

CHILE

MERCOSUR IPR SME Helpdesk

IP Country Factsheet

1. THE FACTS: Business in Chile for EU SMEs

SIZE of the market
Key INDUSTRY SECTORS

2. IPR in Chile for SMEs: BACKGROUND

Intellectual Property Rights for SMEs: Why is this RELEVANT to you?
How does Chile's IP legal framework compare to INTERNATIONAL STANDARDS

3. IP Rights in Chile: THE BASICS

- A. Copyright and related rights
- B. Patents
- C. Trademarks
- D. Geographical Indications
- E. Confidential Information
- F. Domain Names
- G. Plant Varieties

4. ENFORCING your IP

5. Using CUSTOMS to block counterfeits

6. RELATED LINKS and Additional Information

1.- THE FACTS: Business in Chile for EU SMEs



SIZE of the market

- GDP in 2013: € 213,740 million
 - Annual growth rate in 2013: 4.1% (Source: World Bank)
 - Total trade between Chile and the EU in 2013: € 18,209 million
 - EU export in 2013: € 9,276 million
 - EU import in 2013: € 8,995 million
- (Source: www.direcon.gob.cl)



TIPS and WATCH-OUTS

The EU is Chile's third major trade partner and second largest export destination (after China) within the framework of the Association Agreement (2002).

In 2013, Chile was the 62nd largest exporter to the EU (0.2% of total imports).

In 2013, Chile exported mainly mining products (52%) to the European Union, as well as fruits, food, wine and cellulose.

Chile mainly imports industrial products from the EU (machinery, transport equipment and other manufactured products).

In order to avoid risks, please check DG TRADE's market access database for exports before making any business decision.

Key INDUSTRY SECTORS

Chile's main economic sector is the services sector (financial, tourist, retail, energy, communication, transport and construction services), followed by the mining sector.

The country is the leading world producer of copper, lithium and iodine. It is also important to highlight the importance of the aquaculture and fishing industry in the southern region of Chile (salmon, hake and trout) and the forest industry associated with cellulose and woodwork. The agro-industrial sector is export-oriented (grapes, apples, blueberries, avocados, oil, pork, chicken and wines) and offers opportunities for processing, irrigation and refrigeration activities. The construction sector offers opportunities under the Concession Programme of the Ministry of Public Works, especially regarding the construction of hospitals, urban highways and airport infrastructure.

Renewable energy and energy efficiency are becoming increasingly important for mining companies, together with environmental initiatives (waste treatment and management, and desalination). The ICT sector shows a high increase of investments in services and technologies that improve the productivity of enterprises.

The technological areas with the highest business potential in Chile are: non-conventional renewable energies, aquaculture, livestock, mining, agriculture, fisheries, tourism, manufacturing, health, software, forestry, environment, construction, food and non-food agro-industry, processed food, wine sector, and astronomy.

Chile has a large number of Trade Agreements and preferential access to the markets that account for more than 90% of global GDP (23 agreements with 61 countries). The EU-Chile Association Agreement has been in force since 2003. In any case, it is advisable to check with your local Chamber of Commerce and/or other support services before taking business decisions on exports or investments in Chile.

2.- IPR in Chile for SMEs: BACKGROUND

Intellectual Property (IP) is a set of legal rules that regulate the exclusive rights related to innovative and creative activity and to commercial activity. IP is usually divided into two branches, namely Industrial Property, which relates to inventions, designs or signs used in commerce and Copyright which relates to literary and artistic works.

As exclusive rights, Intellectual Property Rights (IPRs) confer a temporary monopoly to the right holders, granting them exclusivity on the use and exploitation of their intellectual creations and also the right to prevent any unauthorized use by third parties.

Nowadays, IPR have become a key factor for innovative SMEs seeking to internationalise, for they provide market exclusivity, allow them to recoup their investment in R&D, facilitate the negotiation of licence and transfer agreements related to IPR and allow them to access third party technologies. SMEs that are interested and concerned about their intangible assets generally have the chance to find new investors, build a better enterprise image, access new markets and thus increase their value. The IPR system also enables rightholders in the artistic and cultural sphere (such as authors, performers, producers, broadcasters, etc) to improve their visibility and protect their moral and economic interests

The following IP rights are further developed throughout this factsheet, focusing on Chilean features: Copyright, Patents, Industrial Designs, Trademarks, Geographical Indications and Appellations of Origin, and Plant Varieties.

How does Chile's IP legal framework compare to INTERNATIONAL STANDARDS?

Chile has a reasonable standard of IP protection at all levels as far as legislation is concerned. Nevertheless, there are still some enforcement problems and specific difficulties that hinder the exercise of these rights notably in the pharmaceutical and biotechnological sectors.

The country has specific regulations for the protection of patents, trademarks, geographical indications and appellations of origin, trade secrets, copyright and related rights, domain names and plant varieties.

The aforementioned regulations are framed within different international treaties ratified by Chile, including the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS); the Paris Convention for the Protection of Industrial Property (CUP); the Trademark Law Treaty (TLT); the Patent Cooperation Treaty (PCT); the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure; the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks; the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks; the Locarno Agreement Establishing an International Classification for Industrial Designs; the International Union for the Protection of New Varieties of Plants (UPOV 78 Convention); and the Strasbourg Agreement Concerning the International Patent Classification.

Regarding international treaties on copyright and related rights, Chile is a party to the Inter-American Convention on the Rights of the Author in Literary, Scientific and Artistic Works, the Universal Copyright Convention, the Berne Convention on Protection of Literary and Artistic Works, the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, the Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of their phonograms and the so-called WIPO internet Treaties, WCT and WPPT..

Chile is not a member of the Madrid Protocol (which is useful for registering trademarks in many countries at the same time) nor of the UPOV 91 Convention on New Plant Varieties

3.- IP Rights in Chile: THE BASICS

A. COPYRIGHT

WHAT are Copyright and related rights?

Copyright protects intellectual works, both original and derivative works (such as adaptations, translations, compilations, etc) whatever their genre, form of expression, or merit.) Copyright is a legal term used to describe the rights (moral and economic) that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture and films, to computer programs, databases, advertisements, maps and technical drawings. Related rights refer to the rights enjoyed by performers, record producers and broadcasters for their participation in and around the creative work.

And in CHILE: What you need to know

Although copyright benefits from automatic protection right from the moment of its creation, in Chile, there is an optional administrative procedure that is useful in proving the originality of the creative work. The registration, which is carried out in Chile by the Intellectual Rights Department (DDI), grants the creator a legal presumption of ownership (evidence to the contrary is admissible).

The author is the person who appears as such when the work is disclosed, i.e. his/her name, pseudonym, signature or a sign that usually identifies him/her must be indicated; or the person who, according to the respective registration, owns the registered copy.

In case the work is reproduced in any form or used in whole or in part, written permission of the copyright holder is needed, unless any legal exception applies. Ordinary Courts of Justice are responsible for hearing infringements and breaches of copyright and provide remedies.

If a work has not been registered, it is recommended to include the following indication for practical purposes: "all rights reserved" or "total or partial reproduction forbidden". Additionally, the sign © together with the name of the copyright holder and the year of the first publication of the work can be included (except for CDs and cassettes).

HOW LONG does legal protection last?

Copyright grants protection in Chile for the lifetime of the author plus 70 years after his/her death.

As for computer programs, if the right holder is a legal person, the duration of the rights will last 70 years from the first publication.

HOW do I register?

In Chile, the registration of a work is carried out before the Intellectual Rights Department of the Directorate of Libraries, Archives and Museums, under the Ministry of Education (DIBAM). The procedure is simple and cheap.

Required information and documents:

Registration requires the filling out of the appropriate registration forms for each work, to enclose the documents required in each case and to pay the corresponding fees. Registration can be done online (via the website of the DDI), in person at the offices located in Santiago, or by post (Herrera 360, Santiago de Chile).

WHO can register?

Any natural person who is the author of the work or any legal person holding the rights can do the registration, either personally or duly represented.



TIPS and WATCH-OUTS

In the case of computer programs, the holder of the copyright will be the natural or legal person whose workers produced the aforesaid program while carrying out his/her work duties, unless otherwise stipulated in writing

Which LANGUAGES can I use?

The application form and other required documents must be submitted in Spanish.

How much does registration COST?

Fees are as follows:

- o Engineering, architectural and computer programme projects: € 21
- o Cinematographic works: € 24
- o Any other legal registration (books, paintings, writings and so on): € 6

Payment should be made at the DDI offices (Herrera 360, Santiago de Chile) or by deposit on to the current account in the Banco Estado No. 9002383 for the Directorate of Libraries, Archives and Museums (DIBAM). If payment is made via an electronic transfer, the same current account may be used indicating the RUT (Rol Único Tributario) number of the institution: 60.905.000-4.

The requirements for each registration and further information can be found on www.propiedadintelectual.cl and your queries will be answered at propiedad.intelectual@dibam.cl.



TIPS and WATCH-OUTS

In the case of computer programs, the holder of the copyright will be the natural or legal person whose workers produced the aforesaid program while carrying out his/her work duties, unless otherwise stipulated in writing

B. PATENTS

Chilean law recognises two kinds of patents: Patents and Utility models.

• Patents

A patent is an exclusive right granted by the State in order to protect an invention. An invention is a solution for a technical problem. It can be a product, a procedure or be related to it.

Patents in CHILE: what you need to know

An invention needs to fulfill the following requirements and conditions of patentability:

- Novelty. The invention must not be part of the state of the art. The state of the art comprises everything made available to the public by means of a publication, a sale or commercialisation before the filing date of the patent application in any country. In Chile, the dissemination of an invention made within 6 months before the filing date of the application is not taken into consideration to determine the novelty of an invention, provided that this dissemination has been produced as a direct or indirect consequence of:
 - Models, essays and the construction of mechanisms or devices necessary for inventions under study.
 - Inventions exhibited by the applicant or creator at official or officially recognised exhibitions.
 - Abuses or unfair practices by the applicant or the creator.
- Inventive step. (non- obviousness) This requirement will be met if the proposed solution is not considered obvious, taking into account the state of the art, by a concerned field expert. (an expert who is not the inventor).
- Industrial applicability. The invention must have practical use and be capable of some kind of industrial application by means of an appliance or device, a product, a material or substance, or a new process or method.

Any patented object must bear an indication of the patent number, either on the product itself or on the container, as well as the mention 'Patente de Invención' or the letters 'P.I.' and the registration number before the patent number.

Inventions derived from Genetic Resources related or not to Traditional Knowledge may be patented or protected through IPR, provided that the genetic material has been acquired in accordance with the Chilean legal framework.

HOW LONG does legal protection last?

Patent protection lasts for 20 years, calculated from the filing date of the application.

Protection starts from the filing date and is subject to the final granting of the right. During such period the indication 'Patente en trámite' (Pending Patent) must be clearly indicated.

• Utility model

WHAT is a utility model?

It is an exclusive right granted by the State to protect instruments, apparatus, tools, devices and objects or parts of them. They must be innovative, in both their external appearance and working system, and have practical use, i.e. they have to provide a new benefit, or advantage or a technical effect to the function of the object that did not previously exist.

Examples: *Some Utility models registered in Chile are, for example, fruit-sorting hods; coin counters and containers; flowerpot stands for vertical crops; handles for food packaging; stationary bikes, etc.*

Utility models in Chile: What you need to know

Just as patents, utility models need to fulfill the requirements of Novelty and Industrial Applicability (the requirement of inventive step is excluded), and only refer to objects, not methods.

All utility models must clearly indicate "Modelo de Utilidad" (Utility Model) or 'MU', and their registration number. These indications can be written on the container, provided that the packaging is sealed when the product is purchased in a way that the packaging must be destroyed to access the product.

HOW LONG does legal protection last?

Protection lasts for 10 years from the filing date of the application.

• Industrial Design- Diseño Industrial (Three-dimensional)

WHAT is an Industrial Design?

It is an exclusive right granted by the State in order to protect any three-dimensional shape and any industrial or handcrafted product that could serve as a model for the manufacture of other items.

They have to differ from similar items intended to perform the same function, either because of their shape, geometric configuration or a combination of both, provided that they provide a special feature that must be visually noticeable and gives it a new appearance.

Clothing are explicitly excluded from industrial design protection (clothes, shoes, trousers, hats).

Examples: *Some Industrial Designs registered in Chile are particular shapes of everyday products such as pens, tape dispensers or toothbrushes.*

HOW LONG does legal protection last?

The term of protection lasts for 10 years from the filing date of the application.

- **Industrial Design- Dibujo Industrial (bidimensional)**

WHAT is an Industrial Design?

It is an exclusive right granted by the State in order to protect any layout, arrangement or combination of shapes, lines or colours set in a plan for the integration into an industrial product for ornamentation purposes. These features must provide the said product with a new appearance.

An example of industrial design registered in Chile is a wave pattern used for the manufacturing of diving clothing or similar clothing.

Industrial Design in Chile: What you need to know

Chilean law requires that both three-dimensional and bidimensional industrial designs fulfill only the Novelty requirement.

Any industrial design must clearly indicate 'Diseño Industrial' (Industrial Design) and the registration number.

These indications can be written on the container, provided that the packaging is sealed when the product is purchased in a way that the packaging must be destroyed to access the product.

HOW LONG does legal protection last?

Protection lasts for 10 years from the filing date of the application.

- **Lay-out designs (topographies) of integrated circuits**

This is an exclusive right granted by the State in order to protect lay-out designs (topographies) of integrated circuits, in other words, the three-dimensional disposition, however expressed, of the elements designed for the manufacture. The layout and order is designed according to the electronic function that the integrated circuit is intended to perform.

An integrated circuit is a device in which some elements with electronic functions, such as transistors, resistors, capacitors, diodes and so on, installed on a common physical base and provided that these components are connected in such a way that the integrated circuit can control the electric current, therefore, the circuit can rectify and amplify it.

The integrated circuits need a special layout and order according to the function they are intended to perform. In other words, a design of the elements the integrated circuit is composed of (i.e. the lay-out design of integrated circuits) must be done.

- **Lay-out design (Topography) of integrated circuits in CHILE:**

What you need to know

Chilean law requires the originality of the layout in order to protect it.

HOW LONG does legal protection last?

Lay-out design (Topography) of integrated circuits protection lasts for 10 years (non-renewable), calculated from the filing date of the application or from the first commercial use in anywhere in the world.

The owner of the lay-out design (Topography) of integrated circuits will benefit from the exclusive right to manufacture, sell or commercialise the protected object in any form. The owner also has the right to prevent third parties from using or exploiting it, with legal constraints.

Any Layout-design (topography) of integrated circuits must have a noticeable and encircled letter "T" in capital. If this is omitted, the owner of the product will not be entitled to the enforcement of his/her rights by means of the legal actions described in the following section.

Required information and documents for patenting (industrial designs included)

Patent applications must include an application form, specifications of the invention, a set of claims and designs (if appropriate).

In the application form, the applicant must submit his/her identification data.

The abstract or technical data sheet must include the details that distinguish the inventor and the applicant, and the subject matter covered by the invention - the technical problem it is aiming to solve and the basic component parts. The abstract should not exceed 1600 characters.

The specifications of the invention must provide precise and detailed information about the invention and the relevant state of the art. It has to include a description of the existing knowledge in the prior art, designs or shapes of the invention and the preferred embodiment (applicability example).

WHO can register? (including Utility models, Designs and Lay-out designs)

Any natural or legal person, either national or foreign, can apply for the registration of his/her invention, model or lay-out design

Any natural or legal person living abroad should designate a legal representative in Chile. Any power related to industrial property will be granted by means of a private deed, either Chilean or foreign.

Applicants residing in Chile may choose between a certified document or a private deed signed by a notary. Foreign mandates can be given to the corresponding Chilean consul without further formalities or undergo a process of legalisation.

The power granted abroad must be signed and written in Spanish. If it is issued in another language, a simple translation must be attached to it. In the event of opposition and, generally, for contentious proceedings, legal representation is mandatory.

Which LANGUAGE can I use?

The application form and required documents must be in Spanish.

Where priority has been claimed, the corresponding certificate issued by the competent authority of the country of origin must be filed (and duly translated into Spanish) within 90 days.

How much does it COST?

Fees are set depending on a monthly variable rate. The official current cost for a patent in Chile is approximately € 117 for 5 years of right granted (€ 580 in total) and half of the price for other types of patent). € 58 of the price must be paid when filing the application. If this initial fee is not paid, the application will not be processed by INAPI.

The cost of publication (€ 53), the fees of expert examiners and individual representatives (for the fees of lawyers and experts, quotes should be requested) should be added.

- Patents: € 580
- Utility Models: € 466
- Industrial Designs and Lay-out designs (Topographies) of Integrated circuits: € 389

HOW LONG does the patent registration procedure last?

The patent registration procedure, either at national or international level, is subject to absolute and non-extendable time limits, during which a preliminary examination is carried out to check whether all the required documents have been submitted and if the application complies with minimum formal requirements to continue processing. The duration of the procedure can also vary according to the degree of complexity of the case. The average length of registration proceedings stands between 3 and 6 years.

If the PCT's procedural system is used, the national phase begins, as a general rule, the 30th month following the international application. The national phase consists in national registration proceedings before each competent authority in the designated countries and the payment of the corresponding fees.

C. TRADEMARKS

WHAT are trademarks?

Any sign capable of graphical representation that serves to distinguish goods, services or industrial or commercial establishments in the market. This sign could be a word, including personal names, letters, numbers; figurative elements (images, graphs, symbols, combinations of colours); sounds; and any combination of such signs.

Trademarks in CHILE: What you need to know

Only signs that can be represented graphically, including sound marks (musical score), can be registered as trademarks. Smell and three-dimensional marks as well as those signs that fall under grounds for non-registrability cannot be registered. Slogans are subject to registration only when linked to a previous trademark registration.

To obtain a trademark registration, the mark must have a "great level of distinctiveness" in relation to the corresponding service or product.

The trademark should serve to differentiate it and therefore cannot be descriptive or generic with regards to the goods and services it is intended to protect. (as "Shoes" brand "Shoe" or "liquid soap" brand "shower gel").

Before filing a trademark registration form, it is advisable to conduct a previous trademark search on INAPI's online database, which is updated daily, in order to check whether the sign that you want to register is not similar to other applications or previous registrations for similar products or services.

Such a search will speed up the registration process since it will reduce the risk of INAPI's observations and third-party oppositions.



TIPS and WATCH-OUTS

Marks or signs that CANNOT be registered:

1. Generic, smell or three-dimensional mark, the colour of the products and packages and simple colours.
2. Descriptive marks (words widely used in trade to describe the protected good or service)
3. Signs that are of such a nature as to deceive the public, for instance as to the nature, quality or geographical origin of the goods or service.
4. Signs that are graphically or phonetically similar, or are the same or similar to others registered abroad which are already well-known in Chile.
5. Signs that are confusingly similar to previously registered signs, taking into account the similarity between signs and between goods and services.
6. Signs that are contrary to public order or to accepted principles of morality.
7. Any international or governmental flag, emblem, insignia or official signs, as well as official signs and hallmarks indicating control and warranty adopted by a State, and signs that reproduce or imitate medals, diplomas or distinctions given in national or foreign exhibitions.
8. Scientific or technical names (e.g. of plant varieties) or common names recommended by the WHO or names that indicate therapeutic action.
9. Personal names, pseudonyms or image, except with the consent from that person or from his/her heirs and names of historical persons 50 years after his/her death, provided that his/her honour is not affected.

How do I REGISTER?

Trademark registrations applications can be processed online via www.inapi.cl or presented in INAPI's offices in Santiago de Chile.

HOW LONG does the trademark registration procedure last?

The time that a trademark registration procedure takes depends on whether INAPI submits any remarks or oppositions are brought to court by third parties. The average period varies between 4 months and 2 years approximately.

INAPI is entitled to submit legal or procedural observations and has the authority to refuse a registration on any legal grounds, even without the owner of a confusingly similar trademark having submitted his/her observations (identical or similar applications or registrations).

Third parties can file an opposition against the registration within 30 days from the application's publication in the Official Journal of Chile.

Required information and documents for trademark registration

Information and registration forms are available at www.inapi.cl.

INAPI has published some Procedure guidelines for trademark registration, which include examples of good practice and advice for users.

The registration form must be submitted in a form that can be downloaded (for free) or obtained at INAPI's offices. The applicant should file at least his/her personal details, information about their legal representation, the type of mark (word, figurative, complex, sound, product or service, or establishment mark) and the trademark name. The appropriate label, whether figurative or complex, must also be attached. It is possible to apply for a unique multiple-class registration. This latter possibility has a separate fee structure.

WHO can register?

Any natural or legal person, either national or foreign, can apply for the registration of his/her trademark.

Any natural or legal person living abroad should designate a legal representative in Chile.

Any power of attorney related to industrial property will be granted by means of a private deed, either Chilean or foreign. Optionally, applicants residing in Chile may choose between a certified document or a private deed signed by a notary. Foreign mandates may alternatively be given to the corresponding Chilean consul without further formalities, or undergo a process of legalisation.

The power granted abroad must be signed and written in Spanish. If it is issued in another language, a simple translation must be attached.

In the event of opposition and, generally, for other contentious proceedings, local legal representation is mandatory.



TIPS and WATCH-OUTS

Registered trademarks used for trade must bear the word "Trademark" or the initials "TM", or the letter "R" encircled (®) prominently in order to enforce any criminal actions granted by law.

Which LANGUAGES can I use?

The application form and required documents must be in Spanish.

Where priority has been claimed, the corresponding certificate issued by the competent authority of the country of origin must be filed (and duly translated into Spanish) within 90 days.

How much does it COST?

Fees are set depending on a monthly variable rate. The registration cost for trademarks, geographical indications or appellations of origin is € 176 for each type of product or service, plus € 53 for the publication fee.

From this amount, € 58 must be paid when filing the registration form, otherwise, it will not be processed.

HOW LONG does legal protection last?

Protection lasts for 10 years from the registration granting date, and can be renewed indefinitely every ten years. Unlike in Europe, there is no general obligation to use the trademark hence according to Chilean Law lack of use is not an accepted ground for invalidity.

In Chile, trademark renewals may be conducted online.

D. GEOGRAPHICAL INDICATIONS and APPELLATIONS OF ORIGIN

What are GEOGRAPHICAL INDICATIONS (GI) and APPELLATIONS OF ORIGIN (AP)?

A GI is a name or sign used on certain products, with the aim to identify their specific geographical location or origin (e.g. a town, region, or country). The GI indicates that the product possesses certain qualities, is made according to specific methods, or enjoys a certain reputation, due to its geographical origin.

An AO is a special kind of GI generally consisting of a geographical name or a traditional designation used on products, which have a specific quality or characteristics that are essentially due to the geographical environment in which they are produced. Products certified with AOs bear a qualitative and stronger connection between the product and the place of origin determined by a set of natural factors (such as soil and climate) and by a set of human factors (knowhow, production processes...)

How do I REGISTER?

GI and AO registration applications must be filed in person before INAPI's offices.

WHO can register?

The GI or AO registration may be applied for by any natural or legal person, provided that he/she represents a significant group of producers, manufacturers or artisans based on a determined area for the GI or AO.

Foreign GI and DO can be registered in Chile, provided that they have not fallen into disuse in their country of origin.

Wines and spirit drinks cannot be registered as foreign GI or AO in Chile. These indications of origin are part of a parallel normative system not subject to registration but regulated by law and international treaties (such as EU-Chile Agreement). Wine is regulated under the Alcohol Act, which empowers the President of the Republic to establish wine-growing areas and authorise the use of wine AO.

Required information and documents

The application form can be downloaded for free or obtained at INAPI's offices. The kind of product or services to be covered must be clearly and precisely described. The following documents should also be attached to the registration form:

- Technical study from a relevant qualified expert, which includes evidence that proves that the characteristics and features of the product are due exclusively or essentially to its geographic origin.
- Map of the geographical production, extraction, processing, growing or manufacturing area of the product.
- Project of Use and Control Regulations.
- Information about the acquired reputation of the product (if applicable and can be verified), the historic features of the manufacturing, extraction, processing, growing and the manufacture of the product can be attached instead.

In the case of AOs, natural and human factors influencing the quality, characteristics or reputation of the product must be outlined in addition to the above documents.

HOW LONG does legal protection last?

Geographical indication or appellation of origin protection is unlimited in time.

How much does it COST?

Fees are set depending on a monthly variable rate. The registration cost for GIs and AOs is € 176 for each class of product, plus € 53 for the publication fee. From this amount, € 58 must be paid when filing the registration form otherwise, it will not be processed.

E. TRADE SECRET and UNDISCLOSED INFORMATION

What is a Trade Secret in Chile?

A trade secret is any confidential information about products or an industrial process that provides an enterprise with improvement, progress or a competitive advantage. It is an alternative way of preserving the company's relevant information without disclosing it, as happens with patents, and is particularly useful in cases where the patentability requirements cannot be met. Trade Secrets are closely related to know-how (technical, process, products or business model) or valuable information that provides a competitive advantage for SMEs.

It can be subject to national or international transfer between enterprises through specific contracts or as part of a complex contract, such as franchises and outsourcing licenses or processes. Undisclosed information is information submitted to the competent authority to obtain sanitary registration or authorisation (e.g. for new medicine).

Trade secrets and undisclosed information submitted to the authorities in Chile: What you need to know

The trade secret – the confidential information itself- is protected in Chile by Industrial Property, Unfair Competition and Administrative Probity law. Chilean law protects the rightholder against infringers and recognises confidentiality agreements. If the confidentiality contracts are breached, the rightholder is entitled to compensation.

The unlawful acquisition, disclosure or exploitation without the holder's authorisation will be considered as a Trade Secret infringement. Likewise, the disclosure and exploitation of trade secrets that have been lawfully accessed with the obligation to preserve confidentiality would also be an infringement, provided that such behavior has been committed to benefit the infringer or a third party, or to cause damage to the right holder.

Protect your secrets by identifying the confidential information, protecting access to computers and documents with passwords or technological security measures. Make sure that few people know the information and set aside the information in separate documents indicating "confidential" and "do not copy", and sign confidentiality agreements with employees, partners, associates, customers and suppliers.

The right holder, whose industrial property right has been damaged, will be entitled to bring civil proceedings and claim:

- (a) Cessation of the infringing conduct
- (b) Compensation of damage
- (c) Adoption of measures to prevent further unfair conducts
- (d) Publication of the legal decision at the expense of the infringer.

The undisclosed information cannot be disclosed or used without the right holder's authorisation for a period of 5 years, for pharmaceuticals, and 10 years for agricultural chemical products, calculated from the first sanitary registration or authorization granted by the Chilean Public Health Institute (Instituto de Salud Pública) or Agriculture and Cattle Service (Servicio Agrícola y Ganadero) respectively. In order to protect the information, the confidential character must be expressly indicated in the sanitary registration or authorization.

D. DOMAIN NAMES

What are Internet domain names?

An Internet domain name is the address of your company on the internet. It enables everyone in the world to access the information on your products and services.

The country code top-level domain (ccTLD) for Chile is <.CL>, and can be used with other domains such as <.com> and <.org>. Currently, the name of a company or a brand (<mypyme.mipyme>) is accepted as well.

The Internet Corporation for Assigned Names and Numbers (ICANN) provides domain names (such as <.com>). and ICANN-accredited registrars are entitled to register them.

The Name registration of the Domain .CL, called NIC Chile (Network Information Center Chile) is provided by the University of Chile. Before choosing a domain name, you can verify if it has been registered by searching either on the registrar's website (for Chile it is www.nic.cl) or on «Whois», (www.whois.com). Avoid choosing a domain name that is the trademark of another company, especially if it is a well-known trademark. Under Chilean Law registering another person's trademark as a domain name is a trademark infringement, also known as "cybersquatting".

How do I REGISTER?

Any natural or legal person, either national or foreign may be the holder of domain names. Over and above providing information required for registration, the applicant should include the contact details of those who may take part in the management of the domain name. The registration forms must be sent online via www.nic.cl. Only the registration of domain names available at the Name registration of the Domain .CL will be admitted.

Any domain name registration will be considered filed when the payment of the corresponding fee is made. It is possible to pay by means of bank transfer (including foreigners). Once the payment is complete, the registrar will confirm the registration and the domain name will be ready to be used. The owner of the registration is exclusively liable for ensuring that his/her registration is not contrary to the freedom of expression and information rules, fair competition principles, business ethics, as well as the legally acquired rights of third parties (such as trademarks).

Registration and Renewal fees		
Years	Approximate Value in Euros (€) 19% VAT included	Estimated Cost Per year
1	€12.88	€12.88
2	€24.48	€12.24
3	€36.09	€12.03
4	€47.15	€11.78
5	€57.64	€11.52
6	€67.61	€11.26
7	€77.09	€11.01
8	€86.07	€10.75
9	€94.57	€10.50
10	€102.70	€10.27



TIPS and WATCH-OUTS

Avoid domain names that include other person's marks or words that may interfere with third parties' rights or international protection systems, such as geographical names, celebrities' names, generic names for pharmaceutical substances, international organizations' names, and other person's trademark names (e.g. the name of another company)

What can you do if someone is using your company's name or trademark as a domain name?

If your company's name trademark is subject to a registration application by third parties in Chile, there is an arbitration procedure available before the Center for the resolution of .CL domain name disputes.(CRC), dependent on NIC Chile, and is responsible for the management of .CL domain disputes. Likewise, any domain name registered in gTLD as <.com>, is subject to a dispute resolution procedure, which entitles the trademark holder to end the cybersquatting.

E. PLANT VARIETIES

WHAT are plant varieties (PVs)?

The Law on the Rights of the Breeders of Plant Varieties grants an IP right to the creator of a new plant variety. In order to be registered as a new variety, it has to meet 5 requirements –it has to be new, distinct, uniform, stable and

it has to have a variety denomination.

Plant varieties in CHILE: What you need to know

Any plant variety breeder, either Chilean or foreigner, must register the variety before the Register of Protected Varieties in the Seeds Division of the Agricultural and Livestock Service (SAG). All botanic genera and species (agricultural, forest, ornamental and fruit varieties) are subject to registration. Only names that are not registered as a trademark are allowed. Once the requirements are met, the right holder receives a variety Registration Certificate. Once the definitive registration is granted, the Plant Variety Certificate is issued. This certificate recognises the breeder's rights over the variety, and it grants the exclusive right to produce and reproduce, to sell or offer for sale, to place on the market, to import or export and use for the commercial production of another variety during 18 years for trees and vines and 15 years for other species, calculated from the registration date.

Currently, the creation of new varieties can be conducted by means of selection and crossing techniques, conventional plant selection techniques, mutagenesis (the whole genome is manipulated) and transgenesis (only one or two genes are manipulated).The most common infringements in Chilean legislation are: exporting the variety of a fruit without the right holder's authorisation; changing the name of a protected variety to the name of a free variety (those that have always existed or those that have been created and their novelty has expired); and changing the name of a protected variety to the name of a fantasy variety.

4. ENFORCING your IP

IP rights are valuable to your company and require effective protection. If a third party or competitor infringes your IPR, then you should be able to enforce them.

In Chile IP right holders can enforce their rights through:

- Civil actions, which aim to put an end to the infringement and obtain compensation for damages.
- Criminal actions, intended to impose criminal penalties for IP infringements.
- Protective measures, designed to avoid IP right infringement or prevent further infringement.
- Border measures, which prevent goods infringing IP rights from entering or leaving the country.
- Relevant agencies

Relevant agencies

In Chile, IP rights fall under the jurisdiction of the National Institute of Industrial Property (INAPI), which acts as an administrative body for registrations and as a Court of First Instance (for remarks, oppositions and invalidity); the Industrial Property Tribunal (specialised second-instance court) and the Supreme Court, which has developed case-law relating to appeals in cassation for the protection of intellectual rights.

The civil legal system uses technological tools, which provide transparency and speed up legal proceedings. The legal services market is fairly well developed and offers affordable litigation costs and times.

The criminal legal system prosecutes public IP offences. This is carried out through an independent body (Ministerio Público – Public Prosecution Service) in cooperation with specialised police forces before hierarchical courts.

Criminal cases are heard by ‘Guarantee Courts’, Criminal Trial Courts and Courts of Appeal. The Supreme Court is responsible for hearing appeals for annulment on the ground of law infringements.

At an administrative level, the Customs authorities are competent to implement border measures against IP rights infringement.



TIPS and WATCH-OUTS

In order to be able to take legal action, it is essential to be able to claim that the product or service is protected by industrial property rights using any of these indications:

For trademarks, the letters ‘MR’ or ‘R’ within a circle ®.

For patents, the letters ‘PI’ and the corresponding registration number; for industrial designs, ‘DI’ and the registration number; for utility models, ‘MU’ and the registration number.

Failure to comply with this requirement shall prevent the right holder concerned from taking criminal action.

5. Using CUSTOMS to block counterfeits

Customs in Chile: What you need to know

The so-called ‘cross-border law’ (border measures) is an enforcement measure concerning intellectual property that prevents products infringing intellectual property rights from entering or leaving the country.

These measures fall within the competence of the National Customs Service.

The Customs authorities develop risk profiles and seize counterfeit and pirated goods via two different procedures, either ex officio or at the request of a party before the courts.

The Customs authorities can suspend the clearance of goods for a maximum of 5 working days because of a copyright infringement or counterfeit trademarks, without prejudice to the competence of civil courts to take measures and to criminal actions linked to police measures.

6. RELATED LINKS and Additional Information

- Further information about IPR in Chile can be found on the Mercosur IPR SME Helpdesk website: www.mercosur-iprhelpdesk.eu
- Agency in charge of Industrial Property in Chile: National Institute of Industrial Property www.inapi.cl
- Agency in charge of Copyright in Chile: Intellectual Property Right Department at the Directorate of Museums, Libraries and Archives: www.propiedadintelectual.cl
- Chilean Customs Authorities: National Customs Service www.aduanas.cl
- Authority in charge of Plant Variety Registrations: Agricultural and Livestock Service www.sag.cl
- Authority in charge of Innovation: National Council on Innovation for Competitiveness www.cnicyt.cl
- Authority in charge of the transparency of public service and access to information www.consejo-transparencia.cl
- Barriers to Trade www.barrerascomerciales.es
- Congress of Deputies: www.camara.cl
- Design, Technology and IP Research Centres www.dkchile.cl
- Chiletransfiere www.chiletransfiere.cl
- CONADI: www.conadi.gob.cl
- Council for National Monuments www.monumentos.cl
- CORFO (Economic Development Agency) www.corfo.cl
- Creative Commons www.creativecommons.org
- Diario Financiero (Financial Newspaper) www.df.cl/
- DIRECON (Foreign Ministry’s General Directorate of International Economic Relations) www.direcon.gob.cl
- EUROCHILE (Business Foundation) www.eurochile.cl
- EUROSTAT (European Union Statistics Office): www.epp.eurostat.ec.europa.eu
- FLORASEM www.florasem.cl
- ICANN New gTLDs www.newgtlds.icann.org
- ICEX www.icex.es
- INIA (Agricultural Research Institute) www.inia.cl
- Public Prosecution Service in Chile www.fiscalia-dechile.cl
- NIC Chile www.nic.cl
- OECD www.oecd.org/chile
- The Judiciary in Chile www.pjud.cl
- Criminal Investigation Police in Chile www.investigaciones.cl
- PROCHILE www.prochile.gob.cl
- Start Up Chile www.startupchile.org
- Industrial Property Court in Chile: www.tdpi.gob.cl/
- WHOIS www.whois.com



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Helpline: Ask our experts any IP related questions in MERCOSUR or Chile! We provide professional IP advice – customized, straightforward, and free of charge. Our Experts will answer your question within **five working days**.

Newsletter: Keep track of the latest news on IP in the MERCOSUR and Chile, relevant to your business.

Multi-lingual Webportal: Browse our multilingual web portal for a broad range of information and training materials on IPR in MERCOSUR and Chile in English, Spanish, Portuguese, French and German.

Training: Attend our trainings (online and on-site) and learn more about the key aspects of IPR protection and enforcement issues for doing business in MERCOSUR and Chile.

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