

GIBSON DUNN

International Arbitration Update

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## Chile's Lithium Regime Under President Kast: Pro-Investment Tone, but the State-Centric Model Still Governs

*For lithium investors, the central question is not whether the rhetoric has turned more market-friendly, but whether the legal route to control, develop, and monetize lithium assets has fundamentally changed. As of mid-March 2026, it has not.*

Chile's lithium sector is entering a new political phase under President José Antonio Kast, who took office on March 11, 2026.<sup>[1]</sup> One of the administration's first moves was to place the economy and mining portfolios under the same minister, Daniel Mas,<sup>[2]</sup> reinforcing the government's message that growth, permitting and mining policy will be coordinated more closely. That shift is significant because mining remains a pillar of the Chilean economy, and the Chilean Copper Commission's (Corporación Nacional del Cobre de Chile, or COCHILCO) current 2025-2034 investment pipeline stands at approximately US\$104.5 billion.<sup>[3]</sup> For lithium investors, however, the central question is not whether the rhetoric has turned more market-friendly, but whether the legal route to control, develop, and monetize lithium assets has fundamentally changed. As of mid-March 2026, it has not.

The starting point remains Chile's distinctive title regime. Lithium is a non-concessionable resource under Chilean mining law, and Decree Law No. 2886 reserves lithium in favor of the State.<sup>[4]</sup> In practical terms, that means a foreign investor cannot treat lithium the way it would treat copper or gold by simply acquiring and developing an ordinary mining concession. Access to lithium still depends on a state-sanctioned structure: direct state participation, a state company

mandate, or a special lithium operation contract (Contrato Especial de Operación de Litio, or CEOL). In addition, lithium remains a “material of nuclear interest,”<sup>[5]</sup> which means the Chilean Nuclear Energy Commission (Comisión Chilena de Energía Nuclear, or CCHEN) retains authority over lithium sales and exports and customs authorities require CCHEN authorization before export.<sup>[6]</sup>

That legal architecture continues to be shaped by the 2023 National Lithium Strategy. Whatever policy refinements the Kast administration may pursue, the inherited framework is still a state-led model in which private capital is welcomed primarily as a strategic partner, not as a free-standing title holder. While certain state-owned companies have been assigned the initial role of leading development, other areas are now open to private participation through CEOL processes.<sup>[7]</sup> The pipeline is no longer theoretical: as of March 10, 2026, the Ministry of Mining reported ten decrees in process before the Comptroller’s Office to enable lithium projects in northern Chile.<sup>[8]</sup> That is a meaningful sign that the project queue is moving, even if it has not yet become frictionless.

Equally important for investors, the Production Development Corporation (Corporación de Fomento de la Producción, or CORFO) has repeatedly emphasized respect for existing contracts.<sup>[9]</sup>

The real execution risk remains permitting, environmental review, and community process. Chile has, in fact, moved to streamline non-environmental permits through Law No. 21770, published in September 2025, and the new Office of Sectoral Authorizations and Investment (Oficina de Autorizaciones Sectoriales e Inversión, or OASI) began operating on January 1, 2026.<sup>[10]</sup> The environmental side is also evolving: amendments to the Environmental Assessment System (Sistema Evaluación de Impacto Ambiental, or SEIA) regulation entered into force in January 2026,<sup>[11]</sup> and the second edition of the lithium-from-salars project description guide took effect in February 2026.<sup>[12]</sup> Yet investors should not mistake those reforms for a wholesale fast-track. Environmental review remains separate, indigenous consultation continues to be embedded in CEOL processes,<sup>[13]</sup> and the government has also expanded protected-”salares” policies, including the Red de Salares Protegidos in Atacama announced in January 2026.<sup>[14]</sup>

For foreign investors, the practical lesson is clear. In certain simplified CEOL procedures, the Ministry has required applicants to control at least 80% of the mining concessions and to demonstrate technical experience and financial capacity.<sup>[15]</sup> Investors therefore need to conduct diligence not only the resource and process technology, but also the concession mosaic, water and brine assumptions, consultation exposure, and the downstream CCHEN approval path for commercialization and export. In Chilean lithium, legal access is a layered bundle of state contract, regulatory approvals and social license, not a single mineral title.

From an investor-protection perspective, this is a market where structuring matters just as much as geology. Chile remains an ICSID member state<sup>[16]</sup> and maintains a broad network of investment treaties,<sup>[17]</sup> while Law No. 20848 provides the domestic framework for foreign direct investment and access to a foreign investor certificate.<sup>[18]</sup> In any serious lithium bid, investors should therefore focus early on treaty planning, dispute-resolution architecture, change-in-law allocation, stabilization language where available, governance and deadlock protections in state-partnered vehicles, and express provisions on offtake, transfer and exit. The best Chile lithium

platforms will be those engineered to withstand regulatory delay and political transition, not merely win a CEOL.

Bottom line: the fair inference from the first week of the Kast administration is that it will try to accelerate execution and present Chile as more decisively pro-investment. But until new legislation or decrees say otherwise, investors should assume that Chile's lithium sector will continue to operate under the inherited state-led model: non-concessionable resource, CEOL-based access, intensive environmental and indigenous process, and growing but still supervised openings for private capital.

[1] See Gobierno de Chile, *José Antonio Kast assumes the presidency of Chile*, 10 March 2026, available at: <https://www.gob.cl/en/news/jose-antonio-kast-assumes-the-presidency-of-chile/>.

[2] See Mining.com, *Chile mining sector faces policy test under Kast government*, 10 March 2026, available at: <https://www.mining.com/chile-mining-faces-policy-test-under-kast-government/>.

[3] See Reuters, *Chile raises mining investment forecast through 2034 to \$105 billion*, 11 December 2025, available at: <https://www.reuters.com/world/americas/chile-raises-mining-investment-forecast-through-2034-105-billion-2025-12-11>.

[4] See Ley 2886, available at: <https://www.bcn.cl/leychile/navegar?idNorma=7029>.

[5] Ley 16319, available at: <https://www.bcn.cl/leychile/navegar?idNorma=28393>.

[6] See Ley 2886, available at: <https://www.bcn.cl/leychile/navegar?idNorma=7029>.

[7] See Gobierno de Chile, *National Lithium Strategy*, available at: [https://s3.amazonaws.com/gobcl-prod/public\\_files/Campa%C3%B1as/Litio-por-Chile/Estrategia-Nacional-del-litio-EN.pdf](https://s3.amazonaws.com/gobcl-prod/public_files/Campa%C3%B1as/Litio-por-Chile/Estrategia-Nacional-del-litio-EN.pdf).

[8] See Ministerio de Minería de Chile (@MinMineria\_cl), X (10 March 2026, 3:55 PM), available at: [https://x.com/MinMineria\\_cl/status/2031458870929805656](https://x.com/MinMineria_cl/status/2031458870929805656).

[9] See SQM, *Codelco and SQM sign partnership agreement making Chile a leader in the global lithium market*, 31 May 2024, available at: <https://sqm.com/en/noticia/codelco-y-sqm-firman-acuerdo-para-asociacion-que-da-a-chile-liderazgo-en-el-mercado-mundial-de-litio/>.

[10] See Ley 21770, available at: <https://www.bcn.cl/leychile/navegar?idNorma=1216930>.

[11] Servicio de Evaluación Ambiental, *Conoce los principales cambios que considera la modificación al Reglamento del SEIA*, 16 January 2026, available at: <https://www.sea.gob.cl/noticias/conoce-los-principales-cambios-que-considera-la-modificacion-al-reglamento-del-seia>.

[12] See Servicio de Evaluación Ambiental, *SEA publishes second edition of "Guide for the description of lithium and other mineral exploitation projects from salt flats in the SEIA"*, 25

November 2025, available at <https://www.sea.gob.cl/en/noticias/sea-publica-segunda-edicion-de-guia-para-la-descripcion-de-proyectos-de-explotacion-de>.

[13] See, e.g., Ministerio de Economía, *Estrategia Nacional del Litio: Gobierno anuncia apertura de proceso para asignar CEOLes en seis sistemas salinos*, 26 September 2024, available at: <https://www.economia.gob.cl/2024/09/26/estrategia-nacional-del-litio-gobierno-anuncia-apertura-de-proceso-para-asignar-ceoles-en-seis-sistemas-salinos.htm>.

[14] See Gobierno de Chile, *Hito ambiental en Atacama: Presidente Boric firma decretos de la Red de Salares Protegidos y crea “Reservas de Región Virgen”*, 30 January 2026, available at: <https://www.gob.cl/noticias/red-salares-protegidos-atacama-presidente-boric-firma-decretos/>.

[15] See Ministerio de Economic, Fomento y Turismo, *Estrategia Nacional del Litio: Gobierno anuncia apertura de proceso para asignar CEOLes en seis yacimientos de litio*, 5 February 2024, available at: <https://www.economia.gob.cl/2024/12/05/estrategia-nacional-del-litio-gobierno-anuncia-apertura-de-proceso-para-asignar-ceoles-en-seis-yacimientos-de-litio.htm>.

[16] See ICSID, *Database of ICSID Member States*, available at: <https://icsid.worldbank.org/about/member-states/database-of-member-states>.

[17] See UNCTAD, *International Investment Agreements Navigator: Chile*, available at: <https://investmentpolicy.unctad.org/international-investment-agreements/countries/41/chile>.

[18] See Ley 20848, available at: <https://www.bcn.cl/leychile/navegar?idNorma=1078789>.

**The following Gibson Dunn lawyers prepared this update: Patrick W. Pearsall, Lindsey Schmidt, and Ben Shorten.**

Gibson Dunn’s lawyers are available to assist in addressing any questions you may have regarding these developments. Please contact the Gibson Dunn lawyer with whom you usually work, the authors, or any leader or member of the firm’s [International Arbitration](#) practice group or the [Mining & Metals](#) team:

[Patrick W. Pearsall](#) – Washington, D.C. (+1 202.955.8516, [ppearsall@gibsondunn.com](mailto:ppearsall@gibsondunn.com))

[Lindsey D. Schmidt](#) – New York (+1 212.351.5395, [lschmidt@gibsondunn.com](mailto:lschmidt@gibsondunn.com))

[Ben Shorten](#) – London (+44 20 7071 4231, [bshorten@gibsondunn.com](mailto:bshorten@gibsondunn.com))

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