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Editorial Chapters

- 1** **Loan Syndications and Trading: An Overview of the Syndicated Loan Market**
Bridget Marsh & Tess Virmani, Loan Syndications and Trading Association
- 7** **Loan Market Association – An Overview**
Scott McMunn, Loan Market Association
- 10** **Asia Pacific Loan Market Association – An Overview**
James Hogan, Sophie Yu, Ivy Lui & Chiva Lai, Asia Pacific Loan Market Association (APLMA)

Expert Analysis Chapters

- 13** **An Introduction to Legal Risk and Structuring Cross-Border Lending Transactions**
Thomas Mellor, Marcus Marsh & Suzanne Dabage De La Espriella, Morgan, Lewis & Bockius LLP
- 18** **Global Trends in Leveraged Lending**
Joshua Thompson, James Crooks & Bryan Robson, Sidley Austin LLP
- 30** **Financings of Medical Practices: Considerations for Lenders**
Scott M. Herrig, David J. Kennedy & Matthew J. Wiener, Davis Polk & Wardwell LLP
- 34** **2024: A US Regulatory Perspective**
Bill Satchell & Lena Kiely, A&O Shearman
- 52** **Acquisition Financing in the United States: Optimism After Another Down Year**
Geoffrey Peck & Jeff Xu, Morrison & Foerster LLP
- 58** **A Comparative Overview of Transatlantic Intercreditor Agreements**
Laura Bonamis & Benjamin Sayagh, Milbank LLP
- 67** **Fund Finance: Past, Present and Future**
Samantha Hutchinson & Wesley A. Misson, Cadwalader, Wickersham & Taft LLP
- 69** **The Dynamics of European Covenant Lite**
Tracy Liu, Manoj Bhundia & Daniel Seale, Latham & Watkins LLP
- 75** **Analysis and Update on the Continuing Evolution of Terms in Private Credit Transactions**
Sandra Lee Montgomery & Michelle L. Iodice, Proskauer Rose LLP
- 87** **Trade Finance on the Blockchain: 2024 Update**
Josias Dewey & Samir Patel, Holland & Knight LLP
- 95** **Financing Your Private Debt Platform**
Dechert's Global Finance Team
- 106** **No Soup for You! Disqualified Lender Lists in Leveraged Loan Facilities**
Gregg Bateman, Y. Daphne Coelho-Adam & Michael Danenberg, Seward & Kissel LLP
- 112** **Private Credit and Middle Market Update 2024: Rising Returns and Increasing Risk of Default Driving Priming Liability Management Structures**
Jeff Norton, Jennifer Taylor & Maiah H. Parks, O'Melveny & Myers LLP
- 116** **Rated Subscription Lines: An Emerging Solution to the Liquidity Crunch?**
Charles Bischoff, Danny Peel & Laura Smith, Travers Smith LLP
- 122** **Recent Trends in Sustainable Finance**
Lara M. Rios & Camilo Gantiva, Holland & Knight LLP
- 130** **Syndicated vs Direct Lending: Evolution of Competing Yet Complimentary Debt Financing Providers**
Ilona Potiha Laor, Eugene Pevzner, Dino Peragallo & Ludovica Ducci, A&O Shearman
- 135** **Exchange Offers and Other Liability Management Options for High-Yield Bonds**
Jake Keaveny & Courtland Tisdale, Cahill Gordon & Reindel (UK) LLP
- 142** **Taking Security in Cross-Border Lending: (How Do You Know) The Steps to Take or Whose Law is it Anyway?**
David W. Morse, Otterbourg P.C.
- 149** **Subordination in US Operating Company Capital Structures: A Primer**
Daniel Bursky, J. Christian Nahr, Mark Hayek & Eliza Riffe Hollander, Fried, Frank, Harris, Shriver & Jacobson LLP
- 156** **UK Take Private Transactions – Overview of Lender Considerations**
Karan Chopra, Rob Davidson & Sindhoo Vinod Sabharwal, Paul Hastings (Europe) LLP

Q&A Chapters

- 161** **Austria**
Fellner Wratzfeld & Partners: Markus Fellner, Florian Kranebitter & Mario Burger
- 173** **Bermuda**
Wakefield Quin Limited: Erik L. Gotfredsen & Jemima Fearnside
- 181** **Brazil**
Levy & Salomão Advogados: Luiz Roberto de Assis & Fabio Kupfermann Rodarte
- 191** **British Virgin Islands**
Maples Group: Michael Gagie, Matthew Gilbert & Ana Lazgare
- 199** **Bulgaria**
Eversheds Sutherland: Konstantin Mladenov, Radoslav Sabotinov & Nikolay Bebov
- 208** **Canada**
McMillan LLP: Jeff Rogers, Don Waters, Maria Sagan & Shaniel Lewis
- 219** **Cayman Islands**
Maples Group: Tina Meigh & Bianca Leacock
- 227** **Chile**
Carey: Diego Peralta, Fernando Noriega & Alejandro Toro
- 237** **China**
Grandall Law Firm: Will Fung, Zhu Wei, Kee Shao Yee & Dong Huizi
- 246** **Croatia**
Macesic and Partners LLC: Miroljub Macesic & Antea Muschet
- 255** **Cyprus**
Kilikitas & Co Law: Marinella Kilikitas
- 265** **England**
A&O Shearman: Jane Glancy, Oleg Khomenko & Fiona FitzGerald
- 276** **Finland**
White & Case LLP: Tanja Törnkvist & Krista Rekola
- 285** **France**
Orrick Herrington & Sutcliffe LLP: Laure Seror & Judith Rousvoal
- 296** **Germany**
SZA Schilling, Zutt & Anschutz Rechtsanwalts-gesellschaft mbH: Dr. Dietrich F. R. Stiller, Dr. Andreas Herr & Dr. Ilja Baudisch
- 307** **Greece**
Sardelas Petsa Law Firm: Panagiotis (Notis) Sardelas & Aggeliki Chatzistavrou
- 316** **Hong Kong**
Morgan, Lewis & Bockius LLP: Grigory Marinichev & Changyu (David) Liao
- 325** **Indonesia**
ATD Law in association with Mori Hamada & Matsumoto: Alfa Dewi Setiawati, Faiz Naufaldo & Yasmin Nariswari
- 333** **Ireland**
Dillon Eustace: Conor Keaveny, Jamie Ensor, Richard Lacken & Shona Hughes
- 344** **Italy**
A&O Shearman Studio Legale Associato: Stefano Sennhauser & Alessandro Carta Mantiglia Pasini
- 355** **Japan**
Anderson Mōri & Tomotsune: Yusuke Kawahara
- 363** **Jersey**
Carey Olsen Jersey LLP: Robin Smith, Kate Andrews, Peter German & Nick Ghazi
- 375** **Luxembourg**
S.J.L. Jimenez Lunz: Antoine Fortier Grethen & Esteban Thewissen
- 384** **Netherlands**
Freshfields Bruckhaus Deringer LLP: Mandeep Lotay & Tim Elkerbout
- 392** **Panama**
Morgan & Morgan: Kharla Aizpurua Olmos
- 400** **Peru**
Miranda & Amado Abogados: Juan Luis Avendaño C. & Jose Miguel Puiggros O.
- 412** **Portugal**
SRS Legal: Alexandra Valente, João Santos Carvalho, António Pape & Vasco Correia da Silva
- 420** **Singapore**
Drew & Napier LLC: Pauline Chong, Renu Menon, Blossom Hing & Ong Ken Loon
- 433** **South Africa**
A&O Shearman (South Africa) LLP: Ryan Nelson & Cynthia Venter
- 445** **Spain**
Cuatrecasas: Héctor Bros & Manuel Follía
- 457** **Sweden**
White & Case LLP: Carl Hugo Parment & Magnus Wennerhorn
- 466** **Switzerland**
Bär & Karrer Ltd.: Frédéric Bétrisey, Taulant Dervishaj, Lukas Roesler & Micha Schilling
- 476** **Taiwan**
Lee and Li, Attorneys-at-Law: Hsin-Lan Hsu & Odin Hsu
- 486** **United Arab Emirates**
Morgan, Lewis & Bockius LLP: Alexey Chertov, Sourabh Bhattacharya, Oluwatomisin Mosuro & Alexander Tombak
- 502** **USA**
Morgan, Lewis & Bockius LLP: Thomas Mellor, Katherine Weinstein, Rick Denhup & Sandra Vrejan

Chile



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Carey

1 Overview

1.1 What are the main trends/significant developments in the lending markets in your jurisdiction?

To provide a general overview of the country's economic and lending conditions, it must be noted that during recent years and following the inflationary trends that were caused by COVID-19 mitigation measures, the Central Bank of Chile has managed to lower inflation levels, which reached an accumulated level of 12.8% for the year 2022, the highest in more than three decades, to reasonable levels by sustaining a high Monetary Policy Rate (“*Tasa de Política Monetaria*”). Inflation for the year 2023 was 3.9% and the Monetary Policy Rate, which reached a maximum of 11.25% between October 2022 and July 2023, has been lowered to 7.25% as of February 2024 and is expected to keep declining, which should have a positive impact on the lending market and economic activity/growth. Economic activity has, however, declined in recent years and the gross domestic product grew only 0.2% during the year 2023, which implies a negative *per capita* performance, considering population growth. This has translated to lending markets, as, according to the CMF, the number of debtors in the supervised lending industry, specifically for bank loans, increased from 5,405,651 to 6,526,397 within the period December 2021–December 2023. This increase may be explained by a number of different factors, including the increment of basic living costs, inflation, which has just recently declined, and stagnated wages, as well as an increase in unemployment and informal labour.

As to specific legal and regulatory developments in the financial markets, some of the most notable updates are as follows:

1. Law N° 21,641, which strengthens the resilience of the financial system and its structures, was published in the Official Gazette on December 30, 2023. Among other things, this law improves certainty for the repurchase and reverse repurchase agreement markets by giving obligations between parties of any such transaction the status of “related obligations” (*obligaciones conexas*), if said transactions are covered under a framework agreement, and therefore allowing the netting of such obligations between the same parties, even in case of insolvency or bankruptcy reorganisation resolutions (which was not the case prior to the enactment of this law, since this type

of transactions were governed by general insolvency/bankruptcy regulation, that as a general rule (and subject to certain exceptions) prohibits netting upon commencement of reorganisation or liquidation proceedings.

2. On November 30, 2023, the Commission for the Financial Market (“**CMF**”) issued Exempt Resolution No. 9,077, whereby it modified the category of transactions “expressed” in foreign currency to also include those “in” foreign currency (i.e., payable in foreign currency), which have been renamed as “transactions in foreign currency and expressed in foreign currency”. The foregoing is for purposes of determining the current interest rate (*tasa de interés corriente*) and the maximum interest rate for both types of transactions. Prior to such resolution, the CMF only published the current interest rate and the maximum interest rate for operations expressed in foreign currency but payable in Chilean pesos. However, as a result of a Supreme Court ruling, the new category of “transactions in foreign currency and expressed in foreign currency” will be subject to the provisions of Law No. 18,010, on money lending operations, including rules on maximum interest rate. It is worth mentioning that, notwithstanding the provisions of the resolution issued by the CMF, money lending transactions indicated in article 5 of Law No. 18,010, which include transactions that are agreed with a foreign or international banking or financial institution and transactions in which the borrower is a banking or financial entity, will continue to be exempt from the maximum interest rate.
3. The most notable legal change introduced to financial/lending markets during 2023 was the introduction of Law N°21,521 known as the “**Fintech Bill**”, which establishes a regulatory framework for services based on Fintech technologies, such as crowdfunding platforms, alternative transaction systems, credit and investment advice, custody of financial instruments, order routers and financial instrument intermediaries, that were not previously regulated or supervised by the CMF. In addition, the Fintech Bill has created an open banking system that will enable the exchange of client information directly and securely between different financial or related service providers, through remote and automated access interfaces, provided express consent by the clients has been obtained. The Fintech Bill also regulates alternative

transaction systems, such as the offer, quote and trade of cryptocurrencies and crowdfunding or crowdfunding platforms and in other cases providing a more in-depth regulatory framework, such as advisory services for credit and investment, custody of financial instruments, order routers and intermediaries of financial instruments. The focus of this law, notably, is regulating services rather than regulating the entities themselves.

Although most provisions of the Fintech Bill are currently in force, some of its chapters have specific rules of deferred entry into force, in particular, chapters regarding technology-based financial services and the open finance system. As at the time of writing (March 2024), the CMF has completed the first part of implementation of the Fintech Bill, by enacting General Rule N° 502, effective since February 3, 2024, which establishes the requirements generally applicable to the registration, authorisation, and obligations of financial service providers under the Fintech Bill. General Rule N° 502 mainly establishes the registration requirements, authorisation process and obligations applicable to all fintech service providers, including crowdfunding platforms, alternative transaction systems, intermediation of financial instruments, order routing, credit rating services, investment advice and custody of financial instruments and covers the following requirements: (i) registration with the CMF; (ii) authorisation from the CMF to operate as a provider of fintech services; (iii) information and reporting obligations; (iv) corporate governance and risk management; (v) minimum capital and required collateral; and (vi) operational capacity, among others.

For the implementation of the aforementioned requirements, the General Rule distinguishes Fintech platforms mainly by their number of active clients and dictates differential and less burdensome compliance requirements depending on such number of active clients for the provision of services in a smaller volume or for services which, by their nature, do not compromise public faith or financial stability. These differential criteria apply for aspects such as minimum equity and collateral requirements, as well as for certain corporate governance and risk management aspects. For the purpose of calculating these minimum equity and collateral requirements, each company's assets are weighted by risk, in accordance with the provisions and formulas indicated in General Rule N° 502.

These new laws and regulations, along with some other legislative and regulatory developments, generally aim to improve the Chilean financial system, to maintain the country's status as one of the best and more reliable investment destinations in the region.

1.2 What are some significant lending transactions that have taken place in your jurisdiction in recent years?

There is no separate information pertaining to local lending transactions but, generally speaking, the largest sector of borrowers is real estate developers, followed by commerce (retail) and construction.

Nonetheless, in the last few years, Carey has advised, among others, the following clients in significant lending transactions:

- BNP Paribas Securities, BofA Securities and HSBC Securities (USA), as dealers, on the issuance of AT1 bonds by Banco de Crédito e Inversiones (“BCI”), under Rule 144A/Reg S, for USD500 million, under its Medium-Term Notes (“MTN”) issuance programme, to be listed on the Luxembourg Stock Exchange and traded on the Euro MTF market.

- Aguas Pacífico (Patria Investments), on a financing for USD883 million, under New York law, for a desalination project located in Valparaíso, and an aqueduct located in the Metropolitan region of Chile.
- Grünenthal and its Chilean subsidiary, Laboratorios Andrómaco, the latter as guarantor, on the amendment of a credit agreement for a revolving credit facility for approx. USD550 million (EUR500 million), and on the issuance of USD330 million approx. (EUR300 million) aggregate principal amount, secured by Laboratorios Andrómaco, among other companies of the Grünenthal group. The Notes were offered outside the United States in reliance on Regulation S under the Securities Act of 1933, as amended. In the United States, the Notes were offered only to qualified institutional buyers pursuant to Rule 144A under the same Securities Act.

2 Guarantees

2.1 Can a company guarantee borrowings of one or more other members of its corporate group (see below for questions relating to fraudulent transfer/financial assistance)?

Following certain corporate requirements depending on the type of company involved (including satisfaction of specific rules for related-party transactions, especially in cases of publicly traded corporations or other regulated entities), provided the guarantor benefits somehow from these operations, and subject to applicable insolvency, moratorium or similar laws relating to or affecting creditors' rights generally, and general principles of fairness (regardless of whether it is considered in a proceeding in equity or at law), there are no restrictions for this type of guarantee.

Additionally, under Chilean general banking law, banks are not authorised to grant mortgages or pledges over their own physical assets, unless to guarantee payment of the purchase price thereof. Considering this, it has been construed that banks can provide guarantees over financial assets subject to certain restrictions regulated by the CMF.

2.2 Are there enforceability or other concerns (such as director liability) if only a disproportionately small (or no) benefit to the guaranteeing/securing company can be shown?

Under the Chilean Corporations Law, directors of corporations are jointly and severally liable for any damages caused to shareholders for their negligent or malicious actions, making it highly unlikely that the approval of a board would be secured for such a disadvantageous operation. Should these agreements cause the company's insolvency, there are actions for revocation which apply once the reorganisation or liquidation procedures have started, according to Chilean insolvency law. Among the agreements that can be revoked are any pledges or mortgages granted by the insolvent company within a year before the insolvency proceedings (to guarantee debts previously acquired), and any act or agreement (including granting guarantees) entered into within two years before the insolvency proceedings, provided that (i) the counterparty knew of the company's poor state of business at the time, and (ii) the agreement caused damage to the other creditors, where damage means that the terms and conditions were distant from the market's at the time of the agreement. On the other hand, article 2,468 of the Chilean Civil Code grants the creditors of an insolvent debtor the right to request the revocation of certain agreements

entered into by such debtor (*acción pauliana*), provided that: (i) the transaction causes damages to the creditors (the transaction executed increased the insolvency of the debtor); (ii) the debtor was aware of its poor business condition at the time of entering into such act or contract; and (iii) in case of an onerous act or contract, the counterparty of the debtor was also aware of the poor business condition of the debtor. In addition, during 2023, Chilean Congress approved the bill that systematises economic crimes and offences against the environment, which innovates in a series of matters, some of which might have an impact on the liability of directors and the company in connection with granting guarantees and security interests in favour of third parties. In general terms, the new bill can be summarised as follows: (i) the systematisation of offences related to business activity under four major categories of crimes that correspond to so-called “Economic Crimes”; (ii) the creation of new offences (e.g., a new title has been incorporated into the Criminal Code called “Offences against the environment”, among others); (iii) the inclusion of new offences based on the crime of money laundering typified in article 27 of Law No. 19,913; (iv) the establishment of new penalties and sanctions, as well as the strengthening of existing ones, seeking that custodial sentences are effectively complied with by those who are involved in the commission of an Economic Crime; and (v) the exponential growth of the number of predicate offences for which legal entities may be criminally liable under Law No. 20,393.

2.3 Is lack of corporate power an issue?

Yes. The Chilean Civil Code establishes in articles 2,151 and 2,160 that the principal shall not be obliged toward third parties by acts or agreements entered into by its agent if (i) the latter did not mention that he was acting on behalf of the principal, and (ii) the agent acts beyond the limits of its mandate. However, this issue is mitigated by the “theory of appearance”, based on article 2,173 of the Chilean Civil Code, according to which, such agreements are legally binding for the corporation, in case they were agreed upon in good faith by the counterpart, without knowledge of said lack of corporate power. Ratification by the principal of the non-empowered actions is also a possible solution for the lack of corporate power.

2.4 Are any governmental or other consents or filings, or other formalities (such as shareholder approval), required?

There are no governmental approvals required, but, depending on the company’s structure, the value and the type of guarantee, there are certain corporate consents which are required. If the guarantor is a corporation, in order to guarantee third-party obligations (unless the guaranteed obligations belong to a company that is a subsidiary of the guarantor, in which case the Board’s approval suffices, and also with an exception for lender banks) and also if the value of the guaranteed obligations exceed 50% of the guaranteeing corporation’s assets, an extraordinary shareholders’ meeting must be called in order to grant approval.

2.5 Are net worth, solvency or similar limitations imposed on the amount of a guarantee?

No. Nevertheless, any operation executed between related parties needs to be for the company’s benefit, complying with the market’s standards for price, terms and conditions, and also the required approval if the guaranteed value exceeds 50% of the guarantor’s assets, as explained above.

2.6 Are there any exchange control or similar obstacles to enforcement of a guarantee?

There are no exchange control regulations. Payment in foreign currency is possible if the parties have agreed such form of payment. In order to enforce a guarantee (as an accessory obligation), it is required that the secured obligations comply with certain requirements, and in case of obligations governed by foreign law and subject to foreign jurisdiction, *exequatur* procedures must be conducted. Subject to Law No. 18,010 regarding lending operations, transactions agreed in a foreign currency shall be payable according to the seller exchange rate applicable on the date of payment, which must be certified by a Chilean commercial bank. Please refer to our answers to questions 7.2, 7.3 and 7.7 with regard to the enforcement of foreign judgments procedure.

3 Collateral Security

3.1 What types of collateral are available to secure lending obligations?

Lending obligations can be: (i) secured by security granted over collateral, creating rights *in rem*; and (ii) guaranteed by personal guarantees.

(i) **Security over assets:** There are securities over moveable assets (pledge agreements) and securities over real estate, vessels, and aircrafts (mortgage agreements).

(a) Security over moveable assets:

- **Civil pledge:** This has a wide scope, as it may apply to any moveable property, including all kinds of personal rights and credits. Any obligation may be secured by this pledge, including obligations to act, or to refrain from acting. However, it is not commonly used, as the pledgor must deliver the pledged asset, losing the ability to use and exploit it.

- **Commercial pledge:** This aims to secure commercial obligations. Though it is very similar to the civil pledge, unlike the latter, the material possession by the pledgee is not required, as it may be delivered to a third-party bailee. With this pledge it is not possible to secure future obligations – only currently existing and determined obligations – and its only requirement is that the material possession of the pledged property is not held by the pledgor. The Commerce Code requires certain formalities for granting the pledge in order for the pledgee to be able to exercise its right to be paid preferentially: (i) the execution of the pledge agreement by means of a public deed, or by private instrument entered into a Chilean Notary Public’s registry; (ii) the amount of the debt secured and the pledged asset must be defined in the agreement; and (iii) for pledges granted over a credit, the debtor of the credit must be notified not to make any payment under the pledged credit but to the creditor.

- **Banking pledge over securities:** This may be granted over bearer securities of any kind in favour of banks and other financial institutions, even those that are foreign. This pledge may secure all current or future obligations of the pledgor with the pledgee. It only requires the handing over of the instrument by the pledgor to the pledgee. Credits payable to the order (i.e., not in bearer form) must be endorsed as a guarantee to the pledgee. Finally, shares must be pledged by means of a public deed or private instrument, which must be notified to

the issuer by a Notary Public. This pledge does not allow the pledgor to remain in material possession of the pledged assets. It is worth noting that the Constitutional Court of Chile ruled in one case that this procedure was not compliant with the due process constitutional protection, thus it declared the same unconstitutional. This is not a general ruling, but it may show a tendency.

- **Pledge without conveyance (“PwC”):** This allows any kind of corporeal or incorporeal, present or future, moveable assets to be pledged in order to secure own or third-party obligations, present or future, irrespective of whether such obligations are determined or undetermined at the time of the pledge agreement. It must be executed either by means of a public deed or a private instrument, with the signatures of the appearing parties authorised by a Chilean Notary Public, before the instrument is entered into a Chilean Notary Public’s registry. The PwC agreement must contain at least the following references: (i) the identities of the parties; (ii) the existing secured obligations or the specification that the pledge secures present and future obligations (*cláusula de garantía general*); (iii) the identification of the pledged assets; and (iv) the determined or undetermined amount to which the pledge is limited or the extent to which the pledge secures several obligations, if applicable. The PwC agreement must be registered in a special registry called the Pledge without Conveyance Registry. Upon its registration, the pledge without conveyance is enforceable upon third parties.
- **Pledge over deposited securities:** A new pledge was created at the end of 2016 to simplify the pledging of securities deposited with depository entities. The latter shall need to enter into a master agreement with all depositors to allow this type of pledge.

(b) Security over real estate:

- **Mortgages:** Granted by means of a public deed, a mortgage allows not only existing and determined obligations but present and future obligations of the borrower (*cláusula de garantía general*) to be secured. Mortgages are perfected by means of registration in the corresponding Mortgage Lien Registry. Generally, the mortgage deed will also contemplate a prohibition to transfer, convey and enter into acts or contracts with respect to the mortgaged property. Likewise, mortgages can be granted over mining concessions and water rights, which need to be registered in the same manner in the Custodian of Mines’ Registry or the Real Estate Registrar Property Registry, as appropriate.
- **Security over vessels and aircraft:** Mortgages can be granted over vessels and aircraft fulfilling certain requirements, such as the vessel or aircraft being duly registered in the corresponding Registry and the agreement being granted by means of a public deed.

- (ii) **Personal guaranties:** The most common personal guaranties in Chile are sureties (*fianzas*) and joint and several guaranties (*fianzas y codendas solidarias*). By means of sureties, one or more third parties are bound to pay the debtor’s obligation in the event such debtor does not pay the secured obligation. By virtue of joint and several guaranties, the liability for default is enforceable directly against all of the debtor(s) and guarantors as a group or against any one of

them as an individual at the choice of the enforcing creditor. The main characteristic of the joint and several guaranties is that guarantors become equally liable to the creditor, just as the primary debtor. Therefore, they are not entitled to request that (i) the debt be claimed first from the borrowers and only if they do not pay, then be collected from them, and (ii) the debt be divided equally or proportionally among the various guarantors. Under Chilean law, guaranties are an accessory to the main obligations and cannot exceed the amount of such obligations. This is expressly regulated for sureties, where it is stated that they cannot exceed the main obligation being guaranteed and cannot be granted in terms more onerous than those of the main obligor but can be granted in terms more effective (like securing its obligations as guarantor through a mortgage, for example). The Chilean Civil Code does not provide for any formalities at all to grant sureties but if the obligation intended to be secured is a commercial obligation, it must be granted in writing. Where the guarantor of a surety and a joint several co-debtor is an individual married under joint ownership of the matrimonial estate (*sociedad conyugal*), the prior spouse’s consent is required.

- (iii) **Conditional assignments of rights:** This is a widely used tool in Chile to safeguard creditors’ rights in an event of default.

3.2 Is it possible to give asset security by means of a general security agreement or is an agreement required in relation to each type of asset? Briefly, what is the procedure?

It is not possible to dispose or grant a security over all of an entity’s assets. The security document must clearly identify which assets are being pledged (or mortgaged). Additionally, each type of security requires specific formalities for perfection (see our answer to question 3.1 above). The most advisable manner is to have an agreement for every type of asset, since each has a different registration process.

3.3 Can collateral security be taken over real property (land), plant, machinery and equipment? Briefly, what is the procedure?

Yes. Please refer to the answer to question 3.1.

3.4 Can collateral security be taken over receivables? Briefly, what is the procedure? Are debtors required to be notified of the security?

Yes. Please refer to the answer to question 3.1, since the receivables are credits.

3.5 Can collateral security be taken over cash deposited in bank accounts? Briefly, what is the procedure?

Yes, it can be taken either by means of a commercial pledge or a PwC. The procedure is briefly explained in the answer to question 3.1.

3.6 Can collateral security be taken over shares in companies incorporated in your jurisdiction? Are the shares in certificated form? Can such security validly be granted under a New York or English law-governed document? Briefly, what is the procedure?

Yes. All the pledges set forth by Chilean law can be granted over

shares. Please refer to our answer to question 3.1. The Chilean Corporations Law states that any liens or rights *in rem* over shares of a company must be notified by a minister of faith, who must leave a record thereof in the company's shareholders' registry. Shares can be issued either in certificated form or dematerialised in case of corporations and companies limited by shares.

No, security over shares or any other assets located in Chile cannot be granted under a New York or English law-governed document, given that in accordance to article 16 of the Chilean Civil Code, assets located in Chile are subject to Chilean law, notwithstanding the valid stipulations made in foreign contracts.

3.7 Can security be taken over inventory? Briefly, what is the procedure?

Yes. Please refer to the answer to question 3.1.

3.8 Can a company grant a security interest in order to secure its obligations (i) as a borrower under a credit facility, and (ii) as a guarantor of the obligations of other borrowers and/or guarantors of obligations under a credit facility (see below for questions relating to the giving of guarantees and financial assistance)?

Yes, it can. Please refer to our answer to question 2.4 above.

3.9 What are the notarisation, registration, stamp duty and other fees (whether related to property value or otherwise) in relation to security over different types of assets?

It mainly depends on the kind of collateral the company is granting. Except for civil and commercial pledges, all other collateral agreements must be executed by means of a public deed or by a private document which must be authorised and registered by a Notary Public. Therefore, notarisation expenses are common to all kinds of collateral over all kinds of assets.

In case of mortgages, as mentioned above, the agreement must be registered in the relevant Mortgage Lien Registry and in the Prohibitions Registry of the Real Estate Custodian, which charges a fee as well.

In case of a PwC, it is necessary to register it in the PwC Registry, which also charges a fee. If a PwC is granted over shares which are deposited in the Central Securities Deposit, these must be registered in an electronic pledge registry, which also charges a fee for its services.

3.10 Do the filing, notification or registration requirements in relation to security over different types of assets involve a significant amount of time or expense?

No, expenses are generally not material, and in general, procedures do not take long, although it depends on the registrar and workload at the time of the registration request. The PwC Registry charges a fixed fee of CLP 51,290 (approx. USD 52) for each such registration.

3.11 Are any regulatory or similar consents required with respect to the creation of security?

No, there are not.

3.12 If the borrowings to be secured are under a revolving credit facility, are there any special priority or other concerns?

No, there are not.

3.13 Are there particular documentary or execution requirements (notarisation, execution under power of attorney, counterparts, deeds)?

Yes, please refer to the answers above. In case of the execution of foreign agreements in Chile, documents must be apostilled (or legalised, if it was extended in a country that is not a member of the Apostille Convention), and if not in Spanish, they need to be translated to be presented in courts.

4 Financial Assistance

4.1 Are there prohibitions or restrictions on the ability of a company to guarantee and/or give security to support borrowings incurred to finance or refinance the direct or indirect acquisition of: (a) shares of the company; (b) shares of any company that directly or indirectly owns shares in the company; or (c) shares in a sister subsidiary?

- (a) Shares of the company
There are no such prohibitions or restrictions under Chilean law, except for the requirements mentioned in our answers to questions 2.4 and 2.5.
- (b) Shares of any company that directly or indirectly owns shares in the company
There are no such prohibitions or restrictions under Chilean law, except for the requirements mentioned in our answers to questions 2.4 and 2.5.
- (c) Shares in a sister subsidiary
There are no such prohibitions or restrictions under Chilean law, except for the requirements mentioned in our answers to questions 2.4 and 2.5.

5 Syndicated Lending/Agency/Trustee/Transfers

5.1 Will your jurisdiction recognise the role of an agent or trustee and allow the agent or trustee (rather than each lender acting separately) to enforce the loan documentation and collateral security and to apply the proceeds from the collateral to the claims of all the lenders?

Yes. Their appointment requires the existence of at least two creditors, who may allow the authorities to manage the collateral as well as enforcement and release of the same in case of an event of default, among other duties and attributions. In the case of a single lender, it can also issue a mandate for a local entity/person to act on its behalf, serving the same purpose as a collateral agent with the same powers, although in this case, such mandate will be subject to general rules, but not to the simplified granting and collateral management provisions applicable to the security agent pursuant to Chilean law.

5.2 If an agent or trustee is not recognised in your jurisdiction, is an alternative mechanism available to achieve the effect referred to above, which would allow one party to enforce claims on behalf of all the lenders so that individual lenders do not need to enforce their security separately?

Yes. Individual lenders can also issue a mandate for a local entity/person to act on their behalf, serving the same purpose as a collateral agent with the same powers.

5.3 Assume a loan is made to a company organised under the laws of your jurisdiction and guaranteed by a guarantor organised under the laws of your jurisdiction. If such loan is transferred by Lender A to Lender B, are there any special requirements necessary to make the loan and guarantee enforceable by Lender B?

Yes. Under the Chilean Civil Code, it is necessary to duly notify the credit assignment to the debtor, and for the debtor to accept it. Otherwise, the assignment cannot be enforced against the debtor or third parties.

Regarding the guarantees, the Chilean Civil Code provides that assignment of credits encompasses assignment of guarantees securing the same, by virtue of the law.

In all such cases, if there is a foreign lender lending to a Chilean entity, these international transfers must be reported to the Central Bank of Chile, for statistical and monetary purposes.

6 Withholding, Stamp and Other Taxes; Notarial and Other Costs

6.1 Are there any requirements to deduct or withhold tax from (a) interest payable on loans made to domestic or foreign lenders, or (b) the proceeds of a claim under a guarantee or the proceeds of enforcing security?

- (a) As a general rule, interest paid by Chilean taxpayers to foreign lenders is subject to a 35% withholding tax. However, a reduced 4% tax rate is applicable to certain interest payments (see question 6.2). The above is notwithstanding the existence of double taxation treaties. The payment of interest by Chilean taxpayers to domestic lenders is not subject to withholding tax.
- (b) Payments of interest abroad upon enforcement of a guarantee could be subject to withholding tax depending on the reimbursement rights that the guarantor has against the main obligor.

6.2 What tax incentives or other incentives are provided preferentially to foreign lenders? What taxes apply to foreign lenders with respect to their loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

Interest paid to foreign banks or foreign financial institutions complying with the requirements set by Chilean tax legislation benefit from a reduced withholding tax rate of 4%. Interest payments to foreign individuals resident in a country where there is a tax treaty in place with Chile may also benefit from a reduced withholding tax rate.

Stamp tax applies to documents evidencing indebtedness for borrowed money, including loan documents, notes and bond issuances. The tax is applied over the principal amount of the loan and its current rate is 0.066% of the principal amount

multiplied by the number of months-to-maturity of the loan, with a maximum of 12 months (i.e., 0.8%). In case of loans payable on demand, the applicable rate is 0.332%.

6.3 Will any income of a foreign lender become taxable in your jurisdiction solely because of a loan to, or guarantee and/or grant of, security from a company in your jurisdiction?

No, it will not.

6.4 Will there be any other significant costs that would be incurred by foreign lenders in the grant of such loan/guarantee/security, such as notarial fees, etc.?

There are transactional fees and translation costs, but as explained in our answer to question 3.9, they are not significant.

6.5 Are there any adverse consequences for a company that is a borrower (such as under thin capitalisation principles) if some or all of the lenders are organised under the laws of a jurisdiction other than your own? Please disregard withholding tax concerns for the purposes of this question.

Under Chilean income tax law, thin capitalisation rules are triggered when a Chilean-resident taxpayer pays interest or other financing expenses (e.g., services, commissions, expenses reimbursements) to a related party abroad under a withholding tax rate of less than 35%. Per the thin capitalisation rules, in article 41F of the Chilean Tax Code, any interest (or similar) payments made abroad to a related party and attributed to excessive indebtedness are subject to a 35% tax payable by the debtor. The withholding tax applicable to the payments made by the Chilean resident taxpayer can be used as a credit against such 35% tax.

A taxpayer will be deemed to have “excessive indebtedness” if its total indebtedness (related and non-related) is greater than three times its tax equity at the end of the year when payments were made to related parties.

7 Judicial Enforcement

7.1 Will the courts in your jurisdiction recognise a governing law in a contract that is the law of another jurisdiction (a “foreign governing law”)? Will courts in your jurisdiction enforce a contract that has a foreign governing law?

Yes, taking into consideration the existence of a connecting factor with the parties involved. However, according to article 16 of the Chilean Civil Code and article 105 of the Private International Law Code (the “Bustamante Code”), assets are governed by the *lex situs* (the law of the jurisdiction where the assets are located), thus assets of any kind located in Chile are governed by Chilean laws. In consequence, generally speaking, a choice of law of a court in Chile will be based on the *lex situs* of the charged assets.

7.2 Will the courts in your jurisdiction recognise and enforce a judgment given against a company in New York courts or English courts (a “foreign judgment”) without re-examination of the merits of the case?

Yes. Chilean courts would enforce an English/New York

judgment without re-examination of the merits, provided legal requirements are met and there are no public policy considerations and to the extent the judgment complies with a proceeding called “*exequatur*”, which must be followed before the Chilean Supreme Court.

7.3 Assuming a company is in payment default under a loan agreement or a guarantee agreement and has no legal defence to payment, approximately how long would it take for a foreign lender to (a) assuming the answer to question 7.1 is yes, file a suit against the company in a court in your jurisdiction, obtain a judgment, and enforce the judgment against the assets of the company, and (b) assuming the answer to question 7.2 is yes, enforce a foreign judgment in a court in your jurisdiction against the assets of the company?

- (a) In general, disputes are resolved in the first instance by a lower court, which may take from two to four years. Rulings and judgments of a lower court may be reviewed in second instance by a Court of Appeals, which may take from one to two years. Beyond that, some remedies may be claimed before the Supreme Court, which may take from one to two years. Therefore, a common civil proceeding may take up to eight years. In addition, enforcement of judgments is generally executed by means of an enforcement proceeding, which may take around one year.
- (b) The *exequatur* proceeding itself may usually take around six to eight months. Once the *exequatur* is obtained, the enforcement proceeding may usually take around one year, although we have obtained payment in a New York-issued ruling in a three-month period.

7.4 With respect to enforcing collateral security, are there any significant restrictions that may impact the timing and value of enforcement, such as (a) a requirement for a public auction, or (b) regulatory consents?

Yes. The enforcement of collateral security located in Chile must be made in Chile, before the competent Chilean court, in accordance with the rules for the so-called summary proceeding (*juicio ejecutivo*) contained in the Chilean Code of Civil Procedure. This procedure provides a very brief discussion stage, a stage of liquidation and subsequent public auction, which is held by auctioneers appointed by the court. This last stage can take a long time and the proceeds of the auction may be different from the expected ones.

7.5 Do restrictions apply to foreign lenders in the event of (a) filing suit against a company in your jurisdiction, or (b) foreclosure on collateral security?

No, there are no such restrictions.

7.6 Do the bankruptcy, reorganisation or similar laws in your jurisdiction provide for any kind of moratorium on enforcement of lender claims? If so, does the moratorium apply to the enforcement of collateral security?

Yes. According to Chilean insolvency law, during a term of 30 days as of the legal notice of the reorganisation resolution which appoints a supervisor for the insolvency proceeding “*Veedor*”, the debtor will be protected by the Insolvency Financial Protection

(*Protección Financiera Concursal*), during which neither the declaration nor the initiation of a liquidation proceeding against the debtor or foreclosures can take place, nor may individual foreclosures, any kind of executions or restitutions in lease trials be initiated and, among others, all agreements executed by the debtor will maintain their effectiveness and payment conditions. The credits that contravene this restriction will be postponed in payment until all of the creditors have been paid off. This 30-day period may be extended under certain circumstances for two more 30-day periods. Nonetheless, personal guarantees issued by third parties can be foreclosed.

7.7 Will the courts in your jurisdiction recognise and enforce an arbitral award given against the company without re-examination of the merits?

Yes. Foreign arbitral awards are recognised and enforced in Chile, subject to an *exequatur* from the Supreme Court, which will be granted provided legal requirements are met and there are no public policy considerations, without re-examination of the merits.

8 Bankruptcy Proceedings

8.1 How does a bankruptcy proceeding in respect of a company affect the ability of a lender to enforce its rights as a secured party over the collateral security?

Please see our answer to question 7.6 above.

8.2 Are there any preference periods, clawback rights or other preferential creditors’ rights (e.g., tax debts, employees’ claims) with respect to the security?

According to Chilean insolvency law and the Chilean Civil Code, there is a scale of preference, according to which debts are paid. The first class, which includes judicial costs, administrative and liquidation fees, labour wages, severance payments and surcharge and withholding taxes, has preference over all other credits. The second class includes the rights of the pledgee over the pledged asset. Mortgagees prefer every other credit, including first class credits, over the mortgaged asset; nevertheless, if there are not enough assets to cover the debts, the first class gives preference to the mortgagee over the mortgaged asset.

8.3 Are there any entities that are excluded from bankruptcy proceedings and, if so, what is the applicable legislation?

Banks, and the Republic and its agencies and municipalities, are excluded. Mutual, investment and pension funds are deemed a created patrimony that adopt an independent existence from their owner in order to serve a particular and autonomous purpose; thus, they are not considered a legal entity. Their managers (corporations) might be declared insolvent.

8.4 Are there any processes other than court proceedings that are available to a creditor to seize the assets of a company in an enforcement?

No, there are not.

9 Jurisdiction and Waiver of Immunity

9.1 Is a party's submission to a foreign jurisdiction legally binding and enforceable under the laws of your jurisdiction?

Yes, it is. Nonetheless, the Republic and its agencies and the Central Bank of Chile have certain restrictions and sometimes they may not submit to a foreign jurisdiction.

9.2 Is a party's waiver of sovereign immunity legally binding and enforceable under the laws of your jurisdiction?

Yes, it is. Nonetheless, the Republic and its agencies have certain restrictions and sometimes they may not waive sovereign immunity.

10 Licensing

10.1 What are the licensing and other eligibility requirements in your jurisdiction for lenders to a company in your jurisdiction, if any? Are these licensing and eligibility requirements different for a "foreign" lender (i.e., a lender that is not located in your jurisdiction)? In connection with any such requirements, is a distinction made under the laws of your jurisdiction between a lender that is a bank *versus* a lender that is a non-bank? If there are such requirements in your jurisdiction, what are the consequences for a lender that has not satisfied such requirements but has nonetheless made a loan to a company in your jurisdiction? What are the licensing and other eligibility requirements in your jurisdiction for an agent under a syndicated facility for lenders to a company in your jurisdiction?

There are no licence or permission requirements to perform lending operations in Chile.

11 LIBOR Replacement

11.1 Please provide a short summary of any regulatory rules and market practice in your jurisdiction with respect to transitioning loans from LIBOR pricing.

As to regulatory rules, not much has been implemented, aside from the introduction of Resolution 2416-01-210819 by the Board of the Central Bank of Chile, published in the Official Gazette on August 23, 2021, which added a list of foreign reference rates to those that can be agreed upon in foreign currency agreements with variable rates granted by financial institutions to persons domiciled or resident in Chile. To the then existing list, comprised mainly LIBOR and Prime rate, the following were added: Secured Overnight Financing Rate ("**SOFR**"); Euro Short-term Rate ("**ESTR**"); and Swiss Average Rate Overnight ("**SONIA**"). These new additions were intended to provide a range of options for the market to choose from, as a replacement for LIBOR rates.

Multiple meetings have been held by the Central Bank of Chile, together with banks, assisted by Carey, pension funds and key investors in order to better determine the best course of action regarding LIBOR replacements, due to the short-term nature and disparity between many SOFR rates, which still appears to be one of the more suggested and applied options.

On the other hand, market practice has rapidly adapted by transitioning to the use of SOFR in an ever-increasing number of transactions. Regarding SOFR variations, both term rates corresponding to the duration of the respective interest periods of the loans, as well as compounding daily rates (in both cases with additional fixed margins) are commonplace market practices, the first ones being more prevalent. Additionally, replacement mechanisms are contemplated in most loan agreements, in case it is not possible to determine applicable interest rates, providing an array of standard SOFR alternatives as well as flexible/consensual replacement mechanisms as a last resort, considering the remaining uncertainties surrounding this relatively new interest rate. No legislation or regulations were passed expressly mandating the transition from LIBOR to other rates for outstanding credits. However, most if not all market participants and entities duly amended their outstanding loans with LIBO rates before June 30, 2023, or before the interest period of their respective loan falling immediately thereafter, to replace their interest rates, mainly by SOFR variations.

12 ESG Trends

12.1 Do you see environmental, social and governance (ESG) or sustainability-related debt products in your jurisdiction? If yes, please describe recent documentation trends and the types of debt products (e.g., green bonds, sustainability-linked loans, etc.).

ESG-centred products have indeed been prevalent in an ever increasing number of transactions in Chile. Most of these ESG centred debt products are loan facility agreements or bond issuances, which have been granted, among other relevant projects, to implement ambitious decarbonisation plans by relevant participants in the local market, or in projects whose debt products are linked to several ESG parameters (and that have several consequences in case of compliance or non-compliance with the relevant key performance indicators, including increases or decreases of the applicable interest rates), or whose purpose is to finance mortgages to certain disadvantaged or vulnerable groups or to small and medium enterprises that comply with certain relevant ESG criteria.

Additionally, we have also seen direct investments by foreign entities via the creation of local funds and fund administrators, for the purpose of granting small scale financing mechanisms to vulnerable sectors of society and women micro-entrepreneurs or funds that seek to provide funding to companies that they understand are causing a positive social impact, because of their business model, ESG compliance and employment factors, among others.

12.2 Are there any ESG-related disclosure or diligence requirements in connection with debt transactions in your jurisdiction? If yes, please describe recent trends and any impact on loan documentation and process.

A general overarching ESG requirement that was introduced in November 2021, was General Rule N°461, issued by the CMF, which requires entities that issue public offering values, supervised by the CMF, to incorporate ESG matters into their annual memory books. This intends to give a better understanding to investors of the profile of the entities potentially managing their funds, their corporate governance practices, risk management, business model, etc.

Additionally, there are several important diligence requirements, related mainly to environmental and social matters in connection to debt transactions in Chile. Regarding

environmental matters, funded projects need to comply with: (i) all applicable emission limits, such as waste introduced in water bodies, atmospheric emission, noise, light pollution, etc.; (ii) specific sectorial authorisations, depending on their line of business; and (iii) Environmental Pertinence Resolutions (*Resolución de Pertinencia Ambiental*) or Environmental Approval Resolutions (*Resolución de Calificación Ambiental*), as applicable to each project, which as per recent regulatory changes, require climate change impact estimations for their approval.

Some large-scale investment projects have been notably delayed or even cancelled because of their failure to comply with environmental requirements, as per some recent judgments by environmental courts of the country, such as a Google data centre which failed to account for or evaluate climate change effects in its request for an Environmental Approval Resolution.

As for the social requirements, an emphasis is made in diligence processes on any ongoing judicial or administrative procedures with local communities affected by certain projects and/or industries, especially when indigenous groups are potentially

affected, as special local and international regulations approved by Chile apply, for example, requiring special consultation processes, which are in turn related to environmental approvals.

All these ESG matters being in due order and the granting of all required resolutions and approvals by regulatory entities are normally contemplated in representations and warranties sections for the closing of debt transactions and are usually considered as requirements for disbursement, as well.

13 Other Matters

13.1 Are there any other material considerations that should be taken into account by lenders when participating in financings in your jurisdiction?

There are regulations for the prepayment of local loans, which are not applicable to cross-border loans. Additionally, there is no interest rate limit for loans granted to Chileans by foreign or international financial institutions or banks.



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