

ENVIRONMENT

Legal Alert

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Environment Legal Alert



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REAL RIGHT OF CONSERVATION

Legal initiative establish a Right of Conservation

In 2008, the Chilean National Congress began a legislative process in order to discuss the proposal of an innovative bill, seeking to involve private actors on environmental and biodiversity protection.

After years of legislative discussion, in June 2016 the President of the Republic of Chile, promulgate the Law establishing the "right of conservation", which is a legal instrument that will allow Chile to move forward in the field of conservation and environmental protection.

In the United States legislation, this legal institution was created many decades ago and is known as "conservation easement". There are more than 3,000 owners who have used this tool, preserving this way more than 20 million hectares.

In the case of Chile, the right of conservation consists in a binding agreement between the owner of a property and a third party. Under this agreement, the land owner permanently restricts the development and future use of his land, to ensure its protection and conservation. In turn the third party, who may be a University, Research Center, NGO's or a natural person, commits to protect and conserve the natural resources of the property.

The parties under this agreement must commit at least, one of the following restrictions:

- Prohibition of allocating land to real estate, commercial, industrial or other purposes.
- The obligation to maintain, clean up, repair and manage the property.
- Implement or supervise an environmental management plan for the rational and sustainable use of natural resources of the land.

Once the agreement is concluded, it must be registered under the Burden and Mortgage Registry. Thus, constituting a real right that lies on the property, similarly to an easement. Therefore, it is not extinguished even if the property is sold or inherited.

Conclusion

Certainly, the right of conservation will encourage the private conservation initiatives, complementing the role of the Chilean State of protecting the natural heritage. The land owners will be able to obtain funding for the adequate protection of these areas, and in turn, those organizations that are interested in the protection of environmental heritage, will concentrate their resources on environmental conservation, rather than spend large amounts of money to acquire land for the same purposes.

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