

Doing Business in Chile

Guide 2025

GENERAL CONSTITUTIONAL PRINCIPLES AND PROTECTION OF PROPERTY



Executive Summary

This chapter describes the Chilean constitutional protection of property rights, providing a general view of the regime of economic freedom created by the 1980 Constitution, the definition of property in the Civil Code and the structure of the Courts entitled to enforce all kind of property rights.

The chapter finishes with a summary of constitutional relief, protection against takings, mining and intellectual rights.



INTRODUCTION

With a strong judicial system that upholds the rule of law, Chile is one of the world's top destinations for foreign investment. Since 1980, constitutional protection of property rights has been key to its economic success. The rejection of two constitutional reform proposals in 2022 and 2023 has effectively reaffirmed the 1980 Constitution, which has been amended democratically over the past 35 years.

Chile's property rights regime is unique. The Constitution dedicates eleven subsections to property, offering clear and detailed protections compared to other legal systems.

The key provision is Article 19 N°24, which must be read alongside two others:

- Article 19 N°23 guarantees freedom to acquire property.
- Article 19 N°21 grants the right to engage in any economic activity unless it violates morals, good customs, or public order.

Together, these articles establish a broad framework for economic freedom.

CIVIL CODE

The Constitution does not define property; instead, the Civil Code of 1855 provides its definition.

Article 582 of the Civil Code describes property as a right over a thing, equivalent to dominion. It grants a bundle of rights, which can be separated and reassembled. These rights apply to both tangible goods and intangible assets.

The methods of acquiring property follow common civil-law principles: occupation, accession, tradition, prescription, and succession.

THE COURTS AND THE RULE OF LAW

Chile's judicial system is strong and independent, ensuring the rule of law. It consists of the Ordinary Judiciary and the Constitutional Court. It has a three-tier system consisting of Trial courts, Courts of appeal operating in full or in chambers, and the Supreme court which is in Santiago with 21 judges.

The Supreme Court functions similarly to the Courts of Appeal but has specialized chambers. Judges serve for life until they reach 75 years old, ensuring judicial independence.



The Constitutional Court is in Santiago, and has 10 Justices. It has final authority on constitutional interpretation. It can invalidate laws before they are enacted, declare laws inapplicable in specific cases, and void laws if challenged by 4/5 of its Justices.

CONSTITUTIONAL RELIEF

The Courts of Appeal and the Supreme Court have the power to grant constitutional relief, including interim measures when necessary. Anyone can file a petition, either on their own behalf or for a third party, against wrongful acts or omissions that violate or threaten constitutional rights. This remedy has proven effective in cases of unlawful administrative actions, such as undue takings or excessive regulations.

TAKINGS

Subsection three of Article 19 N°24 states that no one can be deprived of their property, its essential attributes, or associated rights, except through a general or special law authorizing expropriation for public utility or national interest, as determined by the legislator. The expropriated party has the right to challenge the legality of the taking before the ordinary courts and must receive due compensation for the actual damage caused. Compensation must be paid in cash, and the affected party has the right to contest the amount in court.

MINING RIGHTS

Subsection six of Article 19 N°24 establishes that the State has absolute, exclusive, inalienable, and non-prescriptive ownership of all mines, including natural guano deposits, metallic sands, salt flats, coal, hydrocarbons, and other fossil substances—except for superficial clays. This applies regardless of private ownership of the land where the mines are located.

However, a statute determines which substances may be subject to concessions. Liquid or gaseous hydrocarbons and lithium cannot be privately owned but may be exploited through administrative concessions or special operational contracts granted by the Government. According to Article 4 of the Mining Code, all other metallic and non-metallic minerals, as well as fossil substances in their natural state, may be subject to exploration or exploitation concessions awarded by the courts. These concessions are protected under civil and constitutional property rights.

INTELLECTUAL PROPERTY

Article 19 N°25 safeguards all forms of creative inventions and intellectual property, including industrial property rights, trademarks, patents, and other related rights.