

Corporate Aspects of Trading and Investing Chile

1. INTRODUCTION

This Article briefly illustrates the legal framework that is applicable in Chile to anyone interested in carrying out business activities in the country, with more details regarding foreign investment regulations and corporate structure alternatives.

2. METHODS OF MARKET ENTRY IN CHILE

2.1 AGENCY OR BRANCH OF A FOREIGN CORPORATION

Any foreign corporation wishing to set up a branch must appoint a representative in Chile. This agent acts on the basis of a mandate, contained in a contract that the non-resident principal confers to a Chilean resident individual or entity. The agent or representative acts on behalf and at the risk of the foreign principal to execute one or more business transactions. A local representative must be appointed through a broad power of attorney.

To establish a branch of a foreign corporation in Chile, it is necessary that certain duly certified documents be registered at local Public Notary. Thereafter, the agent must grant a statement of establishment of the agency. A summary of the said statement must fulfil with certain publicity requirements. No prior authorization of any governmental body is required.

The foreign corporation is responsible for all the activities and business carried out by the Chilean branch, and this liability is not limited to the assets located in Chile. In any case Chilean creditors of the branch will have a preferential right over the branch assets in case of bankruptcy or insolvency of the corporation.

No minimum capital is required for the establishment of a branch of a foreign corporation in Chile. Any amount of capital may be determined at the time of establishment of the branch and it is not mandatory that said capital be paid in on the date of establishment. Furthermore, the capital of the foreign corporation may be changed at any time, either increasing or decreasing it, in which case the said amendment must be executed by the agent by a public deed and duly informed to the tax authorities.

The branch shall be managed by the agent, who shall be vested with broad authorities to represent the foreign corporation.

There are no limitations with regard to the remittance of profits from the branch, provided all the pertinent taxes have been paid in and that any foreign investment remittance terms have been accomplished.

The agent must publish the financial statements of the branch every year in a newspaper of the domicile of the branch.

2.2 CORPORATION (SOCIEDAD ANÓNIMA)

The Corporation in Chile is an entity resulting from the formation of equity contributed by the shareholders, where each may contribute different assets of various types. The liability of the shareholders is limited to the amount of their individual contributions.

Corporations can be 'open', 'special' or 'closed'. A corporation is considered to be 'open' (public) when voluntarily or by law it registers its shares in the Register of Securities. 'Special' corporations are so, when law specifically identifies them as such, which would be the case of insurance companies, pension funds and other financial institutions. All other corporations are known as 'closed'.

2.3 LIMITED LIABILITY PARTNERSHIP (SOCIEDAD DE RESPONSABILIDAD LIMITADA)

A limited liability partnership is akin to a general partnership. The main difference is that each partner's liability is either limited to the amount of capital contributed or a greater amount as specified in the partnership deed. It is a legal entity with its own assets. There are no minimum or maximum capital requirements and a limited liability partnership is not required to publish financial statements or hold general meetings.

A limited liability partnership is formed by means of a deed executed before a public notary, which has the same requirements as for a general partnership deed. It is also necessary to file an excerpt of the partnership deed with the Register of Commerce within 60 days.

The management of a limited liability partnership may be vested in one or more partners, in a third party or in a Board of Directors specially appointed for that purpose. The quorum and structure of the said Board of Directors, in case the partners decided to appoint it, may be freely established in the by-laws.

The terms and conditions of profit distributions may be freely set forth in the by-laws by the partners.

The transfer of equity interests in a limited liability partnership requires the unanimous consent of all the partners thereof. Otherwise, the transfer shall be null and void. In the case that the partners agree to the transfer of interests, a public deed should be executed and an excerpt thereof published in the Official Gazette and registered with the Register of Commerce within 60 days as of the public deed date.

2.4 OTHER PARTNERSHIPS (SOCIEDADES)

The other types of partnerships that can be formed are:

General Partnership (Sociedad Colectiva)

In a general partnership all of the partners administrate the company either individually, or through an elected representative. Each partner is responsible for the legal liabilities of the partnership unlimitedly. To create a general partnership the partners, or their legal representatives, must sign a public deed.

The name of the partnership must contain the names of one or more of the partners, followed by the words "y compañía" (and company). Profits and losses can be assigned to the partners in

proportion to their contribution, but this is not mandatory so the deed must clearly state how they are to be divided. An excerpt of the partnership public deed must be registered at the Register of Commerce within 60 days.

Limited partnership ("Sociedad en Comandita")

In a limited partnership some partners can provide all or a part of the capital with no right to manage the partnership's affairs. These partners have limited liability. One or more of the other partners are designated as managers or general partners and are subject to unlimited liability for the partnership's debts and losses. If shares represent the limited partners' capital, the partnership is known as a limited partnership with share capital ("sociedad en comandita por acciones"). If not, it is a simple limited partnership ("sociedad en comandita simple"). The requirements for the creation of a limited partnership are comparable to those required when forming a general partnership.

Association & Silent Partnerships (Asociación y Cuentas en Participación)

An association ("asociación" or "cuentas en participación") is a contract between two or more business persons or entities to share in one or more commercial transactions, which are to be carried out by one of them in his or her own name. This partner must render an account to the other partners and share any possible profit or loss with them. The association only creates rights between the partners.

As far as third parties are concerned, only the partner in whose name the transaction is carried out is responsible. This association has no legal status and there are no legal requirements to create one. The association only creates rights among the partners. Essentially they are private and are not usually revealed to outsiders, making them a "silent partnership". Silent partners are not usually known to third parties, with the exception of the tax authorities for purposes of applying taxes to that partner's share of the profits.

Limited Liability Individual Partnership (E.I.R.L.)

Created on February 2003, by law 19.587. A legal frame that, without being a corporation, has legal personality derived from its holder. These partnerships are created with only one individual, Chilean or foreign (sole proprietorship).

Shares Partnership (Sociedad por Acciones)

This new type of partnerships was created on June 5th 2007, by the modifications of the Law 20.190. It is focused in the promotion of the investment in venture capital. Although it has the characteristic of being a partnership, law gives it the character of a closed corporation in every matter not governed by law or by its by laws, and imposes the obligation to have its capital divided in shares. If this partnership meets for more than ninety days any of the following requirements ((i) it has more than 500 shareholders, or (ii) at least 10% of its registered capital belongs to at least 100 shareholders) it will transform -by the operation of law- into an open corporation.

3. FORMATION AND MANAGEMENT OF A CORPORATION

For most corporations, the minimum number of shareholders is and there is no maximum number. They can be formed with one or more foreign partners or shareholders.

The management of a corporation is vested in a Board of Directors appointed by the shareholders. The Board shall have not less than three members in closed corporations, and not less than five or seven in open corporations, as required by the Chilean Corporations Act (Law

N° 18.046). It is not mandatory that a Director be a shareholder of the company. A shareholders meeting may, at any time, remove the Board as a body.

Shareholders may freely transfer their shares, except when there exists a limitation in the by-laws or in a shareholders agreement. In open corporations the by-laws may not limit the free transfer of shares, and any private agreement between shareholders setting forth restrictions must be registered with the company shareholders' registry in order to be enforceable. Transfers of shares must be duly signed and executed before a Public Notary, two witnesses or an authorized broker in order to be binding to third parties.

A corporation is dissolved and terminated when its term of duration expires, unless it has been incorporated for an indefinite duration. Additionally, corporations are dissolved if it is so agreed by 2/3 of the shareholders attending a meeting called for that purpose, or all the shares are acquired by one shareholder for more than ten straight days. The by-laws of the company may include other additional events which shall cause the dissolution of the corporation. When the dissolution of the corporation takes place, its liquidation shall be undertaken by a liquidating committee freely elected by the shareholders.

4. OFFICERS' LIABILITY OF A CORPORATION

The Board of Directors may delegate some of its authority upon a General Manager who shall have the legal representation of the company and shall be entrusted with the duty of implementing the resolutions of the Board of Directors. In open corporations Directors cannot be Managers.

Financial statements of corporations must be audited by inspectors of accounts or external auditors appointed by the shareholders' meeting. Open corporations must publish their financial statements in a newspaper of its domicile, as well as certain relevant information requested by the Securities and Insurance Superintendence. Additionally, all information requested by such authority must be filed every year by open corporations.

5. TAXATION

In general terms, the taxation system is very similar for all kinds of companies. They have to pay the so called "first category tax", which is a 17% of the profits of the precedent year, having in mind that a "year" is the period from 1st January till 31st of December. Indeed, in order to determine the applicable tax, the law allows to deduct from the earnings all the expenses needed to produce it.

Besides, when the company distribute the profits to the partners or shareholders, there is a distinction we need to set forth:

- a) If the shareholder is a foreign person or company, in that case there is a withholding tax that the distributing company must pay, equivalent to a 35% of the distributed profit. However, in this case, the foreign person or entity, is entitled to occupy as a credit of such tax, the 17% already paid by the company. This implies that the withholding tax shall be only the difference between the 35% and the 17%, thus 18%.

- b) If the shareholder is a Chilean person, there is also a distinction whether this person is a person or a company. In the first case, a progressive scale of taxation up to 40% will apply, with a credit of the 17% already paid by the company. Finally, if the shareholder is another company, this company will not pay any tax, because, the first category tax of 17% is paid only once. In that case, the taxation shall be deferred until the distribution this latter company makes to its shareholders.

There is a special regime of taxation in some particular fields or economy areas: such as agriculture and transport which allow, when below some amounts of sales in a year, a taxation upon a “supposed earnings”, even if they are not real in a particular case.

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