

## LEGAL UPDATE NEWSLETTER

January 2022

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 circumstance should be regarded as replacing an official interpretation by the competent authorities regarding the matters presented.**

## CONSTITUTIONAL CONVENTION

### Relevant activity during January

**A brief description of the main agreements adopted by the Constitutional Convention in January is found below.**

On January 4, 2022, the executive board of the Constitutional Convention, led by its President, Elisa Loncón, and its Vice President, Jaime Bassa, gave a public accountability presentation on the **Convention's operation since the constituent entity convened, as stipulated in its Regulations. On the same day**, the new executive board was elected, **with María Elisa Quinteros chosen as President and Gaspar Domínguez as Vice President.**

**María Elisa Quinteros, 40**, has a degree in dentistry from the **Universidad de Talca** and a **Master's and a Ph.D. in Public Health from the Universidad de Chile. She was elected member of the Constitutional Convention for District 17** (northern Maule) as an independent candidate on the list for the **Asamblea Popular por la Dignidad** political grouping. **Gaspar Domínguez, 33**, earned his medical degree at the **Universidad de Chile** and is **completing his Master's in Public Health at the same institution. He was elected member of the Constitutional Convention** by District 26 (Los Lagos Region), as a candidate of the **Independientes No Neutrales** political grouping.

At the January 6th session, the new deputy vice presidents to the Constitutional Convention were elected, as follows: **Tomás Laibe** (Partido Socialista), **Amaya Alvez** (Revolución Democrática), **Bárbara Sepúlveda** (Partido Comunista), **Lidia González** (independent, Yagán indigenous people), **Natividad Llanquileo** (independent, Mapuche indigenous people), and **Raúl Celis** (Renovación Nacional).

In January, the period for presenting people's constitutional initiatives continued, and an internet platform was launched to enable citizens to support the different proposals. **More than 1,500 constitutional articles** were

proposed, **78 of which obtained more than 15,000 signatures, enabling them to be discussed within the Convention.**

At the same time, the Convention's thematic committees **began their general discussion and voting on the articles proposed by the Convention members. Approval of these articles does not mean they will be immediately incorporated into the new Constitution**, but only that they will be discussed by the **constituent body**. As such, their content may change substantially in the coming weeks as observations are presented in the discussions of the final text.

## PUBLISHED LAWS

Law amending the Fisheries and Aquaculture Law to require aquaculture concession holders to introduce measures to prevent or reduce deposited waste.

**Subject** Fisheries and Aquaculture

**Subcategory** Organic and inorganic waste

**Number** [21.410](#)

**Publication date** January 27, 2022

**Effective date** January 27, 2024

This law amends Law 18.892, Chile's Fisheries and Aquaculture Law, by establishing measures to prevent or reduce, **as applicable, the deposit of organic and inorganic waste from aquaculture concessions on the seabed.**

For **inorganic waste**, the law requires aquaculture concession holders, or those having a right to those concessions, to adopt measures **to prevent the deposit of said waste**. Once the existence of inorganic waste is confirmed, the concession holder or entitled party shall, within six months, **undertake the corresponding cleanup and dispose of the waste** in accordance with current legal provisions.

For **organic waste**, the concession holder or entitled party is also required to adopt measures to prevent or reduce the deposit of such waste. To this effect, the concession holder in question shall present a **recovery plan and an investigation plan** for the seabed in the concession area to the National Fisheries and Aquaculture Service (SERNAPESCA).

The **recovery plan** shall outline the use of physical, chemical, or biological mechanisms **that will improve conditions in the area of sedimentation and accelerate the incorporation of the organic material** into the

environment. On the other hand, the **investigation plan** will focus on the **study and development of methods and technologies for the recovery of the seabed**.

The new law also stipulates that the concession holder of an operation that has violated the above provisions shall be subject to a **two-year suspension of its operations**, from the date of the resolution imposing the sanction, or from the deadline for filing an administrative remedy against said sanction, or once said remedy has been denied, as applicable. **If a concession holder has been sanctioned twice for infringements of the provisions described above, this shall be considered cause for the termination of the concession.**

Existing inorganic waste must be **removed no later than six months from the date of publication of this law.**

## BILLS

Bill to amend Law 20.241 establishing a tax incentive for investment in research and development (“R+D Law”)

<b>Type of bill</b>	Government motion
<b>Subject</b>	R&D
<b>Subcategory</b>	Tax incentives
<b>Bulletin No.</b>	<a href="#">14808-19</a>
<b>Entry date</b>	January 20, 2022
<b>Status</b>	First constitutional process. Currently under general discussion by the Science and Technology Committee of the Chamber of Deputies
<b>Urgency</b>	Simple urgency

The bill seeks to amend Law 20.241 (the “R+D Law”) by improving **existing incentives for investing in research and development, optimizing mechanisms for accessing tax benefits, and increasing the number of taxpayers who use them.** Its aim is to promote the creation of new science and technology enterprises and, as a result, to achieve greater development.

First and foremost, the bill proposes to eliminate the distinction **between the two forms of research that is set out in the current R+D Law, which differentiates between** activities carried out with **external capacities** through Corfo-certified contracts and those conducted **in-house using a company’s own capacities.** Under the bill, both forms would be considered R+D projects, allowing them to be evaluated with the same criteria and under the same conditions.

The initiative also amends article 9 of Law 20.241, stipulating that those expenses not certified by Corfo in its evaluation shall be governed by the **general rules of deductible expenses.** This amendment addresses the current law’s lack of any explicit mention of the general rules of the Income Tax Law.

The bill also raises **the maximum applicable tax credit from 15,000 to 45,000 UTM,** in line with the international experience of OECD member nations. **Furthermore, it allows taxpayers currently filing under the Pro-SME General regime to access the tax benefit, even though they are not required to maintain comprehensive accounting records.**

With the aim of reducing operating costs when making use of the tax credit, the bill provides that the credit will not be charged against the first category tax that is applied to income in the fiscal year in which the disbursements occurred but will only be applicable **to the fiscal year in which the corresponding certification was obtained from Corfo and to subsequent years.** Payments made in fiscal years previous to the Corfo resolution shall be governed by the general rules of deductible expenses.

The initiative also proposes to eliminate the double benefit **for projects receiving other subsidies,** excluding from the tax benefit those expenses **that are financed by public funds or leveraged by them.** **The bill will also abolish the minimum fee that Corfo must charge for evaluating R+D project applications,** allowing the agency more flexibility in collecting such fees.

Lastly, the bill extends the effective duration of Law **20.241 to 2030.**

#### Gas market improvement bill

**Type of bill** Government motion

**Subject** Energy

**Subcategory** Liquefied gas

**Bulletin No.** [14.796-08](#)

**Entry date** January 7, 2022

<b>Status</b>	First constitutional process Currently under discussion by the Mining and Energy Committee of the Chamber of Deputies
<b>Urgency</b>	No urgency
<p>This bill amends Decree Law 323 of 1931, which established the Gas Services Law, by <b>incorporating changes proposed by the National Economic Prosecutor's Office (Fiscalía Nacional Económica, FNE) for the liquefied gas and natural gas market.</b></p> <p>The bill proposes to establish market conditions that prevent potential agreements between large enterprises, in order to ensure <b>greater competition in the liquid petroleum gas (LPG) cylinder sector. To achieve this, the bill splits</b> the wholesale LPG market away entirely from the <b>retail market, prohibiting wholesalers from selling directly to final consumers or to retail providers within the same economic group.</b></p> <p>Therefore, while wholesalers may purchase LPG in the domestic and international markets, manage logistics to the bottling plant, and own the cylinders, only retailers <b>may sell and distribute LPG cylinders to consumers.</b> Wholesale distributors are required to provide service to retailers with no price discrimination.</p> <p>For the liquid natural gas (LNG) market, the bill seeks to guarantee third party access to LNG distribution pipelines and terminals by requiring that their owners provide such access, with the exception of those used for hydrocarbon extraction operations. <b>The bill sets out a request and authorization procedure for access to LNG transport networks and terminals,</b> distinguishing between the rules applicable to primary open access (primary market) and the rules for secondary open access (secondary market).</p> <p>The initiative also would strengthen the <b>powers of the sector's authority to intervene in the access request process and to oversee the piped gas market.</b> Under this proposal, the National Energy Commission will be authorized to approve tender terms and conditions for all bids on transporting LNG or regasification at the terminal. The Commission would also be made responsible for implementing public information systems to monitor the sector and guarantee its transparency.</p> <p><b>Other aspects of the bill include, among others:</b> strengthening the Electricity and Fuels Superintendency's capacity for oversight; granting more powers to the Expert Panel for conflict resolution in disputes related to access to LNG and natural gas distribution installations; and fostering regional retail distributors with their own brands.</p>	

## JURISPRUDENCE

Supreme Court	
<b>Case No.</b>	<a href="#">95.908-2021</a>
<b>Remedy</b>	Appeal

<b>Date</b>	January 24, 2021
<b>Subject</b>	Indigenous peoples
<b>Subcategory</b>	Archaeological remains

The Supreme Court **confirmed the ruling by the Concepción Court of Appeals**, in a remedy for protection presented by an indigenous community against an agro-forestry enterprise, to stop the company from **operating in a place of great cultural significance to the Mapuche people, where spiritual and religious ceremonies have been held.**

In their pleadings before the Court of Appeals, the appellants argued that the company had caused damages, including the **destruction of a series of shell middens, native plants and trees, and the destruction of the Rewe**, a space in which the community holds activities, gatherings, ceremonies, and acts that propitiate the reproduction and life of the Mapuche culture.

The Concepción Court of Appeals deemed that the report provided by the Technical Secretary of the National Monuments Council was especially relevant; the report included a request from the Municipality of Arauco for the implementation of concrete and effective measures to protect the above mentioned area. **The Secretary also testified to the presence of elements of archaeological value, which are frequently found in the zone, and concluded that the road widening carried out by the company without the Council's permission had impacted archaeological sites protected under Law 17.288.**

The Concepción Court of Appeals deemed that the action affected, or at least threatened, the legitimate exercise of the appellants' right to freedom of religion **and the conservation of their sacred places**, and granted the protection remedy to the indigenous community. The ruling was upheld by the Supreme Court, which heard the appeal.