

Project Finance 2020

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Project Finance 2020

Contributing editors**Alec Borisoff and Aled Davies**

Milbank LLP

Lexology Getting The Deal Through is delighted to publish the thirteenth edition of *Project Finance*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on China, Cyprus and Turkey.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Alec Borisoff and Aled Davies of Milbank LLP, for their continued assistance with this volume.



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CREATING COLLATERAL SECURITY PACKAGES

Types of collateral

1 | What types of collateral and security interests are available?

There are different real guarantees (ie, those created over goods, either tangible or intangible) depending on the type of collateral, the nature of the secured obligation and its beneficiary.

One of the most important real guarantees is the mortgage, which may be created, among others, over real estate, mining property, water rights, usufruct rights, aircraft and vessels.

Additionally, the pledge is a kind of security interest that can be created over movable assets. There are different types of pledges, such as the civil pledge (to secure any kind of obligations), the commercial pledge (to secure commercial obligations) and the pledge without conveyance (where the pledgor maintains the possession of the asset). Using these pledges, a security interest can be created over any type of movable assets, such as personal property, contractual rights, receivables, securities, shares, monies deposited in bank accounts, after-acquired property and concession rights.

There is also a special pledge over securities in favour of banks, which can be created over any kind of securities (including shares) delivered to a bank or other financial institution to secure the obligations of the pledgor with such institution.

Collateral perfecting

2 | How is a security interest in each type of collateral perfected and how is its priority established? Are any fees, taxes or other charges payable to perfect a security interest and, if so, are there lawful techniques to minimise them? May a corporate entity, in the capacity of agent or trustee, hold collateral on behalf of the project lenders as the secured party? Is it necessary for the security agent and trustee to hold any licences to hold or enforce such security?

The mortgage over real estate property is perfected by means of a public deed executed before a Chilean public notary, registered in the corresponding Real Estate Registry. More than one mortgage can be created over the same property and, in such case, the priority among existing mortgages will be given by the order of their respective registrations. The parties can also create priorities among mortgages in the same mortgage agreements.

Civil and commercial pledges are perfected by delivering the relevant pledged asset to the pledgee without requiring any kind of registration. However, in the case of the commercial pledge, for the relevant creditor to benefit from the preference created by the pledge, it must be executed by means of a public deed or a private document incorporated in a notary public's registry. If a civil or commercial pledge is created over a credit, it must be notified to the debtor.

The pledge without conveyance is perfected by executing a public deed or a private document duly authorised and registered by a notary public. The pledge agreement has to be registered in the Registry of Pledges without Conveyance kept by the Civil Registry Service. If the pledged asset is subject to mandatory registration in other specific registry (eg, motorised vehicles), a reference to the pledge agreement shall be annotated in such registry. One or more pledges of this kind can be created over the same asset and, in such case, the priority among them will be given by their registration order. The parties can also create priorities among pledges in the same pledge agreements.

To perfect pledge over securities in favour of banks, the pledgor shall deliver the pledged securities to the financial institution if the securities have been issued to the bearer, or endorse them in guarantee if the securities have been issued to the order of the holder. The pledge over shares shall be executed by means of a public deed or a private document, and notified to the issuing company.

No taxes are required to be paid to perfect the above-mentioned guarantees, but there are fees charged by the intervening notary public and other charges and expenses associated with the applicable registrations.

The law expressly recognises the collateral agency. Pursuant to a collateral agency agreement, two or more creditors, with the acceptance of the debtor, appoint a common agent to represent them in the creation, amendment or release of their guarantees, and in the joint exercise of their rights. The guarantees are created in favour of the collateral agent, who accepts them on behalf of all present and future creditors and, therefore, new creditors will be secured without the need to amend the underlying security agreements. It is not necessary for the collateral agent to hold any licences to hold or enforce such securities.

In the event of bankruptcy of the collateral agent, the assets granted as collateral should be excluded from the bankruptcy process, as the collateral agent does not own the collateral, which is held on behalf of the secured creditors.

The parallel debt clause concept is not expressly recognised by Chilean law.

Assuring absence of liens

3 | How can a creditor assure itself as to the absence of liens with priority to the creditor's lien?

Liens over real estate property have to be registered in the corresponding Real Estate Registry and, therefore, a creditor can obtain from the competent real estate registrar a certificate listing all liens affecting the relevant property.

In the case of movable property, a creditor can obtain from the Civil Registry Service a certificate of pledges without conveyance granted by an individual or legal entity. Since this certificate cannot be requested with respect to a specific asset, it may not give a creditor total assurance that no preferred lien exists over such asset.

There is no certification with respect to civil and commercial pledges created over an asset.

Enforcing collateral rights

- 4 | Outside the context of a bankruptcy proceeding, what steps should a project lender take to enforce its rights as a secured party over the collateral?

It is mandatory for a secured creditor to follow the procedures contemplated in the law for the enforcement of its rights over any collateral located in Chile.

In general, these procedures must be carried out before an ordinary court and the sale of assets must be made through a public auction, in which the secured creditors can participate as bidders. There are statutory rules related to notice periods, rights and obligations of all the parties involved in the process.

There is no legal prohibition for a sale in foreign currency, but in practice sales within a judicial procedure are made in the local currency.

Enforcing collateral rights following bankruptcy

- 5 | How does a bankruptcy proceeding in respect of the project company affect the ability of a project lender to enforce its rights as a secured party over the collateral? Are there any preference periods, clawback rights or other preferential creditors' rights with respect to the collateral? What entities are excluded from bankruptcy proceedings and what legislation applies to them? What processes other than court proceedings are available to seize the assets of the project company in an enforcement?

As regards a project company, there are two main insolvency proceedings: the reorganisation proceeding, which has the purpose of restructuring the liabilities and assets of a debtor permitting to continue with its business; and the liquidation proceeding, for the liquidation of the assets of the debtor.

In a reorganisation proceeding, the debtor will enjoy a 'bankruptcy financial protection' for 30 business days, which can be extended for up to 60 additional business days if supported by the creditors. During such bankruptcy financial protection, all contracts entered into by the debtor and the payment conditions thereof will remain in force. Consequently, they may not be unilaterally terminated early or accelerated nor may any collateral thereunder be enforced, based on the commencement of a reorganisation proceeding. If a creditor contravenes this ban, its credit will be subordinated until all creditors are paid. Additionally, during a reorganisation proceeding, creditors may not demand the early payment of obligations based on the legal acceleration recognised by the Civil Code in the case of the debtor's notorious insolvency.

In a liquidation proceeding, the rights of the creditors to individually enforce their rights against the debtor are suspended. But, secured creditors are entitled to initiate or continue their legal actions to enforce their rights over the collateral subject to mortgages or pledges, but securing the payment of certain preferential credits. However, there are certain events that suspend the rights of secured creditors to exercise their rights over the relevant collateral (eg, sale of assets as an economic unit and the continuation of the economic activities of the debtor if the creditor accepts the terms thereof).

Regarding clawback rights, any act or contract executed by the debtor within two years prior to the commencement of the reorganisation or liquidation proceeding may be rendered ineffective if it is proved that: the counterparty had knowledge of the debtor's bad business condition; and the act or contract caused damage to the bankruptcy estate or affected the parity that shall exist among creditors. Exceptionally, there are specific cases, based on objective grounds, that allow the creditors

or the insolvency trustee to request the revocation of certain acts or contracts executed by the debtor within the year prior to the commencement of the insolvency proceedings (eg, payments before its maturity date or the creation of security interests over a debtor's assets to guarantee pre-existing obligations).

In a liquidation, creditors are paid following the mandatory preferences established by the law, and an employee's salaries, wages, social security obligations, taxes and court fees, among others, will have preference over other claims. In the case of a reorganisation proceeding, certain expenses incurred and facilities granted during the bankruptcy financial protection will be preferred.

The bankruptcy law applies to individuals and private legal entities. Banks and other regulated entities, such as insurance companies, pension funds and public agencies, are subject to other insolvency proceedings contained in different specific laws.

As a general rule, no out-of-court proceedings are available to seize the assets of the project company in an enforcement.

Claims of foreign creditors are treated equally as the claims of local creditors.

FOREIGN EXCHANGE AND WITHHOLDING TAX ISSUES

Restrictions, controls, fees and taxes

- 6 | What are the restrictions, controls, fees, taxes or other charges on foreign currency exchange?

Foreign currency exchange transactions can be freely carried out by any person, but the Central Bank is entitled to establish certain limitations and restrictions.

Those limitations are basically that certain foreign exchange transactions shall be informed of in writing to the Central Bank or carried out through the Formal Exchange Market (which is composed of local banks and other entities or persons authorised by the Central Bank). Currently, both of these limitations are in force.

The restrictions are the obligation to repatriate and liquidate foreign currency, and hold cash reserve to credits, deposits and investments from or to abroad; and authorisation to assume obligations to pay or remit foreign currency to abroad. None of these restrictions are currently in force.

There are no fees or taxes associated with foreign currency exchange.

Investment returns

- 7 | What are the restrictions, controls, fees and taxes on remittances of investment returns (dividends and capital) or payments of principal, interest or premiums on loans or bonds to parties in other jurisdictions?

Pursuant to the Foreign Exchange Regulations of the Central Bank, payments or remittances of foreign currency to abroad, or made abroad, corresponding to investment returns (dividends and capital) or payments of principal, interest or other benefits related to loans or bonds, shall be reported to the Central Bank. The foreign currency remitted from Chile shall be carried out through the Formal Exchange Market.

From a tax perspective, a capital return from the local project company to its foreign shareholders is not subject to taxes. In the case of payments of dividends to abroad, a 35 per cent withholding tax is applicable. However, the foreign investor is entitled to use as a tax credit against the withholding tax, all or part (depending on the corporate tax regime applicable to the local project company) of the corporate tax paid by the Chilean project company. In addition, there are bilateral double taxation treaties that provide for reduced tax rates or additional benefits to foreign investors domiciled or with residence in the states with which Chile has entered into such treaties (eg, Australia,

Brazil, Canada, China, France, New Zealand, Spain, Switzerland and the United Kingdom).

Interest payments by a Chilean resident to any person domiciled or resident abroad are subject to a 4 per cent withholding tax, provided that such payments are made to a foreign or international bank or non-banking financial institution, or a 35 per cent withholding tax to the extent paid to any other person domiciled or resident abroad. A surtax of up to 35 per cent shall apply on the portion of interest associated to the indebtedness deemed to be 'excessive' when such interest is paid to 'related entities' pursuant to the terms of the income tax law. Any other payment made to any person domiciled or resident abroad (other than on account of principal), may be subject to withholding tax at a rate of up to 35 per cent.

Foreign earnings

- 8 | **Must project companies repatriate foreign earnings? If so, must they be converted to local currency and what further restrictions exist over their use?**

Pursuant to the Foreign Exchange Regulations of the Central Bank, there is no obligation to repatriate earnings obtained from investments abroad, but payments or remittances to and from Chile shall be reported to the Central Bank and shall be carried out through the Formal Exchange Market.

- 9 | **May project companies establish and maintain foreign currency accounts in other jurisdictions and locally?**

Yes. In the case of certain deposits abroad, the Central Bank requires that payments or remittances to and from Chile shall be reported to it and shall be carried out through the Formal Exchange Market.

FOREIGN INVESTMENT ISSUES

Investment restrictions

- 10 | **What restrictions, fees and taxes exist on foreign investment in or ownership of a project and related companies? Do the restrictions also apply to foreign investors or creditors in the event of foreclosure on the project and related companies? Are there any bilateral investment treaties with key nation states or other international treaties that may afford relief from such restrictions? Would such activities require registration with any government authority?**

There are no particular restrictions, fees or taxes on foreign investment in or ownership of a project and related companies other than those generally applicable to local investment.

However, there are some specifically regulated sectors that are subject to restrictions. For example, the development of power plants interconnected to the power system, or the operation of its related services, must be directly carried out by Chilean companies or individuals. Also, nationals of countries bordering Chile are prohibited to acquire rights, including mortgages, over real estate properties located in the border area. The above-mentioned restrictions also apply in the case of foreclosure.

Insurance restrictions

- 11 | **What restrictions, fees and taxes exist on insurance policies over project assets provided or guaranteed by foreign insurance companies? May such policies be payable to foreign secured creditors?**

Any person is free to take out an insurance policy over assets with a foreign insurance company and no specific restrictions, fees and taxes exist in this regard.

Payments of insurance premiums to a foreign insurance company domiciled abroad are subject to a 22 per cent withholding tax. Reinsurance premiums paid to a reinsurance company domiciled abroad are subject to a 2 per cent withholding tax. However, in both cases, the premium will be exempted from withholding taxes if it corresponds to an insurance policy related to port or aeronautical industries, or if the insured party is a public works concessionaire.

Even though local insurance is not mandatory, reinsurances and cut through clauses are effective and customarily required by foreign creditors.

The holder of an insurance policy can appoint a collateral agent (acting on behalf of the foreign creditors) as insured party or as an additional beneficiary of the policy, which is a common practice in project financing in Chile.

Worker restrictions

- 12 | **What restrictions exist on bringing in foreign workers, technicians or executives to work on a project?**

In a local company with more than 25 employees, at least 85 per cent of them must be Chilean nationals, with certain exceptions such as technical specialists.

Any foreigner who wishes to engage in a labour relationship in Chile must previously be authorised to do so by the immigration authority. The employer has the obligation to verify that a foreign employee has a valid working permit or visa.

Equipment restrictions

- 13 | **What restrictions exist on the importation of project equipment?**

As a general rule, there are no restrictions on the importation of project equipment. However, the importation of some assets is forbidden (such as used vehicles, hazardous industrial waste and asbestos). In addition, the importation of some goods requires the authorisation of the corresponding government authority, such as guns, ammunition and cement that will be used in public works and buildings.

Nationalisation laws

- 14 | **What laws exist regarding the nationalisation or expropriation of project companies and assets? Are any forms of investment specially protected (from nationalisation or expropriation)?**

Pursuant to the Chilean Constitution, no person may be deprived of its property, except by means of a general or particular law that authorises the expropriation based on public benefit or national interests. The expropriated person may claim before the ordinary courts against the legality of the expropriation and will always be entitled to be indemnified.

There are no forms of investment specially protected from nationalisation or expropriation.

FISCAL TREATMENT OF FOREIGN INVESTMENT

Incentives

- 15 | What tax incentives or other incentives are provided preferentially to foreign investors or creditors? What taxes apply to foreign investments, loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

There are bilateral double taxation treaties that provide for reduced tax rates or additional benefits to foreign investors domiciled or with residence in the states with which Chile has entered into such treaties. Chile has double taxation treaties in force with more than 30 countries, including Australia, Brazil, Canada, China, France, New Zealand, Spain, Switzerland and the United Kingdom. Chile has also signed a double taxation treaty with the United States, but it is not in force.

There are no specific taxes applicable for the effectiveness or registration of foreign investments, mortgages or other security documents, other than fees charged by notary publics or registrars, documents' translations and legalisations, and other out-of-pocket expenses.

Foreign loans, whether evidenced by promissory notes or not, are subject to a stamp tax at a rate of 0.066 per cent per month calculated on the aggregate principal amount of the loan and capitalised interest thereon, with a limit of 0.8 per cent.

GOVERNMENT AUTHORITIES

Relevant authorities

- 16 | What are the relevant government agencies or departments with authority over projects in the typical project sectors? What is the nature and extent of their authority? What is the history of state ownership in these sectors?

For oil, gas, energy and transmission projects, the Ministry of Energy is the relevant authority, entitled to elaborate and coordinate plans and policies and advice the government in such fields. This sector is under the supervision of the Superintendency of Electricity and Fuels.

In the case of minerals, the relevant government agency is the Ministry of Mining, which has the authority to coordinate and organise the exploitation of the mineral resources. This sector is under the supervision of the Superintendency of Electricity and Fuels.

With regard to the chemical refining sector, the relevant government agency is the Ministry of Energy. This sector is under the inspection of the Superintendency of Electricity and Fuels.

The General Water Bureau, which is part of the Ministry of Public Works, is in charge of the management of the water resources. This sector is under the supervision of the Superintendency of the Environment.

Transportation and telecommunications are supervised by the Ministry of Transportation and Telecommunications, being in charge of national policies and the supervision of public and private companies operating in those areas.

The Ports Works Bureau, which is part of the Ministry of Public Works, is in charge of supervising the port activity and is also in charge of authorising the construction and development of ports and other related services. This sector is under the supervision of the Ministry of Public Works, but some public ports are subject to the authority of the Ministry of Transportation and Telecommunications.

With respect to infrastructure, the Ministry of Public Works has the authority over the public infrastructure, whereas the Ministry of Housing and Urbanism and the municipalities supervise private infrastructure.

Regarding state ownership in these sectors, the Constitution of 1925 provided that laws may reserve any natural resources to the

public national domain. Afterwards, pursuant to the current Constitution of 1980, the state no longer has the right to reserve for itself the ownership of natural resources, except for oil, gas and minerals. Water belongs to the nation.

REGULATION OF NATURAL RESOURCES

Titles

- 17 | Who has title to natural resources? What rights may private parties acquire to these resources and what obligations does the holder have? May foreign parties acquire such rights?

Except for superficial clay, the state owns all oil, gas and mineral resources. In the case of oil and gas, it has the exclusive right to exploit these resources, either by itself, through state-owned companies, or by private parties through concessions or special operational agreements.

As to mineral resources, exploitation is reserved to public or private entities that have been granted concessions. Concessionaries' obligations basically consist in the payment of a royalty and keeping harmless the superficial landowners and other concessionaries.

Water belongs to the nation, although its administration corresponds to the state. Privates can obtain water use rights from the General Water Bureau, which shall grant the rights as long as the water is available and the prospective rights do not affect third parties. Holders must protect the environment and pay a non-use royalty. Discussions are being held to change the current water rights regime.

Foreign parties can acquire the aforementioned rights, except for nationals from neighbouring countries, which cannot acquire real estate, mining rights or water rights located in a border area.

There are limitations to acquire property qualified as indigenous land. If an indigenous community is affected by a project, an indigenous consultation process must be conducted within the corresponding environmental assessment process.

Royalties and taxes

- 18 | What royalties and taxes are payable on the extraction of natural resources, and are they revenue- or profit-based?

In addition to income tax, mining companies must pay a specific progressive income royalty for the extraction of non-renewable resources at a rate of 0.5 per cent to 14 per cent applicable over the operational income obtained from mining activities. Such royalty applies indistinctly to domestic and foreign parties.

Export restrictions

- 19 | What restrictions, fees or taxes exist on the export of natural resources?

Chilean law does not impose restrictions, fees or taxes on the export of natural resources.

LEGAL ISSUES OF GENERAL APPLICATION

Government permission

- 20 | What government approvals are required for typical project finance transactions? What fees and other charges apply?

All projects or activities that may have an environmental impact can only be executed or modified upon an assessment of such impact, which ends with a resolution that qualifies the project as suitable environmentally. Additionally, some sectoral environmental permits and other sectoral permits are required to develop the project.

Other specific approvals may also be required for particular projects (eg, operation of hazardous and non-hazardous substances requires sanitary approvals, mining projects may require specific mining permits).

No approvals are required from governmental authorities for financings or remittances to or from foreign parties.

Registration of financing

21 | Must any of the financing or project documents be registered or filed with any government authority or otherwise comply with legal formalities to be valid or enforceable?

The financing agreement or the project documents subject to a foreign law do not require any formalities to be valid in Chile, but to be enforceable, the documents must be executed in proper form and be translated into Spanish language.

Arbitration awards

22 | How are international arbitration contractual provisions and awards recognised by local courts? Is the jurisdiction a member of the ICSID Convention or other prominent dispute resolution conventions? Are any types of disputes not arbitrable? Are any types of disputes subject to automatic domestic arbitration?

Chilean law does recognise international arbitration contractual provisions and awards and Chile is a member of the New York Convention and the ICSID Convention.

To recognise an arbitration award, the award must do the following:

- refer to the payment of money;
- be final and conclusive;
- be presented to the Supreme Court of Chile duly legalised or apostilled and translated into Spanish by a court appointed translator;
- not be contrary to the public policy of Chile; and
- not affect in any way property located in Chile.

In such case, the Supreme Court will recognise the award without any retrial or re-examination of the merits of the case, under the following circumstances:

- if there is a treaty between Chile and the country where the foreign award was rendered with respect to the enforcement of foreign awards, the provisions of such treaty shall be applied;
- if there is no treaty, the foreign award will be enforced if there is reciprocity as to the enforcement of foreign awards;
- if it can be proved that there is no reciprocity, the foreign award cannot be enforced; and
- if reciprocity cannot be proved, the foreign award will be enforced if it has not been rendered by default within the meaning of Chilean law.

There are some types of disputes not arbitrable, but they are not related to project finance transactions. Disputes subject to automatic domestic arbitration are mainly related to those among partners and shareholders.

Law governing agreements

23 | Which jurisdiction's law typically governs project agreements? Which jurisdiction's law typically governs financing agreements? Which matters are governed by domestic law?

Project agreements are usually governed by local law, with the exception of engineering, procurement and construction (EPC) contracts, which sometimes are governed by New York law.

Credit agreements are usually governed by New York law when foreign banks are involved, but governed by local law when only local banks participate. Security agreements related to collateral located in Chile and promissory notes are always governed by local law.

Submission to foreign jurisdiction

24 | Is a submission to a foreign jurisdiction and a waiver of immunity effective and enforceable?

The submission to a foreign jurisdiction that has a connection with the parties to the contract and a waiver of immunity are effective, but in the case of state-owned companies an authorisation by the President of Chile is required.

ENVIRONMENTAL, HEALTH AND SAFETY LAWS

Applicable regulations

25 | What laws or regulations apply to typical project sectors? What regulatory bodies administer those laws?

Oil, gas and power generation and transmission are regulated primarily by the General Electrical Services Law and the Gas Services Law, both supervised by the Superintendency of Electricity and Fuels.

Minerals extraction regulation is mainly contained in the Mining Code and the Mining Concessions Law, being the Ministry of Mining and the National Service of Geology and Mining the corresponding administrative bodies.

Water treatment and usage are regulated by the Water Code and General Sanitary Services Law. The supervision corresponds to the Superintendency of Sanitary Services and the General Water Bureau.

Several laws regulate transportation, including the Traffic Law, the Passengers Transportation Law, the Commercial Code and the Aeronautic Code. The Undersecretary of Transportation, the Civil Aviation Authority and the Maritime and Marine Territory Bureau supervise this regulation.

Maritime Concessions Regulation rules the ports activities, which are supervised by the Ports Works Bureau.

Telecommunications are regulated by the Telecommunications Law, which is supervised by the Undersecretary of Telecommunications.

The Ministry of Public Works Law and the Public Works Concessions Law regulate the public infrastructure. The supervision corresponds to the Ministry of Public Works. Urbanism and Constructions Law applies to private infrastructure, being supervised by the municipalities.

PROJECT COMPANIES

Principal business structures

26 | What are the principal business structures of project companies? What are the principal sources of financing available to project companies?

The principal business structures for project companies are the closely held stock corporation and the company by shares.

In both cases, the equity of the company is divided into shares, which can be freely transferred and over which pledges in favour of creditors may be created.

The main sources of financing available to project companies are bilateral or syndicated loans, which may be granted by either local or foreign banks or financial institutions, and the issuance of debt securities to be publicly offered (bonds).

PUBLIC-PRIVATE PARTNERSHIP LEGISLATION

Applicable legislation

27 | Has PPP-enabling legislation been enacted and, if so, at what level of government and is the legislation industry-specific?

Yes, at national level. It covers different industries such as toll roads, bridges, airports, transmission lines, cable railways, multipurpose dams, hospitals, jails, stadiums and other social infrastructures.

PPP – LIMITATIONS

Legal limitations

28 | What, if any, are the practical and legal limitations on PPP transactions?

For the development of a project as a PPP transaction, the regulations and limitations imposed by the respective PPP-enabling regulation shall be observed. In this sense, for example, under the Public Works Concessions Law and related regulation, a concession shall be awarded only to an entity that complies with certain requirements, and the concession cannot be granted for more than 50 years. Other particular restrictions shall be analysed on a case-by-case basis.

If a PPP transaction requires the use of public funds, it must be included in the national budget and duly authorised pursuant to the applicable laws and regulations.

There are some relevant practical limitations, such as the following:

- the awarding of the PPP contract involves a lengthy administrative process that includes the participation of different authorities (eg, the Ministry of Finance and the General Comptroller of the Republic). On the same note, the processes of environmental approval are complex and environmental agencies involved in the process (such as municipalities) may require adaptations to the awarded project;
- the risk of obtaining financing for the project is borne by the developer;
- guarantees required by PPP contracts (such as performance bonds and insurance policies) must be issued in Chile by local banks or local insurance companies. Those guarantees must be taken directly by the bidders or the concessionaire company, and not by its shareholders or sponsors. This could make guarantees more expensive or may force the sponsors to issue a counter-guarantee;
- during the construction stage, the shareholders of a project company (concessionaire) that has been awarded a public work concession cannot freely transfer its shareholdings in the project company; and
- project companies that have been awarded a public works concession are sole purpose entities, which imposes certain restrictions on the type of business they can engage in.

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PPP – TRANSACTIONS

Significant transactions

29 | What have been the most significant PPP transactions completed to date in your jurisdiction?

CODELCO (a state-owned company that is one of the world's main copper producers) tendered for the supply of desalinated water for its mining operations in the Antofagasta region. The project purpose is to supply desalinated water at competitive prices, under a build, own, operate and transfer-type arrangement. The initial capacity of the project will be 630 litres per second (l/s) and a potential 1,680 l/s. The project includes marine works, a desalination plant and approximately 160km of pipeline and relevant pumping system to transfer the water, as well as the associated electrical infrastructure.

The Port Company of San Antonio is working on the expansion of the San Antonio Port, which would cost more than US\$3,300 million. The project plans to serve eight container ships of up to 400 metres in length in concessioned terminals, mobilising around six million 20-foot equivalent units; that is, three times the current capacity of the port.

The free flow implementation in mayor toll roads will permit the toll payment through an automatic electronic system instead of tollbooths.

UPDATE AND TRENDS

Key developments of the past year

30 | In addition to the above, are there any emerging trends or 'hot topics' in project finance in your jurisdiction?

The transnational insolvency of the construction companies under EPC Agreements is significant. Certain relevant projects have experienced great difficulties caused by the insolvency of the head office of their respective construction companies.

The creation of the public limited company that will give rise to the Infrastructure Fund, a state company whose purpose will be to develop financing and investment activities in infrastructure projects. The resources will initially come from the transfer that will be made by the Public Works Ministry and in the future, from the fund's own operational profits.

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