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Law and Practice

Contributed by Eelaw

Contents

Eelaw is a boutique firm founded in 2008 dedicated to providing highly specialised legal services on a wide variety of issues within the practice areas of energy, natural resources and environmental law. It focuses on developing environmental assessments of projects, implementation and environmental compliance, due diligence, strategic permitting planning, environmental litigation and administrative proceedings. The firm has also developed a study area of environmental and natural resources public policies, offering comprehensive environmental counselling to Chilean and international companies and institutions, as well as governmental agencies. Eelaw has received national and international recognition for its performance and constant evolution, appearing in international publications because of its human capital and achievements for the benefit of clients.

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1. Regulatory Framework

1.1 Key Policies, Principles and Laws Governing Environmental Protection

In Chile, the Political Constitution guarantees all people the right to live in an environment that is free of contamination, and declares that it is the State's duty to ensure that the environment is not affected and to protect the preservation of nature.

In this context, Law N° 19.300 came into force in 1994 and establishes the legal framework for environmental matters in Chile. This regulation contains all the principles that govern environmental regulations in Chile, such as environmental responsibility, the prevention principle, "polluter pays", gradualism, the participatory principle and efficiency.

Other key environmental protection standards in Chile are: (i) the Organic Law of the Superintendence of the Environment, which provides the regulatory framework for environmental compliance and enforcement; (ii) Law Nº 20.600, which creates the Environmental Courts and a special environmental jurisdiction; and (iii) the Environmental Impact Assessment System implementing regulations ("SEIA").

1.2 Notable Developments, Regulatory Changes, Government/Regulatory Investigations

The publication of Law N° 20.417 in 2010 initiated a substantial reform of Chile's former environmental institutions. The law sought to build rationality and independence by creating a Ministry of the Environment that is responsible for designing and enacting environmental policies and regulations, a Superintendence of the Environment ("SMA") that is in charge of environmental compliance and enforcement, and an Environmental Assessment Service ("SEA") that is in charge of the Environmental Impact Assessment System; it also outlines the creation of the Environmental Courts.

In addition, several environmentally relevant regulations were discussed and published in 2016, such as Law N° 20.920, which establishes a framework for waste management, extended producer responsibility and recycling promotion, as well as the tax reform that introduced taxes on carbon, called "green taxes".

1.3 Developments in Environmental Policy and Law

As part of the reorganisation of Chile's environmental governance started in 2010, and with the purpose of enhancing biodiversity conservation and its management, Congress is currently discussing the enactment of a new agency, the "Biodiversity and Protected Areas Service", which will be complemented by a National Forest Service, in charge of the sustainable management of forests.

Considering the need to improve water management in an increasing scarcity scenario, in addition to reasserting the public function of water, Congress is discussing several legislative and constitutional reforms related to this area, such as relevant amendments to the Water Code, and studies on glaciers and sanitary systems. Moreover, the authority enacted Law N° 20.998, to regulate the rural sanitary systems, which are a new institution in Chilean law.

Regarding SEIA regulations, it is important to note that there are a number of proposals for amending the system, including a recent Bill filed in Congress in July 2018. Said Bill includes the following modifications to the SEIA:

- changes to the assessment governance bodies;
- modifications with regard to the public participation stage; and
- changes to the legal remedies available for participants in the SEIA.

Finally, as a result of various episodes of contamination and serious environmental damage cases that have generated broad public concern, several legislative proposals are currently being discussed, with the aim of establishing criminal responsibility in environmental matters, including corporate liability.

1.4 Environmental NGOs or Other Environmental Organisations/Groups

NGOs are very active in relation to environmental protection and citizen awareness in Chile. In this context, it is common for environmental NGOs to be involved in the environmental impact assessment proceedings of relevant investment projects, submitting observations during the public participation stage and filing complaints and legal actions to challenge a project's environmental licences. NGOs are also active within the process of drafting policies and regulations by submitting comments within the public consultation stage, presenting complaints against polluting projects, participating in parliamentary discussions on environmental bills, and generating dialogue and discussion regarding the definition of priorities within the Government's environmental agenda.

2. Enforcement

2.1 Key Regulatory Authorities and Bodies

The principal regulatory authority that is responsible for environmental policy is the Ministry of the Environment, which collaborates with the President in the design and implementation of environmental policies, plans and programmes. In addition, the Council of Ministers for Sustainability is responsible for proposing policies for the management and sustainable use of renewable natural resources.

The agency in charge of administering the environmental impact assessment system in Chile is the Environmental Assessment Service ("SEA"), which is charged with ensuring that an environmental assessment of projects listed in article 10 of Law Nº 19.300 is conducted in accordance with the regulations, including ensuring the public is provided with an opportunity to participate in the environmental assessment.

With respect to environmental compliance and enforcement, the Superintendence of the Environment ("SMA") is the agency within the Ministry of the Environment that is responsible for enforcing environmental regulations (including environmental licences) and promoting compliance.

The Environmental Courtsare specialised jurisdictional bodies, independent from the Administration and of a mixed composition, whose function is to resolve environmental controversies within its competence (article 17 of Law N°26.000) and to deal with all other matters that the law specifically submits to its knowledge.

There are three Environmental Courts in Chile, divided by territorial areas: the Northern part of Chile (called "Macrozona Norte") is subject to the jurisdiction of the First Environmental Court, based in Antofagasta; the Central part of Chile (called the "Central Valley") is under the jurisdiction of the Second Environment Court, which is seated in Santiago; and the last tribunal, the Third Environmental Court of Valdivia, has jurisdiction over the southern regions of Chile.

2.2 Investigative and Access Powers

The Superintendence of the Environment ("SMA") has broad investigative and access powers with respect to breaches of environmental licences and/or regulations. The regulations allow the SMA to perform inspections, granting it broad access powers in case of resistance, to request additional background information, to take samples and perform monitoring, and to order preventive measures to avoid major environmental damage.

Regarding environmental incidents, the SMA's powers are limited to investigating incidents within projects that have an environmental licence. For this purpose, the SMA has established a web platform where those licence holders that are responsible for environmental incidents must report such events, in accordance with the terms regulated in the respective licence.

2.3 Approach to Enforcement

The general approach to enforcing environmental law varies in accordance with the professional appointed to serve as the head of the agency ("Superintendente"). Generally, in the case of environmental violations, the agency can either impose monetary fines, which may be quite significant (millionaire fines), and/or determine the closure of facilities or even the revocation of permits. Also, the environmental legal amendment undertaken in Chile in 2010 incorporated incentives for compliance, which allow the offenders to cooperate with the investigation or even propose compliance programmes, assuming responsibility for the facts.

In this context, since their enactment the legal incentives regulated by D.S Nº 30/2012 have frequently been used by project holders as an alternative approach towards enforcement, focused on collaboration rather than an adversarial strategy, enabling regulated parties to comply and avoid sanctions.

Finally, the Environmental Courts serve as a legality control of the acts of the SMA, and could eventually invalidate its acts. The Courts also have jurisdiction to establish liability for environmental damage, which carries the obligation to repair the impaired environment.

3. Environmental Impact Assessment and Permits

3.1 Requirement for an Environmental Permit

Under Chilean regulations, all projects listed in article 10 of Law Nº 19.300 and further detailed in article 3 of D.S. Nº 40/2012 ("Environmental Impact Assessment System Implementing Regulations") must undertake an environmental impact assessment proceeding and obtain an environmental licence ("RCA"). In this context, it is relevant to note that there is one environmental licence and many sectorial environmental permits. In order to obtain the sectorial environmental permits, a project listed in article 10 must undertake an environmental assessment. The list of projects in Article 10 includes a number of productive activities, such as mining projects with production above 5,000 ton/month mineral ore and power generating projects above 3 MW, among others.

Overall, any significant environmental impact activity will require some kind of environmental permit, whether through a whole environmental assessment proceeding (to obtain an environmental licence) or simply by a sectorial permit approval.

3.2 Requirement for an Environmental Impact Assessment

Article 10 of Law Nº 19.300 contains a list of various projects that require environmental impact assessment because they are deemed to cause environmental effects, including ports, airports, railroad stations, highways, electrical power generating units above 3 MW, and mining development projects with a production capacity above 5,000 tons/month, among others.

Once a project is listed in article 10, it must determine the appropriate entry mechanism, taking into consideration

the magnitude and possible impacts of the project. There are two possible entry mechanisms: through an environmental impact statement, or through a full environmental impact study. If the project could potentially present any of the effects listed under article 11 of Law N° 19.300, it must submit a full environmental impact study.

The effects that determine the submission of an environmental impact study listed in Article 11 of Law Nº 19.300 are as follows:

- health risks for the population, due to the amount and quality of the streams, emissions or wastes;
- significant adverse effects on the amount or quality of renewable natural resources, including soil, water and air;
- the relocation of human communities, or significant alteration to the living systems or customs of human groups;
- location in or next to populations, resources or protected areas, priority sites for conservation, protected swamps and glaciers that could be affected, as well as the environmental value of the territory where the project is intended to be settled;
- significant alteration of the scenic or touristic value of an area, in terms of magnitude and duration; and
- alteration of monuments, sites with anthropologic, archeological or historical value, and, in general, every site belonging to the cultural heritage.

3.3 Obtaining Permits and Rights to Appeal

If a project is subject to the Environmental Impact Assessment System, it can obtain the environmental licence and relevant environmental sectorial permits through that system. Other relevant sectorial permits must be filed with the sectorial agency; however, environmental issues must be resolved within the environmental impact assessment system.

Environmental sectorial permits can be requested prior to the execution or modification of the activity or project, and the issuance of an environmental licence. However, the project's holder must present the environmental licence (if applicable) and all the information or documents necessary under the current regulations in order to obtain the permit.

The environmental sectorial permits are listed in Title VII, articles 111 to 160 of D.S. Nº 40/2012 (Environmental Impact System Implementing Regulations).

With respect to the rights to appeal permitting decisions by the relevant agency, it is important to note that there are different actions depending of the type of administrative proceeding. In the case of an environmental impact assessment proceeding, regulations stipulate a special legal action to appeal the decision of the assessment authority, which can be reviewed by the Executive Director of the Environmental Assessment Service ("SEA") if the complaint challenges a decision over an environmental impact statement, or by the Committee of Ministers if the complaint challenges a decision regarding an environmental impact study. Both decisions can be appealed to the competent Environmental Court.

Other sectorial permitting proceedings contemplate different mechanisms to appeal the permitting decisions of the authority, either asking the same authority that issued the decision or before another independent authority, but there is always the possibility of going to the Courts in a general procedure.

In the context of the right to appeal environmental permitting decisions, it is worth highlighting a ruling issued in October 2018 by the Supreme Court (Docket No. 2653-2018): "*Monasterio de Carmelitas Descalzas del Amor Misericordioso y de la Virgen del Carmen*" and the ecological community "*Comité de Adelanto Comunidad Ecológica El Peumo*"). In this ruling, the Supreme Court recognised the right of Public Participants within the SEIA not only to file the corresponding reclamation action but also to use the general Administrative Law remedies, in particular the invalidation petition, in cases where the competent authority (Committee of Ministers) included issues that were not originally considered within the environmental impact assessment proceeding.

The Supreme Court ruling vacated the decision of the Second Environmental Court that rejected the claim filed against the Committee of Ministers based on the provisions set forth in Article 17, No. 8 of Law No. 20.600, which expressly excludes the project holder and the Public Participants of the environmental assessment proceeding from the possibility of using the general Administrative Law invalidation petition. In this case, the invalidation request was declined by the Committee of Ministers as both the religious community and the ecological community were participants in the environmental assessment proceeding.

3.4 Integrated Permitting Regimes

There is a partial integrated permitting regime for projects or activities that are required to enter the Environmental Impact Assessment System ("SEIA") in order to obtain an Environmental Licence ("Environmental Qualification Resolution" or "RCA"). Through the SEIA, projects can benefit from an integrated permitting regime, called a "one-stop shopping system", through which holders must file all related environmental sectorial permits needed for the project's implementation. As a consequence, all environmental issues arising from these permits must be reviewed through the environmental assessment system. Thus, once the project has obtained an environmental licence, the sectorial agency cannot deny the permit based on environmental grounds.

The objective of this regime is to provide an integrated proceeding for obtaining all the relevant environmental permits for a project that is subject to the SEIA. However, there are other relevant sectorial permits that a project would need to file separately, and not through this integrated regime. For this reason, the Chilean integrated permitting regime is only partial, since it is applicable to a limited number of environmental permits, as listed in the D.S. Nº 40/2012 (SEIA implementing regulations) (all the environmental sectorial permits included in the integrated permitting regime are listed in Title VII, articles 111 et al of D.S. Nº 40/2011).

In contrast, if a project is not required to enter the Environmental Impact Assessment System, all relevant sectorial permits (including environmental permits) must be filed independently before the proper sectorial agency.

3.5 Transferring Environmental Permits

Environmental permits and licences can be transferred, but the environmental licence granted to a given project must be transferred as a whole: Chilean regulations do not accept any severance of permits/licences and obligations.

Additionally, the project's holder is always responsible for the environmental compliance, even when the execution of the project or activity is contracted to a third party.

3.6 Time Limits and Onerous Conditions

The environmental licence granted to a project is valid for five years, and the project's holder must initiate its execution within such timeframe. If the project fails to demonstrate initiation of works within the five-year timeframe, the environmental licence will expire.

Other sectorial permits last until the expiration of the timeframe given by the proper agency, or until the project or activity is finished.

Some environmental licences can contain unusual conditions, depending on the magnitude of the project and its environmental impacts.

3.7 Penalties/Sanctions for Breach

The breach of permitting requirements is typically subject to administrative penalties issued by the competent agency. The legislation also includes civil liabilities in case of environmental damage and, eventually, criminal penalties in certain specific cases.

The administrative penalties for the breach of an environmental licence (RCA) are listed in article 36 of Law N° 20.417, which regulates the powers of the Superintendence of Environment and the environmental sanctioning proceeding. These administrative penalties are imposed after the due course of a sanctioning administrative proceeding, led by that agency. There are other administrative penalties for the breach of other environmental permits that are not related to an RCA, which are subject to the competent agency to resolve (such as the National Mining and Geology Service or the National Livestock and Agricultural Service).

Civil liability in case of environmental damage is regulated in articles 51 to 55 of Law N° 19.300. These provisions establish a general environmental liability regime by which any party that willfully or with negligence causes any environmental damage must restore the damage caused. The environmental damage action must be filed before the competent Courts in order to obtain relief. However, a lawsuit for the compensation of damages derived from environmental damage must be filed only once the Environmental Courts has determined, in a final ruling, the existence of liability for environmental damage; consequently, this lawsuit can only be brought after the Environmental Court's ruling.

The law also provides for a presumption of negligence in the case of breach of environmental permits and/or regulations (such as environmental quality standards, emission standards, prevention and decontamination plans, among others).

However, Chilean civil law also recognises tortious liability. In this case, the injured party of the environmental damage is entitled to obtain compensation for the damages experienced, as determined by Civil courts.

Exceptionally, a criminal penalty could be imposed if the breach causes environmental harm and the offender has intentionally caused such harm. Environmental criminal liability in Chile is limited to two punishable figures set forth in article 291 of the Chilean Criminal Code and article 136 of Law N° 18.892. Article 290 of the Chilean Criminal Code states that " *those who improperly propagate organisms, products, element or agents either chemical, viral, bacteriological, radioactive or any other that by its nature could put on risk the vegetable or animal health, or the supplies of the population will be punished (…)* ". Article 136 of Law N° 18.892, which regulates fishery and aquiculture, establishes that "*the one who introduces or gives the order to introduce in the sea, rivers, lakes or any other water stream, chemical pollutants, biological or physical substances that cause damage to the hydrobiological resources, without been previously neutralised to prevent harm will be punished (…)*".

4. Environmental Liability

4.1 Key Types of Liability

It is important to note that, in Chile, landowners are not subject to special penalties for breaches of environmental law or environmental damages. Under Chilean legislation, environmental damage (with very specific exceptions) requires the concurrence of negligence (fault-based system) iand

three other requirements. Strict liability cases are few and exceptional.

In this context, the key types of liabilities that can be imposed on operators, polluters, landowners and others for environmental damage or breaches of environmental law are as follows:

- Administrative liability arises from the violation of an environmental licence or other environmental permits as regulated by their own regulation. Breaches of environmental licences are regulated by Law N° 20.417, which establishes a range of administrative penalties depending on the magnitude or effect of the violation (very serious violations, serious violations and minor violations). The agency in charge of enforcing compliance with environmental licences is the Superintendence of the Environment ("SMA").

There are other types of administrative penalties linked to the enforcement of other environmental permits and subject to the specific permit statute. These penalties are imposed through a sanctioning administrative proceeding, led by the competent sectorial agency.

Finally, liability for the breach of non-environmental regulations is carried forward by the pertinent sectorial agency, following its own regulation.

- Civil liability is set forth in articles 51 to 55 of Law N° 19.300, which establish a general environmental liability (fault-based) regime by which any party that willfully or with negligence causes any environmental damage is liable and required to restore the damage caused. The environmental damage action must be filed before the competent environmental Courts in order to obtain relief.

There can also be tortious claims, but a lawsuit for compensation of damages derived from environmental damages can only be filed once the Environmental Courts have established, in a final ruling, the existence of liability for environmental damage; therefore, this lawsuit can only be brought after the Environmental Court's ruling.

- There are a few strict liability cases where fault is not a requirement, such as nuclear damage, oil spills and the application of pesticides.
- Exceptionally, criminal penalty could be imposed if the violation causes environmental harm and the offender has intentionally caused such harm. However, there are no general provisions that establish criminal environmental liability; it applies to isolated sectorial cases.

5. Environmental Incidents and Damage

5.1 Liability for Historic Environmental Incidents or Damage

In Chile, liability for historic environmental incidents or damage is restricted and subject to statutes of limitations. Also, there are no special liability rules for current landowners or operators related to historic environmental incidents caused by previous owners or operators. However, a current owner could be responsible for environmental damages caused by a previous owner under general environmental damages liability rules, if the conditions for such liability are met.

5.2 Types of Liability for Environmental Incidents or Damage

Civil liability arising from environmental damage requires the occurrence of four conditions:

- an action that caused the damage;
- the damage or injury to the environment (significant harm);
- the fault or negligence of the party (fault-based system); and
- the causal connection between the action and the damage.

The law provides for a presumption of negligence in the case of violation of environmental regulations (such as environmental quality standards, emission standards, prevention and decontamination plans, among others). In this event, the breach of a given permit or regulation will eliminate the need to prove the third condition.

The main defences against this kind of lawsuit are centred on challenging the concurrence of any of the four conditions required for the existence of the liability; key defences include lack of evidence of the damage claimed, discussing the proper determination of the damage, and/or challenging the causality between the environmental damage and the effects of it.

It is relevant to note that this liability requires the filing of a reparation of environmental damage legal action, with the purpose of obtaining reparation of the damaged environment. This lawsuit is filed in the Environmental Court of the place where the damage has occurred or has been exposed. This suit may be filed by the person who suffered the damage, by the municipalities for the actions that cause damages in their respective territories, and by the State Defence Council on behalf of the State.

In addition, Chilean legislation recognises strict liability in very specific cases, such as nuclear damage, oil spills and the application of pesticides.

Chilean civil law also recognises tortious liability, in which case the injured party is entitled to obtain compensation for the damages experienced, whether monetary or moral, as determined by Civil courts.

On the other hand, the administrative liability arising from the breach of environmental regulations may also be imposed by the Superintendence of the Environment, through the corresponding administrative sanctioning proceeding.

Liability for the breach of non-environmental regulations is carried forward by the pertinent sectorial agency, following its own regulation.

In both cases, the main defence is to prove that the project holder exercised the proper diligence in the attainment of the regulatory standards and provisions, because the limits and conditions for these sanctions are set by each particular proceeding and its sectorial regulations.

5.3 Landmark/Significant Cases

There is an important recent principle regarding liability for environmental damage in Chile, which is the "protection of the biodiversity as a value by itself", regardless of the ownership of the damaged territory.

In this context, the State Defence Council (the agency that protects the interests of the nation) filed an environmental restoration legal action against a private party (the 'Legionaries of Christ Religious Congregation') for environmental damage inflicted on the "Cerro del Medio" site in northeast Santiago.

After intensive litigation, the Supreme Court issued a final ruling in 2015 establishing that the private party was responsible for the environmental damage inflicted on their hillside property, "Cerro del Medio", due to its implementation of an illegal waste dump that affected the specific biodiversity of the sector and caused intervention of a creek (the Supreme Court Docket number is 3003-2015, dated October 28, 2015, and the name of the litigating parties is "Consejo de Defensa del Estado con Congregación Religiosa Legionarios de Cristo").

In its ruling, the Supreme Court established that the party (landowner) was responsible for the environmental damage due to its negligence and breach of environmental regulations. The ruling dismissed the argument raised by the defendant, who asserted that there was no damage since they were also the owner of the property where the environmental harm occurred, and that, as owner of the land, they were not affected. Therefore, the defendant was forced to repair the damage to the ecosystem.

The key element of this ruling is the consideration of biodiversity as a value, regardless of the ownership of the land where the harm occurred or the will and rights of the owner of the land.

Another recent landmark case on environmental enforcement is the ruling issued by the First Environmental Court of Antofagasta (Docket No. R-5-2018 1TA) that reviewed the sanctions imposed by the SMA on the project holder of the "Pascua Lama" gold mining project. According to article 57 of Law Nº20.417, whenever the SMA imposes severe administrative sanctions, such as definite closure, the decision must be reviewed and confirmed by the Environmental Court.

In this case, within an administrative sanctioning proceeding, the SMA resolved to apply the sanction of "definitive closure" to five of the 33 charges filed for breach of the environmental licences of the project. In this ruling, the Court upheld and confirmed the criteria used by the SMA to impose the sanction of definite closure of the project only for breach of the environmental obligations identified as Charge No.7 in the Final Sanctioning Decision from the SMA (R.E. Nº 72/2018). For the other four violations, the Court considered that the reasoning and arguments of the SMA were not sufficient to meet the standards of proportionality and reasonability required for sanctions applied for environmental violations.

Additionally, in the ruling, the First Environmental Court reviewed the standard and criteria used by the SMA for qualification of environmental violations as "very serious" based on the generation of "irreversible environmental damage". The Court raised the standard for the SMA, requiring a higher level of technical evidence and reasoning to determine the existence of environmental damage and whether or not such damage could be deemed irreversible.

6. Corporate Liability

6.1 Liability of a Corporate Entity

Chilean legislation dictates that either a person or a legal entity, in any of its forms, can be responsible for any environmental damage or breach of environmental legislation. The liability is extended to the company's representative, which is a general environmental liability regime by which any party that willfully or with negligence causes any environmental damage must respond to restore the damage caused.

There are some cases of strict personal responsibility set by the regulation, such as the Mine Closure Law (Law Nº 20.551), which establishes the personal responsibility of the legal representatives of the company in case closure of a mine is being disguised ("disguised abandonment").

However, there are no particular rules concerning the liability of a corporate entity, although there are some legal ini-

tiatives to regulate specifically the criminal liability of legal entities regarding environmental damage.

6.2 Shareholder or Parent Company Liability

Chilean legislation does not consider that shareholders or parent companies may be liable parties for environmental damages or regulatory breaches. However, there are some legal Bills that have been submitted to Congress that seek to regulate specifically the criminal liability of legal entities regarding environmental damages.

7. Personal Liability

7.1 Liability of Directors or Other Officers

Chilean legislation dictates that either a person or a legal entity, in any of its forms, can be responsible for environmental damage or the breach of environmental legislation. This liability is extended to the company's representative, which is a general environmental liability regime by which any party that willfully or with negligence causes any environmental damage must respond to restore the damage caused.

Nonetheless, under certain exceptional circumstances, directors or other officers may be personally liable for breaches of environmental laws or regulations. An example of this is found in the Mine Closure Law (Law Nº 20.551), which establishes the personal responsibility of the legal representatives of the company in the case of disguising the abandonment of a mine site (article 34 sets out the responsibility of the company's representative: "*The company representatives of a mining industry and those who are declared responsible for breaching the execution of a closure mining plan will be sanctioned with …*").

The possible penalties that can be imposed are generally civil penalties; no criminal sanctions have yet been imposed, despite the fact that some criminal procedures regarding environmental damages are currently under investigation.

7.2 Insuring Against Liability

Chilean legislation does not regulate such insurance against those penalties or sanctions specifically. However, there could be insurance coverage in such cases, from foreign insurance companies.

8. Lender Liability

8.1 Financial Institution/Lender Liability

It is currently impossible for a financial institution to be liable for environmental damages or breaches of environmental law, and there has been no development of this kind of liability in the legislation or court rulings. However, it is important to consider that any financial institution might be subject to reputational damage if it has financed a highly controversial project.

8.2 Lender Protection

Lender protection is not currently regulated in Chilean legislation; therefore, lenders could protect themselves with contractual clauses of liability exemption caused by environmental damages or breaches in environmental regulations, as well as requiring borrowers to follow environmental good practice standards and establishing regular environmental compliance audits as part of the conditions of the loan.

9. Civil Liability

9.1 Civil Claims for Compensation

Civil claims for the compensation of environmental damages can only be filed after the Environmental Courts have established, in a final ruling, the existence of liability for environmental damage; therefore, this suit can only be brought after the Environmental Court's ruling.

If the Environmental Court did not accept such claim, the affected party may only claim compensation for damages in accordance with the general rules of civil liability, in the regular Courts.

9.2 Exemplary or Punitive Damages

The Courts cannot award punitive damages, since Chilean legislation sets the "integral reparation of the damage" as a principle in liability matters. Therefore, it is not possible to settle compensation beyond the damage actually caused.

9.3 Class or Group Actions

Chilean legislation does not consider class lawsuits for environmental matters. Such suits have only recently been incorporated in the areas of consumer rights and deficiency in construction.

9.4 Landmark Cases

These kind of lawsuits are not legislated in Chile, so there have been no cases regarding this issue so far.

10. Contractual

10.1 Transferring or Apportioning Liability

Indemnities and other contractual agreements can be used to transfer or apportion liability for incidental damage or breaches of law. These are only binding among the parties, and not on the regulators or enforcement agencies.

In the case of environmental damage legal actions, it is possible to go through transaction agreements between the parties. These agreements could only be used to repair the damage caused, through the implementation of actions, obli-

gations, deadlines and reports to monitor the restitution of the damaged environment. However, such agreements cannot transfer or apportion the liability for incidental damages or breaches of law.

10.2 Environmental Insurance

The legislation in Chile regulates insurance for certain risks arising from environmental damage – for example, nuclear damage. Such insurance aims to cover the eventual compensation derived from the civil liability of environmental negative impacts, but there is no general insurance to cover environmental damages or breaches in environmental laws or regulations.

In addition, some insurers in Chile offer environmental insurance to cover pollution damage, including compensation to third parties, costs of damage to the biodiversity and costs of cleaning the site when needed, but those are exceptional cases.

11. Contaminated Land

11.1 Key Laws Governing Contaminated Land

Although there are several statutes that address different issues relevant to contaminated land, Chile does not have one landmark statute that regulates the remediation of contaminated land or provides guidance as to liability and apportioning such liability among multiple liable parties.

The general approach taken by regulatory agencies to address the remediation of contaminated land is the use of the environmental damage liability provisions set forth in articles 51 to 55 of Law N° 19.300. These provisions establish a general environmental liability regime by which any party that willfully or with negligence causes any environmental damage must respond to restore the damage caused. The environmental damage action must be filed before the competent Courts in order to obtain relief.

11.2 Definition of Contaminated Land

Contamination is defined as the presence in the environment of substances, elements or energy, or a combination of them, in concentrations above or below the thresholds set forth in the regulations according to Law N° 19.300 article 2 letter c). Therefore, land will be deemed contaminated if there are contaminants present in the soil above or below the specific regulatory threshold.

11.3 Legal Requirements for Remediation

Under the environmental damage liability regulations, remediation can be imposed after a positive ruling from the Courts accepting the claim, or after an agreement between the plaintiff and the defendant.

11.4 Liability for Remediating Contaminated Land

Under Chilean legislation, only the polluter that caused the contamination is liable for remediating the contaminated land. Such liability is subject to a statute of limitations of five years from the time the harm is made evident. It is important to note that, although liability for environmental damage is a fault-based system (as opposed to a strict liability system), there is a provision that imposes liability on all those parties that have breached their permits, environmental emissions standards, non-attainment plans or other relevant environmental regulation.

11.5 Apportioning Liability

It is possible for more than one person to be liable for the remediation of contaminated land if there is evidence that all of them caused the environmental damage (ie, contaminated the land). Apportioning liability among several parties is always a complicated issue, because it requires evidence of the extent to which each party contributed to causing the damage.

11.6 Ability to Seek Recourse from a Former Owner

A person liable for remediating contaminated land may seek recourse from the original polluter, the former landowner or any other person, using traditional civil law actions. There are no specific legal actions to favour a party that seeks the reimbursement of remediation expenses from the original polluter, former landowner or any other potential liable party.

11.7 Ability to Transfer Liability to a Purchaser

The polluter or landowner may transfer liability to a purchaser in the context of a contractual agreement that will regulate their commercial understanding. However, that agreement will not be binding on the authority that can seek relief against the landowner or polluter. The agreement will entitle one party to request reimbursement from the other.

12. Climate Change and Emissions Trading

12.1 Key Policies, Principles and Laws Relating to Climate Change

Although Chile does yet not have a Climate Change Law, as a party to the Paris Agreement and the Montreal Protocol, it has developed a series of Plans and Policies to address this matter, especially through the Second National Action Plan for Climate Change (2017-2022), which establishes adaptation and mitigation guidelines.

With respect to adaptation, the National Adaptation Plan and the Sectorial Adaptation Plans of the forestry and livestock sector, the health sector, biodiversity, and fisheries and aquaculture stand out in this regard. Adaptation Plans

are currently being prepared for the energy sector, tourism, water resources and cities.

With respect to mitigation, the Policy comprises the following action areas:

- maintaining and updating the National Inventory of Greenhouse Gases;
- developing and implementing mitigation actions and policies, including mitigation actions for specific sectors (such as energy, transport, forestry and agriculture, low carbon strategies for housing, urban planning and public infrastructure) and cross-sectorial mitigation actions;
- determining the emissions of short-lived climate pollutants (CCVC) and implementing mitigation measures;
- implementing accounting systems and measuring, reporting and verification systems; and
- implementing actions to comply with international climate change mitigation commitments.

The Policy also sets the standard for the ministries and related agencies, which are developing different initiatives, such as the "National Strategy for Climate Change and Vegetative Resources" of the National Forestry Corporation, and the Energy Sector Mitigation Plan of the Ministry of Energy adopted on December 4, 2017, among others.

In accordance with the public and political debate, it is expected that a Climate Change Law will be enacted in the next few years.

12.2 Targets to Reduce Greenhouse Gas Emissions

Chile's Intended Nationally Determined Contributions to the Paris Agreement is the reduction, by the year 2030, of CO2 emissions per unit of GDP by 30% compared to the level achieved in 2007. In addition, and subject to obtaining international monetary contributions, a reduction of between 35% and 45% is sought in the same period. This policy also includes a specific target for the forest sector of sustainable management and the reforestation of 100,000 hectares of mainly native forest, and the forestation of 100,000 hectares, mostly with native species.

In addition to this commitment, there are some inter-agencies efforts such as the Mitigation Actions and policies aiming at GHG reduction, as well as the implementation of the National Greenhouse Gas Inventory System of Chile and the National Management Programme of Carbon Footprint, called "HuellaChile", for the voluntary management and quantification of GHG.

12.3 Energy Efficiency

Although Chile does not have an Energy Efficiency Law, a Bill on the matter was recently submitted to Congress, aiming to adopt a series of measures focused on housing and transport to generate important energy savings with respect to final consumption.

Despite this, the subject has been addressed consistently in various Policies, Programmes and Plans, such as the Energy Efficiency Action Plan, the Energy Policy 2050, the Energy Route 2018-2022 and various governmental programmes that promote the incorporation of energy efficiency in different economy sectors.

These initiatives have produced specific results, such as 100% of the main categories of appliances and equipment sold in the market are energy-efficient equipment. 100% of the buildings have OECD standards of efficient construction and intelligent energy management and control systems, and there are some policies regarding the implementation of international standards on energy efficiency in different types of transportation systems (such as road, air, sea and rail), among others.

Notwithstanding the above, there are no legal or binding requirements regarding energy efficiency.

12.4 Emissions Trading Schemes

There are some emission trading schemes in Chilean regulation.

Chile uses some market instruments to intensify the reduction of emissions, including the Clean Development Mechanism (CDM), in which Chile has participated since the ratification of the Kyoto Protocol in 2002. For its implementation, Chile established its Designated National Authority in 2003, which has a technical committee chaired by the Ministry of the Environment. This Committee is responsible for reviewing and evaluating the background of each project to grant the National Approval Letter, which is a prerequisite for the registration of any projects. The Partnership for Market Readiness (PMR) project is also under development.

Finally, certified emission reductions bonuses can be traded in the CO2 market, once an emitter project has reduced its emissions. Those bonuses can be used to reduce significantly the cost for environmental attainment.

13. Asbestos

13.1 Key Policies, Principles and Laws Relating to Asbestos

There is no special treatment regarding asbestos in Chilean regulation, but its regulation falls under the hazardous substances category under the current legal structure. However, there have been some historic initiatives regarding this issue.

The first legislation that referred to asbestos was published in 1954, and established the maximum standard of asbestos

allowed in areas with a human working force. This standard was updated in 1976.

Later, in 2001, the production, importation, distribution, sale and use of blue asbestos was prohibited. This same regulation also prohibited the production, importation, distribution and sale of construction materials containing any type of asbestos, and its production, importation, distribution, sale and use for any element or product that does not constitute a building material.

13.2 Responsibilities of the Landowner or Occupier

The landowner has a mandatory obligation to remove asbestos and other hazardous substances in buildings that could harm human beings, according to the health regulation standards.

The demolition, dismantling or modification of buildings with breakable asbestos fibre insulation (material that is poorly maintained, which breaks easily, releasing asbestos fibres into the environment) will require prior authorisation from the competent health authority. In order to obtain this authorisation, the owner of the buildings must present a work plan that provides the measures to protect the health of workers and the surrounding population.

13.3 Asbestos Litigation

Compensation claims for damages related to exposure to asbestos have been filed in Chile. Even though the use of asbestos was prohibited in 2001, there are still cases that arise regarding this subject.

These lawsuits have been presented by former workers or their families against their employers for negligence regarding safety measures to work with asbestos. Likewise, lawsuits have been filed by people who were not workers of the company but were exposed to asbestos through living in areas surrounding the company or through living with employees of the company.

Until approximately 2003, the Courts rejected all claims of compensation for damages caused by asbestos. However, since then, the Courts have taken two approaches, referring to the requirement of the standard of diligence of the company.

The first of these rulings establishes that the companies were supposed to adopt safety measures regarding workers, and also environmental security measures in the neighbouring area.

The second kind of decision is based on the fact that, in the occurrence of these circumstances (between the years 1960 and 1990), it was not possible to require companies to adopt such measures, since asbestos was not prohibited.

Therefore, there is a clear distinction in the Court's ruling, which establishes a timeframe in which to impose sanctions on companies that caused harm derived from the use of asbestos.

13.4 Establishing a Claim for Damages

Claims for asbestos compensation are based on victims that have at least been diagnosed with asbestosis disease. There are cases where it has been claimed that the mere exposure to asbestos, without asbestosis, is enough to initiate the suit, but the Courts have rejected such claims, ruling that there was no harm.

In conclusion, the plaintiff must prove physical harm or injury of some kind in order to bring a claim for damages based on exposure to asbestos.

However, when the victim dies, relatives can file a damage claim for moral damages, based on the pain, illness and death endured by their relative due to asbestosis. Currently there are claims that accept this type of request.

13.5 Significant Cases on Asbestos Liability

The two most significant cases regarding asbestos liability in Chile are the Manuel Elgueta and Raúl Olivares cases; these two men were victims in the first two lawsuits filed in civil and labour courts.

In the first case, the victim was a resident who lived for nine years in one of the villages near "Fabrica Pizarreño", which manufactured asbestos and construction products. In this case, it was established that the company had the duty to take security measures and protection measures not only at the working place, but also towards the environment and the health of the surrounding population.

In the second case, the victim was a worker from "Empresa Pizarreño". The Courts determined that the company failed to comply with its obligation of protection and prevention, since the Court could establish that the company was aware of the dangers of asbestos, but intentionally exceeded the asbestos limit standards set by the regulations.

14. Waste

14.1 Key Laws and Regulatory Controls Governing Waste

The key law governing waste regulation is Law N° 20.920, which establishes a framework for waste management, extended producer responsibility and the promotion of recycling ("REP Act"), which has been in force since June 1, 2016.

In addition, Chile has regulations on hazardous waste, landfills, industrial waste, sludge, and the emission of liq-

uid waste, and will soon have a regulation regarding transboundary movement of waste.

14.2 Retention of Liability After Disposal by a Third Party

The REP Act establishes an extended producer liability system according to which the producers of priority products are responsible for the management of the waste that they commercialise in the country; therefore, even though there is a third party that disposes of the waste, the producer will remain liable for it.

The same law determines the priority products, which have been selected due to their massive consumption, size, toxicity, feasibility to be valued and the existence of compared experiences at the international level. Accordingly, seven residues have been established as priority products: lubricating oils, electrical and electronic equipment, batteries, containers, packaging and tyres.

Regulations will be issued periodically to establish the goals for recycling, setting an amount of waste that each producer or vendor must manage and valorise.

14.3 Requirements to Design, Take-Back, Recover, Recycle or Dispose of Goods

The law establishes that any potentially recoverable waste must be destined to that end, in order to avoid its elimination, which is the responsibility of the producer.

For that purpose, the Ministry of the Environment will issue regulations that establish the obligation for the producers of priority products to collect and value certain quantities of priority products. In addition, these regulations may establish annexed obligations related to labelling, eco-design, the prevention of waste generation, communication and awareness-raising strategies, and the limitation of hazardous substances in waste, among others.

At present, the Ministry of Environment has issued two regulations in the context of the REP Act:

- the Regulation of the Recycling Fund (D.S Nº 7/2017), which allows the financing of projects, programmes and actions aimed at preventing the generation of waste and promoting their separation, reuse and recycling; and
- the Goal Setting Regulation, which establishes the mechanism to set the goals for the recycling of waste from priority products (D.S. Nº8/2017).

In September 2018, the Ministry of Environment published the draft regulation that sets the goals for the recycling and valorisation of discarded tyres, and opened a public consultation process.

15. Environmental Disclosure and Information

15.1 Requirement to Self-Report Environmental Incidents or Damage

There is a mandatory requirement to report any environmental incident associated with the RCA to the Superintendence of the Environment through the Environmental Monitoring System, within 24 hours of the event, providing all the background information on the incident, and also its effects and implemented containment measures.

15.2 Public Access to Environmental Information

Any person has the right to access the environmental information held by the Administration. The access to public information is regulated by a special law (Law N° 20.285), which applies to different agencies. Additionally, by legal mandate, the Ministry of the Environment administers a National Environmental Information System with general environmental information of free access, including a list of all the authorities that hold environmental information.

15.3 Disclose Environmental Information in Their Annual Reports

Companies have the duty to disclose environmental information about their projects under various regulations: the environmental decontamination plans or environmental permits, through periodic reports, and through monitoring on web platforms, among others. For example, emissions, waste and/or the transfer of pollutants are publicly administered by the Ministry of the Environment, with information provided every year from the companies.

16. Transactions

16.1 Environmental Due Diligence on M&A, Finance and Property Transactions

Environmental due diligence is one important part of the general due diligence conducted in M&A, finance and property transactions.

16.2 Environmental Liability for Historic Environmental Damage

Under a share or asset sale scenario, the general rule is that the company will be liable for historic environmental damage not covered under the statute of limitations, and for breaches of environmental regulations. The current owner of the company or of its shares will have to bear the burden of dealing with such liability. Therefore, contractual liability distribution and indemnity clauses are typical in these transactions.

16.3 Retention of Environmental Liability by Seller

In a share or asset sale scenario, the parties can contractually agree that the seller will retain environmental liability

for historical environmental damage or breaches of environmental law. However, as this will be a contractual obligation, the enforcing authority will obtain relief from the company, and the buyer will then have to sue the seller for the reimbursement of expenses.

16.4 Environmental Due Diligence by a Purchaser of Shares/Assets

Typically, environmental due diligence is conducted through a desk review of relevant environmental documents and files, such as permits, monitoring reports, enforcement notices and communications with authorities, among other pertinent information. However, in certain cases, it is necessary to undertake a more thorough and site-specific environmental due diligence, which includes a visit to the site, sampling and other site-specific environmental investigations.

16.5 Requirement for Seller to Disclose Environmental Information to the Purchaser

Under Chilean legislation, in most cases the seller is not required to disclose any environmental information to a purchaser. Therefore, proper environmental due diligence is essential in the acquisition of industrial properties or companies.

16.6 Environmental Warranties, Indemnities or Similar Provisions

It is a common practice in Chile to include special contractual liability provisions and indemnities related to environmental matters in both share and asset sales. These provisions aim to regulate the responsibility between the parties for environmental non-compliance or environmental damages arising from the assets or shares that have been acquired.

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16.7 Insolvency Rules

Chilean legislation does not generally contain specific insolvency rules regarding environmental matters or liabilities, with one exception: Law Nº 20.551, which regulates the closure of mining sites and facilities. This statute contains insolvency rules in case a mining company is bankrupted, providing preferential treatment for mine closure costs and financial assurances.

17. Taxes

17.1 Green Taxes

There was an important modification to the tax regime in 2014, which included a tax on emissions (carbon tax) from mobile sources and fixed sources, which has progressively introduced some relevant issues.

The first of these amendments imposes a tax on the registration of new private passenger vehicles, which depends on the retail price of the car, the efficiency of fuel consumption and the emission of nitrogen dioxide.

The second amendment imposes a tax on emissions of carbon dioxide, nitrogen dioxide, sulfur dioxide and particulate matter (carbon tax). This tax applies to establishments whose fixed sources made up of boilers or turbines generate at least 50 MW of heat, either individually or as a whole. The thermoelectric power stations and pulp mill industries are included in this amendment.

In addition, Chile is reviewing different carbon pricing alternatives for complementing its carbon taxes. Recently, the Government filed in Congress a new Bill that proposes to amend the Tax Reform of 2014 – Bill No. 12043-05, which incorporates specific modifications on the emissions taxes and considers offsets for taxpayers who implement projects for reducing CO2 emissions.