

# Doing Business in Chile

## Guide 2025

### SECURITY INTERESTS



## Executive Summary

This chapter outlines the main security interests recognized in Chilean law, along with other contractual forms adapted from foreign jurisdictions but used locally. It reviews their key characteristics, validity, and perfection requirements.

Security interests in Chile are generally divided into two categories:

- 1.** In rem securities (e.g., pledges and mortgages), which attach to specific assets.

The most common in rem securities include pledges and mortgages, including:

- I.** Commercial Pledge: Regulated by Article 813 of the Chilean Commercial Code, used primarily over movable assets.
- II.** Pledge over Securities for Banks: Established by Law 4,287, applicable to (i) bonds, (ii) commercial paper, and (iii) registered shares.
- III.** Pledge on Endorsable Securities: Applies only to securities issued to the order of the pledgor.
- IV.** Pledge without Conveyance: Governed by Article 14 of Law 20,190, this type does not require physical delivery of the pledged asset to the creditor.

Common Features of Pledges:

- They are formal legal acts, requiring a public deed or notarized private document. Some also require registration to be perfected.
- Most require delivery of the pledged asset or the instrument representing the pledged right (with some exceptions).
- They follow a publicity process, typically through registration or notice to the relevant debtor.

There are two main types of Mortgages:

- I.** Civil Code Mortgages, governed by Articles 2407 et seq.; and
- II.** Special Mortgages, governed by specific laws (e.g., aircraft mortgages).



Common Features of Mortgages:

- Execution by public deed before a Chilean notary public is required (except for aircraft, where a notarized private document is also valid).
- They apply to real property or assets legally considered real estate.
- Registration in the appropriate public registry is mandatory. Without it, the mortgage has no legal effect.

2. Personal guarantees, where obligations are secured by the guarantor's equity or liability meaning the obligation follows the individual rather than the asset.

Certain obligations under Chilean law do not attach to specific assets but instead create personal liability, ranking below any in rem rights.

- Joint and Several Obligations (Solidaridad Pasiva): Multiple debtors are each liable for the full debt.
- Guarantees (Fianza): A secondary obligation where one or more guarantors become liable for a third party's debt.

Foreign Contractual Instruments Used in Chile

Some foreign instruments have been adapted for local use, including:

- Conditional Assignments, often used to secure rights or receivables; and
- Direct Agreements, allowing lenders to step into the project company's contractual position under certain conditions.



## SECURITY INTERESTS

Article 2,465 of the Chilean Civil Code establishes that every creditor has the right to enforce their claims over the debtor's assets. However, creditors typically lack control over the composition of a debtor's assets and liabilities. As a result, effective recovery may be hindered if the debtor holds insufficient assets at the time of enforcement.

To mitigate this risk and enhance the likelihood of repayment, Chilean law provides mechanisms to encumber or secure specific assets of the debtor.

Chilean law recognizes two primary categories of security interests:

1. **In Rem Securities:** These secure obligations over a specific asset. The guarantee attaches to the asset itself and remains effective even if ownership changes. Common examples include mortgages and pledges.
2. **Personal Securities:** These secure obligations based on the general patrimony of the guarantor. Here, the guarantee follows the person, rather than a particular asset. Examples include fianza (guarantees) and solidaridad pasiva (joint and several obligations).

Chilean law requires that all guarantees be specific, both in terms of the asset and the obligation:

- **Asset-specific:** For in rem securities, this refers to the identified asset subject to the security interest (e.g., an apartment, a vehicle, or an aircraft). For personal securities, this refers to the identity of the individual or entity providing the guarantee.
- **Obligation-specific:** The obligation being secured must be clearly defined or at least determinable at the time the security is granted.

Any collateral granted over assets located in Chile must be governed by Chilean law. This ensures enforceability and compliance with formal requirements such as notarization and registration.

Certain instruments adapted from foreign legal systems—such as conditional assignments—are commonly used in Chilean practice. While these may function similarly to security interests in practice, they are strictly contractual in nature. As such, they do not enjoy the same priority or protection in insolvency proceedings and may be subordinated or voided in bankruptcy.

### 1. Rights In Rem and Personal Securities under Chilean Law

Rights in rem are enforceable against specific assets and are opposable to third parties. Their defining feature—and the primary reason they are highly valued by banks and financial institutions—is that the security interest remains attached to the asset, regardless of any change in ownership. This ensures continuity of the creditor's rights, even if the secured asset is transferred to a third party.



In contrast, personal securities are enforceable only against the individual who has assumed the obligation. They are not linked to a specific asset but rather to the overall patrimony of the guarantor. While this may increase the pool of assets available for enforcement, it is dependent on the solvency of the person providing the security.

In practice, financial institutions in Chile commonly require personal securities as a supplementary guarantee to rights in rem. This provides an additional layer of protection in cases where enforcement against the asset may be insufficient to satisfy the debt.

Under Chilean law, there are three main forms of real (in rem) guarantees:

1. Pledge
2. Mortgage
3. Antichresis

This chapter will focus on pledges and mortgages, as antichresis is rarely used by banks or financial institutions in practice.

## PLEDGES

The pledge is a unilateral contract in which a person (debtor or a third party) pledges a movable asset<sup>1</sup> to a creditor to guarantee an obligation of their own or of a third party. The general rule is that this contract is perfected with the delivery of the pledged asset, but as we will see later, there are several exceptions to this.

The concept of pledge under Chilean law has two distinct dimensions:

1. As a real guarantee – This aspect allows the creditor to enforce the pledge over the secured movable asset, regardless of whether it remains in the possession of the pledgor or has been transferred to a third party. The guarantee follows the asset, providing legal certainty and enforceability.
2. As a contractual agreement – This dimension refers to the creditor's contractual right to seek payment of the underlying obligation from the debtor, based on the terms of the pledge agreement.

For banks and financial institutions, it is primarily the former - the nature of the pledge as a real guarantee - that renders it a valuable and reliable security instrument.

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<sup>1</sup> For the sake of clarity, movable property refers to the ones that can be moved from one place to another without losing their integrity or utility. This includes both tangible goods (e.g., a car) and intangible goods (e.g., the right to demand rent from a lease).



There are several different types of pledges.

(a) Commercial Pledge

This type of pledge is governed by Article 813 et seq. of the Chilean Commercial Code. It is the standard mechanism for encumbering movable assets in Chile.

To perfect a commercial pledge, the following formalities are generally required:

- Execution of a public deed before a Chilean notary public, or a notarised private instrument.
- Delivery of the pledged asset to the creditor.

Depending on the nature of the pledged asset, other formalities may apply. For instance, in the case of a pledge over shares:

- The pledge must be registered in the Shareholders' Registry by a notary public.
- The issuing corporation must be notified and/or acknowledge the existence of the pledge.

The pledge deed must include:

- Identification of the parties.
- Description of the secured obligations. It is important to note that this form of pledge does not allow for a general security interest covering all obligations of the pledgor.
- Identification of the pledged assets.
- Specification of the maximum amount secured. While an exact figure is not required, the amount must be at least determinable.

As a rule, perfection of a commercial pledge requires the physical delivery of the pledged asset. Exceptions include pledges without displacement, where the asset remains with the pledgor or a third party. In such cases, the pledgor cannot retain direct possession. A third party may act as depositary, provided it is independent of the pledgor.

Money may also be pledged under this framework, though it presents unique challenges due to its fungible nature. Current Chilean law does not recognize pledges over bank accounts themselves, only over the funds deposited in them. As such:

- A new pledge must be granted for each new deposit made into the account.
- To streamline this process, it is common for the debtor to grant a power of attorney to the depositary bank (or the local collateral agent) to execute new pledges on its behalf.

Because commercial pledges require removal of the asset from the pledgor's possession, pledged funds cannot be held in a regular bank account in the name of the debtor. Instead, internal book-entry accounts, opened in the name of the



depository bank, are typically used to satisfy the possession and perfection requirements.

(b) Pledge over securities in favour of banks<sup>2</sup>

This special pledge is governed by Law No. 4,287 (Ley Sobre Prenda de Valores Mobiliarios a Favor de los Bancos) and applies to the following securities:

1. Bonds, debentures, and other bearer securities: The pledge is perfected by the delivery of the securities to the creditor.
2. Commercial papers issued to the order of the pledgor: Perfection requires an endorsement by way of pledge.
3. Registered shares of a corporation or stock company: The pledge must be created by a public deed granted before a Chilean notary public or by a notarised private instrument. In addition:
  - The issuing corporation must be notified of or acknowledge the pledge.
  - The pledge must be recorded in the Shareholders' Registry by a notary public.
  - The pledged shares must be delivered to the creditor.

It is important to note that, for pledges over shares in favour of banks, registration in the Shareholders' Registry is a validity requirement, not merely a requirement for publicity. This differs from pledges created in favour of private parties, where notification serves to ensure publicity.

The pledge deed must include:

- Details of the parties.
- A description of the secured obligations or a general clause securing all obligations of the pledgor.<sup>3</sup>
- Details of the securities.

## Enforcement

The enforcement process for this pledge is simpler and faster than for other types of pledges. Enforcement requires only judicial notification to the debtor. After seven days from the notice, the creditor may sell the pledged securities in a special round on the stock exchange.

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<sup>2</sup> The provisions of Law 4287 apply to the Production Development Corporation, banks of any nature, financial companies, savings and credit cooperatives, cooperative financing auxiliary institutes or companies, savings and loan associations, and, in general, to all legally established financial institutions.

<sup>3</sup> The peculiarity of these pledges is that they are generally constituted in favor of a Bank as a guarantee for all direct and indirect obligations of any kind that the owner of the pledge has or may have in favor of the same Bank, unless it is expressly stated that the pledge has been constituted as a guarantee for specific obligations.



### Use by Foreign Banks

This pledge structure has been used for loans granted by foreign banks, based on the interpretation that the term “Banks” under the applicable Chilean law includes foreign banking institutions. However, foreign non-bank financial institutions cannot use this pledge.

### Limitations

The law expressly states that this pledge can only secure obligations of the owner of the pledged securities. It cannot be used to secure obligations of third parties, which must instead be secured through a commercial pledge.

#### (c) Pledge over endorsable securities

This is a special pledge regulated in Article 2 of Law 4287, which is only applicable to securities issued to the order (a la orden) of the pledgor<sup>4</sup>. It can be perfected by a simple endorsement by way of a pledge in favour of the creditor.

Upon the maturity of the security, the creditor is entitled to collect the amount payable and apply such funds to the secured debt.

#### (d) Pledge without conveyance

This type of pledge is governed by Article 14 of Law No. 20,190. It requires execution by public deed before a Chilean notary public or by a notarised private instrument, followed by registration within three days in the Registry of Pledges without Conveyance (Registro de Prendas sin Desplazamiento), maintained by the Civil Registry (Registro Civil).

Depending on the nature of the pledged asset, additional registrations may be necessary. For example, if the pledge covers a vehicle, it must also be registered in the Motorized Vehicle Registry (Registro Nacional de Vehículos Motorizados).

A key feature of this pledge is that the pledgor retains possession of the pledged asset.

The pledge deed must include:

- Details of the parties.

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<sup>4</sup> To the order (a la orden) is a legal term used to indicate that the financial instrument could be charged upon the request of the person that is designated in the document. Also, this financial instrument could be transferred through endorsement.



- A description of the secured obligations, or a statement that the pledge secures all obligations owed by the pledgor to the pledgee. If the secured obligations are described by reference to other documents not publicly registered, those documents must be filed with a notary at the time of granting the pledge.
- Identification of the pledged assets, taking into consideration the type of asset being pledged<sup>5</sup>. For assets pledged as economic or production units (e.g., a facility or plant), it is common practice to describe the most relevant components to ensure enforceability even if parts are separated and individually transferred.
- The maximum amount secured by the pledge, which must be determined or at least determinable.

Registration in the Registry of Pledges without Conveyance is mandatory for the pledge to be perfected. No security interest exists until registration is completed. The time required for registration may vary, depending mainly on the number and nature of the pledged assets.

## MORTGAGES

Mortgages are in rem securities granted over real properties or specific types of chattel properties. “The mortgage contract is a unilateral contract in which a person guarantees their own or another’s obligation to a creditor by providing a property asset<sup>6</sup> as collateral, with the latter remaining in the hands of the person who constituted it.

In general, we can classify mortgages into two types: (a) Those on real property; and (b) Other specific categories which are regulated by their own laws.

### (a) Real Property Mortgages

Real property is encumbered through mortgages, which must be executed by public deed before a Chilean notary public and registered in the Mortgage Registry (Registro de Hipotecas y Gravámenes) of the Real Estate Registry (Conservador de Bienes Raíces) corresponding to the property’s location.

Mortgages may cover not only fully owned real property but also a share (quota) in a property. Future property can also be mortgaged, in which case the deed serves as a promissory mortgage.

<sup>5</sup> A peculiarity of this pledge is that it allows pledging factual universes, which are sets of assets that form an entity but are identifiable among themselves (e.g., a company’s inventory). This factual universe can change over time.

<sup>6</sup> In Chilean legislation, the following are considered real estate: (i) Properly so-called: they cannot be moved from one place to another without altering their substance; (ii) Adherence: Those that are movable assets but are attached to a real estate asset. Their separation can cause detriment to the thing (e.g., air conditioning); (iii) Destination: Those that the law fictionally determines as real estate, even though by their nature they are not (e.g., airplanes).



The mortgage deed must include:

- Details of the parties.
- A description of the secured obligations, or a statement that the mortgage secures all obligations of the mortgagor to the mortgagee.
- Identification of the mortgaged property.

Registration of the mortgage is mandatory for perfection. No security interest over the property exists until registration is completed. Registration times vary depending on the efficiency of the local Real Estate Registry.

#### (b) Water Rights and Mining Concessions Mortgages

Like real property, mortgages can also be granted over assets that, under Chilean law, are treated as real property. The Chilean Water Code allows the mortgaging of water rights, and the Mining Code permits the mortgaging of mining concessions, both of which are classified as real property.

In general, mortgages over water rights and mining concessions follow the same regime as mortgages over real property. They must be executed by public deed before a Chilean notary public and registered as follows:

- Mortgages over water rights must be registered in the Mortgage Registry of the Water Registry (Registro de Hipotecas y Gravámenes de Aguas).
- Mortgages over mining concessions must be registered in the Mortgage Registry of the Mining Registry (Registro de Hipotecas y Gravámenes de Minas).

Registration is a requirement for perfection, and no security interest is created until registration is completed.

#### (c) Aircraft Mortgages

Aircraft are encumbered through a mortgage, which must be executed either by public deed or by a notarised private document. The mortgage must be registered in the Registry of Encumbrances (Registro de Gravámenes y Prohibiciones de Aeronaves) maintained by the General Civil Aeronautics Authority (Dirección General de Aeronáutica Civil). Registration is required for perfection, and no security interest is created until registration is complete.

The mortgage deed must include:

- Details of the parties.
- Identification of the aircraft (manufacturer, model, serial number, and Chilean registration mark), as well as any unattached spare parts and their storage location.
- A description of the secured obligations and, if applicable, the maximum amount secured.
- The creditor's domicile in Chile for service of process.



Although not legally required, it is advisable to specifically list aircraft equipment and spare parts in the mortgage deed to ensure they are covered in any foreclosure, even if removed or transferred to third parties.

The mortgage registration must contain:

1. Details of the debtor, the secured parties, or the attorney requesting registration.
2. The date and nature of the secured obligation; if the mortgage is granted by a separate document, this must also be noted.
3. A description of the secured obligations and the maximum secured amount, if applicable.
4. Identification of the aircraft, related equipment, spare parts, and the location of unattached parts.
5. The filing date and the Registrar's signature.

## PROHIBITIONS ON PLEDGED OR MORTGAGED ASSETS

The Chilean legal system also permits the establishment of prohibitions on creating additional liens over pledged or mortgaged assets, as well as prohibitions on disposing of such assets. These prohibitions are typically included in the same pledge or mortgage deed and must be registered in the relevant registries, alongside the main security interest.

However, although these prohibitions are recorded on the title (e.g., together with the pledge or mortgage), in most cases they do not constitute true rights in rem (*derechos reales*). Rather, they are considered contractual obligations (covenants).

Chilean courts have consistently ruled that such prohibitions are not in rem securities but are instead negative covenants. As such, a breach of these covenants does not render void any agreement entered in violation of the prohibition. Instead, the breach gives rise to an obligation to indemnify the aggrieved party for the damages resulting from the breach and/or to the consequences specifically agreed upon by the parties in the original agreement (such as acceleration of the secured obligations).

## PERSONAL GUARANTEES (surety and/or joint and several liability)

Personal guarantees are those in which no specific asset is designated as collateral. The significance of this type of guarantee lies in the identity and creditworthiness of the guarantor, who personally guarantees the fulfillment of the debtor's obligations (e.g., payment of a debt). In such cases, the debtor is liable with all their present and future assets.

Unlike real guarantees, personal guarantees do not create a right in rem over a specific asset; instead, they confer a general claim over the debtor's estate. Under Chilean law, the main forms of personal guarantees are joint and several obligations (*solidaridad pasiva*) and suretyships/guarantees (*fianza*). Importantly, claims based on personal guarantees will rank junior to claims secured by a right in rem—such as a mortgage or a pledge—over a specific asset.



Joint and Several Obligations arise when two or more debtors are individually liable for the entire debt. A key feature, and one that makes it particularly attractive to creditors, is that the creditor may demand full payment from any one of the debtors or guarantors, without first having to exhaust remedies against the principal debtor.

Suretyships/Guarantees are accessory obligations under which one or more individuals—the guarantors—assume liability toward the creditor for an obligation owed by a third party. The guarantors undertake to perform the obligation if the principal obligor fails to do so. Guarantees can be:

- Joint and Several, where the guarantor is liable for the full amount of the secured debt on the same terms as the borrower; or
- Several, where the guarantor is liable only for amounts that remain unpaid after the creditor has taken collection action against the borrower.

## CONTRACTUALLY CREATED GUARANTEES

The following structures are not, strictly speaking, legally recognized security interests under Chilean law. Rather, they are contractual mechanisms—often adaptations of foreign legal instruments—that are increasingly used in Chile to secure obligations.

### (a) Conditional Assignments

A conditional assignment is a contractual mechanism under which certain contractual rights are assigned to a creditor, but the assignment becomes effective only upon the occurrence of a debtor's default under the secured obligations.

Chilean law is generally unsympathetic to conditional assignments and does not expressly recognize them. Nevertheless, they are often used in project finance transactions as part of the creditors' security package, providing an additional layer of protection even though practical evidence of their enforceability remains limited.

Conditional assignments are indirectly referenced in the Chilean Civil Code under the general rules governing the assignment of rights (Articles 1,901 et seq.).

In practice, conditional assignment deeds typically include:

- Details of the parties.
- A description of the secured obligations.
- Identification of the contracts from which the assigned rights arise.

Following general assignment rules, conditional assignments require both the delivery of the assigned contracts to the assignee and the notification to, or acceptance by, the counterparties to the assigned contracts.



#### (b) Direct Agreements

In recent years, project finance lenders—particularly foreign ones—have required the execution of direct agreements with the counterparties to pledged or conditionally assigned contracts.

Under these agreements, the counterparties undertake specific obligations directly in favour of the lenders. A common commitment is the grant of cure periods in the event of breaches by the debtor under the relevant contracts.

Direct agreements are often difficult to negotiate due to the reluctance of local counterparties to assume obligations toward lenders with whom they have no contractual relationship. Moreover, these agreements are frequently governed by foreign law and subject to foreign jurisdiction, adding to the complexity.

As with conditional assignments, Chilean law does not expressly recognize direct agreements, and there is limited precedent regarding their enforceability.

#### (c) Collateral Agents

Article 18 of Law No. 20,190 introduces the figure of the Collateral Agent, a local entity appointed to hold collateral on behalf of secured parties and to exercise any related rights.

The Collateral Agent must be appointed through a public deed executed by the debtor and the secured parties. When new secured parties join the financing arrangement, they must execute an accession deed to become part of the existing security structure.

Under the appointment deed, the Collateral Agent is authorized to enforce the collateral upon instructions from the lenders or, if applicable, from an appointed Administrative Agent. The Collateral Agent is responsible for distributing the enforcement proceeds to the lenders.

It is important to distinguish the Collateral Agent from the Administrative Agent: The Administrative Agent represents the lenders and instructs the Collateral Agent regarding any actions related to the collateral.

Unless otherwise agreed, the Collateral Agent is entitled to remuneration for its services and must provide an accounting of its actions once its mandate ends.



## FINAL COMMENTS

### (a) Enforcement

Generally, under Chilean law it is not possible for a secured party to take self-help measures in respect of encumbered assets. Chilean law requires that every mortgage or pledge be enforced by a public auction conducted through a court procedure. The only exception to this general rule is the pledge over credits, which allows the secured party to collect the credit when it becomes due and apply to the outstanding debt any proceeds from that collection. Consequently, the enforcement of a mortgage or pledge will normally be subject to the usual delays associated with any court proceeding.

Regulatory consents are only required in respect of certain rights, such as the assignment of rights under foreign investment contracts, or pledges over concessions granted by government entities. In all such cases, since the enforcement of the collateral will result in the assignee becoming the holder of such assigned rights, it will have to undergo the same approval process before the relevant governmental entity as any other applicant requesting such right or concession.

In connection with the effects of a bankruptcy procedure on the enforcement of perfected security interests, Chilean bankruptcy law sets forth an exception with respect to the general stay of execution imposed on creditors after a borrower is declared bankrupt. Pursuant to such exception, secured creditors may foreclose their collateral and apply the obtained proceeds to the payment of their credits, provided there are sufficient assets to cover the rights and credits of those with a higher legal priority, such as unpaid taxes and labour and social security payments.

### (b) Expenses

Expenses in connection with the execution of security interests involve notary and registration fees. These fees tend to be charged to the debtor. The execution of a security interest is not subject to taxes.