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Antonio Ortúzar Vicuña Baker & McKenzie Santiago

The Second Capital Market Reform (RK2) is one of Chile's most ambitious legislative reforms to date. The reform modifies 14 legal bodies and introduces more than 60 measures aimed at modernizing and liberalizing Chile's capital markets. The reform has been approved by the House of Representatives and, at the time of writing, is being reviewed by the Senate.

Two key objectives of the reform are to create incentives for the development of the risk capital industry, and to reduce contracting and trading costs.

Incentives to develop the risk capital industry

Innovative companies will enjoy big advantages when looking to finance their development projects with capital contributions. The reform promotes the financing of development projects by means of tax incentives to investors and a system of guarantees for risk capital investment funds.

The reform envisages two tax incentives for investors. First, it proposes to classify as non-income proceeds the portion of the stock capital profits accrued during the period in which one or more investment funds participated in more than one-third of the property ownership of a closely held stock company or a stock-limited liability company (a new company type created by the reform), up to a maximum of Ps20,000 (\$600,000). This incentive is temporary, and will only be in effect during the first 15 years after the reform's implementation.

Secondly, income tax exemption benefits to the underlying assets of an investment fund will be transferable to the bearers of fund quotas, thereby abolishing an existing tax distortion that favoured investing through investment funds as opposed to making direct investments in the underlying assets.

Also, the Production Development Corporation (the Corfo), jointly with the Inter-American Development Bank (the IADB), will guarantee the securities to be issued by the risk capital investment funds. The objective of this guarantee system is to promote the participation of institutional investors in the financing of the risk capital industry.

Reducing the trading and contracting costs of sophisticated instruments

The reform created the limited liability stock company (the SPA), a new type of corporate organization that is more flexible, dynamic and economical, and more in line with the needs of the risk capital industry. The main features of an SPA are:

- There is ample freedom for setting up the management body, which may consist of one or more individuals, a board of directors, or any collective or plural form of management.
- The bylaws may empower management to increase directly the company's stock capital to finance the company's general management efforts or toward specific objectives.
- Each partner's participation is easily assignable, to enable the straightforward entry or exit of capital.
- An SPA can have one shareholder owning 100% of its stock capital – which was not possible under the previous law on corporations.
- Shareholders' meetings may be conducted remotely, to guarantee the correct and timely exercise of the rights of all company shareholders.
- The bylaws can include a broad range of agreements and preferences, such as multiple vote and percentage stock, or maximum and minimum stock capital amounts to be controlled by one or more shareholder.
- It is possible to establish preferences regarding assured dividends payable always over net or retained profits. But, in case of losses, unpaid dividends can be registered in an account set up for the sole purpose of ensuring the preferred payment of the remaining shares of stock.
- Similarly – and subject to the creation of an account separation plan to ensure the payment of applicable taxes and to avoid the duplicity of income or income tax deductible expenses – business units can be segregated so that dividends and other economic rights pertaining to a stock series can be directly linked to the performance of that business unit.
- Stock options or warrants are permitted.

To facilitate access to financing, and reduce the cost of that financing – especially for small and medium-sized businesses – the reform introduced a new pledging system for collaterals without conveyance, which is more flexible and reliable.

- The new system created a single registry of pledges without conveyance, managed by the Civil Registration & Identification Service. The old pledge without conveyance was published in the Official Gazette, which made it difficult to control the pledging of new collaterals on the part of pledged collateral holders.
- The new collateral may be pledged over any type of tangible or intangible asset, including contracts, securities, public infrastructure concession rights, port concession rights, construction rights, underground mining rights, or concession rights to develop sanitary utility services.
- The pledge is extended with full legal rights to the products transformed with the assets originally pledged as collateral.

The reform creates the legal conditions required to launch the risk capital industry in Chile. While acknowledging the importance of private entrepreneurship as the main driver of the country's economic development, the reform provides incentives to develop the risk capital industry, and takes decisive steps to create a more dynamic, flexible and simple legal regime.

Banking

Recommended firms

Tier 1

Carey y Cia

Claro y Cia

Philippi Yrarrázaval Pulido y Brunner

Tier 2

Barros y Errázuriz

Cariola Díez Perez-Cotapos y Cia

Guerrero Olivos Novoa y Errázuriz

Morales Noguera Valdivieso & Besa

Tier 3

Barros Court & Correa

Larrain y Asociados

Capital markets

Recommended firms

Tier 1

Carey y Cia

Claro y Cia

Philippi Yrarrázaval Pulido y Brunner

Tier 2

Barros y Errázuriz

Cariola Díez Perez-Cotapos y Cia

Guerrero Olivos Novoa y Errázuriz

Morales Noguera Valdivieso & Besa

Prieto y Cia

Tier 3

Larrain y Asociados

Urenda Rencoret Orrego y Dörr

Vial y Palma

Insolvency and restructuring

Recommended firms

Tier 1

Carey y Cia

Claro y Cia

Philippi Yrarrázaval Pulido y Brunner

Tier 2

Barros y Errázuriz

Cariola Díez Perez-Cotapos y Cia

Guerrero Olivos Novoa y Errázuriz

Morales Noguera Valdivieso & Besa

Prieto y Cia

Tier 3

Larrain y Asociados

Urenda Rencoret Orrego y Dörr

Vial y Palma

Mergers and acquisitions

Recommended firms

Tier 1

Carey y Cia

Claro y Cia

Philippi Yrarrázaval Pulido y Brunner

Tier 2

Barros Court & Correa

Barros y Errázuriz

Cariola Díez Perez-Cotapos y Cia

Morales Noguera Valdivieso & Besa

Tier 3

Guerrero Olivos Novoa y Errázuriz

Larrain y Asociados

Urenda Rencoret Orrego y Dörr

Prieto y Cia

Tier 4

Alessandri y Cia

Cruzat Ortúzar & Mackenna/Baker & McKenzie

Vial y Palma

Project finance

Recommended firms

Tier 1

Carey y Cia

Claro y Cia

Philippi Yrarrázaval Pulido y Brunner

Tier 2

Cariola Díez Perez-Cotapos y Cia

Larrain y Asociados

Morales Noguera Valdivieso & Besa

Tier 3

Barros y Errázuriz

Guerrero Olivos Novoa y Errázuriz

Prieto y Cia

Barros Court & Correa

Barros Court & Correa has offices in Santiago and Concepción, and benefits from extensive relationships with many other law firms in Latin America. The firm has traditionally been strongest in litigation and M&A, but has recently been making forays into the banking and finance markets with considerable success.

Last year Barros Court advised Inversiones CMPC in relation to a \$475 million syndicated loan and a \$205 million 10-year bond issue, and provided counsel to Esval regarding two local note issues worth a total of \$147 million. The most significant M&A deal Barros Court was involved in was Córpora Aconcagua's purchase of Iansa for \$35 million.

The firm's clients include leading international financial institutions such as Morgan Stanley, Santander Investment and Goldman Sachs, and corporates such as the Liberty Media Corporation. From the highly regarded team, Max Letelier is considered a pragmatic and efficient lawyer.

Key contact partners

Max Letelier
Juan Pablo Schwencke

Barros y Errázuriz

A medium-sized practice founded in 1988, Barros y Errázuriz expands its reputation every year, and it is coming to be recognized as a genuine rival to Chile's so-called magic circle firms (Carey y Cia, Claro y Cia and Philippi Yrarrázaval Pulido y Brunner). Traditionally strongest in M&A and project finance, Barros y Errázuriz is branching out into capital markets, utilities and telecommunications deals, and recruiting young lawyers to strengthen its future capabilities in these sectors. The firm's peers describe it as "up and coming, with a lot of energy". Local clients are also effusive about the firm's credentials and professional approach.

Over the past year Barros y Errázuriz has been visible on a number of the country's prestigious deals. In the mergers and acquisitions market, for example, it represented Inversiones San Antonio when it sold a 95% stake in the Chilean salt processing company Salinas Punta de Lobos for \$100 million. In the core area of corporate finance, meanwhile, the firm acted as financial advisor to Santander Investment Chile on its \$120 million syndicated loan to supermarket chain Hipermercado Jumbo, advised Coca-Cola Embonor on a complex financial restructuring plan involving voluntary bond purchases worth \$80 million and on a syndicated credit facility of \$180 million, and represented Morgan Stanley and Santander Securities New York in their capacity as underwriters for a refinancing plan of Chilean electric corporation Enersis's \$2.8 billion of debt.

Fernando Barros is the leading M&A specialist at Barros y Errázuriz, while José Tomás Errázuriz and the "very consistent and very professional" Gonzalo Molina are well respected in banking.

Leading lawyers

Cristián Barros
Fernando Barros
José Tomás Errázuriz
Pablo Guerrero
Gonzalo Molina

Key contact partner

José Tomás Errázuriz

Carey y Cia

Founded in 1976 and now the largest law firm in Chile, with 16 partners and 67 associates, Carey y Cia is an outstanding firm with unparalleled depth of expertise in banking and corporate law. The firm's lawyers are variously praised for their depth of legal knowledge ("they have a particularly good understanding of how Chilean law applies to complicated transactions"), integrity ("their ethics are impeccable"; "they don't just consider their own fees, but try to find the best solution"), and professional approach ("when the going gets tough, these are guys you want by your side").

The depth and quality of Carey's team affords it an outstanding reputation in bond issues, corporate restructuring, M&A, and project finance in equal measure. The only weakness noted by one client is that the number of diversity of lawyers can occasionally lead to uncertainties. However, the vast majority of clients have nothing but admiration for the firm, and indeed another client qualifies the above comment by noting that "when there is any uncertainty, Carey has quick access to the relevant authorities to get clarity and decisions".

Banking deals Carey advised on this year included the \$185 million sale of Banco Santander's consumer business to Almacenes Paris, a \$140 million bond issuance by Metro, the company that runs Santiago's subway system, and the \$66 million sale of Dresdner Bank Latinamerika. In the capital markets, Carey advised on two bonds issuances: a \$700 million offering by Banco Santander Chile and a \$475 million notes issuance by Vespucio Norte Express. Diego Peralta was the lead lawyer on many of these deals, and is noted as "an excellent deal-maker and business lawyer" who "looks beyond the short-term interest of his clients". Salvador Valdés, meanwhile, was described by one client as "particularly outstanding" in capital markets, and "excellent at helping to develop negotiating positions". José Miguel Carvajal is also making a name for himself as a rising star.

The M&A market is small in Chile, although Carey has taken on four new associates in this area this year and continues to win roles on impressive deals, such as the \$1.8 billion merger of Masisa with Terranova, the \$934 million sale of Telecom Italia's 54.76% controlling stake in Entel, and the acquisition of Metropolis Intercom by VTR Global Com for \$280 million. Such activity in a fairly static market moved one client to describe Carey as "the pre-eminent M&A firm in Chile," able to provide "sound, concise and creative advice on a number of complex corporate and M&A matters". Jaime

Martínez and Jaime Carey are both recommended by the market for their “experience, client contacts, dedication and expertise”. Pablo Iacobelli is also praised for being “familiar with the business perspective and needs of international clients”.

Oscar Aitken, who is considered to be “the best qualified in how to put the big picture together for clients,” is the firm’s leading expert on insolvency and restructuring, and at the time of writing is advising Colo-Colo (a Chilean football team) on bankruptcy proceedings. Two project finance deals on which Carey is providing counsel are the construction of hydropower plants by Hidroeléctrica La Higuera (valued at \$200 million in the first stage) and the \$700 million modernization of Santiago’s public transport system. Jorge Carey, who is “excellent at strategic advice and in developing strategic options,” is highly regarded, as is Juan Guillermo Levine, a lawyer who “knows how to use a company’s capabilities to best advantage, and who is extremely clever in structuring business deals”. One of Carey’s rising stars, meanwhile, is associate María Fernanda Carvajal, a specialist in project finance, foreign investment and securities – an “excellent problem solver who works at incredible speed”.

The client roster of the firm is exceptional, and includes Credit Suisse, HSBC, Bank of America, Philip Morris, JP Morgan Chase, Frito Lay, ABN Amro, GE Capital, Merrill Lynch and UBS. Carey y Cia is member of three international legal alliances: the Pacific Rim Advisory Council, Terralex and the World Services Group.

Leading lawyers

Jaime Carey
Jorge Carey
Juan Guillermo Levine
Claudio Lizana
Jaime Martínez
Diego Peralta
Salvador Valdés

Key contact partners

Oscar Aitken
Gonzalo Fernández
Pedro Pablo Gutiérrez
Juan Guillermo Levine
Jaime Martínez

Cariola Diez Perez-Cotapos y Cia

A 15-partner firm with an excellent reputation for intellectual property work, Cariola Diez Perez-Cotapos y Cia also possesses strong credentials in banking and corporate transactions, and regularly advises on debt restructurings, bond issues and acquisitions transactions. The practice has recently hired two new partners with solid expertise in M&A work – Cristián Herrera and Oscar Ferrari – who will add considerable depth to Cariola’s corporate team.

Cariola advised on a series of prominent banking deals this year. It provided counsel to Rabobank International in

connection with a \$180 million loan credit facility granted to bottling company Coca-Cola Embonor, acted for ABN Amro in relation to a \$150 million loan restructuring facility to leading Chilean steel producer CAP, and advised Banco de Crédito e Inversiones when it entered into a \$60 million loan restructuring facility with Chilean fishing company Cultivos Marinos Chiloé. The most notable M&A deal on which Cariola provided counsel was the acquisition by Aguas Nuevas of a controlling stake in three water utilities companies for \$167.5 million.

Francisco Illanes and Sebastián Obach are the leading partners in banking and M&A respectively, and both are highly recommended by the market.

Leading lawyers

Luis Oscar Herrera
Francisco Illanes
Sebastián Obach

Key contact partner

Sebastián Obach

Claro y Cia

Boasting a “prestigious and consistent” practice, Claro y Cia is a broad 14-partner firm with diverse areas of expertise, from corporate law to securities to mining. The firm is excellent in banking, having assisted in the development of innovative financial products now standard in the Chilean securities markets, and is especially noted for its derivatives expertise. It also advises international investors and clients in a range of industrial and commercial sectors, such as energy, telecommunications and computer law.

Claro’s expansive knowledge of the securities market allows it to offer advice on the latest trends and instruments within the most complex international markets. Senior partner Cristián Eyzaguirre is acclaimed for his knowledge of planning and implementing foreign investments in Chile, as well as structuring complex financial transactions with cross-border flows. José María Eyzaguirre is also regarded as “a very high quality lawyer”.

Among the firm’s clients are Deutsche Bank, Cottage Corporation and the Inter-American Development Bank. Claro is allied with law associations Lex Mundi, Club de Abogados and Bomchil Group.

Leading lawyers

José María Eyzaguirre
Nicolás Eyzaguirre
Matias de Marchena
Rodrigo Ochagavía

Key contact partner

José María Eyzaguirre

Guerrero Olivos Novoa y Errázuriz

Once the dominant Chilean law firm for banking (and still exceptionally good in this sector), Guerrero Olivos Novoa y Errázuriz is recommended by clients for its “intelligent, commercial approach” and motivated team of lawyers “happier to start solving problems immediately than read out the civil code”.

The firm’s banking pedigree ensures that it deals with a large number of foreign investors in Chile, including Banco Santander, Credit Suisse, Deutsche Bank, Banco de Chile, Morgan Stanley and Goldman Sachs. Recent transactions Guerrero’s team has advised on include a \$110 million bond issue by Securitizadora, Anglo-American’s \$1.3 billion buy-out of La Disputada from Exxon Minerals, and Transelec’s acquisition of two electricity distribution centres for \$107 million.

Carlos Olivos, a former general counsel at the central bank of Chile, is a “highly respected” banking lawyer, while Jorge Delpiano has “tremendous knowledge” of corporate transactions.

Guerrero Olivos is a member of the legal alliances TAGLaw and Globalaw, which provide the firm with solid international networks.

Leading lawyers

Jorge Delpiano
Roberto Guerrero Valenzuela
José Miguel Hernandez
Carlos Olivos

Key contact partners

Roberto Guerrero del Río
Roberto Guerrero Valenzuela
Jorge Delpiano
Carlos Olivos

Philippi Yrarrázaval Pulido y Brunner

Philippi Yrarrázaval Pulido y Brunner traditionally specializes in tax, but has done an excellent job in establishing its credentials as a leading firm in banking, mergers and acquisitions and project finance. It continues to put an emphasis on *pro bono* work, assisting the Chilean government in matters such as free trade agreements and border disputes, and has consistently supported domestic non-government organizations in achieving their objectives.

In one of this year’s most prominent M&A deals, the firm acted as counsel to Cencosud on its acquisition of retailer Almacenes Paris for \$600 million (the first hostile takeover in Chile since 2000), and its subsequent purchase of supermarket chain Disco for \$315 million. Philippi also advised Teléfonos de México in connection with its purchase of Chilean long-distance carrier Chilesat Corp for \$117.5 million.

On the finance side, Philippi advised JP Morgan Chase on its \$467 million loan to Almendral so it could acquire a controlling stake in telecommunications company Empresa Nacional de Telecomunicaciones, acted for Cencosud in two

international bridge loan agreements, valued at \$120 million and \$45 million, and represented the Bank of Tokyo-Mitsubishi in its capacity as administrative agent on the \$300 million syndicated credit facility granted to the Chilean state-owned company Codelco. Two project financing transactions Philippi advised on over the past year were a \$300 million note issue to fund the construction of a toll road concession in Santiago, and the \$110 million financing of the Petroquim polypropylene plant by JP Morgan Chase.

Juan Pablo Roman is consistently cited by respondents as one of Chile’s leading insolvency lawyers, while Juan Francisco Gutierrez is known as “an excellent professional” to turn to for advice on capital markets transactions. Marcelo Armas and Alberto Pulido are well thought of in banking.

Clients of the firm include ABN Amro, Merrill Lynch, Banco Santander, Nestlé and LanChile.

Leading lawyers

Marcelo Armas
Juan Francisco Gutierrez
Alberto Pulido
Juan Pablo Roman

Key contact partner

Marcelo Armas

Prieto y Cia

A 10-partner firm based in Santiago, Prieto y Cia is a strong player in corporate transactions – especially those involving energy sector public utilities companies – and also offers expertise in M&A and infrastructure projects. One interviewee referred to the firm as “a relatively small firm, but very homogeneous”.

Prieto has experienced a quiet year in terms of major deals. The two most notable transactions the firm has advised on are Saesa’s \$100 million debt refinancing, and Telefónica Móviles’ \$500 million acquisition of Bellsouth Chile.

However, despite this, the practice retains an extremely respectable client roster, which includes Watts, Invesco, Metlife, Aguas Andinas, IM Trust and Electrogas. José Luis Prieto is recommended by respondents for his all-round knowledge and depth of experience.

Leading lawyers

José Luis Prieto
Patricio Prieto
Jaime Rios

Key contact partners

Carlos Concha
Jaime Rios
Fernando Samaniego
Claudio Undurraga

Other notable firms

Morales Noguera Valdivieso & Besa continues to grow in terms of staff and stature, and is developing a specialization in providing advice on toll road and natural gas projects. Guillermo Morales is the star lawyer at the firm, praised by several interviewees for his experience and powers of negotiation. **Larrain y Asociados** advises on foreign investments, banking, mining and real estate, and has established a creditable reputation in project finance deals. **Vial y Palma** preserves an excellent reputation in banking, and is considered to be “very good in commercial and tax areas”. And **Cruzat Ortúzar & Mackenna**, the Chilean operation of international firm Baker & McKenzie, has advised on some noteworthy banking and M&A deals, representing Grupo Security in relation to its purchase of Dresdner Bank Latinamerica, and advising Banca Intesa on a \$54 million joint venture with Banco Sudameris-Paraguay.