

Doing Business in Chile

Guide 2025

PUBLIC WORKS CONCESSIONS



Executive Summary

Public works concessions have proven to be one of Chile's most successful public policies over the past three decades.

In the early 1990's, Chile faced a significant infrastructure gap, estimated at \$11 billion, which hindered economic growth. This shortfall in public funds made it difficult for the Chilean government to fully fund these projects directly. As a solution, Chile turned to public-private partnerships (PPPs), initially focusing on interstate toll roads and later expanding to urban highways, airports, tunnels, prisons, and other public infrastructure. Notably, Santiago introduced the world's first integrated system of electronic toll highways.

Although some basic PPP regulations existed, substantial improvements came in 1996 with Law N° 19,460, which updated the Public Works Concessions Law, now consolidated in Supreme Decree N°900. These reforms enhanced private sector interest by offering economic compensations, a streamlined dispute resolution process, and a new form of security—pledges over concession rights—which balanced the interests of the state, sponsors, and financiers.

This innovative model has driven infrastructure development, spurred economic growth, and attracted foreign investment. Over 30 years, Chile has awarded 110 contracts totalling \$28 billion. The National Directorate of Concessions recently unveiled its 2024-2028 project portfolio, with over 40 new projects valued at an estimated \$17.6 billion. The portfolio includes prison facilities, motorways, a tsunami alert system, train infrastructure, airports, and desalination plants. This next wave of projects is set to further strengthen Chile's infrastructure and economic resilience.



GENERAL FRAMEWORK

In Chile, any individual or legal entity can initiate a public-private partnership (PPP) process with the Ministry of Public Works (Ministerio de Obras Públicas, or “MOP”) under the concession system. There are two primary types of PPPs:

1. **Public Initiative Projects:** These projects are initiated by MOP or another authority. The project is developed and submitted to the National Concessions Directorate (DGC), which is part of MOP and the competent authority. Approval from the Ministry of Finance and the Ministry of Social Development is required before launching any bidding process.

Once approved, the Director of Public Works may call for bids, including essential details like the purpose, duration, and bid submission instructions. Calls for bids are published in the Official Gazette and a national newspaper to ensure public accessibility.

2. **Private Initiative Projects:** These are proposed directly by individuals or private entities to the DGC. The DGC reviews these proposals, ensuring that the project is unique and not already being pursued by a public authority or otherwise deemed of no public interest. If the project is deemed of public interest, a detailed procedure is established for the proposal, including required studies, report timelines, and performance bond conditions.

The MOP's response indicating initial public interest in a project outlines the required procedures, including:

- (i) **Minimum Studies:** Specifies the necessary studies for the proposal stage, detailing format and specifications.
- (ii) **Report Delivery Timeline:** Sets deadlines for both the partial and final reports, with the final report due within 180 days.
- (iii) **Fiscal Inspector Assignment:** Appoints a fiscal inspector to represent MOP and liaise with the applicant during the proposal stage.
- (iv) **Performance Bond:** Details the bond amount and conditions as specified in Article 10 of the Public Works Concessions Regulations.

A Social Evaluation of Projects approach has been introduced to ensure that new projects maximize societal benefits, supporting responsible investment that enhances overall welfare. Furthermore, the 2011 Law on Associations and Citizen Participation in Public Management encourages public engagement in decision-making related to infrastructure projects, allowing citizens to contribute actively to projects affecting connectivity, public buildings, safety, and water resource management.



LEGAL FRAMEWORK

The primary regulations governing public works concessions in Chile (“Concessions”) include:

1. The Concessions Act: Establishes the legal framework for public works concessions.
2. Public Works Concessions Regulations (Reglamento de Concesiones de Obras Públicas): Details specific procedural guidelines for concession projects.
3. Bidding Terms: Developed by the Chilean Ministry of Public Works, these define the terms for each project, including tender requirements and clarification documents.
4. Awarding Decree: A formal decree signed and published by the relevant authority to finalize the award process.

REGULATORY AUTHORITIES

The Ministry of Public Works (MOP) is the Chilean government body responsible for overseeing, implementing, and awarding public works concessions, as well as executing Concession Agreements. Its key responsibilities include:

1. Preparing the Bidding Terms: Drafting the terms and requirements for concession bids.
2. Conducting the Tender Process and Awarding Concessions: Managing the bidding process and finalizing the award.
3. Inspecting and Supervising Works: Ensuring the concession’s compliance with the Concession Agreement.
4. Issuing Start-Up Authorizations: Granting provisional and definitive approvals for project operation.

The National Directorate of Concessions (Dirección General de Concesiones) supports Chile’s infrastructure development through public-private partnerships (PPPs), focusing on providing, preserving, and enhancing public infrastructure. Key duties of this agency include:

1. Concessions Plan Development: Maintaining a five-year Concessions Plan that outlines upcoming projects, with a territorial focus to ensure equitable infrastructure development nationwide.
2. Project Monitoring and Evaluation: Continuously assessing concessioned works and providing public reports on project performance.



The Concessions Plan, once reviewed by the Concessions Council, is presented to the National Congress for approval, offering clarity and continuity for future investments. This agency's role is critical in fostering national infrastructure growth and balanced regional development through PPPs.

The Concessions Council, created by Law N°20,410, is an advisory body that reviews projects to be developed under the Concessions Act and determines the concession methods to be used. It is chaired by the Minister of Public Works, includes an adviser designated by the MOP, and four technical experts. The Council may consult with other government ministers and authorities as needed.

Technical Panel: This panel addresses technical or economic disputes between the parties during the Concession Agreement's execution. Either party may request the Technical Panel's involvement to obtain a non-binding recommendation. This recommendation does not limit the Concessionaire's right to seek further resolution from the Arbitration Commission or the Santiago Court of Appeals.

The Technical Panel is made up of two lawyers, two engineers, and an expert in economic or financial sciences, appointed through a public bidding process by the Council of Senior Public Management.

Arbitration Commission: For disputes related to interpreting or executing the Concession Agreement, parties may refer the case to the Arbitration Commission or the Santiago Court of Appeals. The Arbitration Commission, composed of three experts chosen from lists prepared by the Supreme Court (for lawyers) and the Antitrust Court (for technical experts), provides final resolutions. When technical or financial issues are involved, these disputes must first be reviewed by the Technical Panel before proceeding to arbitration.

The Arbitration Commission serves as an "ex aequo et bono" arbitrator, focusing on fairness and equity rather than strictly legal considerations, and evaluates evidence based on "sana crítica" (reasoned judgment). The Commission's final ruling is conclusive and cannot be appealed.

CONCESSIONS

Concession Award

The Concessions Act outlines the MOP's procedures for awarding a Concession through a transparent bidding process, avoiding bilateral negotiations directly between the State of Chile and private investors. Typically, the Concession goes to the bidder with the highest-ranked financial offer, provided they meet the technical requirements. Specific evaluation criteria for each Concession, as detailed in the Bidding Terms, include factors such as:

1. **Tariff Structure:** The fees that will apply under the Concession.
2. **Concession Term:** The length of the Concession period.



3. State Subsidies: Financial support provided by the State to the bidder.
4. Payments for Pre-existing Infrastructure: Compensation offered by the bidder for existing infrastructure.

The winning bidder is formally awarded the Concession through a Supreme Decree issued by the MOP and signed by the Ministry of Finance. Following this, the bidder must meet certain conditions, including notarizing copies of the decree to confirm acceptance and forming a Chilean corporation or registering a local branch, as stipulated in the Bidding Terms. Only once these steps are complete is the Concession Agreement formally executed, and the entity officially becomes the Concessionaire.

Concession Models

In Chile's concession system, different models are available to meet specific project needs. Key models include:

1. Build-Operate-Transfer (BOT): Primarily applied for projects involving existing assets or retrofits. In a BOT model, the concessionaire finances, owns, and constructs the asset, operating it commercially throughout the concession period. Upon expiration, the asset is transferred to the awarding authority. Here, revenue typically comes from a fee charged to the utility or government, not the end consumer. This model is a preferred tool for new infrastructure financing, as no immediate profit is generated during initial stages. To mitigate risks, lenders ensure project assets are insulated within a dedicated project company—a closed stock corporation under Chilean law, which also offers certain tax benefits to incentivize this approach.
2. Design-Build-Operate (DBO): In this model, the public sector finances new asset construction, while the private sector handles design, construction, and operation to meet pre-set performance targets. The private operator does not bear financial risk and is generally compensated in two parts: one payment for design and construction and another for plant operation.

These models offer flexibility, allowing Chile's concession system to customize approaches that balance public and private interests, ensuring financial viability and operational efficiency.

Amendments to the Concession Agreement – Additional Investments

Following the signing of a Concession Agreement, the Ministry of Public Works (MOP) may, if deemed in the public interest, alter the scope of works and services under the Concession. The Concessions Act and Regulations leave the term “public interest” undefined, affording the MOP discretion. However, any such modifications require that the MOP indemnify the Concessionaire for resulting damages.

With the amendments introduced by Law N°20,410, the Concessions Act mandates that the concessionaire maintains service levels and technical standards outlined in the bidding documents and Concession Agreement for the full term of the



concession. This ensures that public interests underpinning infrastructure projects are safeguarded.

Limits on additional investments are specified in the Concessions Act:

1. Required by the MOP: Up to 15% of the official budget for works and limited to within three-quarters of the total concession term.
2. Agreed with the Concessionaire during construction: Up to 25% of the official budget for works.

A public bidding process is mandatory in specific cases of additional investments:

- Investments unilaterally requested by the MOP during the exploitation period exceeding either 5% of the official works budget or UF 100,000 (approximately USD 4 million or GBP 3.1 million).
- Investments agreed upon with the concessionaire during the exploitation period exceeding either 5% of the works budget or UF 50,000 (approximately USD 2 million or GBP 1.56 million).

Law N°20,410 stipulates that compensation for additional investments serves only for indemnity, ensuring the project's profitability remains unchanged. Any compensation for additional investments must yield a net present value of zero, maintaining the project's financial equilibrium. For additional investments awarded through public bidding, compensation is limited to the contract's winning bid amount plus contract management costs.

Special Public Works Pledge (Prenda Especial de Concesión de Obra Pública).

In Chile, the Concession Agreement can be pledged as collateral under a system known as the Special Public Works Pledge. This pledge may include:

1. Rights granted under the Concession Agreement.
2. Revenue generated by the Concessionaire.
3. Any payments committed by the State to the Concessionaire under the Concession Agreement. This pledge is available exclusively to the Concessionaire's financiers or as security for bonds issued by the Concessionaire.

Primary Risks for Developers and Allocation Strategies

Developers and concessionaires in Chilean public works face certain common risks in infrastructure projects, including:

- Incomplete engineering designs provided by the authority
- Delays in land expropriation or eminent domain actions



- Setbacks in obtaining environmental authorizations necessary for early project stages
- Potential conflicts with local communities
- Concession agreements that may be rigid and hard to renegotiate
- Lack of a clear tariff policy
- Vulnerability to changes in political cycles

Risk allocation is managed through several mechanisms outlined in the bidding terms, such as provisions for time and cost relief, proportional or phased cost-sharing between the authority and the concessionaire, and the incorporation of guaranteed minimum revenues.

Additionally, conflict resolution institutions like the Technical Panel and the Arbitration Commission, strengthened by Law 20,420, provide an early-stage technical response to disputes before reaching judicial processes, thereby adding certainty for both parties.

Suspension of Concession

The Concessions Regulations allow for the suspension of a concession due to force majeure, destruction of the works that prevents their use, or other causes defined in the bidding terms. During suspension, all payments, including subsidies and tariffs, to the Concessionaire are paused until the issue is resolved. If the Concessionaire incurs damages due to suspension, compensation may be provided through an extension of the concession term, increased State contributions, tariff adjustments, or other economic adjustments within the contract.

Termination of Concession

A concession concludes upon the expiration of its term (including any amendments) or by mutual agreement between the Concessionaire and the Ministry of Public Works (MOP). If the Concessionaire has provided a Special Public Works Pledge, the MOP may not proceed with early termination unless creditors consent to release or modify the guarantee.

A concession may also be terminated if the Concessionaire materially breaches its obligations. In such cases, the MOP will seek a declaration of breach from the Arbitration Commission and initiate termination proceedings. Upon termination, the MOP appoints a receiver to oversee compliance with the Concession Agreement. With the Ministry of Finance's approval, the MOP may initiate a new bidding process to reassign the remaining term of the concession.



Early Termination in the Public Interest

The Concession Act permits early termination during the construction phase if deemed in the public interest, subject to a report from the Concessions Council and decrees from both the MOP and the Ministry of Finance. Early termination may occur if changing circumstances render the works unnecessary to meet public needs or if adjustments require additional investments exceeding 25% of the official budget. In such cases, the Concessionaire is entitled to compensation as calculated under the Concessions Act.

FUTURE CHALLENGES

The Chilean public works concession system has faced both past and ongoing challenges, requiring amendments and improvements to ensure its effectiveness and legitimacy.

One primary challenge is transparency. The concession system has been criticized for a lack of clear financial information, which has fuelled public scepticism regarding the benefits of these projects. Another issue lies in the assessment of risks and the social impact of projects; the system has faced allegations of prioritizing private and political interests over genuine public needs, resulting in suboptimal tenders and project abandonment.

To address these issues, the system requires updates to its legal framework and operational practices to meet evolving societal and environmental demands. Future improvements should ensure financial sustainability for long-term investments while maintaining fair costs for investors and users. This also involves promoting intergenerational and regional fairness in tariff policies. Additionally, early public engagement in the planning process is essential to align concessions with community interests, such as addressing housing needs and urban development goals.

Continuing with projects already under the PPP model, such as hospitals, prisons, public buildings, parking facilities, and dams, remains important, as does expanding the scope to include new types of infrastructure, such as schools, parks, and disaster containment structures.

These projects should be designed with environmental responsibility and climate resilience in mind, following sustainability standards to strengthen public confidence in the industry. Furthermore, integrating modern technology and innovative solutions will provide greater security and reliability for all parties involved. Ultimately, the selection of state-priority projects should align with clear, long-term national infrastructure objectives within a strategic development plan, ensuring transparency and consistency.