

# ENVIRONMENT

Legal Alert

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## Environment Legal Alert



17 August 2016

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## WASTE MANAGEMENT LAW

### The extended liability of the producer and the encouragement of recycling

On June 1, 2016, the Official Gazette published the Act No. 20,920 regarding "Waste management, the extended liability of the producer and the encouragement of recycling" (hereinafter, "The Waste Management Act"). This legal reform attempts to redefine the current approach to waste management in our country, and has positioned Chile as a pioneer in Latin America by establishing a public policy of recycling.

Currently, only 10% of waste is disposed in landfills and dumps and is then recollected and revalued. The implementation of the waste management act seeks to reduce waste generation and increase its reusability to 30%.

One of the underlying principles of this act is the "the polluter should pay" principle, that is, a residue generator is responsible for its waste, as well as for, internalizing the costs and negative externalities associated with its waste management (Article 2° of the Waste Management Act).

In line with the above, the Waste Management Act creates the figure of "Extended Responsibility of the Producer", which requires waste generators to categorize certain goods designated as "priority products" pointing out that once their useful life ends, they should organize and finance their recollection and treatment through a management system established for this purpose.

These so-called priority products are: (i) lubricating oils, (ii) electrical and electronic equipment, (iii) batteries, (iv) packaging, (v) tires and (vi) power cells. The reason for categorizing them as priority is their massive amount of consumption, significant volume and the feasibility of their reuse. According to the Waste Management Act, more products may be added to this list in the future, through a supreme decree.

Even though the Waste Management Act is in force as from the date of its publication (June 1, 2016), there are certain provisions

for its complete operation that will require the dictation of a regulation by the corresponding authority, namely, the Ministry of Environment. Within one year as from the act's publication (that is, June 1, 2017), the Ministry of the Environment should establish the procedure in which supreme decrees will be issued for regulating the eco-design of products, certification, marking, labeling and the mechanisms that will ensure an environmentally rational waste management, among others. Therefore, these obligations will not be enforceable against waste generators, until the said regulation (and consequently, the corresponding supreme decree) is issued and published.

In addition, the Waste Management Act modifies Act. No. 19,300 (General Law of Environmental Basis), adding article No. 48 ter, which indicates that the Ministry of the Environment will be responsible for issuing certificates, tags or labels to individuals or legal entities, whether public or private, in relation to technologies, procedures, products, goods, services or activities that are voluntarily requested and meet the sustainability and protection of the environmental heritage of the country criteria, according to the requirements that will be established by the said regulation. The Environmental Superintendence will be responsible for monitoring compliance of this provision.

Finally, the Waste Management Act establishes a system of supervision and sanctions, where the Superintendence of the Environment will be the competent organism to verify the compliance with the obligations established under the act, being allowed to impose financial penalties of up to \$ 780,000 USD in case of minor offenses and up to \$ 7,800,000 USD in case of very serious offenses.

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