

Doing Business in Chile

Guide 2025

PROJECT FINANCE



EXECUTIVE SUMMARY

Project finance structures are commonly employed in Chile to develop large-scale public infrastructure and energy projects. A key distinction between project finance and other forms of financing lies in the approach to risk and analysis: in project finance, commercial, financial, and legal evaluations are typically conducted at the project level rather than based on the general creditworthiness of the borrower. Additionally, these structures often involve limited or no recourse against the project sponsors.

While project finance transactions have been utilized in Chile for some time, they gained significant traction during the 1990's following the enactment of the country's first Public-Private Partnership (PPP) legislation. This legal framework facilitated the development of toll road concessions and marked the beginning of a broader governmental effort to promote infrastructure development through private investment. During this period, developers commonly raised capital by issuing long-term bonds or entering into loan agreements backed by insurance companies or multilateral institutions, such as the Inter-American Development Bank.

In recent years, the range of financial institutions participating in project finance transactions has expanded to include export credit agencies, as well as both foreign and domestic commercial banks. The choice of lender often corresponds to the currency in which the project revenues are denominated—Chilean Pesos (CLP) or U.S. Dollars (USD). Domestic banks play a prominent role in infrastructure projects, while international financial institutions are more active in the energy sector. Financing structures have also evolved, shifting from bond issuances to secured, revolving, or non-revolving long-term loan agreements. In some cases, construction and completion risks are assumed by multilateral agencies.

Chile's liberal economic policies support a favourable environment for project finance, and the legal and regulatory framework—along with institutional support—actively encourages its use. Today, the primary participants in project finance transactions are large infrastructure conglomerates that have been awarded long-term Build-Operate-Transfer (BOT) contracts for the development of public assets, such as toll roads, hospitals, ports, and airports. In the energy sector, developers utilize project finance to construct generation facilities and transmission infrastructure.

The main strengths of project finance in Chile lie in the reliability of its public institutions, the predictability of its legal framework, and the sophistication of its legal and financial markets. However, certain structural challenges persist, particularly with respect to project delays stemming from increasingly stringent environmental and social requirements. These include the need to complete environmental impact assessments, obtain permits from relevant authorities, and engage with local—and in some cases, indigenous—communities. As a result, long-term infrastructure and energy projects often encounter delays and face heightened litigation risks related to environmental and permitting issues.



In response to these challenges, the Chilean government has initiated several reforms aimed at streamlining project development procedures. One notable initiative is the introduction of the Sectorial Permits Framework Act (Proyecto de Ley Marco de Autorizaciones Sectoriales), currently under Congressional review. This proposed legislation seeks to simplify and expedite the processes for evaluating, modifying, and approving project permits.

In parallel, Congress is also considering a bill focused on environmental evaluation, titled Environmental Evaluation 2.0, which aims to strengthen environmental governance and improve the efficiency of procedures carried out through the Environmental Impact Assessment System (Sistema de Evaluación de Impacto Ambiental – SEIA). The purpose of this reform is to reduce uncertainty and shorten evaluation timelines, ultimately promoting a more predictable and investment-friendly environment for project development.



LEGAL FRAMEWORK FOR PUBLIC INFRASTRUCTURE CONCESSIONS IN CHILE

The legal regime governing the development and operation of public infrastructure projects under the concession system in Chile is primarily defined through a set of legislative instruments, including:

1. The Concessions Law (Supreme Decree No. 900 of 1996, Ministry of Public Works), along with its Regulations (Supreme Decree No. 956 of 1997);
2. Law No. 20.410 (2010), which introduced amendments to the original Concessions Law;
3. Law No. 21.044 (2017), which established the General Directorate of Public Works Concessions; and
4. Law No. 21.082, which created the state-owned corporation Infrastructure Fund S.A. and modified regulatory provisions related to privately initiated concession projects.

This legislative framework governs the awarding, execution, repair, and maintenance of public works carried out under concession agreements granted to private entities. It establishes the mechanisms through which private sector participation is facilitated in the financing and development of essential public infrastructure.

The Concessions Law permits the participation of both domestic and foreign companies in concession bidding processes. Projects subject to concession can originate from either the public or private sectors:

- **Privately Initiated Projects:** In such cases, the private party submits a proposal to the Ministry of Public Works. The Ministry must assess whether the proposed initiative aligns with national infrastructure interests. This determination is reviewed by the Concessions Council. If the proposal is deemed of public interest, the project will be formally integrated into the list of concessionable initiatives and proceed to the bidding stage.
- **Publicly Initiated Projects:** When the initiative originates from the public sector, the Ministry consults with relevant government entities to evaluate the project's feasibility and strategic value. Following a positive evaluation, the project is incorporated into the government's infrastructure project portfolio.



PROJECT COMPANIES

Project companies involved in infrastructure and energy developments in Chile are almost always incorporated under Chilean law. This is particularly true for Public-Private Partnership (PPP) projects and specific types of energy projects, such as transmission line developments. In these cases, either statutory requirements or the applicable concession agreements typically mandate that the project company be established as a privately held corporation (*sociedad anónima cerrada*) with a single-purpose corporate object.

In addition, project companies involved in these regulated sectors may be required to register with the Chilean capital markets regulator—even if their shares are not publicly traded. This registration entails compliance with certain statutory reporting and disclosure obligations, including the periodic publication of financial statements for public access.

For privately developed projects, project companies are also commonly incorporated under Chilean law, but in these cases, sponsors have broader discretion in selecting the corporate structure. Due to lender requirements—particularly the need to establish security interests over shares of the project company—it is common practice for these companies to be incorporated either as stock corporations (*sociedades anónimas* or S.A.) or as simplified joint-stock companies (*sociedades por acciones* or SpA).

Foreign investors participating in Chilean project developments may select from any of the legal structures recognized under Chilean law. The process governing the entry, management, and repatriation of capital by foreign investors must be reported to the Central Bank of Chile, in accordance with the applicable rules and procedures. A more detailed overview of these requirements is provided in the Foreign Investment Law section.

PROJECT DOCUMENTS

Public-Private Partnerships and BOT Contracts

Projects involving public-private partnerships (PPPs), including public works concessions and utility developments, are legally structured under Build-Operate-Transfer (BOT) contracts. These contracts are typically awarded through public and competitive bidding processes and are governed by both the specific regulations applicable to the project and the general principles of Chilean public law.

Due to the public nature of these projects, most statutory provisions are mandatory, and parties cannot contractually opt out of them. BOT agreements grant the Chilean government broad discretionary powers to amend, interpret, or terminate



the contract, provided that the private investor receives adequate compensation. These principles reflect Chile's administrative law tradition, where the State retains certain prerogatives to safeguard public interest.

Among BOT agreements, the public works concession model is the most widely used and has served as the template for other sectors. These frameworks are characterized by their long-term nature, detailed risk allocation mechanisms, and the need for robust contractual protections due to the extended lifecycle of infrastructure assets.

Private construction contracts

In contrast, private infrastructure and energy projects—such as power plants, ports, and industrial facilities—are typically governed by construction contracts, where procurement methods vary by industry sector.

- In mining, the dominant model is EPCM (Engineering, Procurement, Construction, and Management), often using unit-rate pricing.
- In energy, particularly power generation and transmission, lump-sum EPC (Engineering, Procurement and Construction) contracts are preferred. These agreements offer greater price certainty and risk allocation, aligning with the demands of project finance structures.

In project-financed developments, lenders typically require that the legal and performance risks be passed through to the contractors. This is usually achieved through turnkey contracting schemes, which include liquidated damages for performance delays and cost overruns—aimed at covering the project company's exposure under offtake agreements or other commercial obligations.

Unlike other jurisdictions, standard international contract forms such as FIDIC or NEC3 are rarely used in Chile. Instead, contracts are typically bespoke and tailored to local legal requirements and practices.

Chile follows a civil law tradition, which influences key aspects of contract law. For instance:

- The principle of decennial liability applies to certain types of construction defects, particularly those affecting the structural integrity of buildings.
- Common law concepts such as time-at-large, which may excuse delays under certain conditions, do not apply under Chilean law.



Offtake Agreements

In the infrastructure sector, project financing structures in Chile are generally not tied to an offtake agreement. As a result, project companies assume the market risk related to the usage of the infrastructure asset. This is particularly the case for toll roads, hospitals, and penitentiary facilities, where the revenue stream depends on actual usage or availability.

To mitigate this market exposure and ensure financial viability, it is common for government agencies to provide subsidies. These subsidies may take the form of availability payments or minimum revenue guarantees, particularly in public-private partnership (PPP) projects, thereby enhancing the project's credit profile and attractiveness to lenders.

In contrast, in the energy generation industry, long-term power purchase agreements (PPAs) are typically required by financing institutions as a condition for project financing. These agreements, entered with creditworthy counterparties, serve to secure the project's revenue stream—fully or partially—throughout the life of the financing, significantly reducing merchant risk.

Recent market developments have also influenced bankability assessments in energy projects:

- The incorporation of battery storage systems in photovoltaic (PV) projects allows energy producers to inject electricity into the grid during peak demand hours (e.g., nighttime) when spot market prices are more favourable.
- Small-scale generation projects that qualify for stabilized price mechanisms (fees) under Chilean regulation offer predictable income streams, enhancing the creditworthiness and financial viability of such ventures.

FINANCING DOCUMENTS

Credit Agreements

The structure of credit agreements for large-scale infrastructure and energy projects in Chile is typically tailored to the specific characteristics of the asset being developed and the anticipated revenue streams. These agreements often involve multiple disbursement tranches, which are released to the project company progressively as the construction and operational milestones are achieved.

Credit agreements commonly include conditions precedent, covenants, and representations and warranties that are consistent with those found in agreements governed by common law jurisdictions. In relation to environmental, social, and



climate change considerations, some agreements incorporate Key Performance Indicators (KPIs) or require third-party certifications to ensure the integration of sustainability principles in the design, construction, and operation phases of the project.

Project finance credit agreements involving multilateral institutions or foreign lenders are generally governed by New York law. These financings typically include ancillary agreements such as agency agreements, inter-creditor agreements, common terms agreements, and credit account arrangements. Whether or not sponsor support is required depends on the specific risk profile of the project. In cases where the financing is with recourse to the sponsors, such recourse usually terminates upon the achievement of construction completion.

VAT Credit Agreements

Construction contracts in Chile are subject to a 19% Value Added Tax (VAT) on the contract price. While the applicable legislation provides a mechanism for VAT recovery, the refund process is not immediate and requires compliance with specific criteria. Given the significant impact of VAT on project costs, it is common for transactions to include a dedicated credit agreement to finance the VAT outlays.

Repayment under these VAT credit agreements is generally structured around the anticipated timeline for VAT recovery. These agreements typically have their own collateral package, which is subordinated to the main credit facility in terms of repayment priority.

Promissory Notes

Repayment obligations under project financing documents are often evidenced through promissory notes governed by Chilean law. These instruments allow lenders to pursue expedited debt collection through summary judgment proceedings before Chilean courts. The issuance of promissory notes is subject to the payment of applicable stamp taxes.



COLLATERAL DOCUMENTS

Collateral Agreements

In project finance transactions, it is standard practice to implement comprehensive collateral arrangements in which all assets, agreements, and equity interests of the project company are pledged, mortgaged, or conditionally assigned in favour of the lenders. A critical component of the due diligence process involves verifying the legal status of the assets to be provided as collateral and identifying any third-party rights or legal constraints that may affect the enforceability of the collateral in the event of default.

Collateral Agency Agreement

Lenders typically execute a collateral agency agreement that appoints a collateral agent to act on their behalf with respect to the collateral. The agent is authorized to manage, enforce, and receive proceeds from the collateral, including those derived from foreclosure proceedings, and to distribute such proceeds to the lenders in accordance with the terms of the financing documents.

Legal Formalities

Under Chilean law, most collateral agreements must be notarized and registered with the relevant public registries—such as the Real Estate Register, the Mining Register, or the Pledge Register—to be valid and enforceable against third parties. Compliance with these formalities is essential not only for the legal perfection of the security interests but also for their enforceability in case of borrower default. Due to these requirements, all collateral agreements over assets located in Chile must be governed by Chilean law. The costs associated with notarization and registration are fixed by statute and generally range from USD 50 to USD 500 per document, depending on the nature and complexity of the instrument.

Foreclosure and Enforcement



Where collateral agreements comply with the requisite formalities, lenders may initiate summary foreclosure proceedings before Chilean courts. In contrast, failure to observe these formalities requires the creditor to first pursue an ordinary lawsuit to establish the debt and only thereafter seek foreclosure through a separate summary process.

Enforcement generally involves a judicially ordered public auction of the collateral. If no bidders come forward, the court may allow the secured creditor to take ownership of the collateral in satisfaction of the debt. Importantly, Chilean law does not permit self-help remedies such as out-of-court repossession.