of materials of goods, objects or elements already known and employed for specific purposes. However, the new use of known goods, objects or elements can constitute an invention susceptible of protection whenever such new use solves a technical problem which did not have previously an equivalent solution, and complies with the general patentability requirements and when it further requires changes in dimensions, proportions

or materials of the article, object or known element to obtain said solution to such technical problem. The claimed new use will have to be proven by means of experimental evidence in the patent application;

(f) parts of living beings as they are found in nature, natural biological processes, biological material existing in nature or material that can be isolated, including genome or germoplasm. Nevertheless, processes using one or more of the biological materials mentioned above and the products directly obtained by those processes shall be susceptible of protection, provided they satisfy the requirements established in Article 32 of the Industrial Property Act, in the sense that the biological material be adequately described and that the industrial application of the same is explicitly outlined in the patent application; and

(g) inventions whose commercial exploitation must necessarily be prevented to protect public order, State security, morality and good manners, to protect human, animal or plant life or health or to preserve plants or the environment shall not be patentable, provided that such exclusion is not made merely because of the existence of a legal or administrative provision that prohibits or regulates such exploitation.

9.2.2.3 Marking

Patented products must display the words *"Patente de Invención"* or the initials "P.I." and the patent number. Failure to do so will not affect the validity of the patent, but will prevent the owner from pursuing criminal actions for infringement.

9.2.2.4 Duration and Other Provisions

The duration of a patent is 20 years as from the filing date of the application. Patents are not renewable and are subject to annuities.

It is possible to obtain annulment of a patent within five years from the granting date.

Licenses must be recorded with the Patent Office.

9.2.3 Utility Models

9.2.3.1 Procedure and Timeframe

Applications for utility models must be made in Spanish in the forms supplied by the Patent Office of the Industrial Property Department, and must include: (a) an abstract; (b) specifications; (c) claims; (d) drawings; (e) a power of attorney; and (f) a prototype of the model, where appropriate.

If the applicant is not the inventor, the application must be assigned to the applicant, and the name of the inventor must be stated as well. Both the power of attorney and the assignment document must be legalized with a Chilean Consul, if executed abroad.

In case priority under the Paris Convention is claimed, a certified copy of the priority document must be filed within 90 working days as of the filing date of the Chilean application. The

results of any search reports and examinations carried out by foreign patent offices regarding the parent utility model application must be submitted in support of the Chilean application. With the exception of search reports and cited documents, which may be filed either in Spanish or English, all documents in foreign languages must be translated into Spanish.

It is possible to file the application without one or more of the mentioned requirements. Missing documentation must be filed within 60 days of the deadline fixed by the Patent Office in a preliminary examination. Otherwise the application will become abandoned.

The utility model application must be published in the Official Gazette and, immediately after publication, will be open to public inspection. A third party may lodge an opposition within 45 business days from the date of publication. Within the next 45 business days, the applicant must answer any opposition filed.

The Patent Office will appoint an examiner for the application. The examiner's report is normally issued within six months from the date of publication, if no opposition has ensued.

The entire registration process takes approximately two to three years. Oppositions may cause a great delay in certain cases.

9.2.3.2 Subject Matter and Patentability

The subject matter for utility model registration includes instruments, apparatuses, tools, devices and objects or parts of them, the shape of which can be claimed regarding its external appearance as well as its functioning, as long as such shape produces utility, that is, contributes an advantage, benefit or technical effect to the functions of said items that did not exist before.

Utility models are patentable if they are new and industrially useful.

9.2.3.3 Marking

Registered utility models must display the words "*Modelo de Utilidad*" or the initials "M.U." and the pertinent number. This indication can be placed on the container, as long as the container is sealed in such a manner that it is necessary to destroy the same in order to gain access to the product. The omission of this requirement will not affect the validity of the registration, but will prevent the owner from pursuing criminal actions for infringement.

9.2.3.4 Duration and Other Provisions

Registered utility models are protected for ten years as from the filing date of the application, and are not renewable. They are subject to annuities.

General patent provisions are applicable to utility models where appropriate, including those on annulment of a granted registration.

9.2.4 Industrial Drawings and Designs

9.2.4.1 Procedure and Timeframe

The application process and timeframe involved are very similar to the ones mentioned for a utility model application. Among the few differences is the fact that applications for industrial drawings and designs do not require the filing of claims.

9.2.4.2 Subject Matter and Requirements for Protection

Industrial drawings include all arrangements, collections or combinations of figures, lines or colors developed on a diagram (i.e. a bi-dimensional surface) for incorporation into an industrial product for the purpose of ornamentation and to give such product a new appearance.

Industrial designs include all three-dimensional shapes, whether associated or not with colors, and any industrial or handcrafted article that can be used as a pattern for the manufacturing of other units and that can be distinguished from similar patterns by its shape, geometric configuration, ornamentation or any combination of these, so long as said characteristics give it a unique appearance perceptible by sight, in such a way as to confer it a new physiognomy.

The Industrial Property Act expressly clarifies that containers are eligible and may be protected as industrial designs; and that printed fabrics, cloths or any laminated materials qualify and may be protected as industrial drawings; provided that they comply with the condition of novelty mentioned below.

Industrial drawings and designs must be new and will be considered as such when they significantly differ from known industrial drawings or designs, or from the combinations of characteristics of known industrial drawings or designs.

9.2.4.3 Marking

Registered industrial drawings and designs must display the words "*Dibujo Industrial*" or "*Diseño Industrial*" or the initials "D.I." and the pertinent number. This indication can be placed on the container, as long as the container is sealed in such a manner that it is necessary to destroy the same in order to gain access to the product. The omission of this requirement will not affect the validity of the registration, but will prevent the owner from pursuing criminal actions for infringement.

9.2.4.4 Duration and Other Provisions

Registered industrial drawings and designs are protected for ten years as from the filing date of the application, and are not renewable. They are subject to annuities.

General patent provisions are applicable to industrial drawings and designs where appropriate, including those on annulment of a granted registration.

9.2.5 Layout-Designs or Topographies of Integrated Circuits

The protection of layout-designs or topographies of integrated circuits under the Industrial Property Act was recently introduced by the IP Amendment.

9.2.5.1 Procedure and Timeframe

The application process and timeframe involved are similar to the ones mentioned in connection with an application for industrial drawings and designs.

9.2.5.2 Subject Matter and Requirements for Protection

An integrated circuit is defined by the revised Industrial Property Act as a product in its final or intermediate form, that performs an electronic function, in which at least one of the elements is active, and some or all of the interconnections form an integrated part of the body or surface of a piece of material.

In turn, layout-designs or topographies of integrated circuits are characterized as three-dimensional arrangements of their elements, expressed in any form, designed for the manufacturing of such integrated circuits.

Layout-designs or topographies of integrated circuits are protected under the Industrial Property Act provided that they are original. A layout-design or topography of integrated circuits is original when it is the result of the intellectual effort of the creator, but not when it is the result of common knowledge shared by creators and manufacturers of layout-designs or topographies of integrated circuits at the moment of its creation.

A layout-design or topography of integrated circuits that consists of a combination of common elements or interconnections will only be protected if the combination as a whole complies with the conditions indicated in the previous paragraph.

9.2.5.3 Marking

Registered layout-designs or topographies of integrated circuits must display in a visible manner an encircled capital letter "T." This indication can be placed on the container, as long as the container is sealed in such a manner that it is necessary to destroy the same in order to gain access to the product. The omission of this requirement will not affect the validity of the registration, but will prevent the owner from pursuing criminal actions for infringement.

9.2.5.4 Duration and Other Provisions

Registered layout-designs or topographies of integrated circuits are protected for ten years as from the filing date of the application, or as from the date of their first commercial exploitation anywhere in the world. They are subject to annuities and are not renewable.

Although general patent provisions are declared to be applicable to layout-designs or topographies of integrated circuits, they are governed by many more specific rules than utility models, industrial drawings and industrial designs, which sets them wider apart.

9.2.6 Geographical Indications and Appellations of Origin

The protection of geographical indications and appellations of origin under the Industrial Property Act was recently introduced by the IP Amendment.

9.2.6.1 Subject Matter

A geographical indication is defined by the revised Industrial Property Act as an indication identifying a product as original from the country, or from a region or locality in the Chilean territory, when the quality, reputation or other characteristic of the product is essentially attributable to its geographical origin.

Appellations of origin, in turn, are understood to be designations identifying a product as original from the country, or from a region or locality in the Chilean territory, when the quality, reputation or other characteristic of the product is essentially attributable to its geographical origin (as with geographical indications), but taking into consideration also other natural or human factors that have an impact on the characteristics of the product.

Any person or legal entity can request the registration of a geographical indication or appellation of origin, provided that such person or entity represents a significant group of producers, manufacturers or artisans, regardless of the group's legal form, whose lands, or establishments for the extraction, production, processing or manufacturing are within the delimited zone established by the geographical indication or appellation of origin requested, and who comply with the other requirements indicated in the Industrial Property Act.

National, regional, provincial or local authorities may request registration of geographical indications or appellations of origin as well, when such geographical indications or appellations of origin refer to territories within their respective jurisdictions.

The following signs or expressions cannot be protected as geographical indications or appellations of origin:

(a) those that do not abide by the definitions contained in the Industrial Property Act;

(b) those that are contrary to morality or public policy;

(c) those that may be misleading to the public as to their geographical origin, nature, way of manufacturing, characteristics, qualities or aptitude for use or consumption of the product;

(d) those that are common or generic indications used for distinguishing the product in question, understood to be those considered as such by persons knowledgeable in the matter as well as by the public at large, unless they have been recognized as geographical indications or appellations of origin under international treaties ratified by Chile; and

(e) those that are identical or similar to other geographical indications or appellations of origin for the same product. Nonetheless, there may be more than one registration of homonymous geographical indications or appellations of origin for wines, provided that they include elements to ensure that consumers will not be misled or confused.

Foreign geographical indications and appellations of origin may be registered in Chile in accordance with the Industrial Property Act. They shall not be protected –or they will forfeit protection, if they already have it in Chile– when they are no longer protected or have fallen into disuse in their country of origin.

In particular, foreign geographical indications and appellations of origin identifying wines and spirits in connection with goods and services cannot be protected under the Industrial Property Act, in case they have been used continuously, in good faith, by Chilean nationals or residents in the national territory to identify those same (or similar) products or services in Chile prior to April 15, 1994 or for at least ten years prior to that date, unless there is stipulation to the contrary in an international treaty ratified by Chile.

9.2.6.2 Procedure

The application for recognition of a geographical indication or appellation of origin shall state:

(a) the applicant's name, address, taxpayer's identification number (if applicable), and activity related to the indication or appellation requested;

(b) the geographical indication or appellation of origin;

(c) the geographical area of production, extraction, processing or elaboration of the product that will be distinguished by the indication or appellation, delimiting it to the geographic characteristics and political-administrative division of the country;

(d) a detailed description of the product or products that will be distinguished by the indication or appellation requested as well as the essential characteristics or qualities thereof;

(e) a technical study prepared by a competent professional that provides information in the sense that the characteristics or qualities of the product are fundamentally or exclusively attributable to its geographical origin; and

(f) a project with the specific regulations for use and control of the requested indication or appellation.

Applications for Chilean geographical indications or appellations of origin regarding forestry, agricultural and livestock goods and agro-industrial goods moreover require an approbatory report by the Ministry of Agriculture for the registration thereof. A similar report issued by the Ministry of Agriculture is also required for foreign geographical indications and appellations of origin related to such products.

9.2.6.3 Use and Marking

All producers, manufacturers or artisans who conduct their activity inside the delimited geographical zone, including those who are not among those who requested the initial acknowledgement, shall be entitled to use the geographical indication or appellation of origin in relation to

the products indicated in the registration, provided that they comply with the provisions regulating the use thereof.

The persons listed above are the only ones that may use the expression "*Indicación Geográfica*" or "*Denominación de Origen*" or the initials "I.G." or "D.O.," respectively, in the identification of the product. These indications can be placed on the container, as long as the container is sealed in such a manner that it is necessary to destroy the same in order to gain access to the product.

9.2.6.4 Duration and Other Provisions

The protection of a geographical indication or appellation of origin does not have a fixed duration. The registration may be modified at any time when any of the circumstances mentioned in the law changes. Such modification shall be subject to the registration procedure, to the extent applicable.

Any interested party may request the cancellation of the registration of a geographical indication or appellation of origin when any of the prohibitions established in the Industrial Property Act has been infringed.

To the extent applicable, general registration rules and trademark regulations shall apply to the examination, publication, registration and cancellation procedures for geographical indications and appellations of origin.

9.2.7 Trade Secrets

The protection of trade secrets under the Industrial Property Act was recently introduced by the IP Amendment.

9.2.7.1 Subject Matter

A trade secret is understood to be any knowledge of industrial products or procedures that, by being kept secret, gives the owner thereof a competitive advantage, enhancement or break-through.

The illegitimate acquisition of a trade secret, the disclosure or exploitation thereof without authorization from the owner, and the disclosure or exploitation of trade secrets to which there has been legitimate access but under a confidentiality obligation, constitute a violation of the trade secret, provided the violation of the secret has been done with intent to obtain advantage for the perpetrator's own benefit or that of a third party, or to injure the holder thereof.

9.2.7.2 Information Disclosed to the Authority to Obtain Health Registrations or Authorizations

When the Institute of Public Health (*Instituto de Salud Pública*, the "ISP") or the Agriculture and Livestock Service (*Servicio Agrícola y Ganadero*, the "SAG") requires the submission of undisclosed information, proof data or other information, concerning the safety and efficacy of a pharmaceutical or agricultural chemical product which utilizes a new chemical entity, that has not been previously approved by the competent authority, such information or data shall be considered confidential pursuant to governing law.

Non-disclosure is deemed satisfied if the data has been subject to reasonable measures to keep it undisclosed and it is not generally known to, nor easily accessible by, persons within the circles in which the type of information in question is normally used.

The competent authority may not disclose nor utilize such data to grant a health registration or authorization to someone who does not have the permission of the holder thereof, for a period of five years for pharmaceutical products and ten years for agricultural chemical products, as from the first health registration or authorization granted by the ISP or the SAG, as the case may be.

In order to enjoy protection, the confidential nature of such data must be expressly stated in the health registration or authorization application.

The "new chemical entity" mentioned above is defined as any active principle that has not been previously included in health registrations or authorizations granted by the ISP or by the SAG, as the case may be, or that has not been commercialized in the Chilean territory prior to the health registration or authorization.

For purposes of the preceding paragraph, active principle is understood to be a substance endowed with one or more pharmacological effects or agricultural chemical uses, regardless of the form, expression or disposition thereof, including its salts and complexes.

In no case shall the following be considered a new chemical substance:

(a) therapeutic uses or indications other than those authorized in other prior health registrations or authorizations of the same chemical substance;

(b) changes in the method of administration or forms of dosage from those authorized in other prior health registrations or authorizations of the same chemical substance;

(c) changes in authorized or registered pharmaceutical forms, formulations or combinations of chemical substances; and

(d) the salts, complexes, crystalline forms or such chemical structures that are based on a chemical substance that has a prior health registration or authorization.

Protection shall not apply when:

(a) the holder of the information or proof data has incurred in conducts or practices declared contrary to fair competition in direct relation to the use or exploitation of such information, according to a final and binding decision of the Antitrust Court;

(b) for reasons of public health, national security, non-commercial public use, national emergency or other extremely urgent circumstances declared so by the competent authority, the protection can justifiably be terminated;

(c) the pharmaceutical or agricultural chemical product is the subject of an obligatory license;

(d) the pharmaceutical or agricultural chemical product has not been commercialized within the Chilean territory by the end of a 12 month period calculated from the date of the health registration or authorization given in Chile; and

(e) the pharmaceutical or agricultural chemical product has a health registration or authorization abroad that has been in force for more than 12 months.

9.3 Copyright

9.3.1 Formalities and Duration

The rights of an author over an original or derivative work are protected and obtained by the sole creation of said work, without the obligation of performing any additional action. Copyright notice and copyright registration are not mandatory, but are advisable as registration raises a presumption of authorship. If a copyright notice is inserted, the applicable provisions of the international copyright conventions to which Chile is a party apply.

To register a creation, a tangible copy of the work must be filed with the Intellectual Property Department. The duration of the copyright is the longer of (a) the author's life, plus 70 years, or (b) the lives of the surviving spouse, and/or single or widowed daughters of the author. In the case of anonymous works, duration is 70 years from the time of their first publication. Copyright cannot be renewed.

9.3.2 Subject Matter

Any original literary, artistic, dramatic, musical or cinematographic work in a material form is subject to protection by copyright, including:

(a) books, brochures, articles and manuscripts, encyclopedias, guides, dictionaries, anthologies and compilations of all kind;

(b) conferences, discourses, lectures, thesis, commentaries and other works of such nature, either oral, written or taped;

(c) dramatic, dramatic-musical and theatrical works in general, as well as choreographic works and pantomimes;

(d) musical compositions, with or without text;

(e) radio or television adaptations of literary productions, the works originally produced by the radio or television, as well as the corresponding librettos and scripts;

(f) newspapers, magazines or other publications of similar nature;

(g) photographs, engravings and lithographs;

(h) cinematographic works;

(i) architectural projects, drafts and models, and map elaboration systems;

(j) geographical spheres or armillary spheres, as well as plastic works related to geography, topography or other sciences;

(k) audiovisual materials;

(l) paintings, drawings, illustrations and works of a similar nature;

(m) sculptures and analogous figurative art works, even if they have industrial appliance, provided that their artistic value can be appreciated separately from their industrial character;

(n) stage design drafts and the corresponding stage designs, when their author is the draft artist;

(o) adaptations, translations and other transformations, when authorized by the author of the original work, provided that they do not belong to common cultural property;

(p) video recordings and slides; and

(q) computer programs (source code, object code, screen views, and "structure, sequence and organization"). The filing of a disk containing the relevant executable program is required.

9.3.3 Exceptions

Pursuant to the Copyright Act, public display or performance of a creation protected by copyright does not infringe the same if the following two circumstances concur: (a) use of the work within the family nucleus or within educational, charity, and similar establishments, and (b) use of the work made without any profit or lucrative aim. In case both of these conditions are met, no payment or retribution should be given to the author of the work, nor is authorization of the author required.

The law also provides for exceptions regarding use of a portion of an intellectual work made in cultural, scientific or didactic activities, as long as the real authorship is expressly mentioned, and also regarding the reproduction –by any means– of architectural works, monuments and artistic works that are placed in public areas, among others. The exceptions to copyright have been strongly restricted in the texts of the free trade agreements that Chile has recently signed with the European Union and the United States of America, and any possible inconsistency between local law and the rules contained in these treaties should be amended in the future.

9.3.4 Moral and Other Related Rights

The Constitution and the Copyright Act recognize and protect not only the economic or pecuniary rights of the author, but also the author's moral rights. These comprise the right of attribution or right to claim authorship of a work; the right to integrity of the work so that it be respected and that any distortion, mutilation or other modification of the work be rejected; the right

to leave the work unpublished; the right to authorize a third party to complete an unfinished work and, finally, the right to maintain the work anonymous or under a pseudonym during the term of the copyright protection.

9.4 Licensing

It is not mandatory to record license agreements in Chile. However, recordal is necessary if licensed industrial property rights are to be invoked against third parties by licensee. In order to be admissible for recordal, license agreements must be made by way of notarized documents. If executed abroad, legalization with a Chilean Consul is required. Sublicensing is permitted.

In addition to recording a license agreement with the Industrial Property Department, it must be registered with the Central Bank of Chile.

9.5 Internet

9.5.1 Online Issues

This matter can be analyzed from two points of view: with regard to the use of marks in the Internet, as well as in respect of the possible connection between trademarks and Internet domain names.

As for the first aspect, both registered and unregistered marks are normally displayed in the Internet. Under the current text of the Industrial Property Act, it is likely that Internet usage will become a relevant factor for establishing active and pre-existing use of a mark, in order to support oppositions and invalidation actions based on use rights that said IP Amendment introduced.

On the other hand, regarding domain names, Internet has become an extremely powerful means of advertisement and communication between businesses and consumers. One of the main consequences of this fact is that, in domain name disputes, ownership of a registered or unregistered mark that is identical or confusingly similar to the disputed domain name is becoming an increasingly relevant factor on which the decisions of NIC Chile ("NIC Chile") are based. Even the use of an unregistered mark can decide a case in favor of the mark's user, if the opponent has no plausible arguments whatsoever to support the choice of the domain name in question.

9.5.2 Procedure and Timeframe

Applications for domain names under the country code top level domain ".cl" must be filed electronically and must include the following data:

(a) the domain name of choice;

(b) identification of the applicant;

(c) identification of the administrative and technical contacts;

(d) primary/secondary servers (optional);

(e) if the applicant is a foreign person or entity, a Chilean representative should be appointed.

After filing the application, it is published for 30 days at NIC Chile's web site (www.nic.cl) for opposition purposes. In order to oppose an application, exactly the same domain name must be applied for within said 30 day period. If no conflicting application –that is, opposition– is filed, registration is granted immediately after expiration of the opposition term, subject to payment of the pertinent fee to NIC Chile. After registration, cancellation actions can be filed according to NIC Chile's regulations.

In all disputes, NIC Chile acts as mediator calling the parties to a conciliation hearing. In the event that mediation is unsuccessful, the dispute may be submitted to arbitration under NIC Chile's applicable rules. NIC Chile has a local alternative dispute resolution system similar to the Uniform Dispute Resolution Policy ("UDRP") system, which however is more ample than the UDRP in that both registered and unregistered marks are welcome when deciding the correct assignment of a domain name. The "first come, first served" principle will be altered when industrial property rights are invoked and no strong counterarguments exist.

9.5.3 Subject Matter and Requirements for Issuance of Domain Names

Any words, letters, numbers and combinations of the aforesaid may be registered as domain names and no domestic trademark rights are acquired upon registration. There are no restrictions regarding the number of domain names registered by the same holder, nor for the registration of generic expressions.

9.5.4 Duration and Use Requirements

Domain name registrations must be renewed every two to ten years. Even though there are no use restrictions, non-use of a domain name may under certain conditions be considered as indicative of having obtained registration for wrongful purposes or in bad faith.

9.6 Enforcement of Industrial and Intellectual Property Rights

9.6.1 Complexity

The enforcement of registered industrial and intellectual property rights is not more complex than the enforcement of most any rights under Chilean legislation, in Chilean Courts. The same cannot be said of unregistered rights. The fundamental difference between those registered and those unregistered is, precisely, the possibility of enforcing the rights that arise from a registration.

For instance, an active user of a preexisting, non-registered trademark will –as provided for in the IP Amendment– be in a position to bar or invalidate registration of the same mark by another person or entity, but he will not be entitled to any of the rights that the law reserves to registered trademark owners, such as initiating criminal procedures against counterfeiters.

Registered industrial property rights owners have access to criminal actions (infringements are currently sanctioned with a fine of U.S.$5,000 to up to U.S.$70,000) and civil actions, pre-trial

motions, injunctions, border measures and rules to determine the damages caused by infringers. Registered intellectual property rights owners have available a more limited number of remedies, but –in compensation– criminal penalties are more severe: prison is a certain possibility in cases of copyright infringement, whereas it is not an option in cases of industrial property rights violations.

Criminal and civil Courts are seldom skilled in industrial property matters and usually only have a general idea of intellectual property. Therefore, plaintiffs must work hard to convince the Courts of the fact that an industrial or intellectual property rights infringement has occurred.

Damages are available to the plaintiff. The only damages that can be recovered by the industrial or intellectual property rights owner are those that are a direct consequence of the infringement. Our legal system does not consider punitive damages.

The Industrial Property Act gives some rules to assess damages. The owner of industrial property rights is entitled to recover actual damages and also the profits received by the defendant, which are a direct consequence of the infringement.

9.6.2 Procedure and Timeframe

In a criminal proceeding, the event of the crime and the person responsible must be established. The public prosecutor can investigate as long as necessary before taking any action. The plaintiff cooperates by suggesting different actions to the court and providing information to prove the infringement.

If the court ends up convinced that an infringement has occurred and that a responsible perpetrator exists, it will issue its decision, against which the losing party can appeal.

Full prosecution of a criminal action can last for one or two years before a final decision is rendered. In case of an appeal, another one or two years should be added. However, criminal procedures normally end earlier, either because an injunction or other precautionary measure is ordered during the proceeding, regarding the infringing products, or because the court considers that no actual infringement has occurred.

10. Antitrust Law

10.1 Introduction

The Chilean antitrust system's backbone is set out in the Antitrust Act or Free Competition Act (the "Antitrust Act").

The purpose of the Antitrust Act is to protect the free competition in the markets considering the following situations as anti-competitive practices:

(a) the agreements, whether express or implied, made among economic agents, or concerted practices agreed thereby, aimed at fixing prices, reducing or limiting production, allocating quotas or zones, by abusing of the power granted by such agreements or practices;

(b) the abuse by one company or a group of companies under common control, of a dominant market position, through price-fixing impositions, tying arrangements, the allocation of market quotas or zones, or imposing similar abuses; and

(c) predatory or unfair practices aimed at attaining, maintaining or increasing a dominant market position.

The *Tribunal de Defensa de la Libre Competencia* (the "Antitrust Court") determines if a conduct is anti-competitive and breaches the Antitrust Act. It also responds inquiries about acts, facts or contracts –either during their negotiation or after their execution, which might breach the Antitrust Act, being able to set forth the conditions that such acts, facts or contracts shall meet in order to be deemed consistent with the Antitrust Act. In addition, the Antitrust Court may issue mandatory general instructions over acts or contracts related to free competition.

Besides the Antitrust Court exists the National Economic Prosecution Office (the "Antitrust Prosecutor") which is an independent agency whose main purpose is to investigate Antitrust Act violations and defend the interests of the public in the antitrust matters heard by the Antitrust Court.

The Antitrust Prosecutor has power to investigate those actions, practices or agreements that may lessen free competition or constitute an abuse of a monopolistic position, and may bring actions against the offenders before the Antitrust Court.

10.2 Procedures

The procedures before the Antitrust Court depend on whether the subject matter is litigious in nature or not, as described below.

10.2.1 Litigious Procedure

The litigious procedure is carried out in written form and is initiated before the Antitrust Court by request from the Antitrust Prosecutor or by a third party action. The petition or the action

has to be serviced to the affected party who will have a term to answer ranging between 15 business days and 30 calendar days.

Upon expiration of the above term, even if no answer is filed, the Antitrust Court may call the parties to resolve the dispute in an amicable manner. If the Antitrust Court does not call for an amicable settlement or if the parties do not reach it, a 20-day discovery term shall be established. The Antitrust Court is entitled to request and receive all evidence it may deem necessary to render its decision.

After expiration of the discovery period, the Antitrust Court shall set a date for hearings, and judgment shall be rendered within 45 days after such hearings took place.

The Supreme Court may review final judgments rendered by the Antitrust Court on antitrust issues provided that such judgments order or reject the imposition of the following sanctions:

(a) the amendment or the termination of actions or agreements, systems or arrangements contrary to the Antitrust Act;

(b) the amendment or dissolution of the legal entities involved in an anti-competitive conduct; or

(c) the imposition of fines for the benefit of the State's treasury.

These appeals must be filed within ten business days from the date the notice on the decision of the Antitrust Court is served.

Should a matter be discussed in a litigious procedure, a non-litigious procedure cannot be later initiated over the same subject matter.

10.2.2 Non-litigious procedure

In this case the interested party (either the Antitrust Prosecutor or a third party entity or individual) initiates the procedure by means of a consultation to the Antitrust Court. Such consultation does not give rise to a formal trial, as in the case of the litigious procedure. This is also a written procedure and the Antitrust Prosecutor or any other person having a legitimate interest may initiate it.

Upon receipt by the Antitrust Court, a "procedure initiation decree" is issued, which shall be published in the Official Gazette and in a newspaper distributed nationwide. Such decree shall also be notified to the Antitrust Prosecutor and to the authorities and parties involved in the matter.

The Antitrust Court shall set a term of not less than 15 business days so that the parties served and those who have a legitimate interest may provide relevant information.

Upon expiration of said term, the Antitrust Court shall convene a public hearing in order that the parties that provided relevant information may express their opinion in the matter. The Antitrust Court is entitled to request and receive all evidence it may deem necessary to render its decision. After the public hearing, the Antitrust Court shall issue its decision or report.

If during the procedure an opposition is filed by another party, the procedure will turn litigious to the extent the case under consultation refers to contracts or actions that have already been executed or performed, as the case may be. Thus, in such a case, all the above-mentioned provisions for the litigious procedures become applicable.

If the non-litigious procedure refers to contracts or actions that have not taken place yet, a claim against such contracts or actions will not turn the procedure litigious, and said claim will have to be discussed according to the non-litigious procedure.

10.3 Sanctions Regime

The Act provides that any person that performs or enters into, whether individually or collectively, any actions or agreements which impede, restrict, or hinder free competition or which are aimed at producing any such effects, may be subject to the following sanctions:

(a) the amendment or the termination of actions or agreements, systems or arrangements contrary to the Antitrust Act;

(b) the amendment or dissolution of the legal entities involved in an anti-competitive conduct; and

(c) the application of fines for the benefit of the State's treasury up to the amount of 20,000 UTAs (U.S.$14,358,600).

For determining the amount of the fines to be applied, the Antitrust Court must take into consideration the economic benefit obtained from the infringement of the provisions of the Antitrust Act, the magnitude of the unlawful conduct, and the previous record of the offender.

Such fines may be imposed on the relevant legal entity, its directors, managers or any other individual who may have been involved in the execution of actions or agreements that contravene the provisions of the Antitrust Act. In the case of fines imposed on legal entities, their directors or managers and any person who may have benefited from the relevant action or agreement will be jointly and severally responsible for the payment of such fines, to the extent that they have participated in the execution of the unlawful action or agreement.

10.4 Merger and Acquisition Transactions

The Antitrust Act has a generally favorable attitude towards mergers and joint ventures, recognizing that they are not per-se contrary to free competition.

The Antitrust Act does not require the filing of any kind of documents, information or form with the antitrust authorities, nor the obtaining of any approval or consent from them in order to enter into, execute or perform a merger transaction. However, the parties to a potential merger may voluntarily seek the opinion or decision of the Antitrust Court in order to ascertain whether or not such particular transaction would be deemed compatible with the free competition provisions of the Antitrust Act and, thereby, valid and enforceable.

In addition, third parties, with a legitimate interest, which consider that an actual or potential merger transaction may infringe the provisions of the Antitrust Act, may (i) request the Antitrust Prosecutor to initiate an investigation; or (ii) may make a formal complaint to the Antitrust Court, requesting the exercise of its powers and that appropriate actions are taken in order to prevent the alleged infringement.

Chile's competition law and practice do not contemplate a specific set of given rules for the review, testing and control of mergers and joint ventures.

However, the following issues are usually given special consideration by the Antitrust Court:

- Entry: whether there exists free access to the relevant market, i.e. the actual possibility that new agents may enter and engage in the activity performed by the merging businesses. This issue addresses whether there are economic, technological or legal barriers that may hinder the entrance of new agents to the relevant market.

- Substitutes: whether there exist substitute or alternative goods or services for those that the merged businesses will supply, a factor which would enable the expansion of the relevant market.

- Import competition: whether there is actual or potential import competition in the relevant market which allows the expansion of such market.

11. Security Interests

11.1 Introduction

The most common form of creating a security interest over Chilean assets of a person are through a mortgage or a pledge. Under Chilean law, both mortgages and pledges do not transfer ownership over the collateral to the secured parties, but, instead, create security interests over the relevant assets. The mortgage and the pledge create in favor of the security holder the following general rights:

(a) the right to foreclose on the collateral pursuant to certain legal proceedings and to pay the obligations secured thereunder with the proceeds thereof;

(b) the right to be paid with preference to other creditors with the proceeds arising from the foreclosure of the collateral, provided, however, that in a bankruptcy scenario certain preferred credits (i.e., bankruptcy estate costs, workers' compensation up to a certain amount and overdue taxes) may be paid or secured with the proceeds arising from the foreclosure of collateral. Among creditors holding the same kind of collateral (mortgage or pledge) the priority to be paid is commonly given by the date of the relevant deed evidencing the collateral or if it need be registered in a given registry, by the date of registration of said deed; and

(c) the right to make a claim against and attach the collateral regardless of who is in actual possession thereof (a mortgage or pledge confers upon the mortgagee or pledgee, as the case may be, a right *in rem*).

Both pledges and mortgages over property located in Chile are governed by Chilean law. A Chilean court has exclusive jurisdiction in respect of assets located in Chile and, as a matter of public policy, a clause providing for a different forum would be null and void.

Under Chilean law, as a general rule, foreclosure of collateral is obtained through certain court proceedings, brought before a Chilean court, pursuant to which the secured obligations are paid with the proceeds obtained from the sale of the collateral concerned at a public auction. Should there be no bidders at the relevant public auction, the collateral may be awarded to the secured party in payment of the secured obligations. Chilean law does not provide for repossession of collateral as an alternative to foreclosure.

Both under the mortgage and pledge, the secured party is paid with priority over other creditors of the mortgagor or pledgor with the insurance proceeds or with any indemnifications paid with respect to the secured asset.

There are several kinds of pledges that can be created in order to secure either specific or general obligations. Depending on the nature and type of pledge, possession of the collateral may remain in the hands of the pledgor or may be delivered to the secured party. Hence, determination of whether possession of collateral will remain in the hands of the pledgor or of the pledgee is relevant. Among other pledges, the industrial pledge and the pledge without conveyance are two special pledges under which possession of the assets remains in the hands of the pledgor, which brings about the liability of the debtor/possessor for any damages sustained by the pledgee.

Shares of stock of a Chilean corporation can be pledged in favor of banks whether domestic or foreign, in this last case so as to secure obligations undertaken by domestic borrowers with respect to loan arrangements duly approved and registered with the Central Bank, being the foreclosure procedure applicable to this kind of pledge much more expeditious than the regular procedure applicable to other pledges. This pledge (*prenda de valores mobiliarios en favor de los bancos*), as any other pledge on shares of stock of a Chilean corporation, is required to be registered in the shareholders' registry of the corporation which issued the shares. Delivery to the secured creditor or a third party of the certificates representing the pledged shares is necessary, as it is the continuing possession of the certificates.

Depending on the assets given as security, a lender has available the following security interests as collateral:

(a) chattels: Civil or Commercial pledges; Pledge without conveyance; Industrial Pledge;

(b) real estate: Mortgage;

(c) transportation vehicles: Pledge without conveyance; Industrial Pledge;

(d) construction and mining equipment: Mining Mortgage;

(e) machinery, tools: Pledge without conveyance, Industrial Pledge;

(f) Material handling equipment: Pledge without conveyance; Industrial Pledge;

(g) Aircrafts: Mortgage;

(h) vessels: Mortgage in the case of large vessels; Pledge without conveyance or Industrial Pledge in the case of small vessels;

(i) industrial property: Pledge without conveyance, Industrial Pledge;

(j) inventory: Pledge without conveyance, Industrial Pledge;

(k) accounts receivables: Civil or Commercial Pledge;

(l) commercial paper, notes, bills of exchange and drafts: Pledge by way of endorsement;

(m) shares of stock, bonds and other securities: Commercial Pledge, Pledge in favor of banks, Industrial Pledge; and

(n) public works concessions: special public works pledge (see Section 16.11 ….

In the mortgage or pledge agreement it may be agreed that the collateral cannot be disposed of or mortgaged or pledged again without the secured creditor's consent. If in a mortgage, that agreement must also be registered in the Registry of Prohibitions of the applicable Real Estate Registrar. This stipulation does not prevent the sale of the mortgaged or pledged asset but if sold it entitles the mortgagee or pledgee to collect damages. Also the parties usually provide that in case of a sale of or creation of a second mortgage or pledge on the collateral the credit would become immediately due and payable.

11.2 Pledges

11.2.1 Civil pledge

The Civil Code provides that through a pledge a personal asset is delivered to a creditor to secure its credit.

In addition to this "civil pledge," Chilean law contemplates other types of special pledges which purpose is to secure specific credits with particular assets, such as the commercial pledge, the agricultural pledge, the industrial pledge, the pledge without conveyance, the pledge of chattels sold in installments, the pledge of securities in favor of banks, the warrants pledge and the special public works pledge.

Although ancillary to the contract from which the debt derives, the civil pledge constitutes a contract in itself and as such there shall exist mutual agreement on its terms between the creditor and the debtor or third person who delivers its personal property to the creditor in order to secure complete payment of a given debt. A civil pledge is perfected by delivery of the collateral. Given that the pledged property must be delivered to the creditor, an asset may be pledged only once.

In addition, the civil pledge is indivisible, which means that the creditor may hold the pledged property until payment in full of the secured debt. Even if partial payment of the debt is made, the creditor will not be bound to release the pledge in the same proportion. The creditor shall be held liable for any damages the pledged property may suffer due to its negligence or fault. The delivery of the property pledged does not entail transfer of title.

The civil pledge may secure obligations of the pledgor or of a third party. This kind of pledge does not admit a general guarantee clause since the obligations secured by it must be determined at the time of granting of the pledge. Thus, future obligations are not securable with this pledge.

As a general rule, all personal assets, whether tangible or intangible may be made subject to a civil pledge. The Civil Code allows for the pledge of credits or contractual rights whereby a debtor delivers the title to a credit or contractual right against a third person, who in turn must be notified of such delivery.

The creditor may retain possession of the pledged property until complete payment of the debt is made, including principal, interest, and any conservation expenses. Once the debt has been completely paid, the creditor is bound to return the asset to the pledgor.

Pledges terminate as a matter of law: (i) when the secured obligation is fully discharged; (ii) when the secured party acquires ownership of the pledged asset; and (iii) in case of total destruction of the pledged asset (provided, however, that with respect to the pledge without conveyance, destroyed assets will be replaced with future assets similar in nature and, provided, further, that any insurance proceeds will take the place of the assets concerned in case of their destruction).

11.2.2 Commercial pledge

The Commerce Code regulates the commercial pledge, which may be created over personal assets related to a commercial activity or a commercial property, including commercial credits, generally on the same terms provided for by the Civil Code. However, for benefitting of the privilege in right of payment over other creditors of the pledgor with the pledge asset, the pledge must be evidenced in a notarial deed or in a private document duly notarized. The commercial pledge may secure obligations of the pledgor or of a third party. It does not, however, admit a general guarantee clause to secure future indebtedness of the pledgor with the pledgee

11.2.3 Special pledges

The aforementioned rules and regulations that govern civil pledges are also applicable to special pledges, in the absence of a specific rule or regulation. These special pledges are contained in several statutes that have been enacted to secure certain obligations with particular assets, allowing the pledgor to retain possession of the relevant property so as to permit the pledgor to proceed with its economic activity.

The most relevant special pledges are the agricultural pledge, the industrial pledge, the pledge without conveyance, and the warrants pledge.

An essential characteristic of these special pledges is the lack of delivery to the pledgee of the pledged property, which brings about the liability of the debtor/possessor for any damages sustained by the creditor.

Another characteristic of these kinds of pledges is the requirement of a public deed (in some cases a private deed authorized before notary public suffices) duly recorded in a special registry (other than the pledge without conveyance which only requires to be published in excerpt in the Official Gazette).

Agricultural Pledge. The Agricultural Pledge Act (*Prenda Agrícola*) provides that the purpose of an agricultural pledge is to create a security interest over a personal asset to secure obligations related to agriculture, livestock and other related industries. The debtor retains possession and use of the relevant property.

The agricultural pledge admits a general guarantee clause through which it will secure, besides the existing credits, all credits that in the future may exist among the same parties. Should this clause be agreed to, the pledge will remain in force until all obligations secured with it are fully discharged.

Pledge Without Conveyance. The Pledge Without Conveyance Act (*Prenda sin Desplazamiento*) provides that all types of existing or future obligations may be secured by a pledge created on any type of tangible personal assets, including, but not limited to, raw materials and

inventory, motor vehicles, etc. In addition, pledges without delivery may not only secure specific obligations, but may also be used as a general guarantee to secure any future obligations between the parties. Pledged assets must be kept at certain specific locations agreed to by the parties, from which they cannot be removed without the pledgee's prior authorization. It is of the essence of this pledge that, in case the pledgee authorizes the pledgor to transfer the pledged assets, typically, stock of raw materials and inventory, to third parties, such assets will be replaced, as a matter of law, by any and all future assets of similar nature thereafter acquired by the pledgor. The pledge without conveyance is intended to cover assets that are part of the normal trade of the pledgor, thus not impeding such party to continue its business operations despite the existence of a security interest on these assets. This is the scheme in Chile closest to a floating charge or floating lien. A floating charge as a continuing charge on all of the assets, present or future, of a company, or a floating lien as a security interest on all of the inventory or accounts of a debtor, not only those in existence at the time of the creation of the collateral but also those after-acquired inventory or accounts, are not available under Chilean law.

Merchandise or goods in transit or shipped may be pledged by the endorsement of the bill of lading or airway bill. Such a pledge is specifically recognized by the Pledge without conveyance Act.

Industrial pledges. Industrial pledges create a security over specific personal assets to secure obligations relating to industrial businesses. Under the Industrial Pledge Act (*Prenda Industrial*), a security can be created on industrial machinery, equipment and inventories, including raw materials or elaborated products, tools and shares of stock, bonds and other securities. Industrial pledges require the creditor's prior consent to allow the pledgor to transfer the pledged asset or to move the same from the agreed location.

This pledge admits the stipulation of a general guarantee clause.

Both under the pledge without conveyance and the industrial pledge, secured parties may be paid with priority over other creditors of the pledgor with the insurance proceeds or with any indemnifications paid with respect to the pledged asset.

Pledge on Securities in Favor of Banks. Under the Pledge on Securities in Favor of Banks Act (*Ley de Prenda de Valores Mobiliarios en favor de Bancos*) it is possible to pledge securities in favor of commercial banks. Through this mechanism it is possible to pledge bonds, debentures and all kind of shares of stock. This pledge is understood as being given as security for all present and future obligations of the pledgor towards the bank, whether direct or indirect, unless it is expressly stated that it secures specific obligations.

Foreclosure under this pledge is very expeditious. Should pledgor default in any of its obligations towards the bank, the latter may, seven days after having notified the pledgee of the occurrence of the default, sell the securities pledged at a public auction in a stock exchange and apply the proceeds to the payment of its credits.

Warrants Pledge. Another type of pledge is the Warrants Pledge, governed by the law on General Warehouse Deposits (*Almacenes Generales de Depósito*). Under these provisions, a storage agreement is entered into between the owner of the merchandise and a storage keeper to be determined, pursuant to which the latter agrees to take care of the custody of the merchandise in its own warehouses or in those of the owner expressly authorized to serve as such. The storage keeper

issues deposit certificates evidencing ownership of the merchandise stored therein, and pledge certificates attached to the ownership certificates, that entitle the endorsee thereof to get a pledge interest over the merchandise represented by them. Thus, transfer of title over the merchandise is done through endorsement of the deposit certificate, and pledge over it through endorsement of the pledge certificates. Once the general deposit warehouse is set up, the storage keeper keeps a registry of all the goods stored therein and also keeps record of the endorsements made on both the deposit and the pledge certificates. Without prejudice to the endorsements being fully operative between endorser and endorsee, only upon registration with the storekeeper are they enforceable against third parties. Both certificates can be endorsed to one or different persons, but the sole endorsement of the pledge certificate to someone other that the holder of the deposit certificate will suffice to deem the goods pledged to said endorsee.

The seriousness of the system is guaranteed, since only individuals or entities that have evidenced to the satisfaction of the Superintendency of Banks and Financial Institutions that they meet the character and capital requirements prescribed by law can act as storage keepers.

This pledge does not admit a general guarantee clause since the pledge certificate indicates specifically the amount of the credit secured by it.

To foreclose on this type of pledge it is enough to notify the storekeeper that the credit so secured has not been paid when due, and within a term of eight days from that notice the merchandise pledged will be sold at public auction.

11.2.4 Certain assets

Pursuant to Chilean law, security interests can also be created on insurance policies so as to secure obligations in favor of third parties, by means of having the relevant insurance policies issued in favor of the secured party as additional loss payee, with delivery of the relevant insurance policy to such secured party. The policy may also be issued in the name of the debtor and be endorsed by it to the secured creditor.

Commercial paper, bills of exchange, promissory notes and drafts can also be delivered as security in favor of a creditor, which delivery, if made expressly for security purposes, does not transfer ownership thereof to such secured party. This security is implemented by an endorsement made by the creditor of such commercial paper and/or other instrument, and operates by the mere stamp of the signature of such party in the document itself and by including a statement by which the relevant document is endorsed as security in favor of a third party.

Under Chilean law, accounts receivable can also be pledged by means of delivering the relevant accounts receivable to the pledgee and provided the formalities prescribed by law are duly complied with. For a pledge of accounts receivable to be effective *vis-à-vis* third parties, including the relevant account debtor, such assignment must be accepted by or notified to the debtor thereof. Once served, the relevant account debtor cannot pay such account receivable to the pledgor but only to the pledgee (otherwise the debtor may be forced by the pledgee to pay again). In order not to jeopardize the necessary cash flow to be generated by the secured debtor, a secured creditor would typically notify the pledge to the account debtor only once the secured obligation is due and payable. Until then, the pledgor would normally collect the receivables concerned in the ordinary course of its business. Please note that once the pledge has been notified to the account debtor the secured creditor is liable for collecting the account receivable *vis-à-vis* the pledgor.

The right to receive payments under contracts or agreements entered into by the debtor may also be pledged to a creditor as security and that such pledge is governed by the same rules applicable to pledges on accounts receivable. Regarding the conditional assignment of contracts or agreements, we note that Chilean law does not provide for the creation of security interests in contract rights and other personal rights except for pledges on rights for moneys due or to become due under contracts. Under Chilean law, the enforcement of a conditional assignment of contracts or agreements must be carried out through the court system in compliance with the procedures applicable to foreclosure of security interests.

As regards the possibility of pledging ownership rights in a limited liability company, most local lawyers are of the opinion that such a pledge would be null and void or at least unenforceable or of limited enforceability. In our opinion, it would not be null and void if consented by all of the partners of the limited liability company but its enforceability during the life of the company would be limited to the distribution of profits the latter may resolve to make to its partners during its life.

11.2.5 Special Public Works Pledge

The Concessions Act (as defined in Section 16.1), set outs a special pledge called special public works pledge (the "Special Public Works Pledge"). Such pledge covers (i) the rights of the Concessionaire (as defined in Section 16.3) arising under the Concession Agreement (as defined in Section 16.2), (ii) the revenues of the Concessionaire, and (iii) any payment agreed by the State of Chile to the Concessionaire under the Concession Agreement.

By means of the Special Public Works Pledge, the Concessionaire may grant a security interest to the creditors financing the works or its operations. The Special Public Works Pledge may also be granted as a security if the Concessionaire issues bonds. In any case, the Concessionaire may proceed without previous authorization of the MOP (the Ministry of Public Works, as defined in Section 16.1).

As a matter of practice, in case of major financing arrangements (i.e. issuance of bonds) previous permission is requested to the MOP regarding the complete security package executed by the Concessionaire and its controllers. See also Section 16.11.

11.3 Mortgages

Under Chilean laws, a mortgage and a pledge differ in that, generally, the former may be obtained over real property whilst the latter can only be obtained over personal assets of the pledgor. As a result, a mortgagor remains in possession of the mortgaged property while a pledgor generally delivers the property pledged to the creditor.

A mortgage is indivisible, which means that the totality of the mortgaged property is subject to complete payment of the debt secured by it. In other words, in the event that the debt be partially paid off, the immovable property as a whole will remain subject to the payment of the balance.

A mortgage may be granted over the right of ownership, a usufruct, immovable property, vessels of fifty tons or more, and aircraft. The last two are considered special mortgages because they are created in movable property.

Exploitation and exploration mining concessions can also be subject to a mortgage. This mortgage can be created to secure specific and/or general obligations. Pursuant to the provisions of the Mining Code as defined in Section 15.1, mortgages on mining concessions extend, as a matter of law, to personal assets which are used on a permanent basis either to exploit or to explore the relevant ore body. Mortgages on mining concessions do not grant the secured party, except in case of gross negligence or willful misconduct of the mortgagor or unless otherwise agreed, the right to request the improvement or replacement of the mortgaged asset, as it happens with mortgages on real estate. In such case, the secured party may request the mortgagor to improve the quality of the collateral should it be damaged or lost or to replace it with a similar one, and if the mortgagor does not agree to any one of the above, the secured party may accelerate the outstanding debt.

A mortgage shall be extinguished if the secured debt is extinguished; if the creditor acquires ownership of the mortgaged property or cancels the mortgage, among others.

A mortgage may be granted with a general guarantee clause.

Possession of the mortgaged asset remains in the hands of the mortgagor, and the mortgagee has no right of repossession. Foreclosure on the collateral need be conducted through proceedings brought before a Chilean court. The purpose of these proceedings is to sell the collateral at public auction and pay the secured obligations with the proceeds obtained at the relevant auction. Mortgages on real estate can secure both specific and general obligation. Mortgages on real estate extend to any and all personal assets deemed realty in nature either by adherence or by destination, based on their relation with the mortgaged real estate. Therefore, any and all constructions, plantations and personal assets used, or intended to be used in connection with the specific real estate, are also subject to the mortgage. In the case of what are called movables by anticipation (*bienes muebles por anticipación*), this is those goods that though currently adhered to a real estate may be separated from them in the future, they can be pledged separately given their nature as personal property. Water rights may also be subject to a mortgage separately from real estate, either to secure the same or different obligations.

Under the Civil Code, the owner of a mortgaged property retains the right to sell it or to give another mortgage over it, despite any agreement to the contrary. If the owner of the mortgaged property, however, encumbers it with other rights *in rem*, such as usufructs or easements, such other rights will not affect the mortgagee who can always exercise its rights as such without regard to them.

The foregoing applies also to mortgaged property that is thereafter declared family property (*bienes familiares*). If the mortgage exists prior to that declaration, there is no impediment for the mortgagee to exercise its rights as such. If the property, however, has already been declared as family property, in order to mortgage it is necessary to obtain the consent of the spouse not owning it, pursuant to the terms of the Civil Code.

Under the Civil Code, and unless otherwise agreed to by the parties to the relevant mortgage deed, the mortgage lien extends to, and may be enforced on, the rents accrued on the mortgaged property as well as on the insurance indemnities.

11.4 Creating and Perfecting Security Interests

A civil pledge is created and perfected by the delivery of the property in pledge to the creditor. In the case of receivables, these are pledged by the delivery of the document in which the relevant rights are set forth, provided that the debtor has been notified of such pledge and delivery.

For a commercial pledge to be effective against third parties, the pledge must be entered into by means of a notarial deed or a private instrument recorded with a notary public. The amount of the debt must be stated and the pledged property specifically described. Between the parties, a commercial pledge is created and perfected by simple delivery of the pledged property to the creditor or a third party, although, as stated, this delivery alone shall not be effective against third parties.

The creation and perfection of a pledge without conveyance must be made through a notarial deed, of which an excerpt shall be published in the Official Gazette within thirty days of the date of the deed of pledge. Registration is also required in certain cases (e.g. the pledge over motor vehicles must be registered with the National Registry of Motor Vehicles).

Regarding agricultural and industrial pledges, these contracts are created and perfected by means of a notarial deed or of a private document authorized by a Notary Public, which shall be registered in the Agricultural Pledge Registry or the Industrial Pledge Registry, as applicable. It takes approximately ten days to register the pledge.

Under the Civil Code a mortgage is created and perfected through a notarial deed duly recorded in the Registry of Mortgages and Liens of the Real Estate Registry of the domicile where the real estate is located. It takes approximately ten days to register the mortgage.

Special mortgages such as those over ships weighing 50 tons or more and aircraft must be created and perfected by means of a notarial deed registered in the Registry of Mortgages, Liens, and Prohibitions kept by the maritime authority, and the Registry of Liens and Prohibitions kept by the civil aeronautics authority, respectively. It takes approximately ten days to register these mortgages.

Ships of less than 50 tons may be pledged pursuant to the above rules and such pledge is required to be registered in the registry where property of the vessel has been registered.

The foregoing notwithstanding, in Chile there is not a central registry that evidences the priority of the claims of the different creditors of a same borrower.

A valid and enforceable first priority security interest in the collateral does extend to all improvements, accessions, appurtenances, substituted and replacement parts and/or equipment, and service parts, whether existing at the time the security interest is created or thereafter.

Regarding the terms and provisions which would be implied by law in the security documentation, although not expressly referred to therein, it is important to point out that each of the laws governing the different types of mortgages and pledges provide rules which may be applied by default if the parties do not expressly refer to them. In this regard the agreement between the parties may modify those rules, unless they fall within the province of public order considerations, such as are, for example, the rules governing foreclosure on the collateral.

11.5 Foreclosure on Security Interests

Rights and remedies of a first priority secured lender in the event of a non-bankruptcy related scenario of the borrower.

Pledgees and mortgagees are vested with the following rights in order to secure complete payment of the debt so secured: the right to possess and retain the pledged or mortgaged property if in their possession and, in the case of a default by debtor, (a) the right to foreclose on the pledged or mortgaged property regardless of who actually is in possession of such property, (b) the right to cause its sale through a court's proceeding, and (c) the right to be paid with the proceeds resulting from the foreclosure proceedings with preference to other common creditors of the same debtor, except for certain preferred credits which are given priority (i.e. judicial costs incurred in for the general benefit of creditors; other bankruptcy expenses; workers compensation and family allowances; social security contributions; tax withholdings and surcharges and up to ten months of severance pay per each worker).

Under Chilean law, foreclosure of collateral is obtained by means of certain legal proceedings before a Chilean court, pursuant to which secured obligations are paid with the proceeds obtained from the sale of the collateral concerned at a public auction. Should there be no bidders at the relevant public auction, collateral may be awarded to the secured party in payment of the secured obligations. Chilean law does not provide for the repossession of collateral as an alternative to foreclosure. Repossession being forbidden under Chilean law, the secured creditor may only foreclose on the collateral following the procedures prescribed by law.

The length of the foreclosure proceedings will generally depend on (a) whether the obligation of the debtor is evidenced in a document that entitles the holder thereof to summary proceedings (*títulos ejecutivos*) and (b) how active the debtor is in defending itself. If the debt is not evidenced in a título ejecutivo then the secured lender has two alternatives (i) sue the debtor in an ordinary proceeding (which may last two or more years) or (ii) request a court to summon the debtor to recognize the debt (the lender will be entitled to follow summary proceedings against the debtor if the latter recognizes the debt or if the debtor does not appear in court or gives vague answers and the court so declares it). Under Chilean law there is a limited number of *títulos ejecutivos* (e.g. final judgments, public deeds, negotiable instruments to the extent certain requirements are met, etcetera). In a summary proceeding the debtor may resort to a limited number of defenses and the terms provided for the debtor to defend himself are significantly shorter than in an ordinary proceeding.

As regards the statute of limitations of the action to request payment of an obligation, it is necessary to distinguish whether the claim being collected is of a civil or commercial nature. For civil claims the statute of limitations is of five years and for commercial claims it is of four years. However, the statute of limitations to initiate summary proceedings is of three years as a general rule, but that in the case of negotiable instruments it is of one year. All terms are computed from the date in which the obligation became due and payable. If the obligation secured is declared extinguished by the lapse of time, the same will happen to the pledge or mortgage securing it.

The Civil Code establishes a system of priority among the creditors of the same debtor for the foreclosure of collateral and payment therefrom. There are four classes of credits. The credits secured with pledges and mortgages belong to the second and third classes respectively. These security interests are specific in the sense that they permit the secured creditor to be paid with the

proceeds of the sale of the encumbered property with preference over any other creditor, provided, however, that the debtor has enough assets to pay the creditors of the first class. Among creditors that have an interest in the same collateral there is a chronological priority system, depending on the date of execution of the deed creating the security interest or on the date of filing of such deed with the relevant public registry, if registration is required. If the debtor does not have enough assets to pay preferred creditors, the same will probably file actions to obtain payment of their credits with the proceeds of the foreclosure carried out by the pledgee or mortgagee.

11.6 Tax

Mortgages and pledges are free of all sort of taxes. A fee may apply in case of registration of the relevant security interest with the appropriate registries but that payment is not a tax.

11.7 Public Policy

The legal rights, remedies or priorities of a secured lender in respect of collateral would not be restricted or superseded by virtue of the fact that such lender's ultimate parent company is a non-Chilean entity.

Tax liens and employee claims (among other liens belonging to the first class of credits) may restrict or supersede the rights, remedies or priorities of a secured lender in respect of collateral. As it was already said, if a debtor has not enough assets to pay all of its debts, the credits of the first class will generally have preference of payment even in detriment to the mortgages and pledges securing a secured lender's credits.

If the owner of a real estate (subject or not to a mortgage or a lease agreement) defaults in the payment of the real estate tax, the Treasury General may have it sold at public auction to pay the taxes owed with the proceeds obtained therefrom. Regarding personal property imported to the country under the system for the deferred payment of customs duties governed by the Deferred Payment of Customs Duties Act (the "Deferred Customs Duties Act"), please note that as a matter of law such personal property shall secure the full and timely payment of the customs duties with preference over any other credit. The Treasury General is entitled to trace the assets from anyone who might have them in order to sell them in a public auction and be paid with the proceeds obtained in such sale.

11.8 Ancillary Nature of Security Interests

It is important to note that both the mortgage and the pledge as collateral agreements are ancillary to the obligations which they secure, and as such do not have an existence independent from the latter, which fate they follow. Thus, if the secured obligation is terminated, annulled or ceases to exist for any reason whatsoever, the mortgage or pledge will follow suit.

12. International Trade

12.1 Export Incentives

Chilean legislation provides for several incentives on exports, which can be summarized as follows.

12.1.1 Simplified drawback

The simplified drawback system set forth by the Drawback in Minor Non Customary Exports Act (the "Minor Non Customary Exports Drawback Act") applies with regard to the cost of the items forming part of exports which are conceived as "minor" (up to a ceiling of U.S.$18 million determined on an annual basis) and "non customary." Generally, the goods that qualify for the benefit are those containing at least 50 percent of imported items, classified in the Custom Schedule at the time of performing the export and which were subject to the benefit at December 31, 1990. A decree is issued on a yearly basis, listing certain goods that shall be considered excluded from the benefit.

The drawback is equivalent to three percent of the FOB value of the goods being exported, excluding, however, commissions and other expenses that may be deducted from the final result of the export.

This benefit is not compatible with other special systems provided by local laws, such as the system for the deferred payment of customs duties set forth by the Deferred Customs Duties Act (the "Deferred Customs Duties Act"), the custom duties drawback system of the Customs Duties Drawback Act (the "Customs Duties Drawback Act") referred herein, and other special exemptions. Finally, there are also certain kind of exports which are excluded from this simplified drawback as set forth in Article five bis of the Minor Non Customary Exports Drawback Act, such as those concerning copper, leather, fur, automotive industry, etcetera.

12.1.2 Customs duties drawback of the Customs Duties Drawback Act

Under the Customs Duties Drawback Act, any exporter shall be entitled to obtain the drawback of the duties and other customs charges previously paid in connection with raw material, elements partially produced or spare parts imported by the exporter or third parties, to the extent, and provided that, such items have been incorporated or consumed in the manufacture of the exported good.

The drawback shall be determined by the customs authorities, in accordance with the proportion of the items incorporated or consumed directly in the manufacture of the exported good, pursuant to the requisites, terms and conditions and control procedures fixed by the National Customs Director.

12.1.3 Customs duties deferred payment regime set forth by the Deferred Customs Duties Act

The Deferred Customs Duties Act provides for an incentive on imports regarding certain goods qualifying as "productive/capital goods." Although referred to imports, this incentive, however, ultimately has resulted in a benefit for the export industry, as Chilean products can be manufactured with the participation of said imported "productive/capital goods" and –as a consequence thereof- be exported to international markets on a competitive basis.

Generally, local legislation sets forth customs duties (*ad valorem*) on imports at a rate of six percent, plus VAT (19 percent), calculated on the customs value of the imported good. The Deferred Customs Duties Act introduced the so-called system for the deferred payment of customs duties, which allows the relevant importer to defer/postpone the payment of the referred custom duties with respect to certain goods, that is, only those qualifying and listed as "productive/capital goods" in a special Decree (generally, machinery, equipment, and similar items dedicated directly or indirectly to the production of merchandise or services or to their marketing). The customs duties may be deferred up to seven years, divided in several installments (the "Deferred Regime"), provided that the relevant capital goods have a minimum CIF value currently of U.S.$4,508.91 or the equivalent thereof in other currencies.

Only capital goods as referred to above, the productive capacity of which does not cease after first usage, are eligible, provided, however, that such goods have a depreciation period of at least three years. Goods for domestic use, recreational purposes, or any other unproductive services are not eligible.

Spare parts and accessories bearing a relation to the capital goods as referred to above can also enjoy the foregoing benefits, provided they are purchased jointly therewith. The relative value of such spare parts and accessories may not exceed ten percent of the aggregate value of those capital goods.

On the other hand, the Deferred Customs Duties Act also contemplates a fiscal credit available for purchasers acquiring new capital goods (first transference) manufactured locally, that is, in the country, for an amount equivalent to 73 percent of the customs duties currently in effect calculated on the net price of the invoice. The payment of the referred fiscal credit is subject to the same rules and modalities contemplated for the customs duties deferred payment regime, including deferred payment of the credit up to seven years.

All goods that have been imported under the Deferred Regime cannot be sold, unless (i) the total debt arising from the custom duties so deferred are fully paid, or (ii) the buyer assumes or undertakes in writing the obligation to pay for the outstanding balance. In this latter case, however, the relevant transfer of the goods must be authorized by the National Customs Service, and executed by public deed.

Any person that sells the goods without first complying with the above referred rules, shall be punished in accordance with Article 470, No.8 of the Criminal Code, that is, as guilty of fraud against the State of Chile.

12.1.4 Export credits

Documents evidencing a credit facility which is to be used in the finance of an export shall be exempted from stamp tax. The Superintendency of Banks and Financial Institutions (the SBIF, as defined in Section 13.1.2), shall determine the documents that qualify for this exemption. In

addition, the IRS has issued various resolutions referred to this matter, providing for the appropriate rules aimed at avoiding the misuse of this benefit.

12.1.5 Margin credits by banks

The Banking Act provides that banks cannot grant credits, directly or indirectly to the same individual or corporation, in an amount exceeding five percent of the effective patrimony of the relevant bank. However, this ceiling is increased up to ten percent in case the credit is granted to finance exports, and even up to 30 percent, whenever the credit associated to the export is, in addition, secured by such individual or corporation. See Section 13.2.8 below.

12.1.6 Governmental insurance/guarantees for exports

Decree Law No. 3,472, as amended by Law No. 19,677, created the so-called "Guarantee Fund for Small Entrepreneurs" (the "Small Entrepreneurs Fund"), which is formed, among other sources, by a contribution of the State of Chile, which purposes is to secure the credit that the financial institutions, whether public or private, may grant to these "small entrepreneurs," among others, those exporters "needing working capital" and who have exported an amount not exceeding a FOB value of U.S.$16.7 million on average during the two preceding calendar years. The credits secured by the Small Entrepreneurs Fund shall be expressed in local currency, and the guarantee by the Small Entrepreneurs Fund, either in local currency or U.S. dollars, cannot exceed, in the case of exporters, from UF4,810, (U.S.$163,301.73), by entrepreneur.

12.1.7 Other benefits

(a) the Customs Act (the "Customs Act") provides that the National Customs Director, with the approval of the Ministry of Finance, and only for export activities, could allow especial devices for temporary admission of certain goods in the premises/warehouse located in the plants or industries of the interested parties, such as raw materials, parts, pieces or elements which are to be transformed, assembled, integrated, manufactured or subject to process for finishing the good in said plant or industries. By means of this temporary admission, the interested party can suspend the payment of the customs duties and VAT up to 180 days, which is the maximum term for their assembly and exportation of the national final product abroad. The exporter is finally and definitively exempted from the referred "suspended" customs duties and VAT if the finished good is exported within the referred time frames; and

(b) in addition, there are legal provisions setting free trade zones in the first and twelfth Regions of Chile (collectively, the "Zones"), allowing the entrance of goods to these Zones free from taxes. The exit of the goods from these Zones abroad is also exempted from taxes. Conversely, taxes are applied, mainly customs duties and VAT, upon the exit of the good from the Zones into Chile, whether into the so called "Primary Extension Zone" (generally, the whole territory of the first and twelfth Regions, respectively), or to the rest of the country (Chile).

Finally note that it is not required that Chileans participate in the local enterprise in order for the investor to benefit from the incentives described in this Chapter 12.

12.2 Import/Export Regulations

As a general rule and absent any free trade or commercial agreement applicable thereto, imports of new products are subject to a six percent customs duty (*ad valorem*) and a 19 percent VAT, calculated on the customs value of the good. In addition, some luxury goods are subject to higher taxes in the form of VAT.

The importation of used assets is allowed (except for importation of certain items such as vehicles and tires, which are prohibited) subject to a 50 percent surcharge over the applicable custom duty, unless an exception is available for certain specific goods (in which case, the referred 50 percent surcharge would not apply).

Notwithstanding the foregoing, reduced *ad valorem* rates apply, in many cases down to 0 percent, as a result of the provisions of the free trade or commercial agreements entered into with, among others, Mexico, Canada, Unites States of America, the European Union, South Korea, China and P4 (the two latter already executed by the respective relevant countries but currently awaiting for ratification by Congress) or as a result of commercial agreements that may be in effect, for example, the Mercosur.

At present, there are no customs duties or other taxes applied on exports.

Regarding clearance of the goods through customs, the National Customs Service has issued general regulations requiring all importers or exporters to submit in advance to it certain documents named "Entry Statement" (*Declaración de Ingreso*) and "Exit Statement" (*Declaración Única de Salida*) for performing an import or export, respectively, in both cases based on relevant invoice and detailing applicable information regarding the concerned transaction, inter alia, information regarding the types of goods imported/exported and their value, their country of origin, classification on schedule of customs duties, place of acquisition, port of embarkation or destination, as the case may be, etc. Once these documents are received and approved by customs authorities, the import or the export will be deemed accepted and registered as such.

Exportation shall be deemed as performed when the merchandise exported under the relevant Exit Statement had been legally and effectively sent abroad, with the purpose of being used or consumed.

There are no local restrictions requesting a product to contain ingredients or components found or produced only in the country. Importation of certain components parts are allowed even if they are not intended to be ultimately incorporated in a final product.

Valuation of the goods is one of the most important issues to be kept in mind under local legislation. Pursuant to the Rules on Imports of Merchandise Act (the "Rules on Imports Act"), which governs the import of goods into the country, customs duties are generally levied on the "transaction value" of the relevant product, and the customs value of the merchandise shall be determined in accordance with applicable international standards in the matter, particularly, in compliance with the rules of the Agreement on Implementation of Article VII of the GATT (the "Customs Valuation Code"); based on these principles, the acceptable customs value for determining customs duties and taxes on import shall be the "transaction value," that is, "the price actually paid or payable for the relevant good," including insurance, freight and similar expenses incurred up to the place or location where the import into Chile is made.

Among the various rules set forth in the Customs Valuation Code for defining an acceptable "transaction value" there is one requisite which requires that buyer and the seller shall be independent from each other; provided that, the transaction value may be still accepted for customs purposes if such relation had not influenced or did not affect the price.

Please note that should the local customs authorities determine that the above mentioned rules are not met, such authorities may reject the relevant transaction value as the basis for assessing the customs duties and may re-assess such value as per provisions of Articles one through seven of said Customs Valuation Code.

In addition, the Central Bank has extraordinary powers to control import prices, as follows: Article 45 of the Central Bank Act, states that the Central Bank may verify that the value of imported or exported goods is consistent with their current value in the international market. The Central Bank shall approve or reject the value informed by the interested party and determine whether it prevails in the international market, without prejudice to the right of the interested party to file a claim against the determination before an administrative commission. The provisions of this Article 45 are in addition to, and without prejudice to, the customs regulations in effect in the Republic of Chile (essentially GATT, and more specifically, the rules of the Customs Valuation Code) or tax valuation, under the competence of the National Customs Service, IRS or other agencies, as the case may be.

Pursuant to the Rules on Imports Act, if the circumstances described in Article XIX of the GATT and in the WTO Agreement on Surcharges exist (mainly, increase in the imports in such an amount and conditions that causes or threaten to cause damage to national production), *ad valorem* surcharges may be imposed by the President of the Republic of Chile -through a Supreme Decree and upon previous recommendation by a special commission- on the relevant merchandise imported into Chile. The surcharges may be levied for a period of one year, renewable for another year when the referred circumstances still exit and remain at the end of the first year. In addition, compensation duties and anti-dumping measures may also be imposed locally regarding those imports that may cause serious present or imminent damage to national production, when low prices are a consequence of artificial circumstances existing in the original market. In such a case, the President of Chile must determine which merchandise is subject to the application of such compensating duties and anti-dumping measures, their percentages, and their effective duration, but such charges thereof may not, under any circumstance, remain in force for more than one year upon the favorable report/recommendation by the same commission above referred.

In addition, the Rules on Imports Act allows the President of the Republic to set forth specific duties or reductions on the customs duties (*ad valorem*), as the case may be, regarding the import of certain items, that is, wheat, wheat flour and sugar, and considering for such purposes the maximum (ceiling) and minimum (floor) values fixed and expected internally for the relevant item. The purpose of this sort of "import barrier" is to set a reasonable margin of fluctuation on the internal prices of the referred items as compared to the international price of the same products. The WTO, however, has requested Chile to eliminate this device by 2,014.

The Central Bank Act provides that any merchandise can be freely exported from or imported into Chile, subject only to the conditions that all of the applicable laws and regulations in force as of the date of the relevant transaction are duly complied with. No mandatory cash deposit requirements may be imposed by any authority as a prerequisite to perform any of them, nor can

quotas or limitations of other class or nature be established in connection therewith. Accordingly, by virtue of the foregoing "freedom principle," no import or export licenses are required, nor import or export quotas can be imposed.

Nevertheless, the President of the Republic, by a Supreme Decree issued through the Ministry of Finance, may prohibit the exportation or importation of goods to or from countries that have established restrictions on merchandise coming in or going out of Chile.

In addition, certain regulatory restrictions may be imposed upon import of certain goods, such as items hazardous for health or consisting in weapons, cattle, vegetables, pornography, etc.

12.3 International Treaties

12.3.1 Free Trade Agreements

A. Currently in Effect

1.- **Canada** ("Free Trade Agreement Chile-Canada" executed on December 5, 1996 and effective from July 5, 1997).

2.- **Central America** ("Free Trade Agreement between Chile and Central America" (Republics of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua) executed on October 18, 1999). The bilateral protocols with Costa Rica and El Salvador became effective on February 14, 2002 and June 3, 2002, respectively; the bilateral protocols with Guatemala, Honduras and Nicaragua are still in negotiations.

3.- **EFTA** ("Free Trade Agreement between the Republic of Chile and the Member States of the European Free Trade Association" (Republic of Iceland, Principality of Liechtenstein, Kingdom of Norway and Swiss Confederation) executed on June 26, 2003 and effective from December 1, 2004).

4. **United States** ("Free Trade Agreement Chile-United States of America" executed on July 18, 2005 and effective from January 1, 2004).

5.- **Mexico** ("Free Trade Agreement Republic of Chile-United Mexican States" executed on April 17, 1998 and effective from August 1, 1999).

6.- **South Korea** ("Free Trade Agreement between the Government of the Republic of Chile and the Government of the Republic of Korea" executed on February 15, 2003 and effective from April 1, 2004)

B. Pending Formalities

1.- **China** ("Free Trade Agreement between the Government of the People's Republic of China and the Government of the Republic of Chile" executed on November 18, 2005; pending ratification by Congress during 2006).

2.- **Panama** ("Free Trade Agreement between the Republic of Panama and the Republic of Chile" executed on February 5, 2006; pending ratification by Congress during 2006).

C. Pending Negotiations

1.- **India** (On March 8, 2006 a "Partial Scope Agreement between the Republic of Chile and the Republic of India" was executed, with view to negotiate a future Free Trade Agreement)

2.- **Japan** (Negotiations begun in November 18, 2005. Next round of negotiations in Santiago in May 2006).

3.- **Thailand and Malaysia** (On February 27 and 28, 2006, the Republic of Chile begun negotiations to study the viability of a Free Trade Agreement with the Kingdom of Thailand and the Federation of Malaysia).

12.3.2 Association Agreements

A. Currently in Effect

European Union ("Association Agreement between the European Community and its Member States, on one hand, and the Republic of Chile, on the other" executed on November 18, 2002 and effective from February 1, 2003).

B. Pending Formalities

P4 ("Transpacific Strategic Agreement for Economic Association" among the Governments of Brunei Darussalam, the Republic of Chile, New Zealand and the Republic of Singapore executed on July 18, 2005; pending ratification by Congress during 2006).

12.3.3 Complementation Agreements

1.- **Bolivia** ("Economic Complementation Agreement between the Republic of Bolivia and the Republic of Chile" executed on April 6, 1993 and effective from July 7, 1993).

2.- **Colombia** ("Economic Complementation Agreement for the Establishment of a Broader Economic Space between Chile and Colombia" executed on December 6, 1993 and effective from January 1, 1994).

3.- **Ecuador** ("Economic Complementation Agreement for the Establishment of a Broader Economic Space between Chile and Ecuador" executed on December 20, 1994 and effective from January 1, 1995).

4.- **Mercosur** ("Economic Complementation Agreement between the Republic of Chile and the *Mercado Común del Sur*" (Republic of Argentina, Federative Republic of Brazil, Republic of Paraguay and the Eastern Republic of Uruguay) executed on June 25, 1996 and effective from October 1, 1996).

5.- **Peru** ("Economic Complementation Agreement between Chile and Peru" executed on June 22, 1998 and effective from July 1, 1998).

6.- **Venezuela** ("Economic Complementation Agreement between the Government of the Republic of Chile and the Government of the Republic of Venezuela" executed on April 2, 1993 and effective from July 1, 1993).

13. Certain Financial Activities

13.1 Certain Governmental Authorities

13.1.1 The Central Bank

The Central Bank is an autonomous legal entity created by the Constitution. It is subject to the Constitution and its own constitutional law. To the extent not inconsistent with the Constitution or the Central Bank Act, the Central Bank is also subject to private sector laws (but in no event is it subject to the laws applicable to the public sector). It is directed and administered by a board of directors composed of five members designated by the President of Chile, whose appointment is subject to the approval of the Senate. The legal purpose of the Central Bank is to maintain the stability of the Chilean peso and the orderly functioning of Chile's internal and external payment system. The Central Bank's powers include setting reserve requirements, regulating the amount of money and credit in circulation, establishing regulations and guidelines regarding finance companies, foreign exchange (including the formal exchange market) and banks' deposit-taking activities.

13.1.2 The Chilean Superintendency of Banks

Banks are supervised and controlled by the Chilean Superintendency of Banks and Financial Institutions (the "SBIF"), an independent Chilean governmental agency. The SBIF authorizes the creation of new banks and non-banking financial institutions and has broad powers to interpret and enforce legal and regulatory requirements applicable to banks and non-banking financial institutions.

Furthermore, in case of noncompliance with such legal and regulatory requirements, the SBIF has the ability to impose sanctions. In extreme cases, it can appoint, with the prior approval of the board of directors of the Central Bank, a provisional administrator to manage a bank. It must also approve any amendment to a bank's bylaws or any increase or reduction in its capital.

The SBIF examines all banks and non-banking financial institutions from time to time, generally at least once a year. Banks and non-banking financial institutions are also required to submit their financial statements monthly to the SBIF, and such statements are published at least four times a year in a newspaper with countrywide coverage. In addition, banks and non-banking financial institutions are required to provide extensive information regarding their operations at various periodic intervals to the SBIF. The annual financial statements of banks and non-banking financial institutions, together with the opinion of their independent auditors must also be submitted to the SBIF.

13.1.3 The Superintendency of Securities and Insurance

The SVS, an independent Chilean governmental agency, is in charge of the control and supervision of public corporations, persons and entities which issue publicly traded securities, stock exchanges, stock brokers, mutual funds administrators, investment funds administrators, insurance companies, rating agencies, securitization companies, and the operations and transactions carried out by these entities, among others.

The SVS has broad authority to interpret existing laws and regulations, issue instructions on their application and order their compliance; investigate claims made by shareholders, investors and other persons against any of the supervised persons and entities; examine transactions, books, records, accounts and assets; set standards and rules for the preparation of financial statements, balance sheets and other records; and impose fines and other sanctions in the event of infractions and violations of the applicable laws and regulations and of the instructions, rules and orders issued by the SVS. The SVS also manages several registries which list, and maintain updated information on, the supervised persons, entities and activities, and other complementary registries, such as the registry of external auditors qualified to review public corporations.

Certain companies, such as insurance companies, stock exchanges and mutual funds administrators, require the authorization of the SVS to be created and operate. The SVS has the authority to revoke such authorization and, consequently, dissolve any such company.

With regard to public corporations, the Corporations Act specially empowers the SVS to: (i) solve controversies arisen with regard to the registration of a transfer of shares; (ii) summon a board of directors' meeting to discuss specific matters; (iii) summon ordinary or extraordinary shareholders' meetings; (iv) attend shareholders' meetings and solve any controversy occurred therein; (v) suspend summons to shareholders' meetings or the meetings themselves, when summoned or held in infraction of applicable laws and regulations; and (vi) act as liquidator of the corporation.

13.1.4 The Superitendency of Pension Fund Managers

The Superitendency of Pension Fund Managers is the main regulator of Pension Fund Managers (*Administradoras de Fondos de Pensiones*, the "AFPs"). It has complete subject matter and personal jurisdiction over the AFPs on all matters relating to their investments both domestic and foreign. It may impose administrative sanctions and fines over the AFPs and, in extreme cases (i.e. self dealing, insider trading, and other serious and repeated infringements of laws) it may revoke the authorization of existence of AFPs and decide their dissolution and liquidation. All such sanctions may be contested before the competent Court of Appeals.

The Central Bank has subject matter and personal jurisdiction over the AFPs on all foreign exchange matters. Also it sets maximum global limits for investments by the AFPs in specific securities, determines the formal secondary markets in which transactions over securities acquired with pension funds resources will take place, has certain custody authority over such securities and publishes credit ratings made by recognized rating agencies with respect to securities and/or issuers in which AFPs are allowed to invest. Failure to comply with any applicable Central Bank rule o regulation by an AFP may derive in administrative sanctions and fines.

13.2 Banks

13.2.1 The Banking Business

The Banking Act of 1997 (the "Banking Act") governs banks and non-banking financial institutions. The Banking Act provides that no individual or legal entity not specially authorized by law may:

(a) engage in the business reserved by law to banks and, particularly, in the business of receiving or soliciting money or other repayable funds from the public on a regular basis, whether in the form of deposits, loans or in any other manner; or

(b) engage, for its own account or for the account of other persons, in the business of money brokering or in the intermediation or brokerage of credits evidenced by securities, commercial paper or any other type of debt instruments.

None of such persons not authorized by law to engage in these kinds of activities is allowed to make advertising or publicity intended to promote itself as engaged in the banking and financial intermediation business, nor to offer the public services related thereto. Indeed, the Banking Act forbids any of such persons not authorized by law to engage in this kind of activities to have in its offices or premises any nameplate or announcement, whatever its language, indicating that it is engaged in the banking and financial intermediation business, nor can it use letterheads, forms or other paperwork which may induce to, or make someone, believe that such person is engaged in the banking or financial intermediation business. Any advertisement, publicity, mailing, press or other media release on this matter is prohibited by law. Furthermore, the Banking Act presumes that an individual or legal entity has violated the Banking Act in this regard whenever it has an office or any premises where the public is invited or solicited to bring in money at any title (whether as deposits or other repayable funds whatsoever), or whenever any publicity is made therefor. Any violation to the foregoing constitutes a criminal offense punishable with imprisonment.

13.2.2 Corporate Structure

The Banking Act defines a bank as a special purpose corporation which, authorized pursuant to the Banking Act and on the terms provided thereto, is engaged in the business of receiving money on deposit or other repayable funds from the public on a regular basis, with the purpose of granting credits, discounting negotiable instruments, making investments, engaging in financial intermediation or brokerage, yielding on such money and funds and, generally, undertaking any other transaction permitted by law.

The Banking Act provides that banks are managed by a board of directors, composed of an odd number of regular members of not less than five nor more than 11, with a maximum of two alternates. There is no restriction as to the nationality of the board members. No person can be a director of two banks and/or non-banking financial institutions simultaneously, nor be an employee or director of a governmental entity or state-owned company.

13.2.3 Scope of Activities

The Banking Act specifies all those operations and activities in which local banks may lawfully engage. It sets out an exhaustive list of such operations and activities including, among others, deposit-taking and acceptance of other repayable funds from the public; issuance of bonds or debentures; lending (in its various forms); discount of commercial paper; issuance of mortgage bonds; money brokerage; intermediation or brokerage of commercial paper and debt instruments (it does not include private offerings of securities); issuance of letters of credit and performance bonds; money collection, payment and transmission services; issuance and administration of means of payment (e.g., bankers drafts, travellers checks, credit, debit and payment cards, etc.); issuance of guarantees; trading in money market instruments, foreign exchange, financial futures and options,

exchange and interest instruments; acquisition, sale and trading in debt or fixed income transferable instruments and provision of underwriting services in connection with the issuance and placement of such securities, and acting as placement agent and underwriter in connection with offerings of newly issued shares of stock of public corporations.

Banks are also authorized by law to grant certain fiduciary services to their clients, including, among others, to act as general or special attorneys for the administration of assets of third parties; as administrators of assets that have been legated or passed on as inheritance subject to the condition that they be administered by a bank; and as administrators of fiduciary property when such administration has been stipulated in the act of constitution of the fiduciary property.

Local banks are authorized to set up local subsidiaries that may conduct the following operations:

(a) stockbrokerage, broker-dealers, management of mutual funds, investment funds or foreign capital investment funds, securitization, insurance brokerage, and

(b) leasing, factoring, financial advice, custody and transport of securities services, credit collection services and other financial services which the SBIF, by a general ruling, deems that are ancillary to the banking business. Local banks are also authorized to set up subsidiaries in the form of real estate corporations to carry out businesses related thereto.

The SBIF has been vested with the authority to authorize banks to undertake directly any of the activities stated in (b) above.

13.2.4 Incorporation

Pursuant to the Banking Act, the founding shareholders of a bank must file a prospectus with the SBIF, together with a business plan for the following three years. Upon acceptance of the prospectus by the SBIF, the latter shall issue an interim authorization that allows the founding shareholders to go forward in preparing the necessary documentation to incorporate the entity and fulfill certain additional requirements, as described herein below. A deposit amounting to at least ten percent of the envisaged equity capital of the prospective entity is required. Such deposit may only be drawn once the definite authorization of existence has been granted and the board of directors has taken office.

The founders shall also deposit the funds received for the payment of the shares issued by the newly formed banking institution. Such funds may only be drawn once the definitive authorization of existence has been granted and the board of directors has taken office.

The SBIF has a 180-day period to reject for cause the prospectus. Absent such rejection, the founding shareholders may request the certification thereof. This certification shall be deemed as the definitive authorization of existence.

Within such 180-day period, the founding shareholders shall incorporate the banking or non-banking financial institution and shall submit the relevant documentation to the SBIF. Upon verification of the effectiveness of the equity contributions, and provided the prospectus has not been rejected, the SBIF shall authorize the existence of the entity. Such authorization, as certified by the SBIF, shall be published and registered within 60 days, together with an abstract of the

entity's incorporation documents. Upon fulfillment of these requirements, the SBIF shall, within 90 days, confirm whether the entity is ready to start-up its operations, particularly whether it has the human and technological resources and control procedures required to operate. At such time, the SBIF shall also review the three-year business plan filed by the founding shareholders together with the prospectus. It is worth pointing out that the business plan shall be monitored by the SBIF on a continuous basis and may be modified to the extent such modifications do not adversely affect the financial conditions of the bank.

Once the compliance of these conditions is verified, the SBIF shall, within 30 days, authorize the entity to start-up its operations and grant a term of no more than a year to effectively do so.

A foreign financial institution may organize or acquire a bank in Chile or organize a branch in Chile to the extent:

(a) it is subject to an adequate surveillance in its jurisdiction of incorporation;

(b) it has been previously authorized by the relevant authorities of its jurisdiction of incorporation;

(c) there do exist adequate channels for the exchange of information between Chilean authorities and the relevant authorities of the jurisdiction of incorporation of the foreign financial institution; and

(d) it obtains the SBIF's approval as described in this Section.

In case of foreign investment companies that desire to organize or acquire a bank in Chile or to organize a branch in Chile, the Banking Act has different rules depending on whether the investment company is organized in a jurisdiction which applies the regulations of the Basle Committee. If the investment company is organized in a jurisdiction which does not apply the regulations of the Basle Committee, the same may organize or acquire a bank in Chile or organize a branch in Chile to the extent it ensures the SBIF it will comply with the same requirements described in the preceding paragraph, should such investment company have or thereafter acquire a significant equity ownership in a bank or non-banking financial institution of its jurisdiction of incorporation or elsewhere. If the investment company is organized in a jurisdiction which applies the regulations of the Basle Committee, such institution may organize or acquire a bank in Chile or organize a branch in Chile to the extent it undertakes to deliver to the SBIF the information issued by the authorities of its jurisdiction of incorporation or, if no such information exists, information issued by independent auditors of recognized international standing.

Additionally, in order to organize a branch in Chile, a foreign bank or non-banking financial institution shall produce and file with a local notary public:

(a) documentation evidencing the due organization, existence and good standing of the relevant foreign corporation pursuant to the laws of the country where it was incorporated, which documentation shall include legalized copies of the articles of incorporation and by-laws of the foreign corporation, and a certificate issued by the competent authority of such country as to the incorporation and good standing of such corporation; and

(b) the appointment of the local representative thereof, with ample powers and authority. The SBIF shall review the by-laws in order to determine that the same do not contain anything contrary to Chilean law, determine that the institution is worth of trust and confirm the capital contribution in the country.

The SBIF shall review the by-laws in order to determine that the same do no contain anything contrary to Chilean law, determine that the institution is worth of trust and confirm the capital contribution in the country.

13.2.5 Ownership Restrictions

The Banking Act states that, no person or company may acquire, directly or indirectly, shares of a bank that, solely or together with shares previously owned, represent more than ten percent of the capital stock of the bank without the prior authorization of the SBIF, which may not be unreasonably withheld. In the absence of such authorization, no person or group of persons acting in concert may exercise voting rights with respect to such shares. In determining whether or not to issue such an authorization, the SBIF shall consider a number of factors specified in the Banking Act, including the financial stability of the purchasing party.

The Banking Act also sets forth certain restrictions in respect of transactions that may affect the ownership of a Bank, and requires the prior authorization of the SBIF for:

(a) the merger of two or more banks;

(b) the acquisition of all or substantially all of the assets and liabilities of a bank by another bank;

(c) the acquisition of control, of two or more banks by one person or controlling group; or

(d) a substantial increase in the share ownership by a controlling shareholder of a bank.

Such prior authorization is required solely when the transaction would result in the acquiring bank or the resulting group of banks owning a significant market share in loans, defined by the SBIF to be more than 15 percent of all loans in the Chilean banking system. The intended purchase may be denied by the SBIF or conditioned on one or more of the following:

(a) the bank or banks maintain an effective equity higher than eight percent and up to 14 percent of their risk weighted assets;

(b) that the technical reserve specified in Article 65 of the Banking Act be applicable when deposits exceed one and a half times the resulting bank's paid-in capital and reserves; or

(c) that the margin for interbank loans be reduced to 20 percent of the resulting bank's effective equity.

The Banking Act further provides that the individuals or legal entities which, individually or together with other people, directly control a bank and who individually own more than ten

percent of its shares shall provide the SBIF reliable information on their financial situation in the form and in the opportunity set forth in Resolution No. 3,156 of the SBIF.

13.2.6 Minimum capital and capital adequacy requirements

Under the Banking Act, a bank must have a minimum paid-in capital and reserves of UF800,000 (U.S.$27,160,000). However, a bank is required to contribute only 50 percent of such amount as of the date of its incorporation. There is no mandatory time period for contributing the remaining balance. Notwithstanding the foregoing, as long as a bank has not contributed the minimum capital, it shall have an effective equity not lower than 12 percent of the bank's risk weighted assets. When such bank's paid-in capital reaches UF600,000 the effective equity required is reduced to ten percent of its risk weighted assets.

According to the Banking Act, each bank should have an effective equity of at least eight percent of its risk weighted assets, net of required allowances. Effective equity is defined as the aggregate of:

(a) a bank's paid-in capital and reserves;

(b) its subordinated bonds, considered at the issuing price (but decreasing 20 percent for each year during the period commencing six years prior to maturity), but not exceeding 50 percent of its Net Capital Base (as defined below); and

(c) its voluntary allowances for loan losses, up to 1.25 percent of risk weighted assets.

Banks should also have *capital básico*, or Net Capital Base, of at least three percent of its total assets, net of allowances. Net Capital Base is defined as a bank's paid-in capital and reserves and is similar to Tier 1 capital, except for the fact that it does not include net income for the period.

The calculation of risk weighted assets is based on a five-category risk classification system to be applied to a bank asset that is based on the Basle Committee recommendations.

13.2.7 Local infrastructure requirements

Banks shall inform, and in certain circumstances request the authorization of, the SBIF on the opening or closing of offices and branches. Banks are required by law to open on banking days. Likewise, the SBIF has ruled that such offices and branches shall be established in real estate owned or leased by the relevant bank and that the offices and branches shall comply with certain security, prevention and protection requirements. Finally, the SBIF has issued regulations regarding the maintenance and destruction of information and records and the standards for evaluating the management procedures of banks and non-banking financial institutions.

13.2.8 Consumer credit requirements

The Banking Act contains certain lending limits applicable to banks, forbidding them to:

(a) extend to any entity or individual (or any one group of related entities), directly or indirectly, unsecured credit in an amount that exceeds five percent of the bank's effective

equity, or in an amount that exceeds 25 percent of its effective equity if the excess over five percent is secured by certain assets with a value equal to or higher than such excess. In the case of foreign export trade financing, the five percent ceiling for unsecured credits is raised to ten percent and the 25 percent ceiling for secured credits to 30 percent. In the case of financing infrastructure projects built through the concession mechanism, the five percent ceiling for unsecured credits is raised to 15 percent if secured by a pledge over the concession, or if granted by two or more banks or finance companies which have executed a credit agreement with the builder or holder of the concession;

(b) extend loans to another financial institution subject to the Banking Act in an aggregate amount exceeding 30 percent of its effective equity;

(c) grant directly or indirectly a loan that shall allow an individual or entity to acquire shares of the lender bank;

(d) lend, directly or indirectly, to a director or any other person who has the power to act on behalf of the bank; and

(e) grant loans to related parties (including holders of more than one percent of its shares) on more favorable terms than those generally offered to non-related parties. Loans granted to related parties are subject to the limitations described in letter (a) above. In addition, the aggregate amount of loans to related parties may not exceed a bank's effective equity.

In addition, the Banking Act limits the aggregate amount of loans that a bank may grant to its employees to 1.5 percent of its effective equity, and provides that no individual employee may receive loans in excess of ten percent of this 1.5 percent limit. Notwithstanding these limitations, a bank may grant to each of its employees a single residential mortgage loan for personal use once during such employee's term of employment.

13.2.9 Reserve requirements and deposit insurance

Deposits are subject to a reserve requirement of nine percent for demand deposits and 3.6 percent for time deposits up to one year.

The Central Bank has statutory authority to increase reserve requirements up to an average of 40 percent for demand deposits (of any denomination) and up to 20 percent for time deposits (of any denomination) to implement monetary policy. In addition, a 100 percent technical reserve applies to demand deposits, deposits in checking accounts, or obligations payable on sight incurred in the ordinary course of business, other deposits unconditionally payable immediately or within a term of less than 30 days and time deposits payable within ten days prior to maturity, to the extent their aggregate amount exceeds 2.5 times the amount of a bank's paid-in capital and reserves.

The State of Chile guarantees up to 90 percent of the principal amount of certain time and demand deposits held by natural persons. The Sate's guarantee covers those obligations with a maximum value of UF120 per person (U.S.$4,074) for each calendar year, with respect to applicable time and demand deposits held by such person at any one Chilean bank.

13.2.10 Confidentiality

The Banking Act provides that deposits and other repayable funds of any type whatsoever received or taken by banks are subject to strict banking secrecy and no information or data in connection therewith may be disclosed or furnished to any person except for the depositor or customer itself, its agents or representatives or such other persons expressly authorized to access or receive such data by the customer or such agents or representatives. Contravention constitutes a criminal offense punished with imprisonment.

This same Article further provides that all other banking transactions are subject to "reserve," which is a form of confidentiality of lesser degree. However, these other banking transactions may be disclosed by the banking institutions to any third parties showing a legitimate interest thereon, provided that there is no reason to believe that knowledge of the same by such third parties may result in pecuniary damage to the customer. Detailed disclosure of these other banking transactions may be made to professional firms engaged in the evaluation of the relevant bank, but such firms are also subject to the same confidentiality duty.

Disclosure of institutional information as opposed to individual customer's information and items are not protected by the secrecy/reservation provisions within the limits authorized by the Banking Act as construed by the SBIF.

Pursuant to the same provision, Chilean Courts may order the disclosure or audit of specific transactions directly related to the pertinent trial facts, about deposits or other repayable funds of any type carried out by persons being a party to, or being charged or indicted at, the relevant civil or criminal proceedings.

Pursuant to the same provision, Chilean Courts may order the disclosure or audit of specified transactions in the course of a civil or criminal action directly related therewith.

Also, the Bank Checking Accounts and Checks Act specifically provides that banking institutions shall keep in "strict reserve" *vis-à-vis* third parties all of the information relating to checking accounts maintained by their customers and may only disclose information related therewith to the account holder or to such persons expressly authorized by the latter. However, Chilean Courts may order the disclosure of specific entries or movements of a banking account in the course of civil or criminal actions affecting the account holder.

This duty imposed on bankers to keep in "strict reserve" any information or data related to the checking accounts of its customers is a form of confidentiality tantamount to secrecy.

Those that fail to comply with or violate the bank's secrecy duty may be criminally prosecuted and together with the bank itself may be held liable for damages, if any. Disclosure of information or data subject to mere "bank reserve" may also result in civil liability to the concerned bank.

The relevant bank may be subject to administrative sanctions also. These sanctions may vary from a mere rebuke to fines, depending on the specific circumstances as determined by the SBIF.

13.2.11 Banks with Economic Difficulties

The Banking Act provides that if specified adverse circumstances exist at any bank, its board of directors must correct the situation within 30 days from the date of receipt of the relevant financial statements. If the board of directors is unable to do so, it must call an extraordinary shareholders' meeting to increase the capital of the bank by the amount necessary to return the bank to financial stability. If the shareholders reject the capital increase, or if it is not effected within the term and in the manner agreed to at the meeting, or if the SBIF does not approve the board of directors' proposal, the bank will be barred from increasing its loan portfolio beyond that stated in the financial statements presented to the board of directors and from making any further investments in any instrument other than in instruments issued by the Central Bank. In such a case, or in the event that a bank is unable to make timely payment in respect of its obligations or if a bank is under provisional administration of the SBIF, the Banking Act provides that the bank may receive a two-year term loan from another bank. The terms and conditions of such a loan must be approved by the directors of both banks, as well as by the SBIF, but need not to be submitted to the borrowing bank's shareholders for their approval. In any event, a creditor bank cannot grant interbank loans to an insolvent bank in an amount exceeding 25 percent of the creditor bank's effective equity. The board of directors of a bank that is unable to make timely payment of its obligations must present a reorganization plan to its creditors in order to capitalize the credits, extend their respective terms, forgive debts or take other measures for the payment of the debts. If the board of directors of a bank submits a reorganization plan to its creditors and such arrangement is approved, all subordinated debt issued by the bank, whether or not matured, will be converted by operation of law into common stock in the amount required for the ratio of effective equity to risk-weighted assets not to be lower than 12 percent. If a bank fails to pay an obligation, it must notify the SBIF, which shall determine if the bank is solvent.

13.2.12 Dissolution and Liquidation of Banks

The SBIF may establish that a bank should be liquidated for the benefit of its depositors or other creditors when such bank does not have the necessary solvency to continue its operations. In such case, the SBIF must revoke a bank's authorization of existence and order its mandatory liquidation, subject to the approval of by the Central Bank. The SBIF must also revoke a bank's authorization if the reorganization plan of such bank has been rejected twice. The resolution by the SBIF must state the reason for ordering the liquidation and must name a liquidator, unless the Superintendent of Banks assumes this responsibility. When a liquidation is declared, all checking accounts, other demand deposits received in the ordinary course of business, other deposits unconditionally payable immediately or that have a maturity of no more than 30 days, and any other deposits and receipts payable within ten days, are required to be paid by using existing funds of the bank, its deposits with the Central Bank or its investments in instruments that represent its reserves. If these funds are insufficient to pay these obligations, the liquidator may seize the rest of the bank's assets, as needed. If necessary and in specified circumstances, the Central Bank will lend the bank the funds necessary to pay these obligations. Any such loans are preferential to any claims of other creditors of the liquidated bank.

13.3. Non-banking financial institutions

13.3.1 Corporate Structure

The Banking Act defines non-banking financial institutions as corporations which sole and specific purpose is to act as intermediary agents of funds and to perform those operations set forth therein.

13.3.2 Scope of Activities

According to the Banking Act, non-banking financial institutions may:

(a) receive deposits, except for deposits in checking accounts;

(b) issue unsecured bonds or debentures in accordance with applicable law; and

(c) act as intermediaries in respect of operations concerning such financial instruments authorized by the Central Bank of Chile.

13.3.3 Incorporation

The rules described herein above for banks also apply to non-banking financial institutions.

13.3.4 Minimum capital and capital adequacy requirements

The minimum capital requirement to which non-banking financial institutions are subject is UF400,000 (U.S.$13,580,000). Except for the lower minimum capital, all of the rules set forth for banks to this respect and described herein above also apply to non-banking financial institutions.

13.3.5 Local infrastructure requirements

The rules described herein above for banks also apply to non-banking financial institutions.

13.4 Insurance Activities

13.4.1 General

The insurance business may be carried out in Chile only by corporations organized in Chile for the sole and specific purpose of existing either as a life insurance company or as a general insurance company. Therefore, foreign insurance companies are prevented from marketing insurance of any kind in Chile. Insurance companies are forbidden from insuring both life and general risks simultaneously, and need be organized with, and maintain at all times, a minimum capital of UF90,000 (U.S.$3,055,500).

Despite the above, any individual or legal entity residing or domiciled in Chile may freely contract any kind of insurance policy abroad, except for certain kinds of insurance provided for by the Chilean social security and welfare statutes and regulations.

Every time an individual or legal entity residing or domiciled in Chile contracts an insurance policy abroad, the foreign insurer may inspect the properties to be insured, liquidate and pay any claims brought up, and receive payment of the agreed premium in Chile.

Foreign insurance companies may not offer, sell, contract or otherwise market insurance policies in Chile, whether directly or through local or foreign intermediaries, brokers or distributors. Consequently, Chilean law does not provide for the registration or authorization of these companies, their intermediaries, brokers or distributors.

13.4.2 Insurance Companies

The Insurance Companies Act distinguishes two groups of insurance companies depending on the type of risk covered. Insurance companies of the first group could only insure risks over assets or credit, with the second group covering risks related to individuals (i.e. life insurance). Risks associated with credit could only be insured by special purpose companies of the first group, which shall not obtain or grant reinsurance when the reassured is a related person with the insurance company. Credit insurance is defined as the one covering losses or damages to the estate (*patrimonio*) of a given person due to the lack of payment of a monetary or money lending obligation.

Insurance companies of the first group are subject to debt to equity ratios set by law, as well as to investment limits per instruments and issuers.

In addition, the Insurance Companies Act provides that insurance companies shall hire at least two independent and recognized rating agencies registered with the SVS to continuously and uninterruptedly rate its obligations towards its clients.

In order to incorporate an insurance company, a special authorization from the SVS must be obtained, for which purpose the identity of the founding shareholders and the ultimate controllers holding at least ten percent of the equity capital must be evidenced to the authority together with evidence that they have net assets at least equal to the equity commitment made for incorporating the insurance company.

The SVS shall resolve the application within 30 days after filing thereof, unless new information is requested. In any event, 60 days after filing, the applicant may request the SVS to resolve the matter with the information provided, which shall approve or deny the application within the next five business days.

13.4.3 Reinsurance

Foreign reinsurance companies are authorized to operate in Chile, provided they are registered in the reinsurers registry kept by the SVS; are rated at least BB or its equivalent by two risk rating agencies of international repute and that they appoint an attorney-in-fact in Chile, which designation shall not be necessary if the reinsurance is hired through one of the reinsurance brokers registered with the SVS, whom shall be deemed as the reinsurer's representative. The reinsurance broker must hold an errors and omission insurance policy for an amount not lower than the higher of (i) UF20,000 (U.S.$679,000) or (ii) one third of the total premiums charged on reinsurances intermediated in Chile by the relevant reinsurance company in the last preceding year. Should the errors and omissions policy be issued by a foreign insurance company, the prior approval of the SVS should be obtained.

Foreign reinsurance brokers or intermediaries registered in a special ledger kept by the SVS may engage also in the intermediation of reinsurance business in Chile.

Reinsurance premiums or contributions payable abroad are subject to a two percent withholding income tax.

The reinsurance business may be carried out in Chile also by (i) insurance companies organized in Chile, subject to the general restriction that they may reinsure only those types of risks in which they are authorized to insure, and (ii) corporations organized in Chile for the sole and specific purpose of engaging in the reinsurance business regarding life or general insurance, or both. Domestic reinsurance companies must maintain at all times a minimum capital of UF120,000 (U.S.$4,074,000).

If any individual or legal entity engages in the insurance business or its intermediation in Chile infringing the above-mentioned rules, such infringement is punishable with imprisonment. Additionally, the SVS may close the offices or establishments where those activities are being performed. Should this happen, policyholders would have a right of action for damages (and recovery of premiums) against the distributor or intermediary and, probably, also against the insurance company with whom they contracted through such distributor or intermediary (based on the contractual relationship between such a company and its distributor or intermediary).

The law provides also that the court entertaining the criminal case may appoint a liquidator for purposes of liquidating the insurance policies that were unlawfully placed.

13.5 Pension Funds

13.5.1 Introduction.

In 1981, Chile's social security system was reformed and became privately administered. This system, which is compulsory for salaried employees and voluntary in other cases, allows individuals to freely select a pension fund into which a fixed percentage of their salary is contributed by their employer. The pension fund system has had a positive influence in the Chilean securities markets since it has raised a substantial pool of money that is available for private investment.

Pension funds are managed by private companies named Pension Fund Managers (*Administradoras de Fondos de Pensiones*) and may diversify their portfolios by investing in a wide, but limited, range of investment opportunities in Chile and abroad. The composition of pension funds investment portfolios is determined by several types of investment limits set by the Central Bank and the Superintendency of Pension Fund Managers (*Superintendencia de Administradoras de Fondos de Pensiones*, the "SAFP") within the ranges addressed by Decree Law No. 3500 (the "Pension Funds Act"), as amended, which sets forth the legal framework of the Chilean pension funds and the AFPs. The provisions of the Pension Funds Act are implemented by the rules and regulations issued by the SAFP.

Each AFP administers up to five different funds (A, B, C, D and E) which vary depending on the risk preference of the affiliates and certain restrictions imposed by the Pension Funds Act and the SAFP rules and regulations.

13.5.2 Limits on Investments

Generally, the investments by the AFPs are heavily regulated. Pursuant to the Pension Funds Act and the SAFP rules and regulations, the exclusive purpose of such investments shall be to obtain an adequate return and safety and any other planned purpose may be considered contrary to the interests of the affiliates and a material infringement of the obligations of the AFP. In the same line of reasoning, SAFP rules and regulations indicate that the AFPs, when purchasing or selling financial instruments with pension funds resources, shall guard against trading at prices that are prejudicial to the pension fund, taking into account those in existence in the formal markets when the transaction is made.

The Pension Funds Act list each of the securities and other investment instruments in which the pension funds are authorized to invest.

Regarding offshore investments, the Pension Funds Act makes a general reference to the alternatives available and leaves the final determination to the SAFP rules and regulations and to the *Comisión Clasificadora de Riesgo* (the "CCR"), which is the independent entity in charge of rating and approving each of the debt or equity securities available for investment by the AFPs.

According to the SAFP rules and regulations, the investment alternatives are as follows (the "Authorized Securities"):

(a) securities issued by foreign states and central banks;

(b) securities issued by international banking entities;

(c) securities issued by foreign banking entities;

(d) securities guaranteed by foreign states, central banks or banking entities, or by international banking entities (may be a subsidiary liability, if the principal obligor defaults);

(e) banking acceptances, i.e. securities issued by third parties and guaranteed by foreign banks;

(f) bonds issued by foreign companies;

(g) quotas in open-end and close-end foreign investment funds;

(h) shares of stock of foreign companies and banking entities;

(i) negotiable certificates evidencing foreign equity or debt securities, issued by depositary banks abroad;

(j) securities reflecting stock indexes; and

(k) securities and financial instruments authorized by the SAFP with prior report by the Central Bank, such as: (i) securities issued by municipalities, regional states or local governments; (ii) bonds convertible in stock of foreign companies; (iii) short term notes issued by foreign

companies; (iv) structured notes issued by foreign entities; and (v) other securities or instruments approved by the SAFP through a general rule.

In connection with the Authorized Securities, the AFPs are also allowed to enter into the following transactions using pension funds resources: (a) short term certificates of deposits issued by foreign baking entities; (ii) securities loan agreements; and (iii) other financial transactions authorized by the SAFP through a general rule with prior report by the Central Bank.

In accordance with the SAFP rules and regulations, the AFPs may also enter into options, forwards and futures agreements to hedge financial risks of interest rate and currency exchange variations in relation to the Authorized Securities.

As mentioned before, the Authorized Securities must be previously approved by the CCR. When referring to long-term debt instruments, the Authorized Securities must be rated AAA, AA, A or BBB; and, in the case of short-term instruments, they must be rated Level 1 (N-1), Level 2 (N-2) or Level 3 (N-3), all in accordance to the respective rating equivalency approved by the CCR. Similarly, equity instruments must be previously approved by the CCR to become an Authorized Security.

13.5.3 Authorized markets

Generally, the AFPs may only acquire securities or other investment instruments in the local and foreign Formal Secondary Markets, as such term is defined by the Central Bank.

Pursuant to the Financial Rules of the Central Bank, the foreign Formal Secondary Market shall be composed by the following entities or persons:

(a) stock exchanges and futures exchanges duly recognized, supervised and registered, when applicable, in the registries of the foreign markets in which the AFPs operate. Such exchanges may be conventional (e.g. New York Stock Exchange) or electronic (e.g. NASDAQ), and shall be located in countries with a sovereign rating of at least AA for Standard & Poor's or Aa2 for Moody's (the SAFP may waive this requirement). In addition, the exchanges shall have an internal regulation and minimum requirements for the registration and trading of securities, and a real time electronic information system;

(b) dealers and brokers duly registered and authorized in their respective markets by a formal regulatory entity (e.g. the Securities and Exchange Commission of the United States of America). These intermediaries may operate in the exchanges or over-the-counter, and shall comply with requirements similar to those explained for the exchanges; and

(c) banks authorized to receive money from the public and/or intermediate securities as principals and agents. These banks shall have a rating of at least A1 for Standard and Poor's, P1 for Moody's or F1 for Fitch on their short-term securities, and A- for Standard and Poor's and Fitch or A3 for Moody's on their long-term securities.

Having said the above, in the case of securities issued by financial institutions which have not been traded before, the AFPs may acquire them directly from the issuer. Similarly, quotas of open-end investment funds may be acquired and sold directly from or to the issuer.

13.5.4 Investment mechanisms

The offshore investments of the AFPs shall be made through one of the following mechanisms:

(a) direct purchase or sale to or through the intermediary agents in stock exchanges, to counterparties or other entities that may trade in the Formal Secondary Market; and

(b) through an attorney-in-fact who complies with the requirements set forth in the SAFP rules and regulations.

13.5.5 Title XII of Pension Funds Act

For the shares of stock of local public corporations to become eligible for significant investment by the AFPs using pension funds resources, they must be approved by the CCR and the by-laws (*estatutos*) of such corporations shall provide that:

(a) no person can concentrate, directly or through related parties, more than 65 percent of the voting stock of the corporation;

(b) the minority shareholders must hold at least ten percent of the voting stock of the corporation; and

(c) at least 15 percent of the voting stock must be subscribed by more than 100 unrelated shareholders, each owning shares with a value of at least U.F.100 based on the value of the shares as set forth in the last balance sheet.

The *estatutos* also shall provide the maximum percentage of concentration of voting stock in one person, directly or through related parties.

In any transfer of shares, corporations subject to Title XII can only register in any shareholder's name the amount of shares that does not exceed the applicable concentration limit. In relation to surplus shares, within 15 days, the relevant corporation shall notify the relevant shareholder so that such shareholder sells such surplus shares.

Preemptive rights provided under the Corporations Act cannot be exercised by any shareholder in any amount exceeding the concentration limits provided in the relevant *estatutos.*

No shareholder of any corporation subject to Title XII can vote, directly or in representation of other shareholders, shares exceeding the applicable concentration limit. Shares owned by related parties of the voting shareholder must be considered in calculating such concentration limit.

No person can represent shareholders who jointly own a percentage exceeding the applicable concentration limit.

Corporations subject to Title XII are entitled to request from shareholders, and shareholders must provide, all the information necessary to determine the existence of a "related party" relationship, as defined under the Securities Act. Shareholders who are entities must also provide, as requested by the relevant corporation, the names of their majority partners or shareholders and the individuals related thereto.

The regular shareholders' meeting must annually appoint account inspectors for these corporations. This is notwithstanding the fact that public corporations under the Corporations Act must also appoint external auditors.

In addition to the matters which are subject to a regular shareholders' meeting under the Corporations Act, the shareholders of corporations subject to Title XII shall also approve, in a regular shareholders' meeting, the investment and finance policy proposed by the management, which is a framework under which the corporation must operate. The investment and finance policy must set forth the management's authority for the execution, amendment or revocation of purchase, sale or lease agreements of goods and services which are essential for the normal operation of the corporation.

Specifically, the investment policy must set forth, as a minimum, the areas of investment and the maximum investment limits in each of them, indicating the participation in their control.

The finance policy must set forth, at least: (i) the maximum indebtedness level; (ii) the management's authority to agree with creditors restrictions to distribution of dividends and the granting of collateral and guarantees; and (iii) the assets declared essential for the operation of the corporation.

In addition to those matters subject to an extraordinary shareholders' meeting under the Corporations Act, for corporations subject to Title XII the following matters are also subject to an extraordinary shareholders' meetings:

1. the transfer by sale or otherwise of assets of the corporation declared essential for its operation in the investment and finance policy as well as any guarantee or security interest granted thereon; and

2. the early modification of the investment and finance policy approved by the regular shareholders' meeting.

The vote of 75 percent of the voting stock in an extraordinary shareholders' meeting is required to amend the *estatutos* in matters already agreed, in compliance with numbers 1 and 2 above, to subject the corporation under the provisions of Title XII.

Any act or contract between the corporation and its majority shareholders or executives, or with their related parties, shall be previously approved by two thirds of the board of directors and evidenced in the minutes of the relevant meeting. This is notwithstanding the requirements imposed upon transactions with related parties under Corporations Act.

14. Environmental Matters

14.1 Governing rules

The main rules of the Chilean environmental legislation are contained in Article 19 No. 8 of the Constitution, which guarantees to all persons the right to live in a pollution-free environment, and the Environmental Act (the "Environmental Act"), which introduced the Environmental Impact Assessment System ("EIAS") for projects or activities capable of causing environmental impact in any of their phases and created the National Environmental Commission (the "CONAMA"), with jurisdiction over national and multi regional projects, and its regional departments, the Regional Environmental Commissions (the "COREMA"), with jurisdiction over regional projects or activities.

The Environmental Act is complemented by the Regulations for the Classification of Wild Species, the Regulations of the Consulting Council for the CONAMA and COREMA, the Regulations of Prevention and Decontamination Plans, the Regulations for the Issuance of Quality and Emission Norms and, most importantly, by Executive Decree No. 95, of 2001, which contains the Regulations of the EIAS (the "EIAS Regulations").

Also, there are several Quality and Emission Norms which govern those activities that may have an impact on the environment, such as the disposal of waste, discharges into the air and water and health safety.

14.2 Environmental Impact Assessment System

14.2.1 General Considerations

The basic principle of the EIAS is that projects or activities that may have an environmental impact in any of their phases can only be executed or modified upon assessment of their environmental impact in accordance with the provisions set forth in the Environmental Act and the EIAS Regulations.

In general, Article ten of the Environmental Act provides that the following activities are subject to the EIAS:

1.- Aqueducts, reservoirs, dams, damming, and significant works of drainage, dredging, defense or alteration of natural bodies or courses of water.

2.- High voltage electric transmission lines and their sub-stations.

3.- Energy generating centrals in excess of three megawatts.

4.- Nuclear reactors and premises, and related installations.

5.- Airports, bus, truck and train terminals, railways, service stations, highways and other public roads that may affect protected areas.

6.- Ports, sailing ways, shipyards and maritime terminals.

7.- Urban and tourist development projects in zones not contemplated in the plans set forth in following number 8.

8.- Urban development regional plans, plans for groups of boroughs or *comunas*, regulating plans for a borough or *comuna*, sectional plans, and industrial or real estate projects that modify such plans or are to be located in zones declared as latent or saturated.

9.- Mining projects, including coal, oil and gas and prospecting, exploitation, disposal and processing plants of residues, as well as the industrial extraction of clay, peat and dry substances.

10.- Oil, gas, mining and other kinds of pipes.

11.- Industrial installations, such as metallurgical, chemical, textile, producers of building materials, metallic and tanning equipment and products, of industrial size.

12.- Agricultural industries, slaughterhouses, farms and stables for the growing, milking and fattening of animals of industrial size.

13.- Forestry development and exploitation projects in fragile soil, lands covered with native woods, cellulose and paper industries, wood, chips and sawing plants of industrial size.

14.- Projects for intensive exploitation, growing and processing plants of hydro-biological resources.

15.- Production, storage, transportation, disposal or recycling on a regular basis of toxic, explosive, radioactive, flammable, corrosive or reactive substances.

16.- Sanitary projects, such as sewer and tap water systems, water or solid residue treatment plants, sanitary fillings, submarine outlets, systems for treatment or disposal of solid or liquid industrial residues.

17.- Execution of works, programs or activities in national parks, national reserves, natural monuments, virgin zones reserves, nature sanctuaries, sea parks, sea reserves or in any other area under official protection in those cases where it is allowed by applicable law.

18.- Massive application of chemical products in urban or rural areas near populated zones or courses or bodies of water that may be affected thereby.

Depending on the effects, characteristics or circumstances of the project or activity concerned, the petitioner shall submit to the authority a Statement of Environmental Impact (a "Statement") or a Study of Environmental Impact (a "Study") regarding the environmental impact that the relevant project or activity will have.

A Statement shall be submitted in the cases the environmental impact caused by the relevant project or activity does not generate or present any of the effects, characteristics or circumstances mentioned below. If the environmental impact caused by the relevant project or activity does create or present at least one of the effects, characteristics or circumstances mentioned

below, the petitioner shall submit a Study. Pursuant to Article 11 of the Environmental Act, the effects or characteristics, that allow us to determine whether a Statement or a Study shall be submitted to the authority, are the following:

a) Risk to the population's health, as a consequence of the quantity and quality of the discharges, emissions or residues;

b) significant adverse effects on the quantity and quality of the renewable natural resources, including ground, water and air;

c) resettlement of human communities, or significant alteration of the life and customs of human groups;

d) location near to human settlements, resources and protected areas susceptible of being affected, as well as the environmental value of the territory in which the project will be located;

e) significant alteration, in terms of magnitude or duration, of the landscape or tourist value of a certain area, and

f) alteration of monuments, sites of anthropological, archaeological or historical value and, in general those belonging to the cultural patrimony.

For the purpose of assessing the risks and the adverse effects indicated in letters a) and b) above, respectively, the provisions set forth in the environmental quality and emission norms in effect shall be taken into consideration. If there are no such rules, the rules in effect on the States which the EIAS Regulations indicates shall be considered. For these purposes, Article seven of the EIAS Regulations provides that the environmental quality and emission norms which shall be used as a reference to assess whether the above-mentioned risks and the adverse effects are generated, shall be those in effect in the following countries: the Federal Republic of Germany, the Argentine Republic, Australia, the Federal Republic of Brazil, the Commonwealth of Canada, the Kingdom of Spain, the United Mexican States, the United States of America, New Zealand, the Kingdom of the Netherlands, the Italian Republic, Japan, the Kingdom of Sweden and the Swiss Confederation. For the use of such reference norms the State which presents similarities on its environmental components with the national and/or local condition shall have priority.

Once a Statement or Study is approved by means of a favorable Environmental Qualification Resolution, no environmental license or permit may be denied to the applicable project, provided that all applicable permits by the appropriate authorities had been duly individualized in the corresponding Statement or Study. On the other hand, if the Environmental Qualification Resolution is unfavorable to the Statement or Study, all the relevant authorities are obligated to reject the corresponding licenses or permits due to its environmental impact, regardless of whether it complies with the other legal requirements.

14.2.2 Procedure

A. Study

A Study is a detailed, ample and comprehensive report and must contain a description of the project or activity; an action plan for complying with applicable environmental legislation; a description of the effects, characteristics or circumstances provided by the Environmental Act; the identification, forecast and assessment of the environmental impacts to be caused by the project or activity, including potential risk situations; mitigation and restoration plans and compensation measures, and any applicable measures for risk prevention and accident control; and the follow-up plan for relevant environmental variables which motivated the Study.

The CONAMA or COREMA, as the case may be, has 120 days (which may be extended) to issue a decision regarding the Study. However, if within such period the petitioner submits an insurance policy covering any potential damage to the environment, the relevant authority may grant a temporary approval which allows the petitioner to begin the execution of the relevant project or activity under its own responsibility.

B. Statement

A Statement is a sworn affidavit whereby the petitioner represents that it complies with the applicable environmental laws and regulations applicable to its project or activity.

The CONAMA or COREMA, as the case may be, has 60 days (which may be extended) to issue a decision regarding the Statement.

C. Environmental Qualification Resolution

In both cases, the relevant authority may request additions, rectifications or extensions to the contents of the Statement or Study, requirements with which the petitioner shall comply. The administrative body shall, after due analysis, issue a resolution approving or rejecting the relevant Statement or Study (the "Environmental Qualification Resolution"). The Environmental Qualification Resolution may provide, when applicable, conditions or environmental requirements that must be complied with in order to execute the project or the activity and those necessary in order to obtain the permits which according to the law have to be issued by the corresponding governmental entities. The above conditions may be appealed before the competent administrative authority within a 30-day term from the date of the corresponding notification.

D. Appeal

The petitioner can appeal the resolution that rejects a Statement before CONAMA's Executive Director. The resolution rejecting a Study or establishing conditions and requirements to the project may be appealed before CONAMA's Governing Board. These appeals must be filed within 30 days from the notification of the pertinent resolution. In turn, the resolution of the Executive Director and of the Governing Board may be appealed before the Ordinary Courts.

14.3 Participation of Civil Organizations and Individuals

In the case of a Study, the Environmental Act contemplates the community's participation in the environmental impact assessment procedure. For this purpose, the Environmental Act provides that the petitioner who has filed a Study must publish an excerpt thereof, duly certified by the relevant authority, in the Official Gazette and in a regional or national newspaper, as applicable,

within ten days from the pertinent filing. Additionally, civil organizations and individuals may request from the relevant authority access to a specific Study (except for proprietary information).

Civil organizations and individuals may submit objections to a Study within 60 days from the publication of the excerpt. The relevant authority must duly consider such objections when explaining the rationale for its decision and notify the latter to the objecting parties. If these objections are not properly addressed, claimants may bring their objections to the superior authority within 15 days, which, in turn, must render a definitive opinion within 30 days. During this review process, the effects of the decision being challenged are not suspended.

For the purpose of maintaining the community duly informed, the COREMA or CONAMA, as the case may be, shall publish the first business day of each month, in the Official Gazette and in a regional or national newspaper, as the case may be, a list of the projects and activities subject to a Statement that may have been filed during the immediately preceding month.

14.4 Environmental Liability

The Environmental Act punishes negligent and willful actions that cause environmental damages. In general, the liability of the originator for the environmental damage is legally presumed when the environmental laws, regulations or norms have been violated. Compensation shall only apply in cases when a "cause and effect" relation between such violation and the damage has been proven.

If as a consequence of willful misconduct or negligence an environmental damage is caused (such damage being defined as "any significant loss, decrease, detriment or impairment caused to the environment or to one or more of its components"), an *acción ambiental* or "environmental action" -the sole purpose of which is to obtain the restoration of the damaged environment- may be filed before the Ordinary Courts by (i) the individuals and entities which have suffered the damage; (ii) by the municipalities, for the situations occurred in their territories, and/or (iii) by the State.

14.5 Carbon Credit Market in Chile

14.5.1 General Considerations

Chile is a signatory party of the United Nations Framework Convention on Climate Change ("UNFCCC") and the Kyoto Protocol.

Being Chile an Annex II Party to the Kyoto Protocol it does not have the obligation to reduce greenhouse gas ("GHG") emissions. Notwithstanding, it is eligible to participate in the Clean Development Mechanisms ("CDM") set forth by the UNFCCC and the Kyoto Protocol. Certified Emission Reductions ("CERs") are generated by climate-friendly, sustainable development projects in developing countries. They can be used by developed country governments and companies to meet their reduction commitments under the Kyoto Protocol.

14.5.2 CDM Projects

In Chile the projects that may apply for CDM shall have to reduce or capture GHG emissions and mainly correspond to: (i) Agricultural and Forestry Projects; (ii) Transportation Projects; (iii) Energy Projects; and (iv) Waste Management Projects.

Those projects which reduce or capture GHG may issue CERs.

A. Characteristics of CDM Projects.

(a) The project has to contribute to the sustainable development of the country.
(b) The project must be approved by the Designated National Authority, which in the case of Chile is the CONAMA
(c) The Project has to contribute to the reduction of GHG
(d) The GHG reductions must be real, measurable and long term.

The GHG reductions must be additional, that is, greater than what they would have been if the project hadn't been materialized.

B. Cycle of the CDM projects.

The authorization process of CDM projects and the issuance of the corresponding CERs shall comprise the following steps:

C. The Project Design Document.

The project design document shall be made in accordance with the instructions contained in the form approved by the CDM Executive Board.

D. Certificate from the Designated National Authority.

The interested party shall obtain from CONAMA (the Designated National Authority) a document[12] in which -as Designated National Authority- confirms the voluntary character of the project and evidences that the latter contributes to the sustainable development in Chile.

E. Validation by the Designated Operational Entity.[13]

The project shall be evaluated and validated by any of the Designated Operational Entities appointed by the CDM Executive Board. The authorization process is addressed under Decision 17/CP.7, Section G on Validation and Registration, and Appendix B UNFCCC.

F. Registration by the CDM Executive Board.

The registration is the official approval that the CDM Executive Board grants to the project validated by the corresponding Designated Operational Entity which is a condition precedent for the verification, certification and issuance of the CERs.

[12] See Section G, on Validation and Registration, Subsection 40, letter a, of Decision 17/CP.7 under the UNFCCC.
[13] The CDM Executive Board, in accordance with paragraph 20 of the CDM modalities and procedures, shall maintain a publicly available list of designated operational entities.

As of this date there are ten CDM projects -where Chile is the host party- registered with the CDM Executive Board.

G. Verification and Certification.

Verification is the periodic independent review and the subsequent determination by the Designated Operational Entity of the observed reductions of anthropogenic emissions at the GHG sources during the verification period.

Certification is the assurance given in writing by the Designated Operational Entity that during a certain period an activity of a CDM project achieved the reduction of anthropogenic emissions at GHG sources which have been verified.

H. Issuance of the CERs.

The CDM Executive Board shall issue the CERs corresponding to the reduction of anthropogenic emissions at GHG emission sources which have been verified.

15. Mining

15.1 Introduction

The Constitution sets forth the fundamental provisions of State ownership of all mines. This is also provided in the Mining Code (the "Mining Code"), where State ownership is defined as follows: "The State has the absolute, exclusive, inalienable and imprescriptible ownership of all mines, . . ., notwithstanding the ownership by individuals or entities of the surface land in which they may be situated."

The *Ley Orgánica Constitucional sobre Concesiones Mineras* (the "Mining Concessions Act") adds that "metallic and non metallic mineral substances… are subject to concession, with the exception of liquid or gaseous hydrocarbons, lithium, and deposits in territorial waters."

Authors and scholars are basically in agreement that the provisions contained in the Constitution, in the Mining Concessions Act, and in the Mining Code all set forth the system which, while contemplating State ownership (*dominium directum*) of all mines, establishes the principle that the purpose of State ownership is principally to assign or grant concessions as original title (*dominium utile*) in favor of the discoverer of the mine.

This means that a mining investor is not, technically speaking, the owner of the mine or of the mineral deposit, but rather is the owner of a concession or real right (right *in rem*), which enables the investor to exploit the deposit, to acquire title to the ores which have been mined, and to sell them at his discretion. Therefore, the mining investor is in fact the owner of a non tangible or incorporated asset, which is the mining concession, which exists by virtue of a judicial judgment and which is treated as the equivalent of immovable property.

15.2 Mining Legislation

15.2.1 Introduction

The Mining Concessions Act provide that any person whatsoever, individuals or companies, nationals or foreigners, may request and obtain, exploration or exploitation mining concessions over grantable ores, provided that the legal procedures therefore are duly complied with. No discrimination is made in this regard between nationals and foreigners. However, it should be noted that certain restrictions apply to foreigners of neighboring countries in respect of ownership of the surface land located near the borders with their respective countries.

Pursuant to the Mining Concessions Act, a mining concession represents a real and immovable right different and independent from ownership of the surface land, even if it belongs to one and the same owner; enforceable against the State and any other person; transferable and transmissible; subject to mortgage and other rights *in rem* and, in general, to any act or contract.

The mining concession can be either for exploration or exploitation.

Mining concessions are granted by a judicial decision rendered by a competent court of justice in the context of a non-litigious proceeding filed with such court, the purpose of which is to

identify, define and create the concession. No administrative agency of the government whatsoever is directly involved in the procedure whereby a mining concession is created, except for the *Servicio Nacional de Geología y Minería* (National Geological and Mining Bureau) which has only a technical advisory role in such procedure.

The territorial extension of a mining concession consists of a solid shape, the surface of which is a horizontal parallelogram of right angles, and the depth of which is indefinite within the vertical planes that bound it. Both the length and width of the parallelogram shall have a North-South orientation based on U.T.M. coordinates.

15.2.2 Mining Exploration Concession

15.2.2.1 Definition

Neither the Mining Concessions Act nor the Mining Code define the mining exploration concession. Legal scholars have defined such kind of concession as "a real and immovable right of limited duration, which grants its holder -in its territorial extension- the exclusive rights of investigating the existence of grantable mineral substances and of requesting one or more mining exploitation concessions."

15.2.2.2 Rights

The mining exploration concession grants the holder thereof (the "exploration concession holder") the following rights:

(a) to freely open test pits and carry out other mining exploration operations, observing applicable control and safety regulations, among other things;

(b) to file court proceedings to create exploitation concessions, which will give the exploration concession holder a preference to create an exploitation concession;

(c) to appropriate the ores which the concession holder is entitled to extract in connection with exploration and research operations; and

(d) to receive compensation, in the event of expropriation.

15.2.2.3 Duration

The term of an exploration concession is two years, from the date of the court's decision. Such term may be extended for another two years, provided that the exploration concession holder requests the extension thereof and abandons at least half of the total surface granted.

15.2.2.4 Size of area

The horizontal sides of the exploration concession must measure a minimum of 1,000 meters or multiples thereof, and the surface cannot extend to more than 5,000 hectares. However, a single applicant may request and obtain as many contiguous concessions as desired. Each such concession, however, shall be treated separately and independent for all legal purposes.

15.2.2.5 Transferability

Mining concessions of any kind constitute real and immovable rights different an independent from the ownership of the superficial land, event if both of them belong to one and the same owner. Mining concessions, including mining exploration concessions, can be transferred by acts *inter vivos* or *mortis causa*, and in general they can be the object of all acts or contracts, being governed by the same civil laws applicable to other immovable properties, and by the specific provisions contained in the Mining Code.

15.2.3. Mining Exploitation Concession

15.2.3.1 Definition

Neither the Mining Concessions Act nor the Mining Code define the mining exploitation concession. Legal scholars have defined such kind of concession as "a real and immovable right of indefinite duration, which grants to its holder –in its territorial extension- the exclusive rights of investigating the existence of grantable mineral substances, extracting such grantable mining substances and becoming the owner of such substances at the time of their extraction."

15.2.3.2 Rights

The mining exploitation concession grants the holder thereof (the "exploitation concession holder") the following rights:

(a) to freely explore and exploit the mine included within the boundaries of the concession and take all actions directed to attaining such objectives, subject, however, to applicable control and safety regulations, among other things;

(b) to appropriate the mineral substances mined within the boundaries of the concession; and

(c) to receive compensation, in the event of expropriation.

15.2.3.3 Duration

The term of an exploitation concession is indefinite.

15.2.3.4 Size of area

The horizontal sides of the exploitation concession must measure a minimum of 100 meters or multiples thereof, and the surface thereof cannot extend to more than ten hectares. However, a single applicant may request and obtain as many contiguous concessions as desired. Each such concession, however, shall be treated separately and independent from the others.

15.2.3.5 Transferability

As explained above, mining concessions can be the object of all acts or contracts, being governed by the same civil laws applicable to other immovable properties, and by the specific provisions contained in the Mining Code.

15.2.4 Royalties

15.2.4.1 Mining Duties

The holder of a mining concession, whether for exploration or exploitation, must pay annually, in advance, a royalty in order to maintain the ownership over such concession. Such royalty is designated as *patente minera* (the "Mining Duties").

Whereas for the exploitation concession the amount of the Mining Duties is equivalent to 1/10th of a UTM for each complete hectare; in the case of the exploration concession, the Mining Duties are 1/50th of a UTM for each complete hectare. Exceptionally, exploitation concessions the main economic interest of which is a non-metallic substance or the metal placers existent therein, or any exploitation concessions over substances existent in salt mines, are subject to an annual Mining Duties equivalent to 1/30th of a UTM for each complete hectare, provided that certain requirements are met.

15.2.4.2 Mining Tax

In addition to the Mining Duties the so-called Royalty Act (the "Royalty Act") establishes a specific tax on mining activities (the "Mining Tax"), levied on mining companies whose annual sales are greater than the equivalent value of 12,000 metric tons of fine copper ("MFT"). The value of MFT will be determined according to London Metal Exchange Grade A copper cash quotation, which will be published, in domestic currency, within the first 30 days of each year by the Chilean Copper Commission.

The Mining Tax will be levied on the "taxable operational income" of the "mining exploiters" (whoever extracts and sell mining products which could be subject to mining concessions), as follows:

Annual Sales of the Mining Exploiters	**Rate**
1. Mine operator with annual sales equal to or less than the equivalent of 12.000 MFT.	No subject to the tax
2. Mine operator with annual sales equal to or less than the equivalent of 50.000 MFT, and greater than the equivalent of 12.000 MFT:	---
2.1 Regarding that portion in excess of 12.000 and no greater than 15.000 MFT:	0.5%
2.2 Regarding that portion in excess of 15.000 and no greater than 20.000 MFT:	1%
2.3 Regarding that portion in excess of 20.000 and no greater	1.5%

than 25.000 MFT:	
2.4 Regarding that portion in excess of 25.000 and no greater than 30.000 MFT:	2%
2.5 Regarding that portion in excess of 30.000 and no greater than 35.000 MFT:	2.5%
2.6 Regarding that portion in excess of 35.000 and no greater than 40.000 MFT:	3%
2.7 Regarding that portion in excess of 40.000 MFT:	4.5%
3. Mine operator with annual sales greater than 50.000 MFT:	5%

The "taxable operational income" is defined in the Royalty Act, in general terms, as the value obtained after deducting from annual sales those costs and expenses associated to sales which would qualify as deductible costs and expenses under the general rules of the Income Tax Act. However, certain expenses which are normally accepted as tax expenses, are explicitly excluded from the calculation of the Mining Tax (e.g. interests, accumulated losses, accelerated depreciation (regular depreciation is admitted, though) and amortization for start-up expenses for a period exceeding six years).

As indicated above, the Royalty Act also amends Decree Law 600. Pursuant to this amendment, in cases of investments of amounts of no less than U.S.$50 million, the Mining Tax would be invariable for a period of 15 years, in terms that foreign investments would be exempt from new mining taxes. Moreover, for the same period of time the Mining Tax may not be applied in less favorable terms, as to rate and calculation mechanism. The invariability of the Mining Tax is not compatible with the invariability currently contained in Decree Law 600, so that foreign investors must select the invariability regime to which they will be subject.

15.2.5 Mining Easements

The owners of mining concessions are entitled to create rights of way or easements over surface land and/or over mining concessions owned by third parties, for the purpose of facilitating mineral exploration and exploitation, provided that a proper compensation is paid. This right includes easements for mining facilities and plants, tailing deposits, power and communications facilities, pipelines, roads, etcetera.

Surface lands are subject to the encumbrance of being occupied to the extent required by mining operations, by ore yards and dumps, slag and tailings; ore extraction and beneficiation plants; electricity substations and communication lines, channels, reservoirs, piping, housing, constructions and supplementary works; and to the encumbrance of transit and of being occupied by roads, railways, piping, tunnels, inclined planes, cable ways, conveyor belts and all other means used to connect the operations of the concession with public roads, beneficiation facilities, railroad stations, shipping ports and consumer centers.

Easements in favor of mining concessions are essentially temporary, may not be utilized in purposes other than those for which they were created and will cease when their utilization is discontinued. Easements may be expanded or restricted according to the development of the work connected therewith.

15.2.6 Companies that operate in mineral business activities

In addition to the different types of companies described under Chapter 3 on "Investment Vehicles" above, the Mining Code provides for the existence of two specific company types available for the mining industry, the "legal" and the "contractual" mining companies.

The first (the legal mining company) is designed to provide less sophisticated mining businesses with a simple mandatory company structure. By the mere fact that two or more persons or entities jointly registering an interest or claim on a mining field, a separate legal entity is thereby automatically incorporated. The Mining Code provides for a comprehensive body of rules for its governance, shareholders right and duties, among others, that are essentially the company's by-laws.

The second type, the "contractual" mining company (*sociedad contractual minera*, the "SCM"), is intended to allow for a more sophisticated corporate structure. The Mining Code states that venturers willing to perform mining activities (the statutory language specifically describes the purpose of these companies in terms of "exploration ... exploitation ... processing [the mine's] minerals ..." and excludes any mention to mere investments in mining interests) may agree on a corporate structure based in the fundamental characteristics of the "legal" mining company. These characteristics are:

(a) it is a stock company which shall have at least two shareholders;

(b) as a general rule the company business is resolved and approved in a shareholders' meetings by simple majority;

(c) the administration may be entrusted to one or more administrators appointed by the shareholders or to a board of directors;

(d) profits may be distributed in minerals;

(e) shareholders must contribute to pay maintenance and exploitation expenses of the company pro rata to their shares, and

(f) the company automatically ceases to exist in the event that the mining interests are wholly disposed of, terminated, or precluded; and all shares wind up being held by one single individual or entity. On the basis of this pattern, shareholders may further agree upon the corporate structure that best suits their needs.

Shareholders are not liable for the obligations of the SCM to third parties. Shares are freely transferable and assignable. To perfect a transfer of shares, the owner of record and the transferee must enter into an assignment agreement evidenced in a notarized document and file it with the

Register of Mines. Likewise, shares can be pledged to secure obligations provided the same formalities to transfer them are followed.

It is of the essence of an SCM that at the time of its formation one or more mining properties be a part of its assets.

Incorporating a contractual mining company requires an agreement among the original shareholders evidenced in a public document signed before and filed with a notary public and recorded with the Register of Mines.

15.3 Mining Activities in Special Areas

As a general principle, any person is entitled to freely prospect (*catar*) and excavate (*cavar*) in open land owned by any person with mining purposes. In all other cases, a written authorization shall be obtained from the owner, the possessor or the holder of the land concerned, as the case may be, or from the relevant governor or mayor when the State or a municipality, respectively, is the owner of the land concerned (Article 15 of the Mining Code).

Whenever such authorization to prospect and excavate is denied or the exercise thereof hindered, an action may be brought in court requesting the competent judge to resolve. In any case, only the owner of a house and the premises thereof, or the owner of vineyards or fruit plantations may issue such authorization.

Notwithstanding the above-mentioned rules regarding the authorization to prospect and excavate, Article 17 of the Mining Code provides that, regardless of a mining concession granted pursuant to the law, mining works (*labores mineras*) can only be executed once the authorizations therefore have been issued by the competent authority, whenever such authorizations are required as indicated herein below. Infringement of Article 17 of the Mining Code is sanctioned with fines and liability for damages caused.

a) Mining works in any of the following places shall be authorized by the respective governor:

1. in cities or towns, in cemeteries, in the shoreline of authorized ports and in places where the water necessary for population is obtained;

2. in places located at a distance of less than 50 meters, measured horizontally, from buildings, public roads, railways high voltage electricity wires, cable lifts, channels, fluvial defenses, flowing waters and lakes of public use; and

3. in places located in a distance of less than 200 meters, measured horizontally, from dams, radio communication stations, antennas and telecommunication installations (Article 17 No. 1 of the Mining Code).

b) Mining works in territorial extensions declared as national parks, national reserves or natural monuments shall be authorized by the maximum authority of the Region where the relevant park, reserve or monument is located (Article 17 No. 2 of the Mining Code).

c) Mining works in land located near the borders of Chile shall be authorized by the Frontiers and Borders Agency (*Dirección de Fronteras y Límites*) (Article 17 No. 3 of the Mining Code).

d) Mining works in any of the following places shall be authorized by the Ministry of Defense:

1. at less than 500 meters from premises used for the storage of inflammable or explosive products (Article 17 No. 4 of the Mining Code); and

2. in military premises or zones dependent of said Ministry, such as, ports and airstrips; or in land adjacent in 3,000 meters, measured horizontally, from territory declared as necessary for national defense purposes (Article 17 No. 5 of the Mining Code).

e) Mining works in guano deposits or places declared as having historic or scientific interest shall be authorized by the President of the Republic (Article 17 No. 6 of the Mining Code).

16. Privatization of Infrastructure

16.1 Legal Framework of Public Works Concessions

The most relevant provisions applicable to public works concessions in Chile (the "Concessions") are: (a) the Public Works Concession Act (the "Concessions Act"); (b) the Public Works Concessions Regulation (the "Concessions Regulation"); and (c) the Bidding Terms for the corresponding project (the "Bidding Terms") prepared by the Ministry of Public Works (the *Ministerio de Obras Públicas*, "MOP"), as amended by any explanatory circular.

16.2 Regulatory Authority

Under the Concessions Act and the Concessions Regulation, the MOP is the Chilean governmental entity responsible for supervising, implementing and awarding the Concessions and executing the corresponding public works concessions agreements (the "Concession Agreements"). Among others, its duties include: (a) the preparation of the Bidding Terms; (b) the implementation of the tender process and the final award of the Concession; (c) the inspection of the works and supervision of performance under the Concession Agreement during the construction and the exploitation phases; (d) the project site expropriation proceedings and; (e) the granting of the provisional and definite start-up authorizations.

16.3 Awarding the Concession

The Concessions Act and the Concessions Regulation set forth the mechanisms to be followed by the MOP when awarding a Concession. The project concerned may have been proposed by an interested party (the Concessions Act and the Concessions Regulation set forth the procedure for interested parties to propose a project) or prepared by the MOP. In both instances, the Concessions Act and the Concessions Regulation require that the award of the Concession be carried out through a transparent tender process. Thus, the public works concession regime does not contemplate bilateral negotiations between the State of Chile and private investors without a public bidding process.

Generally, the bidder with an acceptable technical offer and the best economic offer, as determined by the MOP, shall be awarded the Concession. The specific factors considered in awarding the Concession are set forth in the Concessions Act and the Concessions Regulation. The Bidding Terms precise the evaluation system for the specific Concession. Some of the factors assessed by the MOP are: (a) the tariff structure; (b) the term of the Concession; (c) the subsidies given by the State of Chile to the bidder; (d) payments offered by the bidder for preexisting infrastructure; (e) guaranteed income by the State of Chile; (f) allocation of risks (i.e. *force majeure*) between the State of Chile and the bidder during the construction and exploitation phases; (g) qualification obtained in the technical offer; and (h) the ancillary services required for the project.

The Concession is awarded by means of a Supreme Decree issued by the MOP, which is also executed by the Ministry of Finance. Once awarded, the successful bidder enters into the Concession Agreement with the State of Chile, represented by the MOP. The successful bidder is then required, within the term specified in the Bidding Terms, to execute copies of the Supreme

Decree as acceptance of the award, and to incorporate a Chilean *sociedad anónima*, or register a foreign agency in Chile, as the Bidding Terms so require, with whom the Concession Agreement shall be deemed to be executed (the "Concessionaire").

16.4 Supervision of the Works and Project Completion

The MOP is responsible for overseeing the works during the construction phase, and shall certify the completion of the project in accordance with the specifications included in the Bidding Terms. During the exploitation phase, the MOP oversees the maintenance and the collection of tolls by the Concessionaire as set forth in the Concession Agreement. In case of infractions, the MOP may impose fines and other sanctions to the Concessionaire. The Concessionaire may contest such fines or other sanctions by seeking relief from the Conciliation Commission. See Section 16.9 below.

16.5 Expropriations

Pursuant to the Concessions Act, if an expropriation is required to build the works and additional services of the Concession, then the affected property shall be declared of public interest, and shall be expropriated by the MOP in accordance with the procedure set forth in the Expropriations Act. Unless the Bidding Terms provide otherwise, the payments for the expropriation shall be borne by the Concessionaire, who shall have, to the extent required for the performance of the Concession Agreement, all the rights and duties as the beneficiary of such expropriations.

16.6 Amendments to the Concession Agreement

After the execution of the Concession Agreement, the MOP may, in cases of public interest, modify the characteristics of the works and services included in the Concession. The term "public interest" is not defined in the Concessions Act or the Concessions Regulation, thereby giving the MOP considerable latitude for discretion. However, in such cases, the MOP shall indemnify the Concessionaire of any damage it might suffer due to the modification. The compensation may be in the form of (a) an extension of the term of the Concession or (b) a modification of the economic regime of the Concession.

Unless otherwise provided in the Bidding Terms, the MOP may modify the works and services included in the Concession only in the first half of the term of the Concession, and such modification shall not exceed 15 percent of the original investment of the Concessionaire. All actions of the MOP in this regard are subject to appeal before the Conciliation Commission.

16.7 Force Majeure Risk

Unless otherwise provided in the Bidding Terms, the Concessionaire shall bear the risk of construction and shall pay all the amounts required to complete the works, including those arising from *force majeure* or any other cause. In addition, the State of Chile shall not be responsible of any liability arising from the agreements entered into by the Concessionaire with third parties. Notwithstanding the foregoing, if a delay is caused or can be attributed to the State of Chile, then

the Concessionaire shall have an extension of the term granted to complete the works, besides any other compensation that might be applicable.

During the exploitation period, the Concessionaire shall maintain the works to provide uninterrupted and normal service. However, if the works or its elements are partially destroyed, and that condition impedes its use for a period of time, the Concession shall be suspended and the rights and duties of the parties concerned shall be set in stand-by until the works are repaired.

16.8 Termination

The Concession shall terminate in the event of the expiration of the term of the Concession and any amendments thereof; or in case of mutual agreement of the Concessionaire and the MOP. However, if the Concessionaire has granted the Special Public Works Pledge (see Section 11.2.5 and Section 16.11) to one or more creditors, the MOP cannot execute the early termination agreement unless such creditors agree to release such guarantee or consent to such agreement.

The Concession shall also terminate in the event of a material breach of the obligations of the Concessionaire. If the Concessionaire incurs in a material breach, the MOP shall request the declaration of such circumstance to the Conciliation Commission and proceed with the termination of the Concession. Within the next 180 days from the declaration of material breach, the MOP shall begin a new bidding process for the term of the Concession still remaining. The new Bidding Terms may not establish requirements more onerous than those demanded to the original Concessionaire. At the first auction of this new bidding process, the MOP shall consult with the creditors of the Concessionaire the minimum amount of the bids, which, in any case, may not be inferior to 2/3 of the debt already incurred by the Concessionaire. At the second auction, the bids may not be inferior to one half of such debt. At the third auction there shall be no minimums for the bids. After the material breach is declared, any and all of the debts of the Concessionaire secured with the Special Public Works Pledge shall become due, and shall be paid with the proceeds obtained from the new bidding process. Any remaining balance shall be long to the former Concessionaire.

16.9 Conciliation Commission

Any controversies arising from the interpretation or performance of the Concession Agreement shall be known by a Conciliation Commission, which shall be composed by a professional appointed by the MOP, a professional appointed by the Concessionaire, and a third professional appointed by mutual agreement of the parties. If the parties cannot reach an agreement as to the third member of the Conciliation Commission, then the president of the Santiago Court of Appeals shall appoint such third member.

Any creditor who has a secured credit under the Special Public Works Pledge shall be admitted in the proceedings of the Conciliation Commission, under the circumstances provided by the Concessions Act.

The Conciliation Commission may suspend any decision taken by the MOP. When requested its intervention, the Conciliation Commission shall try to obtain an agreement between the parties. If after 30 days the parties has not settled the issue, the Concessionaire may request, within the next five days, that the Conciliation Commission starts working as an Arbitral Commission, whose decision shall be final and not subject to any substantive appeals. Within the

same term, the Concessionaire may file the same claim before the Santiago Court of Appeals. If the Concessionaire does not opt for any of the two aforementioned alternatives, then any decision taken by the MOP shall be considered final.

16.10 Bankruptcy of the Concessionaire

In the event of bankruptcy of the Concessionaire, the creditors shall decide at the request of the trustee whether they auction the Concession or continue the operations of the Concessionaire. If the creditors decide to auction the Concession, the terms and conditions of the Concession Agreement shall remain unchanged. At the first auction the minimum amount of the bids may not be inferior to 2/3 of the debt already incurred by the Concessionaire. At the second auction, the bids may not be inferior to one half of such debt. At the third auction there shall be no minimums for the bids. In any case, the material elements of the Concession Agreement shall remain unchanged. In a bankruptcy situation, the MOP must appoint a representative to work with the creditors to ensure the continuation of the services contemplated under the Concession Agreement.

16.11 Special Public Works Pledge

The Concessions Act provides for a special pledge called special public works pledge (the "Special Public Works Pledge"). Such pledge covers (a) the rights of the Concessionaire arising under the Concession Agreement; (b) the revenues of the Concessionaire, and (c) any payment agreed to be paid by the State of Chile to the Concessionaire under the Concession Agreement. Under the Special Public Works Pledge, the Concessionaire may secure its obligations with the creditors of the works or its operations. The Special Public Works Pledge may also be granted as a security if the Concessionaire issues bonds. In any case, the Concessionaire may proceed without previous authorization of the MOP. See also Section 11.2.5 above.

17. Telecommunications

17.1 Introduction

Telecommunications are governed by the General Telecommunications Act (the "Telecommunications Act"), and various decrees issued by the Ministry of Transportation and Telecommunications (the "Ministry of Telecommunications") and some other governmental agencies.

The Telecommunications Act defines telecommunications as the transmission, broadcast or reception of signs, signals, data, images, sounds and information of any kind by physical, radioelectrical, optical or other electromagnetic means, and provides that the use and exploitation of the spectrum shall be given by the State through concessions or permits, which are granted by the Ministry of Telecommunications, acting through the Under-Secretariat of Telecommunications ("Subtel" for its acronym in Spanish *Subsecretaría de Telecomunicaciones*).

Under the Telecommunications Act, telecom services are divided as follows:

(a) radio and television broadcasting and other free reception and transmission telecom services;

(b) public services;

(c) limited services; and

(d) intermediate services, which are:

i. transmission and switching services offered by third parties to other telecom service providers; and
ii. long-distance services to end-users.

As a general principle, more than one concession or permit may be granted for an specific type of service or for the same geographical area, except when there are technical limitations, such as mobile telephony, in which case concessions are granted through a public bidding process focused on the technical features of the project rather than in payments offered for the frequency to be used.

17.2 Key Aspects of Concessions

Concessions may only be granted to legal entities organized and domiciled in Chile, regardless of their capital structure. Hence, foreign companies are eligible via their Chilean subsidiaries to provide telecom services through concessions.

Concession holders must establish and accept interconnection with others concessions holders, in accordance with certain technical requirements set forth by Subtel. Interconnections ensure users access to all public services.

Holders of concessions for public services or third parties may provide value-added services through the public network, the rendering of which needs no governmental consent. These services shall be provided by connecting the necessary equipment to such networks, provided that certain technical standards established by Subtel are met, and that the characteristic, possible technical use of the networks or of the basic telecom services provided thereunder are not altered.

Pursuant to Article 15 et seq. of the Telecommunications Act and 14 et seq. of the General Telecommunications Regulations, the applicant and the application for a license shall comply with the following requirements:

(a) the applicant must be a legal entity (i) organized and existing under Chilean law, (ii) domiciled in Chile and (iii) which has not suffered forfeiture of a telecommunications license during the five years preceding the application;

(b) the Chairman, directors, managers, administrators and legal representatives of the applicant shall not have been prosecuted or convicted for a felony. The Chairman, managers, administrators and legal representatives of radio and television licensees must be Chilean. Directors of these licensees may be foreign, provided that they do not form a majority of the relevant board of directors;

(c) the application shall be addressed to the President of the Republic of Chile;

(d) two copies of the application shall be filed with Subtel;

(e) the application shall specify the name, nationality and domicile of the applicant and the same and other information for its legal representatives;

(f) the application shall specify, among other information, (i) the license requested and the type of services included, (ii) the location where the equipments will be installed, (iii) the service area, (iv) the technical characteristics of the equipments, (v) the term of the license (up to 30 years), as well as the terms to begin and finish construction of the works and to begin operations, (vi) how the services to be provided interconnect with existing public services and (vii) third parties' means that the applicant will need in order to provide the services;

(g) the application must be signed by a legal representative of the applicant and an engineer or an expert in telecommunications; and

(h) the applicant shall attach the following documents to the application:

i. a technical project (including a report and a general chart) specifying, among other information, the sites and operation of the license, the type of service, the service area and the terms to begin and finish construction of the works and to begin operations;

ii. a financial project with respect to the construction, exploitation and operation of the license; and

iii. articles of incorporation, by-laws and certificate of good standing of the applicant.

If Subtel, as explained above, is considering to limit the number of licenses to be granted, it will not continue with the application process until it has published in the Official Gazette the technical regulation limiting the number of licenses that will be granted. Otherwise, Subtel will continue the application process, as briefly described below.

Once the application has been filed, Subtel shall study the same. If it has comments or objections Subtel shall so inform the applicant which, in turn, shall respond within 30 business days. If the applicant has responded, Subtel shall decide if the license is viable.

If Subtel decides that the license is not viable it shall reject the application and the applicant's only remedy will be to appeal to the Court of Appeals of Santiago within ten business days following notice thereof.

If Subtel decides that the license is viable it shall order the publication of an abstract of the same in the Official Gazette and in a newspaper of each region or province where the equipments will be installed. The publications shall be made within ten business days following Subtel's notice thereof.

Third parties may oppose to the granting of the license within ten business days from the publication of the abstract. The Ministry of Telecommunications shall notify the opposition to the applicant so it can contest the same within a term of ten business days from the date the relevant notice was sent to the applicant and, at the same time, it shall request a report on the subject matter to Subtel.

Upon Subtel issuing its report, the Ministry of Telecommunications shall resolve the opposition. The parties may appeal of such resolution to the Court of Appeals of Santiago within ten business days following the date they received notice of the resolution. If the resolution granted the license to the applicant and the parties did not appeal or if the Court of Appeals of Santiago fined for the applicant, the Ministry of Telecommunications shall issue the decree granting the license.

18. Insolvency and Bankruptcy

18.1 Introduction

Pursuant to the Bankruptcy Act (the "Bankruptcy Act"), a person or company may be declared bankrupt by its own motion or upon request of a creditor. Regular Courts have subject matter jurisdiction to resolve bankruptcy petitions.

This Chapter summarizes the provisions of the Bankruptcy Act governing the bankruptcy petition, the procedures following a bankruptcy declaration, the cases in which a bankruptcy may be qualified as negligent or fraudulent, the effects thereof, the foreclosure by secured creditors, reorganization proposals and, finally, the termination of bankruptcy.

18.2 Bankruptcy Petition

A person or company dedicated to commercial, industrial, mining or agricultural activities shall file a bankruptcy petition within 15 days after defaulting in the payment of a mercantile obligation. Should the debtor fail to request its own bankruptcy, it shall be presumed negligent and may be subject to criminal prosecution.

In addition, creditors may request the bankruptcy of a debtor in the following cases:

(a) when the debtor is a person or company dedicated to commercial, industrial, mining or agricultural activities and defaults in the payment of any mercantile obligation evidenced in an instrument that entitles the holder thereof to bring a summary proceeding against the debtor;

(b) when debtor against whom three or more overdue documents are outstanding on which summary actions might be based and against whom two such actions have actually been instituted, does not satisfy such claims within four days; and

(c) when debtor has absconded.

Finally, the competent court shall declare the bankruptcy of a person or company when:

(a) a reorganization proposal (*convenio judicial preventivo*) made by the debtor to its creditors is rejected;

(b) a reorganization proposal to prevent or terminate the bankruptcy (*convenio judicial preventivo or convenio simplemente judicial*) agreed by the debtor and its creditors is annulled or rescinded;

(c) a reorganization proposal (*convenio judicial preventivo*) made by the debtor to its creditors, which is supported by the majority of the creditors representing at least 51 percent of the aggregate liabilities, is not approved within 90-day stay period;

(d) the debtor does not submit to the court a reorganization proposal (*convenio judicial preventivo*) when it is forced to do so by a creditor;

(e) the facilitating expert (*experto facilitador*) in a reorganization proposal (*convenio judicial preventivo*) issues a negative report on the legal, financial, economical and accounting situation of the debtor;

(f) the facilitating expert (*experto facilitador*) in a reorganization proposal (*convenio judicial preventivo*) has not issued a report within the timeframe set by the Bankruptcy Act;

(g) the arbitrator in charge of a reorganization proposal (*convenio judicial preventivo*) procedure declares the reorganization proposal annulled or rescinded (in which case the bankruptcy is declared by the court and not by the arbitrator);

(h) the reorganization proposal (*convenio judicial preventivo*) submitted to a procedure before an arbitrator is rejected (in which case the bankruptcy is declared by the court and not by the arbitrator); or

(i) the debtor does not attend to the meeting of creditors who will vote to approve or reject the reorganization proposal (*convenio judicial preventivo*).

18.3 Procedures Following Bankruptcy Declaration

Upon the declaration of bankruptcy by the court, all debts of the debtor become immediately due and payable and an official receiver takes charge of the assets and business of the debtor. The receiver shall also collect the sums owed to the debtor, and shall notify the creditors to file their claims against the debtor. Foreign creditors are afforded additional time to file their claims, which will depend on their place of residence.

Meetings of creditors are held on dates and times fixed in the first creditors' meeting and whenever requested by the receiver, the debtor or creditors representing one-fourth (25 percent) of the total liabilities of the debtor.

The receiver shall make distributions among the creditors whenever sums amounting to at least five percent of the liabilities are available, taking into account the statutory priorities set forth by Chilean law. In this regard, judicial costs incurred for the general benefit of creditors, other bankruptcy expenses, remunerations of workers and family allowances, social security contributions, tax withholdings and surcharges and up to ten months of severance pay per each worker are paid first.

Bankruptcy proceedings shall be suspended when the assets are insufficient to pay the costs of the proceedings. During such period, the creditors may bring individual actions against the debtor.

18.4 Qualification of the Bankruptcy

The bankruptcy of a debtor may be fortuitous, negligent or fraudulent. In the two latter cases the debtor, if dedicated to commercial, industrial, mining or agricultural activities, may become subject to criminal prosecution.

The creditors meeting, any creditor or the Public Attorney (*Ministerio Público*) may request that the bankruptcy of a debtor be qualified as negligent or fraudulent under certain circumstances.

The bankruptcy of a debtor may be considered negligent if, among other cases, the debtor made payments to one creditor with prejudice to the other creditors after the cease of payment (as this term is defined in the Bankruptcy Act), if the debtor failed to request its own bankruptcy or if after filing a reorganization proposal supported by the creditors it worsened the bad condition of its business during the subsequent 90 days.

In turn, the bankruptcy of a debtor may be considered fraudulent if, among other cases, the debtor pays to a creditor before the due date after the cease of payments, if with the intent to delay the bankruptcy the debtor purchases merchandize to sell it at a price lower than the market, obtains loans with an interest rate higher than the market rate or makes other ruinous transactions to obtain funds or, generally, whenever it wilfully makes an operation that reduces its assets or increases its liabilities.

Managers, directors and administrators of a debtor dedicated to commercial, industrial, mining or agricultural activities may be subject to similar criminal and civil sanctions for negligent or fraudulent bankruptcy when, in the administration of the business of the debtor and with knowledge of its condition, they incur or expressly authorize one of the aforementioned actions or omissions. Note, also, that the directors would incur in a crime sanctioned with imprisonment if they agree to distribute dividends knowing that there are no real profits.

18.5 Effects of Bankruptcy Declaration

The declaration of bankruptcy has the following effects (i) immediate effects, (ii) retroactive effects on any debtor, and (iii) retroactive effects on any debtor dedicated to commercial, industrial, mining or agricultural activities, as described in the following paragraphs.

18.5.1 Immediate effects

A. Forbiddance of debtor's management

The debtor is inhibited from its rights to manage its current assets, except non-attachable assets. It is also inhibited from the management of any assets it may acquire for free in the future. Such management is passed on to the receiver. The receiver (or at least two creditors) may propose to the creditors that the debtor continues carrying on its business. The term for this continuation, if agreed, cannot exceed one year, but can be renewed once for the same term. The quorum to agree to continue the business shall be the affirmative vote of creditors holding at least two-thirds of the outstanding claims.

The agreement of the creditors to continue the business shall include the purpose, the assets concerned and the appointment of the management that will administer the business. The bankrupt debtor does not have a vote on this matter. If the receiver is not appointed as manager, he shall still

administer those assets of the debtor not included in the business that continues and shall also have the authority to oversee the operations of the continued business as an inspector (interventor).

B. Determination of the creditors' rights

The bankruptcy declaration irrevocably determines the rights of all the creditors as of the date on which the declaration is issued (credits may not be increased or decreased thereafter or improved with new security interests).

C. Maturity and enforceability of all debts

All debts of the debtor become due and payable for the sole purpose of enabling the creditors to intervene in the bankruptcy proceedings and perceive the dividends corresponding to the current value of their respective credits.

D. Set-off prohibition

Any set-off of reciprocal obligations among the debtor and the creditors which would have not operated by virtue of law prior to the bankruptcy declaration is forbidden, except for related liabilities derived from the same agreement or the same negotiation.

E. Joinder of trials

All pending cases against the debtor before any court and which may affect its assets shall be joined to the bankruptcy proceedings, except for those contemplated by law (*i.e.* arbitral proceedings). New lawsuits filed against the bankruptcy estate shall also be tried jointly. Attachments and precautionary measures decreed in cases that shall be tried jointly with the bankruptcy shall be void if the seized assets shall be sold or included in the bankruptcy proceedings.

F. Cease of the creditors' right to individually foreclose on the bankruptcy estate

As of the date of the bankruptcy declaration, the creditors lose their right to individually foreclose on the bankruptcy estate. Notwithstanding, it is important to note that a secured creditor is generally free to apply the execution proceeds raised upon the foreclosure of its mortgage, pledge or other security interest to the amounts owed and secured thereby. In fact, a secured creditor usually does not need to return such proceeds to the estate or wait until the completion of the bankruptcy proceeding to receive them. In certain cases, however, whenever it appears that claims for preferred credits (*i.e.*, liens imposed by law) would not be satisfied in full from the proceeds of the sale of other assets of the debtor, the secured creditors who have foreclosed on their collateral may be required to deposit a reasonable portion of the proceeds obtained therefrom to cover the existing deficiency or to otherwise secure payment thereof in full. If such credits cannot be satisfied with the proceeds obtained in the liquidation of other assets of the estate, such deposits would be applied to set off any existing deficiency and the secured creditors could be even required to return additional amounts if the deposits thus made are not sufficient to cover the existing deficiency. Otherwise, the proceeds on deposit would be returned to the secured creditors up to the actual sum of money owed to them.

Under the Bankruptcy Act a secured creditor is barred from foreclosing in four special circumstances during a bankruptcy proceeding. These four circumstances are the following:

(a) if creditors with right to vote holding at least two-thirds of outstanding claims decide that the debtor should continue carrying on business, a secured creditor would be barred from foreclosing if such creditor has agreed to the same;

(b) if creditors holding more than one half of the outstanding claims decide that all or a portion of the assets of the debtor shall be sold as an economic unit and such unit encompasses assets covered by a mortgage, pledge or another security interest, a secured creditor may not foreclose thereon. Instead, such creditor would have a first priority claim against the proceeds of the sale of the assets concerned;

(c) if creditors holding an amount at least equal to 51 percent of the outstanding claims support a proposal for the reorganization of the business of the debtor concerned, secured creditors would be barred from foreclosing for a period of 90 days from the date on which the order of the bankruptcy court summoning the creditors to a creditors meeting to discuss the proposal is notified, and

(d) if creditors holding an amount higher than 66 percent of the outstanding claims support a proposal for the reorganization of the business of the debtor concerned, secured creditors would be barred from foreclosing for a period of 30 days from the date on which the order of the bankruptcy court summoning the creditors to a creditors meeting to discuss the proposal is notified.

G. Unenforceability of subsequent actions

The acts and contracts entered into by the debtor after the bankruptcy declaration in relation with the bankruptcy estate may not cause any adverse effect against the creditors.

18.5.2 Retroactive effects of the bankruptcy declaration

All gratuitous acts or contracts entered into by the debtor after the tenth day prior to the date of the cease of payments determined by the court and up to the day of the bankruptcy declaration are unenforceable against the bankruptcy estate. The date of the cease of payments in the case of debtors that are not dedicated to commercial, industrial, mining or agricultural activities shall be the date on which the first of the overdue documents becomes due and payable. Notwithstanding the above, such date may not be one that occurred more than two years prior to the date of the bankruptcy declaration.

18.5.3 Retroactive effects on certain debtors

All of the following acts or contracts entered into by the debtor dedicated to commercial, industrial, mining or agricultural activities within the term beginning ten days prior to the date of cease of payments and up to the date of the bankruptcy declaration are unenforceable against the bankruptcy estate:

(a) any payment in advance of any civil or mercantile debt;

(b) any payment of a due debt which is not done in the manner set forth in the contract; and

(c) any mortgage, pledge or *anticresis* created over assets of the debtor for the purpose of securing previously existing obligations.

In addition, payments not comprised in (a) above and the acts and contracts entered into by the debtor for consideration after the cease of payments and up to the date of the bankruptcy declaration may be annulled, provided that the paid creditors or those who have entered into a contract with the debtor had knowledge of the cease of payments.

Finally, if the debtor has paid bills of exchange or promissory notes after the cease of payments, the creditors may only ask for the refund of the amount paid to the person on whose behalf the payment was made, provided that such person had knowledge of the cease of payments at the time of the draft of the bill or the transfer of the promissory note.

The judicial actions of unenforceability referred to in letters (b) and (c) above lapse within two years after the date of the relevant act or contract.

18.6 Foreclosure by Secured Creditors

18.6.1 Individual foreclosure

In a bankruptcy procedure, secured creditors shall be entitled to individually foreclose on their respective collaterals, with no need to wait the results of the general foreclosure made by the receiver.

However, if the secured creditors do nothing, the collateral will be included in the general foreclosure, and the receiver shall just be obliged to respect the preference for payment with the sale proceeds of the collateral.

The secured creditors may see their right to individually foreclose restricted in four special circumstances:

(a) as stated herein above, if creditors with right to vote holding at least two-thirds of the outstanding claims decide that the company should continue carrying out its business, a secured creditor would be barred from foreclosing if such creditor has agreed to the same;

(b) if creditors holding more than 1/2 of the outstanding claims decide that all or a portion of the assets of the debtor shall be sold as an economic unit and such unit encompasses assets covered by a security interest, a secured creditor may not foreclose thereon. Instead, such creditor would have a first priority claim against the proceeds of the sale of the assets concerned;

(c) if creditors holding an amount at least equal to 51 percent of the outstanding claims support a proposal for the reorganization of the business of the debtor concerned, secured creditors would be barred from foreclosing for a period of 90 days from the date on which the order of the bankruptcy court summoning the creditors to a creditors meeting to discuss the proposal is notified, and

(d) if creditors holding an amount higher than 66 percent of the outstanding claims support a proposal for the reorganization of the business of the debtor concerned, secured creditors would be barred from foreclosing for a period of 30 days from the date on which the order of the bankruptcy court summoning the creditors to a creditors meeting to discuss the proposal is notified.

18.6.2 Proceeds from pledged collateral

The secured creditors would be generally free to apply the execution proceeds raised upon the foreclosure to the amounts owed and secured with the relevant collateral. Indeed, a secured creditor usually does not need to return such proceeds to the estate or wait until the completion of the bankruptcy proceeding to receive them.

In certain cases, however, whenever it appears that claims for the statutory preferred credits would not be satisfied in full from the proceeds of the sale of other assets of the relevant company, the secured creditors who have foreclosed on their collateral may be required to deposit a reasonable portion of the proceeds obtained to cover the existing deficiency or to otherwise secure payment of such statutory preferences in full. If such credits cannot be satisfied with the proceeds obtained in the liquidation of other assets of the estate, such deposits would be applied to set-off any existing deficiency and the secured creditors could be even required to return additional amounts if the deposits thus made are not sufficient to cover the existing deficiency. Otherwise, the proceeds on deposit would be returned to the secured creditors up to the actual sum of money owed to them.

18.7 Reorganization Proposal

Under the Bankruptcy Act, a person or company may file a reorganization proposal (*convenio judicial preventivo*) to restructure its obligations and prevent the bankruptcy declaration. Such proposals can also be prompted by a creditor. The proposal may refer to any licit matter related to the debts (such as cancellation of part of the debts, extension of maturity dates, etc). A similar reorganization proposal may be filed after a bankruptcy declaration to agree on the above-mentioned matters and terminate the insolvency proceedings (*convenio simplemente judicial*).

The reorganization proposal shall be approved by the affirmative vote of the debtor and two-thirds of the creditors holding at least three-fourths of the outstanding claims. Once approved, the terms of the reorganization proposal shall be binding to all creditors.

However, the sole proposal of reorganization may have an automatic stay. If the reorganization proposal is supported by the majority of the creditors representing at least 51 percent of the aggregate liabilities, the debtor cannot be declared bankrupt or, as mentioned herein above, subject to individual foreclosures by any creditor (save for limited exceptions regarding employees) within the subsequent 90 days counted from the publishing of the notice summoning the creditors to vote on the reorganization proposal. The same effect has a reorganization proposal supported by a majority of creditors representing more than 66 percent of the aggregate liabilities. In this case, however, the 90 days term is reduced to 30 days.

Pursuant to the Bankruptcy Act a person or company may also enter into an out-of-court reorganization agreement (*acuerdo extrajudicial*), which agreement is only enforceable against the creditors who executed it.

Reorganization proposals and the resulting agreements under the Bankruptcy Act have a long standing with insolvent debtors in Chile and are successfully implemented frequently.

A recent amendment to the Bankruptcy Act has introduced major changes improving the rules regarding reorganization proposals. Among them, the "facilitating expert" (*experto facilitador*) is probably one of the main innovations. The role of this expert is to assist the debtor in preparing a proposal of reorganization. As such, the facilitating expert will be specially useful in the case of small or medium-sized businesses. Another major change refers to the reorganization proposals when the insolvent debtor is a publicly held company. In theses cases, the proposals must be submitted to an arbitrator instead of a court.

18.8 Personal Jurisdiction

For bankruptcy and reorganization proposals brought before Chilean courts or arbitrators (in the case of publicly held corporations), the insolvent debtor shall be domiciled in Chile. Holding property in Chile without being domiciled in the country is not sufficient to assert jurisdiction in this matter.

18.9 Termination of Bankruptcy Proceedings

Bankruptcy proceedings are terminated and the debtor is discharged in the following cases:

(a) upon agreement of the creditors;

(b) when all claims are paid or a bond is given to secure their payment; and

(c) upon the expiration of two years after approval of the final report of the receiver, provided the bankruptcy was fortuitous in the case of debtors dedicated to commercial, industrial, mining or agricultural activities, and in the case of other bankrupted persons, if they have not been convicted of fraud.

19. Enforcement of Foreign Judgments

19.1 Procedure

Any final decision issued by a foreign court or arbitrator established in a foreign country, whatever the subject-matter of the proceedings, may only be enforced in Chile if previously authorized by the Supreme Court.

In order to obtain the Supreme Court's authorization, a procedure known as exequatur must be followed, which principally encompasses the following steps:

(a) filing of a request for the enforcement of the foreign judgment or foreign arbitration award before the Supreme Court of Chile;

(b) service of process on the party against whom the enforcement is sought and granting of a term (typically fifteen days) in which such party may oppose to such enforcement;

(c) delivery of the court records to the *Fiscal* (an officer of the Court in charge of defending the public interest in certain matters heard before the Supreme Court) so that it reports to the Supreme Court on whether granting of the enforcement requested is advisable or not; and

(d) rendering of a decision by the Supreme Court granting or denying such enforcement.

Concerning the specific procedure that must be followed for the authorization of enforcement of a foreign judgment, attention must be given to any treaties existing between Chile and the country where the foreign judgment was issued. If a treaty is in place and addresses a particular procedure for the enforcement of a foreign judgment, such particular procedure must be followed. Accordingly, while in some instances a party must employ diplomatic means to reach Chile's Supreme Court, in other instances a party may file a petition directly before the Supreme Court.

19.2 Substantive Requirements

In order to decide whether a formal and conclusive foreign judgment shall be enforced in Chile, the Supreme Court must apply the following criteria to each particular case:

(a) if there exists an international (bilateral or multilateral) treaty ratified by Chile and the country where the judgment originated, the rules of such treaty shall apply;

(b) in absence of a treaty, the principle of reciprocity shall apply, meaning that enforcement in Chile will not be granted to a foreign judgment if the same enforcement is denied by such foreign country to Chilean judgments; and

(c) lastly, in the event that neither of the preceding criteria apply, the so called "substitution rule" must apply, which entails that the Supreme Court must grant to a foreign judgment equal force as if it had been pronounced by a Chilean court, provided that such foreign judgment complies with the following requirements of due process:

i. that such judgment is not contrary to the fundamental laws of Chile;

ii. that it does not conflict with the jurisdiction of Chilean Courts, meaning that enforcement will not be granted if the case should have been decided by Chilean Courts;

iii. that the party against whom enforcement is sought has been given due notice of the claim and sufficient procedural guarantees allowing an adequate defense; and

iv. that such foreign judgment be final and conclusive pursuant to the rules of the country where it was issued.

In the case of the enforcement of final arbitration awards, Chile is a party, since 1975 to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Indeed, Chile ratified the Convention with no reservations so it is applicable to arbitral awards issued in any State, not necessarily one that is a party to the Convention. Besides, Chile adopted in 2004 the Uncitral Model Law on International Commercial Arbitration. Both the New York Convention and the Uncitral Model Law provide that the Supreme Court of Chile will authorize enforcement of foreign arbitral awards unless:

(a) a party to the arbitration agreement was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it;

(b) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;

(c) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration;

(d) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place;

(e) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made;

(f) the subject-matter of the dispute is not capable of settlement by arbitration under the law of Chile; or

(g) the recognition or enforcement of the award would be contrary to the public policy of Chile.

In the event that the Supreme Court decides that a foreign judgment or award shall be enforced, the next and final step is to seek actual enforcement of such judgment, which must be undertaken by the Chilean court that would have decided the matter had the claim been filed in Chile, under the same rules applicable for the enforcement of Chilean court judgments.