

**ABDALA & CIA**  
— ABOGADOS —

**DOING BUSINESS IN CHILE**  
Legal Framework

Abdala & CIA is a law firm located in Santiago, Chile founded in 1988. Our main focus, commercial and corporate law, consists of counselling and advising foreign investors who want to do business in our country, assisting them throughout the entire process.

We understand that starting a business in a foreign country goes way beyond the incorporation of the legal partnership, company or agency. It is in this way that we assist our clients: in a professional, tailored and thorough manner throughout the entire process. From the incorporation of the company, as well as the start-up, we collaborate with our clients with responsible planification and legal execution in all matters, specifically relating to commercial law, labour law, tax law, accounting and administrative law, as well as foreign capital inflow and joining forces with our network of contacts to facilitate the commercial diligence when the case requires so and if the possibilities allow it.

Although there exists a vast amount of ways to establish a business in our country through the diverse legal schemes and types of forms of organization that our legislation contemplates, all of which are valid from a legal point of view, choosing randomly from any of the forms of organization might not be adequate for the necessities of each client or business in particular. It is for this reason that it's highly important for the client to seek legal advice that serves as a guide to choose the way that best adjusts to specific necessities, that withstands time and that gives rapidness and efficiency to the diligence, allowing the client to initiate his operations in a successful way in the shortest amount of time possible.

# I. Legal ways to operate in Chile

Non-resident persons and companies can operate in Chile in one of the following ways:

- a) By appointing a representative.
- b) By forming a branch of a foreign legal entity
- c) By creating a partnership or company

## 1. Appointing a representative

This consists in naming a person of national or foreign nationality with permanent residence in Chile as agent, which is done by concluding a mandate contract.

In this mandate, the non-resident principal confers the mandate to a Chilean resident individual or entity. In this contract the powers and limits with which the agent must act are written. It's important to say that the agent or representative acts on behalf and at the risk of the principal to carry out one or more business transactions and he is obliged to report back to the mandatory, unless he is liberated from this obligation expressly in a written form.

## 2. Forming a branch of a foreign legal entity

In Chile, a branch of a foreign legal entity does not have a legal personality different to that of the foreign company. It is a mere agency of the parent company in Chile. This is why all of the acts performed by the branch of the foreign legal entity compromise the patrimony of the foreign company. This means that the foreign entity is liable for all the activities and business carried out by the Chilean branch, and this liability is not limited to the assets located in Chile.

In order to set up a branch of a foreign legal entity in Chile, the foreign legal entity or company must appoint a legal agent in Chile so that he creates the aforementioned agency with all of the legal requirements and formalities that the Chilean commercial law requires.

## 3. Creating a partnership or company

Chilean law offers the following main legal structures in order to create a company in our country and in general terms the foreign company is free to choose any of the following forms of organization that best suits its necessities:

- a) Limited Liability Individual Enterprise (Empresa Individual de Responsabilidad Limitada)
- b) Corporation-Stock Company (Sociedad Anónima)
- c) Simplified Corporation-Company by Shares (Sociedad por Acciones)
- d) General Partnership (Sociedad Colectiva)
- e) Limited Liability Company (Sociedad de Responsabilidad Limitada)
- f) Limited Partnership (Sociedad en Comandita)
- g) Association (Asociacion o Cuenta en Participacion)

## 4. General Aspects of every Chilean Company

By general rule, in order to create a company it's necessary to sign a duly notarized public deed, except for the Company by Shares (or Simplified Corporation). In this last case, the public deed may be replaced alternatively with a private document, provided that the signatures therein be authorized by a Notary and

other legal requirements.

In our legislation there aren't any restrictions regarding the nationality of the partners or shareholders of companies, for which reason the totality of the property of the company can fall in the hands of foreign natural or legal persons. The same happens with its directors, who may also be foreigners in their entirety.

In order to invest in Chile, every foreign person, whether natural or legal, must obtain a Taxpayer number-known in Spanish as Rol Único Tributario (RUT)-as an investor who eventually will be obliged to pay taxes in Chile when withdrawing money or remitting profits to foreign countries. The investor must also appoint as agent a person of national or foreign nationality with permanent residence in Chile so that he can represent the principal in any diligence with the Internal Revenue Service (IRS) and national banks. This number must be obtained when the person or entity is registered with the Internal Revenue Service (IRS) and no commercial activity can operate without a taxpayer number.

No minimum capital is required to create a partnership or company and it can be done in installments.

In the majority of partnerships or companies, its partners or shareholders have a limited liability when it comes to the obligations of the company, for which they are not held liable with their personal.

The entry of foreign capital must be done complying all of the legal requirements and for this reason it is fundamental for the partnership or company to obtain a checking account in Chile.

Also, it's important to know that Chilean partnerships or companies must have a corporate or partnership name and purpose of the corporation or partnership in order to obtain the declaration of initiation of activities from the Internal Revenue Service (IRS), pay a commercial patent and maintain complete accounting records such as a cashbook, a journal, a ledger and a balance sheet register, or their equivalents.

On a final note, it's important to know that partnerships or companies can be incorporated by their foreign partners or shareholders that don't necessarily need to be in the country because they can act through an agent given for those effects, or if the circumstances require it, they can be created by a third party who will later transfer the property back to the partners or shareholders. In this case, the purpose of power of attorney is precisely acting on its behalf.

## **5) Specific aspects of every partnership or company**

Within the wide range of options of partnerships and forms of organization that our legislation contemplates, it's important to make a short reference to those of most popular use to materialize the inflow of foreign capital. Amongst these we can name: a) Closely-held Corporations ("S.A"), b) Simplified Corporation ("SpA"), c) Limited Liability Company ("S.R.L"), and d) Joint Venture.

### **a) Corporation or Stock Company (Sociedad Anónima)**

The corporation is a corporate body that results from the forming of a single equity contributed by the shareholders. It must have at all times two or more shareholders. The shareholders' liability is limited to the amount of their individual contributions. A Board of Directors administrates its affairs, whose members can be replaced at any time by the shareholders. It is permissible for all members of the board to be foreigners.

## **b) Simplified Corporation or Company by Shares (Sociedad por Acciones)**

The simplified corporation's corporate structure is similar to that of a closely-held corporation, although it has some material differences mainly done in order to reduce formalities and administrative costs that are associated to corporations.

A simplified corporation is a legal entity that can be set up and exist with only one shareholder. This corporation is characterized by the fact that it can be set up by a single shareholder, or two or more shareholders, who are only liable for the amount they have agreed to pay-in for subscribed shares. The participation on the capital is represented by nominal shares and shares without a nominal value, which can be freely transferred by its holder or holders, unless otherwise agreed, just like in the Corporations ("S.A").

Simplified corporations ("SpAs") are governed by its statutes and its special law, and in the absence of provisions therein, they are governed by those provisions applicable to closely-held corporations. For taxation purposes it is considered as a Corporation ("S.A").

It is managed by any given body (a Board, a Committee, etc.), by one or more shareholders or through any other mechanism that the shareholders deem suitable. There's plenty of liberty to choose the mechanism of management that best suits the necessities of the company.

## **d) Limited Liability Company (Sociedad de Responsabilidad Limitada)**

The limited liability company requires two or more partners, whose liability is limited to their obligation to contribute a given amount into the company or to contribute to the company's liabilities up to a certain amount, if any, as indicated in the by-laws. One or more partners, a third party or a Board of Directors may manage this company.

## **e) Joint Venture**

This type of partnership is formed by the decision of two or more companies that decide to develop jointly a determined project, combining the abilities of each one in order to create a final objective by enhancing strengths.

The joint ventures are not regulated in Chilean legislation. However, they are not prohibited, for which the principle of private autonomy rules the matters.

They can be created by incorporating an ad-hoc company, using one of the types of companies previously mentioned. The laws and legal dispositions applicable to each type of company or partnership govern them.

In its statutes one can find all of its regulations referring to the type of business, its life, its contributions and experiences, rights and obligations.

This type of association has legal personality.

## II) Foreign Capital Inflow

*Bringing foreign capital by foreign investors is more of a simple rather than complex operation, yet it requires necessary advice in order to materialize it in a correct manner, avoiding any future legal or tax contingencies.*

*The two main ways in which foreign capital is brought into Chile is through foreign loan or through capital contributions to the company that's being incorporated. Whatever way one chooses to intern foreign inflow, it must be done following the legal requirements of the foreign exchange market.*

*In effect, the statutes most frequently used to bring foreign capital are:*

- a) Throughout the Title I, Chapter XIV of the Chilean Central Bank's Compendium of Foreign Exchange Regulations, also known as the "Chapter XIV"*
- b) Through the Direct Foreign Investment law ("DFI Law") Number 20,848.*

### **a) Chapter XIV**

Chapter XIV regulates all foreign loans, deposits, investments and capital contributions for an aggregate amount equal to or higher than US\$10,000 and must be carried out throughout the Foreign Exchange Market.

### **b) Direct Foreign Investment Law ("DFI Law") Number 20,848a**

The DFI Law regulates investments made by any natural or legal person incorporated overseas, not residing or domiciled in Chile, whose investment is equal to or greater than USD \$5,000,000, or the equivalent to said sum in other foreign currencies. The methods of investment consist in: freely exchangeable foreign currency, tangible goods in all forms and conditions, reinvestment of profits, credit capitalization, technology in its various forms suitable for being capitalized or credits associated with foreign investment derived from related companies.

One must bear in mind that even though Chilean legislation does not obligate the investor to declare foreign income for an amount less to US\$10,000, it's important to adopt the necessary safeguards in order to justify such amount of money to the authorities in case one uses that money to invest in our country.

A case-by-case analysis must be done when it comes to choosing from one of the two options to bring in foreign money, depending on the necessities of the investor and the specific characteristics of the investment he wishes to materialize.

## III) Taxation

*In tax matters, it's important to know that Chile is a country that is characterized for the stability of its taxation policy. Although we are not exempted of modifications in tax legislation, it tends to conserve its institutions and the pillars of the taxation structure, giving stability to foreign investors and national businessmen.*

### 1) Main taxes in Chile

All taxes in Chile are levied at the national level. There are no municipal, provincial or regional taxes. The main sources of tax revenue are the following:

#### a. Income taxes (Impuesto a la Renta):

##### i. First Category Tax (Corporate Tax):

this is paid by the business generating the income from industry, commerce, mining, real estate, and other activities involving the use of capital and is payable at a rate of 25% for the year 2017. In simpler terms, it's the tax that companies pay. Here, if the partners or foreign shareholders withdraw money they must pay an additional tax at a rate of 35%, but can use the 25% paid by the company as credit.

There is currently a Tax Reform that started to operate recently and contemplates two options for computing shareholder-level income tax and the taxpayer must choose from one or the other:

**-Attributed income:** with this system, the taxpayer must pay tax on the income he is entitled to, whether paid or not. Under this method, the owners of companies will have to pay tax at the end of the tax year for the totality of income that the company generates, and not only for the profits they withdraw. For this, one must consider not only their own income, but also the income that is attributed to them from third party companies. The rent attribution will be done in the manner that the partners or shareholders have agreed to distribute, and in case they don't have any written agreement, the distribution percentage that was arranged in the statutes or public deed informed to the Internal Revenue Service (IRS) will apply.

With this system, taxpayers will have a right to use 100% of the amount paid as a first category tax as credit against final taxes. The tax rate of such is 25% for the 2017 commercial year.

**-Cash-basis (semi integrated income):** under this system, the taxpayer will only pay personal income tax or additional tax assessed on partners or shareholders neither domiciled nor resident in Chile when actually paid. This system taxes company income when their owners withdraw them. Under this system, the first category tax will have a rate of 25% for 2017 and a tax rate of 27% for the year 2018, and a 65% of this first category tax paid by the company can be used as credit to pay the Complementary Tax or Additional Tax. With the semi-integrated system, the company income will pay a maximum tax rate of 44,45% equivalent to 35% of the Complementary Tax plus 9,45% of company tax without a right to credit.

##### ii. Second Category Tax:

This tax has a progressive rate applied on income from personal services, as an employee. It's a tax on income from Jobs as an employee, and its progressive, meaning that the tax rate increases as the taxable amount increases. It is levied from a 0 to 40%, and it is the employer's legal obligation to retain it and pay it.

### **iii. Complementary Tax:**

Is a progressive tax applied to natural or legal persons domiciled or residing in Chile on income of any source, including income originating from outside of Chile. It is levied from 0 to 40% and must be declared on an annual basis.

### **iv. Additional Tax:**

This tax is applied on income from Chilean sources earned by individuals or entities (natural or legal persons) neither domiciled nor residing in Chile. It has a unique tax rate of 35%.

## **b. Indirect taxes:**

### **i. Value Added Tax (V.A.T):**

This tax is levied over the price of certain goods and services that are indicated in the respective law (D.L 825). The tax rate is 19% and the final consumer of the good or service pays it.

### **ii. Tax Stamp:**

This tax is levied on the documents issued in relation with money lending operations such as bills of exchange, promissory notes, and letters of credit. Basically, any kind of documentation referring to a loan or a credit transaction for borrowed money. The tax stamp rate is 0.066% monthly on the face value of the document with a maximum of 0.8%, and if the document is payable at sight, the rate is 0.332%.

### **iii. Customs duties:**

By general norm, all of imported goods and products are subject to a custom duty of 6% applied to its CIF value, a VAT (19%) applied to its CIF value plus the custom right. The CIF (cost, insurance, freight) value is equivalent to the cost of the good or product, plus the insurance policy plus the value of the freight.

Besides the taxes mentioned above, the Chilean tax system also includes a real estate tax, inheritance and gift tax and several other special taxes applicable to sales.

## **2) Treaties aimed to avoid double taxation**

In Chile we have treaties with different countries such as Spain, Switzerland, United States of America, México, Perú, Brazil, amongst others, which are all based on the Organisation for Economic Co-operation and Development (OECD) model.

This model, in order to avoid double taxation, privileges taxing income under the domicile or residence principle of the investor. It is for this reason that the taxing authority will fall upon the contracting country in which the person is domiciled or has residence. The treaties define when a person is resident or domiciled in one or another contracting country.

On another hand, Chile has signed several bilateral treaties with several countries to avoid double taxation in the services of international transport of passengers and cargo by sea or air navigation. An example of this treaty is the Chile-Argentina treaty currently in force. Under this treaty, the Chilean government compromises to not charge with income tax or any other tax on the benefits and income whose source is sea or air navigation between Chile and any other country obtained by companies incorporated in the Republic of Argentina.



### **3) Taxes on Royalties**

According to the Income Tax Law, all royalties paid abroad are subject to a 30% withholding tax, with the exception of the royalties paid to persons who are resident or domiciled in a country with whom Chile has signed a treaty to avoid double taxation, excluding the quantities that refer to tangible goods interned in the country up to a generally accepted cost.

However, certain royalties have a reduced tax rate of 15%. Examples of these royalties that have this reduced tax rate are the use and exploitation of invention patents, copyright, industrial designs, geographical indications, trademarks, plant varieties, amongst others.

Payments done abroad to entities not domiciled or resident in Chile for engineering or technical jobs or for professional services or technicians embodied in advice, reports or blueprints are subject to a withholding tax of 15%.

These reduced tax rates are not applicable in the event that payments are done towards a party related to a country considered tax haven or towards a country considered a tax haven.

### **4) Investment Companies (Sociedades de Inversion)**

The special taxation regime for investment companies constitutes an investment vehicle for foreigners that wish to invest in third countries, without having to pay in Chile income taxes, whose source are precisely such investments.

The main advantage of the investment companies is that as a legal entity without domicile or residence in Chile, they won't pay tax for any Corporate Tax for the income whose source is a foreign income, and will only pay tax in the country for income whose source is from Chile.

In the same matter, when profit remittance carried out by foreign shareholders with domicile or residence abroad by the platform companies is done with income whose source is from a foreign country, they also do not pay any Corporate Tax.

# LABOUR PERSPECTIVE

*Labour contracts, pensions, social security and other employee benefits.*

## **1) Types of labour contracts**

Chilean law privileges the perpetual individual contract. However, there also exist other special contracts such as contracts for a specific project or service or contracts subject to a fix period of time, among others.

## **2) Guaranteed Minimum Wage**

No worker in Chile can stipulate as base salary a quantity that is inferior to the legal minimum wage. However, persons (individuals) and companies (entities) resident in Chile can pay remunerations in a foreign currency to foreign contracted specialised personnel who are exempted from Chilean social security contributions.

Currently, and as of January 1, 2017 the legal minimum wage has been set in \$264,000 for workers who are over 18 years old and up to 65 years of age. As of July 1, 2017, its value will be \$270,000, and as of January 1, 2018 its value will be \$276,000.

Likewise, and starting January 1, 2017, the legal minimum wage for workers who are over 65 years old and workers who are younger than 18 years of age has been set in \$197,082. As of July 1, 2017 its value will be \$201,561, and as of January 1, 2018 its value will be \$206,041.

Finally, and as of January 1, 2017, the legal minimum wage for non-remuneration purposes has been set in \$170,296. As of July 1, 2017 its value will be \$174,166, and as of January 1, 2018 its value will be \$178,037.

## **3) Pension System**

The current pension system in Chile is based on an individual capitalization system managed by Pension Fund Managers since November 1980. Among its main benefits are the old-age pensions, disability and survival insurance. Its main objective is to ensure a stable income to those workers who have retired and secure that the income is close to that received during the working years of the retired worker.

In this individual capitalization system, retirement, or old-age pensions are financed by employees through contributions that are accumulated in mandatory individual accounts at entities known as Pension Fund Managers. These contributions create profits by investments that the Pension Fund Managers create with the resources from those individual accounts in certain funds.

There currently exist four types of funds: a, b, c and d, all of which are classified according to the risk of investment. The quantity of the remuneration that is destined to that fund is 11,54% of the gross income of the employee.

Nevertheless, there is a limit to the amount an employee contributes, and this limit is 75,5 UF of his monthly income. Any remuneration in excess of 75,5 UF is not subject to the 11,54% contribution employees are obligated to contribute. However, one can hire an additional voluntary savings accounts, which is independent from this fund in order to increase the funds and thus an improved life quality.

Retirement age is not fixed in Chile, for which it can be extended voluntarily, or can be anticipated as well. However, there are certain age references used in Chile which are the following: 60 years of age for women and 65 years of age for men.

#### **4) Health benefit costs**

The employees and self-employed workers are subject to a contribution of 7% of their monthly income for health insurance with a maximum limit of 74,3 UF.

If the employee is affiliated with one of the Government pensions plans, the health insurance premium is collected by the pension plan and paid to the State Health Fund (Fondo Nacional de Salud, or FONASA in Spanish). The employees that are affiliated with one of the pension plans can choose to make their contributions to the State Health Fund (FONASA) or to a private health insurance company (Institución de Salud Previsional, or ISAPRE in Spanish).

#### **5) Labor-related accident insurance**

All of the employers in Chile must pay a 0,95% premium on remunerations capped at 74,3 UF in a monthly manner for labour-related accident insurance. According to the risk of the employers activity, additional contributions at varying rates may be required up to a maximum of 3,4%. This rate might be decreased based on the employer's track record.

#### **6) Unemployment insurance**

There exists mandatory unemployment insurance in favour of employees. This insurance is financed with an obligatory contribution by the employee of 0,6% plus a mandatory contribution of the employer of 2,4%, both of which are calculated on the base of the employees taxable income capped at 111,4 UF. There currently exists an exemption for foreigners to make contributions to the Chilean social security system. As we saw previously, as a general norm all workers-whose nationality is Chilean or foreign-must pay social security contributions. However, there exists an exemption from social security contributions to foreign technician employees and the company that contracts them, as long as certain requirements are met. The requirements that must be met consist in that the expatriate must: first, be subscribed to a social security system outside Chile covering at least illness, pension, disability and death; secondly, the employee must expressly declare in his employment agreement that he will remain a subscriber to the foreign social security system; thirdly, their professional or technician degree must have been obtained abroad. This means that if these legal requirements are fulfilled, then the foreign technician employees can refrain from contributing to the Chilean social security, and in case that deposits were already made, he can request for the funds of the premium that were deposited to be returned to him.

#### **7) Dismissal**

In Chilean legislation, there isn't freedom to dismiss -lay off- an employee. For this reason, in order to dismiss an employee one must invoke a legal cause established in the Labour Code and comply with all of the legal requirements provided there. However, in the case of executives or persons that hold a job of exclusive trust of the employer, it is not necessary to invoke a legal cause to terminate the labour relation.

#### **8) Severance indemnity payments**

If the contract were in force for more than a year and the employer dismisses the employee based on the general grounds known as "needs of the company", the employer must pay the employee at the moment of dismissal a severance compensation for years of service: amounting to one month's remuneration for each year or fraction thereof in excess of six months spent in the service of the same employer, with a limit of 330 days' worth of remuneration. But when it comes to calculating this severance compensation, the

law dictates that the basic monthly remuneration cannot exceed a maximum of 90 U.F, whose cap may be waived by the parties involved. The remuneration mentioned above is compatible with the severance compensation that the employee is entitled to in the event that the dismissal notice is not given 30 days in advance. If the dismissal is considered unjustified (which is a decision that is to be determined by a Court of Law), the amount increases from a 30% to 100%, depending on the legal cause of dismissal. The benefits for compensation are generally tax-free for the employee and are tax deductible for the company with a limit of 90 UF.

Likewise, once the labour relation is terminated, the following must be paid:

- Remuneration for all of the worked days.

- Legal holidays and/or proportional.

- Severance compensation in the event that the dismissal notice is not given 30 days in advance, and the dismissal is based on the general grounds known as “needs of the company”, but if the contract is agreed on a fixed period of time, or it’s a contract for a specific service or project, in those cases this severance compensation does not apply.

## **9) Profit sharing**

Chilean legislation states that if a company earns profit, it must share part of them with its employees. Employers that obtain profit have the obligation of distributing them in a proportion of no less than 30% of such profits.

The employer, in order to fulfil this obligation can choose among one of the two mechanisms that the law provides for this: a) distribute 30% of net profit to the employees, calculated in proportion to the employee`s salary, or b) Pay a bonus of 25% of the yearly salary, but in this case, the bonus cannot exceed 4.75 monthly minimum wages.

Profit sharing is taxable income for the employee and deductible expense for the employer.

## **10) Foreign executives and Immigration Law**

Chilean legislation requires that at least 85% of the employees of a company must be Chilean citizens. Foreigners in Chile can work with a work permit for tourists or with a Visa that allows them to work in the country, which is generally given for 1 or 2 years, time after which one can apply to a permanent residence. Work permits for tourists are given for 30 days, which can be renewed for up to 90 days. The Visa can be Temporary or subject to a Work Contract. Citizens from countries that belong to MERCOSUR can apply to a temporary visa in a simple way.

With a visa that is subject to a Work Contract, the foreigner can only work with one employer. On the other hand, with a temporary Visa the foreigner can develop any economic activity in the country as long as its legal.

Foreigners in Chile pay Corporate Tax only for the income whose source is Chilean. They can be exempted from contributing to the Chilean social security system (there is a social security treaty with Argentina).

Foreign persons without residence are subject to a withholding tax of 20% over remunerations received in Chile for scientific, cultural or sport activities and of 15% in the case of technicians, professionals or engineers for their services.