

LEGAL UPDATE NEWSLETTER  
March 2021

This newsletter provides information about the laws published during the period, the bills currently being processed in Congress, the decrees and regulations issued by the government and autonomous agencies, as well as important jurisprudence on matters that may impact foreign investment in Chile.

**The information provided herein is strictly for guidance purposes only, and under no circumstances should be regarded as replacing an official interpretation by the competent authorities regarding the matters presented.**

**I. Published Laws**

Name	<b>Law authorizing premature withdrawal of pension funds for terminally ill patients</b>
Subject	Social security
Subcategories	Pension funds, AFP, financial sector
Number	21.309
Publication date	February 1, 2021
Effective date	July 1, 2021. However, members and pensioners who are using Explicit Health Guarantees (Garantías Explícitas de Salud, GES) for certain illnesses established by law can apply for these benefits as of April 1, 2021.
Summary	<p>The law establishes that any member certified as terminally ill by a Medical Board created for this purpose will be entitled to receive a pension calculated as a temporary annuity for <b>twelve months</b>, which will be paid by the member's pension fund administrators (AFP).</p> <p>A <b>terminal illness</b> shall be considered to be "<i>any serious disease or pathological condition of a progressive and irreversible nature, without specific curative or lifespan-amending treatment</i>".</p> <p>This benefit is available to all members and pensioners who have been accredited as terminally ill, who <b>have available funds</b> in their individual savings account, and who have chosen a Programmed Withdrawal or Temporary Annuity plan.</p> <p>The law establishes a <b>transition period</b> between April 1 and June 30, 2021, when the benefit will only be available to members and pensioners who are using</p>

	<p>Explicit Health Guarantees for certain types of advanced cancer and other specific illnesses.</p> <p>The benefit consists of <b>recalculating the retirement pension</b> over a 12-month period, thereby increasing the amount received by the member or pensioner. Some of the member's funds are set aside to cover the death benefit of UF<sup>1</sup> 15 and the corresponding survivors' pensions, before recalculating the member's pension.</p> <p>Members who receive a pension <b>greater than the current Basic Solidarity Pension</b> for those over 80 years old of approximately 170,000 pesos per month can request that their temporary annuity is reduced to the minimum and withdraw the remaining balance in a single payment when the benefit is processed.</p>
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## II. Bills

Name	<b>Bill that sets the maximum transaction fees charged by issuers of credit, debit and prepaid cards in the financial payments market</b>
Description	Motion
Subject	Economy
Subcategory	Financial sector, financial payments, transaction fees
Bulletin No.	13.654-03
Status	Second constitutional procedure, Chamber of Deputies. Currently being discussed by the Chamber of Deputies' Economy Committee.
Urgency	Extreme urgency
Summary	<p>The project seeks to regulate the <b>maximum fees</b> applicable to credit, debit or prepaid card transactions.</p> <p>The original bill established maximum limits for each type of card of 0.3% of the transaction value for credit cards and 0.2% for debit and prepaid cards. However, following the presentation of a substitute indication by the Executive, the latest version of the bill delegates this decision to a <b>Transaction Fee Limit Setting Committee</b>.</p>

<sup>1</sup> Unidad de Fomento (UF): An indicator whose value in pesos is adjusted daily in accordance with the Consumer Price Index.

	<p>This Committee <b>will be composed of</b> one member appointed by the Finance Minister, one member appointed by the Chilean Central Bank Board, one member appointed by the Financial Market Commission and one member appointed by the National Economic Prosecutor's Office.</p> <p>The bill also establishes the <b>procedure</b> for determining transaction fee limits. The Committee must publish a resolution initiating the procedure, after which issuers and operators, brand owners, payment processing service providers (PSPs) and affiliated entities may send their opinions and proposals. Subsequently, a deadline is set for comments on this proposal.</p>
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Name	<b>Pharmaceuticals 2 bill</b>
Description	Motion
Subject	Health
Subcategory	Pharmaceutical sector, medicines, Health Code
Bulletin No.	9.914-11
Status	Joint Commission
Urgency	No urgency
Summary	<p>The Pharmaceuticals 2 bill has been under discussion <b>since March 2015</b>, and has suffered several amendments during this legislative process. Since early 2020, the bill has been in discussion by a Joint Commission, one of the last stages in the law formation process.</p> <p>The latest draft bill, which is still subject to changes, incorporates a <b>series of amendments to the Health Code</b> regarding pharmaceutical sector regulations. These include the following:</p> <ol style="list-style-type: none"> <li>1. Medicines, special foods and medical devices will be considered for all purposes as “<b>essential goods</b>” for the general interest of the nation and the public health of the population”.</li> <li>2. Prescriptions issued by health professionals must identify the pharmaceutical product “<b>exclusively</b>” by its <b>International Non-proprietary Name</b> (“INN” or “generic name”). A vote is pending on an</li> </ol>

	<p>exception to this requirement for medicines that have not demonstrated their interchangeability.</p> <ol style="list-style-type: none"> <li>3. The generic name of a <b>medicinal product</b> must be displayed on its <b>packaging</b> in a size that ensures it occupies at least one third of one of the main faces. The trade name of the product may not exceed two-fifths of the space used by the generic name.</li> <li>4. A <b>National Medications Observatory</b> was created to provide technical advice to the Health Ministry regarding the coordination, observation and recording of information on the use and price of pharmaceutical products.</li> <li>5. The latest draft bill establishes that a supreme decree may set guidelines that <b>regulate the price</b> of pharmaceutical products. However, a vote on this article is still pending at the Joint Commission.</li> <li>6. It establishes requirements and timeframes for the <b>interchangeability</b> of pharmaceutical products to be demonstrated.</li> </ol> <p>The bill also amends Industrial Property Law No. 19.039, by allowing requests for <b>non-voluntary licenses on health products, due to economic inaccessibility or shortage in supplies</b> and recognizing "<b>government use</b>" of vaccines, treatments, medical devices, or other products that are protected by one or more patents.</p>
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### III. Administrative documents

Name	<b>Regulation on labeling and notification of hazardous chemicals and mixtures</b>
Description	Decree No.57 dated 2019
Organization	Health Ministry
Subject	Health
Subcategory	Labeling of chemical products
Date	November 26, 2019
Publication	February 9, 2021
Effective date	Deferred, between 1 to 6 years from publication depending on the product type (substance or mixture) and its use (industrial or other).



Summary	<p>The purpose of the regulation is to establish <b>criteria and obligations</b> regarding the classification, labeling, notification and risk assessment of hazardous substances and mixtures applicable to manufacturers and importers, in order to protect human health and the environment.</p> <p>The regulations apply to <b>substances and mixtures classified as hazardous</b>, excluding other products such as nuclear substances, pharmaceuticals, foodstuffs, cosmetics, and other products.</p> <p>The Health Ministry shall approve by resolution an <b>official substance classification list</b> that contains hazard classes and categories. This list will be reviewed at least every two years.</p> <p>It establishes <b>cut-off values or concentration limits</b> for classifying substances and mixtures. The <b>hazard criteria and characteristics</b> that classify hazardous substances and mixtures are regulated. They are separated into physical hazards, hazards to health and hazards to the environment.</p> <p>The <b>main obligations</b> for manufacturers, importers and packagers include the obligation to include safety labeling, the obligation to provide the final recipient with a safety data sheet, and the obligation to notify the corresponding information to the environmental authorities when manufacturing or importing the mixture or substance in quantities equal to or greater than one ton per year.</p> <p>Finally, the Regional Ministerial Secretaries for Health (Seremis) are given the authority to <b>monitor and sanction</b> non-compliance with the standards in this Regulation.</p>
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Name	<b>Decree establishing collection and recovery targets for packaging and containers</b>
Description	Decree No.12 dated 2020
Organization	Environment Ministry
Subject	The environment
Subcategory	REP Law, recycling, containers and packaging
Date	June 8, 2020
Publication	March 16, 2021

Effective date	March 16, 2021. However, the collection and recovery targets and other specific obligations take effect on September 16, 2023.
Summary	<p>This decree establishes the collection and recovery targets for containers and packaging and their associated obligations, within the Law No. 20.920 on Extended Producer Responsibility (Responsabilidad Extendida del Productor, REP).</p> <p><b>Containers and packaging</b> are defined in the decree as <i>“products made of any material of any nature that are used to contain, protect, handle, facilitate consumption, store, preserve, transport, or improve the presentation of goods and their integrated or attached components, when they fulfill the function of informing the consumer or any of the aforementioned functions”</i>.</p> <p>Packaging and container waste is classified as <b>household</b> and <b>non-household</b>, with subcategories applicable to each:</p> <ul style="list-style-type: none"> <li>- <b>Household:</b> cardboard for liquids, metal, paper, cardboard, plastic and glass.</li> <li>- <b>Non-household:</b> metal, paper, cardboard and plastic.</li> </ul> <p><b>Extended producer responsibility</b> shall apply to anyone who makes available to the market consumer goods that are packaged or in containers, whose packaging is composed of at least one of the above materials.</p> <p>The <b>obligations</b> of producers subject to Extended Producer Responsibility are to register with the Pollutant Release and Transfer Register (Registro de Emisiones y Transferencias de Contaminantes, RETC), to organize and finance the collection of packaging waste, its storage, transportation and treatment, to comply with collection and recovery targets, and other obligations.</p> <p>The decree establishes <b>collection and recovery targets</b> on a sliding scale that varies according to the subcategory of packaging material.</p> <p>Producers of containers and packaging must comply with the targets and their associated obligations using a <b>management system</b>, which may be individual or collective and must be authorized by the Environment Ministry. Collective schemes include those comprised of <b>fewer than 20</b> unrelated <b>producers</b>, and <b>Large-scale Collective Household Schemes</b> (GRANSIC) comprising 20 or more producers.</p> <p>Producers of containers and packaging may also submit <b>waste reduction projects</b> to the Environment Ministry.</p>

## VI. Jurisprudence

Court	<b>Supreme Court</b>
Case No.	4960 – 2019
Date	March 15, 2021
Subject	Public procurement
Subcategory	Municipalities, public tenders
Summary	<p>The Supreme Court <b>accepted an appeal</b> filed by an individual against the Municipality of Dalcahue, ordering that the demand submitted in the first instance against the Municipality be accepted.</p> <p>The reason for the controversy was the decision of the Municipality to <b>award a public tender to another bidder</b>, despite the fact that in the appellant's opinion that particular proposal did not comply with the Tender Terms and Conditions.</p> <p>The Supreme Court indicated that by awarding the tender to that bidder, the Municipality violated the principle of strict compliance with the tender terms and conditions, since its bid had an obvious defect. This left the municipality with a reproachable <b>lack of service</b>, as it had awarded a public tender to a bidder that did not comply with the requirements of the tender terms and conditions.</p> <p>Consequently, the person affected by the lack of service, who was the appellant in this case, was entitled to receive <b>compensation for the damages</b> suffered.</p>

Court	<b>Supreme Court</b>
Case No.	11612 – 2021
Date	March 23, 2021
Subject	Public procurement
Subcategory	Invalidation of award
Summary	<p>The Supreme Court <b>upheld the first instance ruling</b> issued by the Court of Appeals of Concepción, which upheld an appeal filed by an individual against the Concepción Health Service.</p> <p>The reason for the controversy was the decision of the Concepción Health Service to <b>invalidate the ruling that awarded a tender</b> at the same time that proceedings challenging that award had been filed before the Public Procurement Tribunal.</p>

Consequently, the Supreme Court ratified the criterion adopted by the court of first instance, by ruling that **an administrative decision to award a public tender cannot be invalidated when the affected parties have filed a complaint** before a jurisdictional body regarding such an award, since the authority of the latter prevails.

MAB/FPG