Global Private M&A Guide - Limited External Content - Chile

Quick reference guide

| Contents |
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| To generate table of contents, right-click here and select **Update Field.** |

# Due diligence, pricing and closing

**Typical due diligence issues**

There are no particular issues that a foreign investor should be aware of when undertaking a due diligence review with respect to a Chilean entity or group of assets, other than those usually reviewed, such as property titles, regulatory, tax, labor and social security compliance, permits, claims, corporate structure and powers, material contracts, change of control provisions, compliance matters and environmental matters. Further, merger control from an antitrust perspective should be considered and analyzed.

**Pricing and payment**

When issues are found during the due diligence process, it is common to ask the seller to rectify the issue before closing. It is also common for the buyer to seek protection through a reduction in, or retention of, the purchase price; the buyer may also obtain a special indemnity for a specific contingency.

**Foreign exchange control**

Chile does not have exchange controls. Certain foreign exchange transactions, such as the ones listed below, should be conducted through the Formal Exchange Market (e.g., through a commercial bank) and reported to the Central Bank of Chile. These transactions should meet either of the following criteria:

Investments, deposits and loans made abroad by Chilean resident individuals in excess of USD 10,000.

Capital contributions, investments, deposits and loans made from abroad into Chile in excess of USD 10,000.

Funds invested in Chile through the Formal Exchange Market may be repatriated abroad at any time, including the profits arising from those investments.

**Signing/closing**

Deposits are not required, but both deposits and escrow arrangements are fairly common in both share and asset deals.

In small deals, simultaneous signing and closing is common in both share and asset deals. Whether signing and closing are simultaneous or non-simultaneous will depend on whether there are conditions that must be satisfied, including regulatory approvals (e.g., merger control), divestments or spin-offs of certain parts of the target entity (e.g., affiliates, business lines, groups of assets), third-party consents/waivers, a drawdown of funds or the resolution of issues discovered during due diligence.

# Approvals/registrations

**Foreign investment restrictions**

Chile does not have a foreign investment screening procedure. However, a foreign investor may make a notification of an investment that has already been made into the country and request a "Foreign Investor Certificate." The Foreign Investor Certificate gives the foreign investor several additional rights. For further information, see the more detailed section on "Foreign investment restrictions".

**Antitrust/merger control**

Chile has a mandatory pre-merger and suspensory merger control regime, which means that transactions that meet the relevant turnover thresholds (sales outside of Chile are not considered for the calculation of the turnover for the purposes of the threshold) need to be notified to the competition authority and cleared before they can be completed. If the operation does not exceed the Chilean jurisdictional thresholds, then the mandatory procedure does not apply. The notification shall be admissible from the point when there is a real and serious intention from the parties to carry out the operation and until the said operation is complete (if it is completed without filing the notification, sanctions will apply). In addition, operations that are not voluntarily notified can be reviewed by the National Economic Prosecutor (FNE) within a year of the transaction's conclusion. For further information, see the more detailed section on "Antitrust/merger control".

**Other regulatory or government approvals**

Approval by the corresponding regulator (superintendence or the Commission for the Financial Market) or government entity is required for acquisitions of certain regulated entities, including banks, insurance companies, investment and pension funds, and public works concession companies.

# Employment

Under the Chilean Labor Code, the decision of how to manage the business is reserved for the employer. The employer can sell the business through a share or asset sale, sell a section of the business, merge, divide the business or carry out any other form of corporate transaction. Employees have no say in the decision. There is no obligation to obtain consent from or report to, employees, labor unions or even the labor authority. However, employees are not left to their own devices. The law affords employees protection known as the labor continuity rule.

Under the labor continuity rule, the total or partial change of ownership, possession or occupation of a business does not alter the rights and obligations of the employees arising out of their individual employment agreements or collective instruments. These remain in force and effect under the new employer.

In practical terms, the new employer will inherit the employees with their current rights and obligations, including seniority. If the new employer wishes to change any terms and conditions of the employment agreements because, for example, they contradict the new employer's policies, any such changes will require the consent of the employees.

If there is a change of ownership that qualifies as labor continuity, there is no need to terminate the employment agreement and, consequently, no need to pay severance or any of the other termination obligations. Labor continuity applies as a matter of law and no further formality is required. However, it is recommended to subscribe to an addendum with each employee indicating the change of ownership and the name of the new employer.

# Tax

No stamp or registration or any other similar taxes or charges are payable under the laws of Chile in connection with the execution, delivery, performance or enforcement of an asset or share acquisition. In the case of a share sale, the names and tax IDs of the new shareholders of the target entity must be provided to the Chilean Internal Revenue Service (IRS) within two months following the acquisition date.

The acquisition of assets is not subject to transfer taxes or any other similar taxes. However, the sale of used vehicles is subject to a municipal tax of 1.5% of the purchase price or the fiscal valuation of the vehicle, whichever is higher. This municipal tax must be borne by the buyer.

The sale of inventory of a Chilean company will be subject to value-added tax (VAT) at a rate of 19%. The sale of fixed assets, including vehicles, is subject to VAT at a rate of 19% only if the seller was entitled to a fiscal VAT credit upon the acquisition of such asset. Fixed assets and vehicles must also be detailed in the corresponding Chilean invoices.

**OECD's Two Pillar Solution**

The OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting has put forward a so-called Two-Pillar Solution to address the tax challenges arising from the digitalization of the economy. Pillar Two is intended to introduce a global minimum effective rate of tax of 15% for large businesses in each jurisdiction where they operate and will lead to fundamental changes in the international tax system. It is currently being implemented in a large number of jurisdictions.

Groups will need to consider how the Pillar Two rules could impact on the life cycle of M&A transactions from the pre-acquisition phase (including transaction planning (such as the choice of acquisition structure and financing) and due diligence of the target group), the acquisition phase (such as contractual risk allocation around Pillar Two) to the post-acquisition phase and the impact of Pillar Two on any post-acquisition integration.

# Post-acquisition integration

For information on post-acquisition integration matters, please see our [Post-acquisition Integration Handbook](https://www.bakermckenzie.com/en/insight/publications/resources/post-acquisition-integration-2023).

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