

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

CHILE

Responses submitted by:

Name: Felipe Ossa / Rosana Zamora

Law Firm/Company: Claro & Cía.

City: Santiago, Región Metropolitana, Chile

1. Would your jurisdiction be described as a common law or civil code jurisdiction?

Our jurisdiction can be described as a civil code jurisdiction.

2. What method of adjudication is used (adversarial, inquisitorial, other or hybrid)?

The method of adjudication which is generally used is the adversarial method. However, the judge has certain limited inquisitorial powers.

3. What are the qualifications of the adjudicator (judge – elected, appointed; jury; other)?

The adjudicator is normally a judge, member of the judiciary of Chile.

In order to be appointed as ordinary judge the following general requirements must be met: (i) be a Chilean national; (ii) hold a professional title of attorney at law; (iii) have fulfilled the training program for applicants for the first level of the judiciary of Chile.

Members of the Lower Courts are appointed by the President of Chile based on proposals made by the corresponding Court of Appeal. Members of the Courts of Appeals and the Supreme Court are appointed by the President of Chile based on proposals made by the Supreme Court.

In various matters parties are allowed to appoint an arbitrator.

4. Are there any procedures available for specialized courts (i.e. commercial court, employment, environmental)?

In our jurisdiction specialized courts normally have special procedures. For example, employment issues must usually be raised before Labour Courts according to the procedure established in the Labour Code; most environmental issues must be raised before Environmental Courts in accordance with the procedure established in law No. 20.600; and consumer issues must be raised in accordance with the procedure established in law No. 19.496.

Disputes regarding business litigation, construction, drug, device and biotech, insurance, professional liability, medical defense and health law, product liability, transportation must be raised before Ordinary Courts in accordance with the procedure established in the Code of Civil Procedure.

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

CHILE

5. Is arbitration an option and when? If so, what rules are typically used?

Arbitration is an option when the matters addressed are not considered as “public policy matters” and are arbitrable.

The rules that are typically used are the ICC Rules of Arbitration and the CAM Santiago Commercial Arbitration Rules.

6. Will the Courts enforce an arbitration agreement to preclude other forms of litigation?

If the arbitration agreement is valid, Chilean courts will enforce said agreement. Therefore, if a party files a claim submitted to arbitration before an Ordinary Court, said Ordinary Court shall decline jurisdiction.

7. For Court proceedings, is mediation mandatory, either before or after filing of a claim or complaint?

In civil proceedings mediation is not mandatory. Nonetheless, before the evidentiary stage begins, the judge must summon the parties to a settlement hearing and propose options which could serve as a basis for settlement.

Also, mediation is not mandatory in proceedings before Labour and Environmental Courts.

8. What is the process for pre-hearing fact discovery (if any)?

Pre-hearing fact discovery does not exist in Chilean civil proceedings, but a party may request from the competent court disclosure of evidence in preparation for litigation.

- (a) *Are there provisions for mandatory document disclosures? N/A*
- (b) *Is there provision for oral examinations of the parties or others? N/A*
- (c) *Are there limits on the length of oral examinations? N/A*
- (d) *Are witness statements or summaries to be provided before the hearing? N/A*

9. What is the process for pre-hearing expert disclosure (if any)?

Pre-hearing expert disclosure does not exist in Chilean civil proceedings.

- (a) *Are expert reports or written summaries required to be exchanged? N/A*
- (b) *Are the parties entitled to conduct a pre-hearing oral examination of opposing experts? N/A*
- (c) *Are there provisions requiring experts to meet and narrow issues before the hearing? N/A*

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

CHILE

10. Are there other notable discovery rules?

No.

11. Is there a prehearing conference (for trial management, settlement or other purposes)? Who conducts it? How long before the hearing?

No.

12. Can a prehearing motion for judgment be brought? If so, what is the threshold test for judgment?

No.

13. Is there a process for obtaining pre-hearing rulings with respect to evidence admissibility including admissibility of expert testimony? What is the process and when does it occur?

No.

14. What is the standard for admissibility of expert evidence?

Expert evidence is admissible provided that the expert is independent and has the relevant credentials.

15. Does the Court have the power to appoint its own experts? Under what circumstances and what type?

Yes, whenever the Court considers expert evidence necessary for the adequate decision of the case. The Code of Civil Procedure establishes a specific procedure to appoint expert witnesses. The Court must summon the parties to a hearing in which the following aspects are decided: number of expert witnesses to be appointed; the capacity, abilities or titles that the expert must have; and the matters which the expert must address. If the parties do not agree as to who must be appointed as expert, the Court shall decide between the experts that appear in a list which is prepared every two years by the corresponding Court of Appeal.

16. Does your jurisdiction protect privilege? If so, what privileges are protected from disclosure (attorney client / legal advice; documents prepared in anticipation of litigation; settlement discussions; other)?

Chilean jurisdiction protects attorney-client privilege.

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

CHILE

17. If privilege is not protected, are there other protections from disclosure (i.e. privacy) that could prevent disclosure of otherwise privileged information, and what is the basis for those protections?

Article 349 of the Code of Civil Procedure entitles parties to request the judge to order the other party or a third party to disclose certain documents, provided that they are directly related to the dispute and that they are not classified as secret or confidential documents.

Article 360 of the Code of Civil Procedure states that ecclesiastical authorities, lawyers, notaries public, prosecutors, doctors and midwives are not obliged to testify about matters which have been confidentially revealed to them due to their status.

Chilean jurisdiction also protects bank secrecy.

18. Who determines privilege disputes, or disputes with respect to other forms of protection described in 17 above?

The same Court that decides the main dispute.

19. Briefly describe the trial process?

A. A civil action commences with the filing of a complaint. The defendant then files an answer to said complaint and, optionally, a counterclaim. Subsequently, the plaintiff submits a reply to the answer to complaint and an answer to the defendant's complaint; then the defendant submits a reply to the aforementioned documents. Afterwards, the plaintiff submits a reply to the defendant's rejoinder.

B. A settlement hearing in which the judge proposes options which could serve as a basis for settlement takes place.

C. If the parties do not reach a settlement agreement that ends the dispute, the judge issues a decision that initiates the evidentiary period, stating the relevant facts over which evidence is going to be taken.

D. Evidence is produced.

E. Parties submit observations regarding the evidence that has been presented.

F. The judge issues an award.

(a) *Are there opening submissions, in what form and of what length?*

No.

(b) *What is the order of presentation of witnesses?*

The first party to present witnesses is the plaintiff.

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

CHILE

(c) *Who conducts examination and in what order?*

The examination of witnesses is conducted by the judge in the same order described in the previous question.

(d) *What is the process for closing submissions?*

Civil proceedings do not have closing submissions.

20. Please identify any other notable trial procedures.

Consumer law establishes a procedure that has 3 stages. The first stage consists in determining if the complaint is admissible; the second stage consists in determining if and in what way the collective interests have been damaged, the liability of the supplier and the corresponding compensation.

21. Who bears the burden of proof of liability? Causation? Damages? What is the standard of proof for each?

According to Article 1968 of the Civil Code, whoever alleges the existence or termination of an obligation must prove it. Furthermore, Article 1547 of said Code states that the burden of proof regarding due diligence and care is placed on whoever must exercise it.

The standard of proof does not vary.

22. What heads of damage are recoverable (compensatory, pre-judgment interest, punitive damages, other)?

In general, only compensatory damages are recoverable; specifically, direct damages consisting of actual loss, loss of profits and moral damages. Punitive damages are not recoverable.

23. If punitive damages are available, what is the threshold for recovery, and range of awards?

Punitive damages are not available.

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

CHILE

24. Are there time limits for bringing claims? Responding to claims? Please describe.

Regarding time limits for bringing claims, these vary depending on the nature of the claim. Ordinary civil actions generally expire 5 years after the obligation becomes enforceable, whilst summary collection proceedings are only available within 3 years after the abovementioned date.

The time to respond to a claim is usually 15 working days from the date on which the defendant was notified of the complaint, provided that the defendant was notified in the same district in which the Court is located.

25. What are the requirements to establish jurisdiction over a foreign defendant in your court? Can a foreign defendant request that the court decline jurisdiction on the basis that there is a more convenient forum?

The Code of Civil Procedure contains detailed rules that determine the jurisdiction of Chilean courts. The general rule is that the competent court is that of the defendant's domicile.

A defendant cannot request that the court decline jurisdiction on the basis that there is a more convenient forum.

26. Are there procedures for a defendant to bring other potentially responsible parties into the proceeding? Briefly describe.

No.

27. Are legal costs recoverable by either party? If so, under what circumstances, and how is the amount calculated? (i.e. is it a loser pays costs system).

In civil proceedings, the general rule is that the party that has been completely defeated must pay the legal costs unless the Court determines that said party had plausible grounds for litigating.

28. Are contingency fees allowed?

Yes.

29. Is third party funding of claims permitted? Under what circumstances?

Chilean law does not regulate this matter.

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

CHILE

30. Are class or multi-party actions allowed? Under what circumstances? For what types of claims?

Class actions are allowed in consumer law, to claim compensation for damages caused by the supplier. This kind of action can be filed by a consumers association, the National Consumer Service or a group of at least 50 consumers that have a common interest in receiving compensation for similar damages. In order for the claim to be deemed admissible it must also contain a clear outline of the facts and legal reasons that reasonably justify that the collective interests of consumers has been affected.

31. Can claims be commenced by a consumers association or other representative organization? Under what circumstances?

Class actions can be commenced by a consumers association, provided that it was created at least 6 months before the date on which the action was filed and that the corresponding assembly authorized the association to file said action. Class actions may also be commenced by the National Consumer Service (SERNAC).

32. On average, how long does it take to get to trial/final hearing, and what factors can affect that?

A civil proceeding can take approximately 3 years until the decision is issued.

33. Is an appeal process available (distinguish between final and interlocutory/procedural orders as needed)? Who hears the appeal? How are they appointed? What are their qualifications?

In civil proceedings an appeal against the final award is always available. The Court of Appeal located in the same region as that of the Lower Court shall hear the appeal. Members of the Court of Appeal are appointed by the President of Chile based on suggestions made by the Supreme Court. All members of the Court of Appeal are lawyers and most of them belong to the judiciary.

34. Are hearing rooms available for electronic trials or appeals (i.e. where documents and transcripts are presented on computer monitors; witnesses can testify by video conference)?

No.

35. What is the practice regarding the use of graphics, computer animation, power point and the like, in trials? In appeals?

It is not very common in civil proceedings.

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

CHILE

36. Will the lawyer at trial be the same as the one responsible for pre-trial procedures? Is there a solicitor / barrister distinction?

Yes. Our jurisdiction does not distinguish between a solicitor and a barrister.

37. What are the contributory negligence laws in your jurisdiction? Is there a comparative fault assessment, joint and several or proportionate liability among tortfeasors? Does a plaintiff's negligence reduce or eliminate liability of defendants named in the litigation?

According to Article 2330 of the Civil Code, if the victim has negligently exposed himself/herself to the claimed damages, compensation costs may be reduced.

Article 2317 of the Civil Code provides for joint and several liability among tortfeasors.

38. Is service of a complaint issued outside your country permitted in your country by "informal" means, or must the Hague Convention be followed?

No. The Hague Convention must be followed.

39. Do your laws prohibit export of relevant documents from your jurisdiction for the purposes of litigation outside your jurisdiction? (Consider privacy rules)

No.

40. Please point out any litigation Best Practices employed by Courts in your jurisdiction but not yet referenced in the survey.

None.

41. Are there any significant areas in which you believe the playing field between plaintiff and defendant is not level that you think need to be addressed?

Generally there is an adequate playing field between plaintiff and defendant. Nonetheless, in labor law and consumer law, there is a very strong tendency to rule in favor of workers and consumers, respectively.

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

CHILE

42. Are there legislative efforts under way that address any of the litigation practices in your country?

Currently, a reform of the Code of Civil Procedure is being discussed in Congress.

