This country-specific Q&A provides an overview of environmental, social and governance laws and regulations applicable in Chile.

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CHILE
ENVIRONMENTAL, SOCIAL AND GOVERNANCE

1. Climate - the law governing operations that emit Greenhouse Gases (e.g. carbon trading) is addressed by Environment and Climate Change international guides, in respect of ESG: a. Is there any statutory duty to implement net zero business strategies; b. Is the use of carbon offsets to meet net zero or carbon neutral commitments regulated; c. Have there been any test cases brought against companies for undeliverable net zero strategies; d. Have there been any test cases brought against companies for their proportionate contribution to global levels of greenhouse gases (GHGs)?

a. Is there any statutory duty to implement net zero business strategies;

The Chilean Long Term Climate Strategy was established in 2021. This plan seeks to address climate change and comply with the Paris Agreement making the commitment to carbon neutrality by 2050. The implementation of this strategy will involve various instruments that contain specific actions and measures.

Law 21,455, published in 2022, sets out the climate governance, powers, and obligations of Chilean state agencies for climate action. The law establishes a target of achieving greenhouse gas neutrality by 2050. This law incorporates the principle of transversality for climate change management, which involves the private sector in the challenge of achieving carbon neutrality. Law 21,455 requires the Ministry of the Environment to devise regulations establishing the maximum amount of greenhouse gases and/or short-lived climate forcers that can be emitted by an establishment, emitting source, or group of these. To comply with these regulations, this law specifies that certificates may be used to certify the reduction or absorption of greenhouse gas emissions achieved through the implementation of initiatives in Chile. Law 21,455 also grants the Superintendence of the Environment the authority to oversee the continuous compliance with emission regulations, as well as to sanction infringements. However, the regulation that will govern emission targets set by each productive sector, including energy, transport, mining, health, and agriculture, among others, has not yet been enacted. Consequently, there is no mandate for specific companies or businesses to implement a net zero strategy.

Regarding the implementation of net zero business strategies, it is noteworthy to mention article 8 of the Law 20,780, amended in 2020, that imposes an annual tax on GHG air emissions from establishments whose emitting sources, individually or collectively, produce 100 or more metric tonnes per year of particulate matter or 25,000 or more metric tonnes per year of carbon dioxide.

b. Is the use of carbon offsets to meet net zero or carbon neutral commitments regulated;

Law 21,455 contemplates the use of carbon offsets, but the specific regulation on the matter is still pending.

Law 20,780, to which the previous answer refers, allows the offsetting of emissions for the calculation of the tax to be paid. The law states that all or a portion of taxed emissions may be offset by implementing projects to reduce pollutant emissions within the national territory, provided that these reductions are additional, measurable, verifiable, and permanent. However, the regulation that will establish the form and requirements necessary to accredit the characteristics of offset projects, as well as the certification procedures for such projects, has also not yet been published.

c. Have there been any test cases brought against companies for undeliverable net zero strategies;

Since in Chile companies are not yet required to comply with a specific net zero goal or objective, no test cases exist in this matter.
d. Have there been any test cases brought against companies for their proportionate contribution to global levels of greenhouse gases (GHGs)?

There have been test cases brought against companies in this matter. A case worth highlighting is “Amolana Codesca Social and Cultural Development Corporation (Corporación de Desarrollo Social y Cultural Amolana Codesca) v. Chilean Environmental Assessment Service (Servicio de Evaluación Ambiental)”, in which the First Environmental Court’s ruling dated September 20, 2022, rejected a claim against the Environmental Qualification Resolution that approved the diesel thermal power station project “Central Eléctrica Canelillo”. The claimant argued that the project’s environmental assessment process did not properly consider and evaluate the project’s contribution of GHGs emissions, and in particular, did not properly weigh Chile’s commitment to reduce GHGs emissions by virtue of the Paris Agreement, and the Decontamination Plan established in the Energy Matrix Decontamination Plan announced in June 2019 by the Chilean Government, which contemplates reducing half of carbon emissions by 2025 and the total closure of thermal power stations by 2040. The court however, rejected the claimant’s arguments on the basis that, at the date the project was subject to environmental assessment and positively qualified, no specific obligation to weigh GHGs emissions existed under Chilean law. The case is still pending review by the Supreme Court. Similar rationales have been followed in cases “Private Corporation for the Development of Aysen (Corporación Privada para el Desarrollo de Aysén), et al. v. Chilean Environmental Assessment Service (Servicio de Evaluación Ambiental)” and “Gabriela Simonetti Grez et al. v. Chilean Environmental Assessment (Servicio de Evaluación Ambiental)” regarding a coal mine.

In “Mejillones Tourist Service Association (Asociación de Prestadores Turísticos de Mejillones) et al. v. Chilean Environmental Assessment Service (Servicio de Evaluación Ambiental)” the Chilean Supreme Court ordered in 2022 the Environmental Assessment Service to include environmental variations caused by climate change in the extraordinary review of the existing environmental authorization of a thermoelectric central. In their ruling, the judges expressly referred Chile’s obligations under the UN Framework Convention on Climate Change, considering that this mechanism is applicable to regulate situations that were not previously foreseen, such as the climate change variable and GHGs reduction requirements.

2. Biodiversity - are new projects required

2. Biodiversity - are new projects required to demonstrate biodiversity net gain to receive development consent?

According to Law 19,300, also known as the General Environmental Framework Law, and Decree 40, which approves the Environmental Impact Assessment System (“SEIA”, by its Spanish acronym) Regulations, if a new project or activity requires an Environmental Impact Study to be submitted, it may only be approved and executed if it addresses the environmental effects it generates, including the alteration of biodiversity as an environmental effect. To address this, appropriate mitigation, compensation, or reparation measures must be proposed. The proposed measures should eliminate or minimize adverse effects and consider restoration actions, if appropriate. If it is not possible to mitigate or restore the adverse effects of a new project on biodiversity, it will be necessary to compensate for this effect by producing or generating an alternative and equivalent positive effect to achieve a net zero loss or even a gain in biodiversity.

According to the Guide for Biodiversity Compensation in the SEIA (the “Guide”), biodiversity compensation measures, which should be executed for residual impacts that remain after implementing measures to mitigate and repair an impact, must be equivalent and additional. By equivalency, it is understood that they must generate an alternative and equal positive effect to the identified adverse effect, substituting the affected elements with others of similar characteristics, class, nature, quality, and function. By additionality, it is understood that they must involve an improvement in the biodiversity condition obtained in the compensation scenario, compared to the scenario without compensation. With these requirements, the Guide aims to comply with the Business and Biodiversity Offsets Programme.

3. Water - are companies required to report on water usage?

In Chile, the Water Code states that private individuals must secure water rights to use water, defining the specific flow to which they will be entitled. This right may be limited to safeguard human consumption and sanitation, ecosystem preservation, water availability, aquifer sustainability and, in general, to promote a balance between efficiency and safety in the productive use of water.

The Water Code also establishes the obligation to install and maintain flow and volume measurement systems and to transmit the obtained information to the General Directorate of Waters. This obligation applies to all water...
Every waste generator of priority products (oils, electronic and electrical devices, batteries, packaging, and tires) is required by Law 20,920 to deliver them to a licensed waste manager for treatment. In addition, it requires every waste manager to handle waste in an environmentally responsible manner, employing the best available techniques and environmental practices in accordance with the law. It should be noted that the application of this law is gradual, with distinct collection and valorisation goals for each priority product.

6. Plastics - what laws are in place to deter and punish plastic pollution (e.g. producer responsibility, plastic tax or bans on certain plastic uses)?

There are numerous regulations in Chile that discourage and sanction the use of plastics. One of these regulations is Law 21,100, which prohibits the delivery of plastic bags used for transporting products across the nation's territory. Municipalities are responsible for enforcing this law and they may levy penalties for each bag delivered.

Law 21,368 seeks to restrict the distribution of single-use plastic products in food retail establishments, encourage the reuse and certification of single-use plastics, and regulate the use of disposable plastic bottles. This law prohibits the delivery of single-use plastic products for consumption within an establishment and restricts their delivery for outside consumption. In the event of delivery of such products, there is a duty to inform consumers about the correct way to valorise them and raise awareness about their environmental impact. Regarding disposable plastic bottles, they must contain a certain percentage of plastic collected and recycled material. The effects of this law have had a gradual entry into force, taking full effect only in 2024.

A third pertinent regulation is Supreme Decree No. 12/2021, which establishes collection and recovery objectives and other associated obligations for containers and packaging, including plastic packaging, within the context of Extended Producer Responsibility Law 20,920.

7. Equality Diversity and Inclusion (EDI) - what legal obligations are placed on an employer to ensure equality, diversity and inclusion in the workplace?

The Labour Code mandates equal treatment and opportunities in employment access and remuneration, without discrimination based on gender, age, marital
status, union membership, political opinion, religion, nationality, sexual orientation, gender identity, or health status, among other factors. This same Code provides for judicial actions to protect the fundamental rights of workers if the exercise of an employer’s powers restricts such rights without adequate justification, in an arbitrary, discriminatory, disproportionate manner or without regard for their essential content.

Law 20,348 safeguards the right to equality in remuneration, allowing distinctions only on an objective basis such as of skills, qualifications, suitability, responsibility, or productivity.

Law 21,015 promotes the inclusion of individuals with disabilities in the labour market by establishing a minimum employment quota for people with disabilities in companies or State agencies with at least 100 employees. Furthermore, in case the employer is a State agency, the law also requires such agencies to preferentially select, on equal merits, persons with disabilities.

Law 21,356 establishes gender representation quotas in the boards of directors of certain public corporations and State-owned entities.

Lastly, and in more general terms, Law 20,609 establishes general measures against discrimination by instituting a judicial mechanism that effectively restores the rule of law whenever an arbitrary act of discrimination is committed.

The General Standard 461 of the Commission for the Financial Market states that regulated companies must annually report on their policies of equal wages and inform the existing gaps in wages between men and women.

8. Workplace welfare - the law governing health and safety at work is addressed in the Health and Safety international guide, in respect of ESG are there any legal duties on employers to treat employees fairly and with respect?

The Labour Code stipulates that employment relationships must always be based on humane treatment, according to human dignity. Employer-on-employee discrimination, workplace harassment and sexual harassment are prohibited in this manner. Labour laws also protect the privacy and the physical and moral integrity of workers.

Failure to comply with these prohibitions may result in requests for indirect dismissal, sanctions, including criminal sanctions, for the offender and liability for the company, both if the act is committed by hierarchical superiors and/or if prevention, investigation, and sanction measures have not been taken if these actions have been committed among workers.

The General Standard 461 of the Commission for the Financial Market states that regulated companies must annually report on their policies to prevent and manage sexual and labour harassment, including red lines and an accounting of cases, always protecting the workers privacy. Similar reporting is mandatory in relation to workers safety and health.

9. Living wage - the law governing employment rights is addressed in the Employment and Labour international guide, in respect of ESG is there a legal requirement to pay a wage that is high enough to maintain a normal standard of living?

Although there is no legal obligation to pay a salary sufficient to maintain a normal standard of living, labour legislation does establish a minimum wage, which is designed to ensure a minimum level of income sufficient to cover basic expenditures for all workers. This minimum wage is established by law and periodically adjusted according to the consumer price index.

Furthermore, it should be noted that Chilean legislation contemplates other social and economic assistance programs that are in part covered by the employer, such as unemployment insurance.

10. Human rights in the supply chain - in relation to adverse impact on human rights or the environment in the supply chain: a. Are there any statutory duties to perform due diligence; b. Have there been any test cases brought against companies?

a. Are there any statutory duties to perform due diligence;

Currently in Chile, there are no legal obligations regarding the implementation of human rights due diligence processes in supply chains. Nevertheless, these due diligence processes are becoming more common due to the international regulations that apply to companies with international operations or foreign clients.
General Rule 461 of the Commission for the Financial Market, which applies to all institutions supervised by the Market authority, including banks, insurance companies, issuers of publicly offered securities, general fund managers and stock exchanges, establishes the obligation to annually report on the risk management policies of each company, including environmental, social and human rights risks. This information should also cover the risks associated with events that could affect the company through its supply chain.

Additionally, companies must report whether they have policies to assess their suppliers’ quality of corporate governance, risk management systems and other sustainability aspects.

b. Have there been any test cases brought against companies?

As there are no domestic legal obligations on companies regarding the prevention of adverse impacts on human rights or the environment in supply chains, no such case has been brought before Chilean courts.

11. Responsibility for host communities, environment and indigenous populations - in relation to adverse impact on human rights or the environment in host communities: a. Are there any statutory duties to perform due diligence; b. Have there been any test cases brought against companies?

a. Are there any statutory duties to perform due diligence;

According with Chilean regulations, all new projects must be environmentally assessed by the Environmental Assessment System. If the project’s effects, characteristics or circumstances include risks to public health, the environment, resettlement of human communities, significant alteration of their livelihoods and customs or if it is located in or near protected populations (including indigenous peoples), it should submit an Environmental Impact Study including the analysis and full description of these impacts within its area of influence, and the proper mitigation, reparation and compensation measures.

If communities are affected by a project in any of the abovementioned ways, it is mandatory to carry out a citizen participation process during the environmental evaluation, allowing any interested person to participate and submit observations. In addition, in compliance with Convention 169 of the International Labour Organization and the domestic legislation incorporating those standards, the State must carry out indigenous consultation processes in cases where a project is susceptible to directly affect one or more human groups belonging to indigenous peoples. This consultation aims not only to inform indigenous groups about the project and its effects, but also to allow them to influence its design and qualification, attempting to obtain their free, prior and informed consent. If the project involves resettlement, their consent is mandatory.

Both the obligation to carry out citizen participation and the indigenous consultation process, fall on the Environmental Impact Assessment Service, without prejudice to the obligation of the project holder to inform the community about the project’s characteristics, its impacts, the proposed measures to mitigate, repair and compensate when appropriate, as well as any other proposed environmental measure.

b. Have there been any test cases brought against companies?

From the 1990s onward, there have been multiple cases in which local communities have confronted companies for causing adverse impacts on their human rights or the environment which they inhabit. Local and indigenous communities, as well as environmental organizations, depending on the case, can resort to the Environmental Superintendence, the Environmental Courts, and the Supreme Court.

Judicialization usually occurs in the process of a project’s request for an environmental qualification authorization due to lack of participation, consultation or consideration of impacts on human groups, or once the project has been authorized, when it violates the parameters of its authorization, or the mitigation, compensation or reparation measures with respect to its impact on communities and the environment.

Community’s claims that have not been fully satisfied in local courts have been brought before the Inter-American Human Rights System. However, there are no rulings by the Inter-American Court of Human Rights against Chile in relation to these matters.

12. Have the Advertising authorities required any businesses to remove adverts for unsubstantiated sustainability claims?

The Chilean National Consumer Service (“SERNAC”, by its Spanish acronym) who is in charge of supervising any false claim or advertisement made by businesses, including sustainability matters, does not have the direct authority to require the removal of unsubstantiated claims and can only prosecute fines.
In 2012 in the case "National Consumer Service (SERNAC) v. Bosch Electrodomesticos S.A.C.", following a series of market studies, the SERNAC filed a claim seeking to fine a German multinational company due to alleged false advertisements in which the company claimed some of their home appliances products to be "100% sustainable" and include "Green Technology Inside", arguing that the company failed to provide sufficient information to back up their statements. The case was dismissed by the local courts as well as the Court of Appeals, although in this case with a dissenting vote of one of the judges who argued for granting the appeal on the basis that the generic statements used by the company make it impossible to identify which sustainability characteristics are being promoted, which would constitute a violation of Law 19,496.

It is also relevant to mention that, since year 2012, SERNAC has been constantly performing market studies related to false or misleading sustainability advertisements of products and/or services, which are then used to evaluate the application of fines or judicial actions. In 2018, the fines for unsubstantiated sustainability claims were increased.

A new bill is currently being discussed in Congress to grant more attributions to Chilean authorities, so they can combat greenwashing more effectively.

13. Have the Competition and Markets authorities taken action, fined or prosecuted any businesses for unsubstantiated sustainability claims relating to products or services?

Chilean Competition or Markets authorities have not yet taken action, fined or prosecuted any business or company for unsubstantiated sustainability claims relating its products or services.

14. Have there been any test cases brought against businesses for unsubstantiated enterprise wide sustainability commitments?

Apart from the cases detailed in the answer to question number 12, there are no specific cases brought before courts in relation to unsubstantiated sustainability commitments by businesses.

15. Is there a statutory duty on directors to oversee environmental and social impacts?

General Rule 461 of the Commission for the Financial Market mandates all institutions supervised by the Market authority to report regarding the frequency with which their boards of directors are informed of matters related to environmental and social issues, especially with respect to climate change, and whether these matters are included when discussing and adopting strategic decisions, business or budgetary plans, among others.

These companies should also report on the board’s assessment of the detection and reduction of organizational, social or cultural barriers that may be inhibiting the natural diversity of capabilities, visions, characteristics and conditions that would have been present in its composition in the absence of such barriers. The report to the Commission for the Financial Market should also include the total number of directors separated by men and women, the number of directors with disabilities and the salary gaps by gender, if applicable.

In accordance with Law 18,046 the board of directors has the duty to provide the shareholders and the public with sufficient, timely and information on the legal, economic and financial situation of the company, in accordance with the law or instructions of the Commission for the Financial Market. The lack of oversee on environmental and social issues that could eventually impact the company’s and shareholders’ interests, may result in a breach of the fiduciary duties of the board of directors.

16. Have there been any test cases brought against directors for presenting misleading information on environmental and social impact?

Even though Law 18,046 includes a generic prohibition for directors to hide or present any misleading or false information to the shareholders or the market, no specific case regarding the presentation of misleading information related to environmental and/or social impacts exist.

17. Are financial institutions and large or listed corporates required to report against sustainable investment criteria?

In Chile there is currently no specific reporting obligation regarding the sustainability criteria for investments, although international regulations and practice are gradually standardizing this practice with respect to banks, financial institutions and investment funds.
The General Standard 461 of the Commission for the Financial Market states that the entities that it regulates are required to mention their strategic investment objectives and describe, in general terms, the planning that has been established to achieve these goals, including their sustainable investment objectives.

Furthermore, entities are required to indicate the strategic commitments adopted within the framework of the United Nations Sustainable Development Goals or equivalent ones.

**18. Is there a statutory responsibility on businesses to report on managing climate related financial risks?**

The General Standard 461 of the Commission for the Financial Market states that the entities that it regulates must describe in an annual report how the entity integrates a framework of risk management and internal control into its activities. The report must mention the risks and opportunities inherent to the entity’s activities and those associated with events that may affect it through its subsidiaries, associates, suppliers or the market in general, including environmental, social and human rights risks. With respect to climate change in particular, entities must refer to short, medium, long-term physical risks and transition risks, as well as opportunities on an equal basis. This report should take into consideration definitions, guidelines and recommendations on climate change risk management issued by international organizations such as the International Organization for Standardization and the Task Force on Climate-related Financial Disclosure.

As such, when referring to the impact of these risks and opportunities, these entities must mention the impact they would have on operational costs, revenues, use of capital, and access to financing. If scenarios have been employed to determine these impacts, the entities must provide a brief description of them.

**19. Is there a statutory responsibility on businesses to report on energy consumption?**

In 2021, Decree 163 of the Ministry of Energy established that certain companies, according to a set of criteria including annual revenues, number of workers, time of initiation of activities and legal entity type, should annually report to the Ministry of Energy their energy consumption and energy intensity. Notwithstanding the above-mentioned criteria, all companies with an annual energy consumption equal or greater than 50 tera-calories should also provide such report.

**20. Is there a statutory responsibility on businesses to report on EDI and / or gender pay gaps?**

The General Standard 461 of the Commission for the Financial Market mandates the entities it regulates to annually report on their personnel structure, indicating the number of employees by gender, nationality, age range, work seniority and disability. Additionally, the entities must report the annual gender pay gap for each category of workers.

Furthermore, these entities must disclose the existence of policies aimed at ensuring equitable compensation among the workers in accordance with their roles and responsibilities, and expressly state whether plans and/or goals have been defined to reduce any existing gaps in this matter. Regarding the latter, the entities must present the self-imposed goals.

**21. Is there a statutory responsibility to report on modern day slavery in the supply chain?**

As of now, there are no legal obligations in Chile to report on modern slavery in companies’ supply chains. However, such reports are becoming more prevalent due to the international regulations that apply to companies with transnational operation or foreign clients.

In any case, it should be noted that General Standard 461 of the Commission for the Financial Market, which is applicable to regulated financial entities, mandates the annual reporting of each company’s risk management policies, including those related to labour and human rights risks. This reporting should also encompass the risks associated with events that could impact the company through its supply chain.
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