

Chile

Establishes the Framework for Foreign Direct Investment in Chile and Creates the Corresponding Institutional Framework (2015)

Official translation

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Establishes the Framework for Foreign Direct Investment in Chile and Creates the Corresponding Institutional Framework

LAW N° 20.848

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Establishes the Framework for Foreign Direct Investment in Chile and Creates the Corresponding Institutional Framework

Given that the Honorable National Congress has approved the following Bill:

Preliminary Title. Scope of application

Article 1

The terms of this law will be applicable to foreign investors who make investments in accordance with the definitions and requirements established in the following articles.

Title I. Definitions and regime applicable to foreign direct investment

Section 1. Definitions

Article 2

For the purposes of the terms of Section 2 of this Title, foreign direct investment will be understood as the transfer to the country of foreign capital or assets owned or controlled by a foreign investor for an amount of or more than five million US dollars or their equivalent in other currencies, carried out through freely convertible foreign currency, physical goods in all their forms or states, the reinvestment of profits, the capitalization of loans, technology in all its forms provided it may be capitalized or loans relating to the foreign investment from related companies.

In addition, foreign direct investment will be considered to include that which, within the amounts referred to in the preceding paragraph, is transferred to the country and materialized through the acquisition of, or partnership in, the ownership of the company or in the capital of the company receiving the investment, constituted in Chile in accordance with Chilean law, either directly or indirectly, that gives it control of at least 10% of the company's voting shares or an equivalent percentage of the share capital if it is not a stock company or in the net worth of the company in

percentage of the share capital if it is not a stock company or in the net worth of the company in question.

Article 3

For the purposes of this law, a foreign investor will be understood to be any individual or legal entity constituted overseas, not resident or domiciled in Chile, that transfers capital to Chile in accordance with the terms of the previous Article.

Article 4

Those qualifying as a foreign investor in accordance with the previous Article may request a certificate, issued by the Foreign Investment Promotion Agency, which will have the sole purpose of providing access to the regime established in Section 2 of this Title.

The application that the foreign investor presents for this purpose must accredit materialization of the investment in the country and contain a detailed description of this investment, including its amount, purpose and nature, all in the form and terms determined by the said Agency.

The Foreign Investment Promotion Agency must issue the certificate referred to in this Article within fifteen days as from the date of receiving the application presented by the foreign investor. If it does not issue the certificate within this period, Law N° 19.880 on the Framework for Administrative Procedures that Govern the Acts of the Bodies of the State Administration will apply.

The certificate must contain all the details that permit identification of the foreign investor and the investment carried out up to the date of its issue.

Section 2. Regime applicable to foreign direct investment

Article 5

The foreign investor will have the right to remit overseas the capital transferred and the liquid profits that the foreign investor's investments generate, once having complied with all the tax obligations established under Chilean law.

Article 6

The foreign investor will have the right of access to the formal foreign exchange market to liquidate the currency that constitutes the investment.

Similarly, the foreign investor will have access to the formal foreign exchange market to obtain the currency required to remit the capital invested or the liquid profits corresponding to the investment, once having complied with all the tax obligations established under Chilean law.

The exchange rate applicable for liquidating or obtaining the currency in the formal foreign exchange market will be that freely agreed upon by the intervening parties.

Article 7

The foreign exchange operations arising from investments made in accordance with this law will be subject to the powers of the Central Bank of Chile in accordance with the terms of its constitutional organic law and other special laws.

Article 8

Foreign investors will be exempt from sales and service tax on the import of capital goods, providing this complies with the requirements and procedures established for these purposes in Article 12, Letter B, n° 10 of Decree Law N° 825 de 1974.

Article 9

Foreign investors will be subject to the common legal regime applicable to national investors and may not be subject to arbitrary discrimination with respect to these, either directly or indirectly.

Title II. Foreign investment development and promotion strategy

Article 10

The President of the Republic will establish a strategy for the development and promotion of foreign investment, referred to henceforward as the "promotion strategy".

The promotion strategy must address, at least, the following areas:

The promotion strategy must include a diagnosis of the country's position as regards its international competitiveness, an evaluation of the economy's capacity to add value to the production of goods and services through the promotion of foreign investment, the definition of its objectives, the gaps detected and the definition of a set of recommendations that considers medium and long-term lines of action and goals.

Article 11

The President of the Republic will establish the promotion strategy in a supreme decree issued through the Ministry of Economy, Development and Tourism, which will also be signed by the Minister of Finance and the other Ministers who are permanent members of the Committee of Ministers for the Development and Promotion of Foreign Investment referred to in the following Article.

Title III. Committee of ministers for the development and promotion of foreign investment

Article 12

Create the Committee of Ministers for the Development and Promotion of Foreign Investment, henceforward "Committee of Ministers", whose purpose will be to advise the President of the Republic on matters related to the development and promotion of foreign investment.

In compliance with its purpose, it will have the following functions and powers:

1. Propose to the President of the Republic the strategy for the development and promotion of foreign investment.
2. Define, in accordance with the proposals of the Foreign Investment Promotion Agency, the plans, programs and priorities for the implementation of the strategy for the development and promotion of foreign investment.
3. Ensure proper consistency between the promotion strategy and the measures and actions implemented by the Foreign Investment Promotion Agency.
4. Ensure coordination among the different State bodies related to implementation of the promotion strategy.

In the exercise of this power, it may charge the Foreign Investment Promotion Agency with the coordination of the actions taken by regional governments to promote and attract foreign investment.

5. Evaluate the implementation of the promotion strategy and the other plans and programs related to the development and promotion of foreign investment.

Article 13

The Committee of Ministers will be chaired by the Minister of Economy, Development and Tourism and will include the Minister of Finance and all the other Ministers whom the President of the Republic appoints as its permanent members through a supreme decree.

The President of the Committee may request the participation of the authorities or civil servants of the State Administration that he deems relevant, depending on the matters to be addressed.

The Ministers may only be replaced by Undersecretaries or by their legal deputy.

The Committee of Ministers will meet at least twice a year and when convened by its president at least fifteen days before the date of the meeting. At its first meeting, it will define the norms for its functioning. The quorum for meetings will be three members and agreements will be adopted by absolute majority of those present. In the case of a tie, the president of the Committee or his replacement will have the deciding vote.

Meetings of the Committee of Ministers must be attended by the Director of the Foreign Investment Promotion Agency, who will have the right to a voice and will act as executive secretary of the Committee of Ministers. In this role, he must draw up minutes of the meetings, will keep a register of them, the agreements adopted and the resolutions issued and will also fulfill the other functions required of him by the Committee of Ministers in the exercise of its powers.

Article 14

The Committee of Ministers may ask the Foreign Investment Promotion Agency to commission or carry out studies, analyses or evaluations for its compliance with its functions, such as:

Title IV

Section 1 Foreign Investment Promotion Agency

Section 11 Foreign Investment Promotion Agency

Article 15

Create the Foreign Investment Promotion Agency, henceforward the "Agency" as a decentralized public service, with its own legal status and assets, domiciled in the city of Santiago and reporting to the President of the Republic through the Ministry of Economy, Development and Tourism.

The Agency will be subject to the Civil Service System, established in Title VI of Law N° 19.882.

The Agency will promote and attract the entry of all types of capital and investment from overseas, regardless of its amount, in accordance with the powers and responsibilities indicated in this law. In the exercise of these powers and responsibilities, it must establish the mechanisms of coordination required of it by the Committee of Ministers and that are necessary for implementation of the promotion strategy, ensuring the consistency of the actions for the development and promotion of investment taken by regional governments.

For all legal purposes, the Agency will be the successor and legal continuation of the Foreign Investment Committee created under Title III of Decree with Force of Law N° 523 of 1993, issued by the Ministry of Economy, Development and Reconstruction, which establishes the rewritten, coordinated and systematized text of Decree Law N° 600 of 1974. As a result, all mentions of this institution in general or special laws will be understood to refer to the Foreign Investment Promotion Agency.

Article 16

The Agency will be responsible for the promotion of foreign investment in Chile. In order to fulfill this objective, it will have the following functions and powers:

1. Implement the promotion strategy through measures and actions to promote foreign investment in Chile. These actions and measures must be regularly evaluated and approved by the Committee of Ministers in accordance with the terms of Article 12. In the framework of the measures defined by the Committee, the Agency may:

- a. Organize public or private missions of potential foreign investors to Chile and participate in them, promoting the advantages of foreign investment in Chile, and organize and participate in rounds of business meetings, fairs, seminars, conferences and missions to promote Chile in order to attract foreign investment, activities that may take place both in Chile and abroad.
- b. Provide potential foreign investors with guidance and information about the market, legislation and the incentives applicable to their investment and inform them about other aspects relevant for their investment.
- c. Carry out activities to retain and encourage the expansion and reinvestment of foreign investment materialized in the country in order to increase its impact on the local economy.
- d. Collaborate with foreign investors in generating contacts and meetings with government bodies, business associations, businesspeople, suppliers, financial institutions, research centers and other actors that facilitate the entry of foreign investment to Chile.
- e. Establish a Consultative Advisory Council formed by representatives of the public and private sectors, whose mission will be to advise the Director on the definition of medium and long-term objectives and to evaluate the activities, initiatives and efforts deployed by the Agency.

A representative of the Undersecretariat for Regional Development must have a permanent seat on the Consultative Advisory Council. Similarly, the President of the corresponding Regional Government will participate in meetings at which activities, initiatives or efforts related to that Region are analyzed.

f. Promote Chile as a destination for investment.

g. Any other activity that contributes to the promotion of foreign investment in Chile.

2. Act as the administrative body of the Committee of Ministers for which purpose it will receive and analyze the presentations made to it, generate the information and studies it requires and fulfill any other administrative function requested by the Committee.

3. Review requests for certification of the status of foreign investor and issue the corresponding certificates in accordance with the terms of Article 4.

4. Propose the foreign investment promotion strategy to the Committee of Ministers.

5. Contribute to the creation of a favorable climate for foreign investment in Chile and, in particular, identify obstacles to the materialization of foreign investment projects and report them to the competent authorities in order to progress in overcoming them.

6. Collect, record and systematize information and statistics about foreign investment. To this end, it may require that public and private bodies as well as foreign investors themselves present the information necessary for fulfillment of this function.

To this same end, the Agency must use the macroeconomic statistics on foreign investment that are compiled and published by the Central Bank of Chile and, for this purpose, may sign collaboration or other agreements with this institution that guarantee due and effective coordination in this sphere.

7. Report annually to the Committee of Ministers on progress in fulfillment of the promotion strategy.

Article 17

The Agency's overall, technical and administrative management will be the responsibility of the "Director", who will be appointed by the President of the Republic in accordance with the norms of the Civil Service System contained in Title VI of Law N° 19.882.

The Director will have the following powers and responsibilities:

Section 2. Norms relating to personnel

Article 18

The Agency's personnel will be subject to the terms of Law N° 18.834 on the Administrative Statute whose rewritten, coordinated and systematized text was established by Decree with Force of Law N° 29 of 2004, issued by the Ministry of Finance. In the case of remunerations, these will be set and modified in accordance with the procedure established in Article 9 of Decree Law N° 1.953 of 1977, issued by the Ministry of Finance.

Section 3. Assets

Article 19

The Agency's assets will be formed by:

Title V. Amendments to other norms

Article 20

Replace as from 1 January 2016 or this law's entry into force if it occurs at a later date, n° 10 of Letter B of Article 12 of Decree Law N° 825 of 1974 with the following:

"10.- Investors, whether established, resident or domiciled in the country or those who qualify as foreign investors and companies receiving foreign investment, in accordance with the terms of Article 3 of the framework law for foreign direct investment in Chile, as regards the capital goods imported that are used for development, exploration or exploitation in Chile of mining, industrial, forestry, energy, infrastructure, telecommunications and research or technological, medical or scientific development projects, among others, that imply investments for an amount of or more than five million US dollars.

The exemption to which this number refers will apply only to the import of capital goods for investment projects that, due to the characteristics of their development, generate income liable to, not liable to or exempt from the tax established in Title II of this law after, at least, twelve months from the date of the import into the country or acquisition in Chile of the first capital goods whose exemption from Value Added Tax is requested

Added tax is requested.

In order to obtain the exemption referred to in this number, the investor must present a request to the Ministry of Finance so that it verifies and certifies correct compliance with the requirements established in this number. Foreign investors must accompany this request with the certificate of foreign investor referred to in Article 4 of the framework law for foreign direct investment in Chile.

The Ministry of Finance must rule on the said request within sixty calendar days as from the date of receiving all the information necessary to verify compliance with the requirements indicated. If it fails to do so within this period, the taxpayer's request will be understood to have been approved and the said Ministry must immediately proceed to issue the resolution granting the benefit, doing so within five working days as from the end of the aforementioned sixty days period.

If a new request for exemption is presented for capital goods for projects that are implemented by stages or whose purpose is to complement or expand an investment project for the initial stage of which exemption was granted, the investor must, in order for the Ministry of Finance to extend the exemption to the new capital goods, only present a copy of the resolution granting the original exemption and the information necessary to accredit that the new request corresponds to different stages of the same project or to complementary or expansion projects.

Empower the Ministry of Finance so that, through a supreme decree, it defines the characteristics of the capital goods and investment project referred to in this number as well as the manner of and procedure for presenting the information that must accompany the request for exemption referred to do in this number so as to permit its analysis.

The Ministry of Finance must send to the Internal Revenue Service a copy of the resolution granting the exemption and the information presented by the taxpayer within twenty calendar days as from the date of issue of the said resolution.

When, in the exercise of its inspection powers, the Internal Revenue Service determines that the exemption has been granted on the basis of incorrect documents or other information presented by the taxpayer, it must, after notifying the taxpayer in accordance with the terms of Article 63 of the Tax Code, determine the tax that would have been applicable had the exemption not been granted, with the indexed adjustments and penal interests established in Article 53 of the same code. In this latter case, the sanctions established in n° 20 of its Article 97 may be imposed.

The taxpayer may appeal against the determination of the tax owing and the fine levied in accordance with the general procedure established in Book III of the Tax Code. The Value Added Tax paid by the taxpayer as a result of the lifting of the exemption established in this number, will, providing compliance with the general requirements established by this law, serve as a credit for the Value Added Tax of the period in which the payment is made.

A taxpayer who has maliciously obtained the exemption referred to in this number, through the presentation of incorrect, incomplete or false documents or other information, will receive the sanctions envisaged in the second paragraph of n° 4 of Article 97 of the Tax Code, notwithstanding payment of the tax evaded with the corresponding penal interest and fines which, once paid, will not serve as a credit for Value Added Tax."

Title VI. Other terms

Article 21

Regional governments may, using their own resources, organize units for the development and promotion of foreign investment.

Transitory terms

First Article

Foreign investors and companies receiving foreign investment who have in force a foreign investment contract signed with the State of Chile in accordance with the terms of Decree with Force of Law N° 523 of 1993, issued by the Ministry of Economy, Development and Reconstruction, which establishes the rewritten, coordinated and systematized text of Decree Law N° 600 of 1974, will conserve all the rights and obligations envisaged in the said contracts, providing they were signed before 1 January 2016 or the date on which this law comes into force if this occurs at a later date. The same protection will also apply to contracts signed under the terms of the fourth transitory article of Law N° 20.469, providing they were signed within the period established by this norm.

For the purposes of the terms of this Article, once the Foreign Investment Promotion Agency starts operation, it will maintain all the functions that corresponded to the Executive Vice-Presidency of the Foreign Investment Committee under Article 15 of the Decree with Force of Law indicated in the preceding paragraph.

Second Article

Notwithstanding the terms of the second paragraph of Article 9 of Law N° 20.780, as from 1 Januar

2016 or the date on which this law comes into force if this occurs at a later date, and for a maximum period of four years as from the first of these events to occur, foreign investors, as defined under the terms of Article 3 of this law, may apply for foreign investment authorizations under the terms of Article 3 of Decree with Force of Law N° 523 of 1993, issued by the Ministry of Economy, Development and Reconstruction, which establishes the rewritten, coordinated and systematized text of Decree Law N° 600 of 1974. These applications must be filed before the Executive Vice-Presidency of the Foreign Investment Committee or its legal successor, depending on the case. Similarly, these authorities will be responsible for signing the corresponding contracts in representation of the State of Chile.

Foreign investors who exercise the option referred to in the preceding paragraph may only sign the corresponding contracts within the same periods referred to in the said paragraph. Under these contracts, they will be subject to the requirements, enjoy the rights and have the obligations referred to in Articles 2, 7 and 11ter of the said decree law.

In any case, the total income tax rate to which they will be liable, under the terms of the first paragraph of Article 7 of Decree with Force of Law N° 523 of 1993, issued by the Ministry of Economy, Development and Reconstruction, which establishes the rewritten, coordinated and systematized text of Decree Law N° 600 of 1974, and with respect to which they will be entitled to invariability, will be 44.45% in all the cases referred to in the said terms.

Notwithstanding the terms of the preceding paragraphs, foreign investors will be able to access the regime applicable to foreign direct investment envisaged in Section 2 of Title I of this law.

Third Article

Empower the President of the Republic to establish, within the period of one year as from the publication of this law, in one or more decrees with force of law issued through the Ministry of Economy, Development and Tourism and also signed by the Minister of Finance, the norms required to regulate the following matters:

1. Determine the personnel to be hired by the Foreign Investment Promotion Agency.

In the exercise of this power, the President of the Republic will issue the norms required for the proper structuring and functioning of the personnel established and, in particular, may determine transitory norms for the application of variable remunerations; the number of posts for each level and type of contract; the requirements for the hiring and promotion of personnel for these posts; and their titles and hierarchical level, for the purposes of the application of the terms of Article 8 of Law N° 18.834, whose rewritten, coordinated and systematized text was established by Decree with Force of Law N° 29 of 2004, issued by the Ministry of Finance, and Title VI of Law N° 19.882. In addition, the President of the Republic will establish the norms for the distribution of the personnel by level, which may include employees who are transferred from the Foreign Investment Committee.

2. Determine, without a solution of continuity, the transfer of employees with indefinite and fixed-term contracts from the Foreign Investment Committee to the Foreign Investment Promotion Agency. The decree with force of law establishing the personnel of the Foreign Investment Promotion Agency will also determine the transfer and the number of employees who will be transferred by level and legal status and may also establish the period of time over which this process will take place. The identification of the personnel transferred and their new position will, in the corresponding cases, be implemented through decrees issued using the formula "By order of the President of the Republic" through the Ministry of Economy, Development and Tourism. The transfer of employees with indefinite and fixed-term contracts, and the posts they occupy, will maintain the level they had at the date of the transfer.

3. The requirements for the posts defined in the exercise of the power indicated in n° 1 of this Article will not be required for the purposes of the new position of employees with a permanent contract at the date of entry into force of the corresponding decree or decrees with force of law. Similarly, the requirements established in the corresponding decrees with force of law will not be required for employees with a fixed-term contract at the date of entry into force of the corresponding decree or decrees with force of law or whose contracts are extended on the same conditions.

4. Determine the date of entry into force of the amendments referred to in n° 1 of this Article. Similarly, determine the date of the start of the activities of the Foreign Investment Promotion Agency and its maximum number of personnel.

5. Transfer the resources and goods of the Foreign Investment Committee to the Foreign Investment Promotion Agency.

6. Use of the powers indicated in this Article will be subject to the following restrictions, with respect to the personnel it affects:

a. It may not have as a consequence a change in an employee's habitual place of residence to outside the region in which the employee is providing services, except with the employee's consent.

b. It may not have as a consequence or be considered grounds for ending the services provided, the elimination of posts or the end of the working relationship.

c. It may not result in a drop in remuneration or the modification of social security rights. Any difference

in remunerations must be paid through a supplementary payroll which will be absorbed by future improvements in remunerations that correspond to the employees, except those arising from general adjustments awarded to public sector employees. Social security payments on this supplementary payroll will be the same as on the remunerations for which it compensates. It will also be subject to the general adjustment indicated above.

d. Employees who are given a new position and transferred will maintain their years-of-service bonus as well as the time used to calculate it.

Fourth Article

The President of the Republic will appoint, temporarily and provisionally, in accordance with Article 59 of Law N° 19.882, the Director of the Foreign Investment Promotion Agency, who will take office immediately and while the corresponding selection process established by said law for Civil Service System posts takes place.

Fifth Article

Until the resolution establishing the remunerations of the personnel of the Foreign Investment Promotion Agency is issued, in accordance with the terms of Article 18 of this law, that issued for the Foreign Investment Committee under Article 9 of Decree Law N° 1.953 of 1977 will remain in force.

Sixth Article

The President of the Republic will, in a decree issued through the Ministry of Finance, establish the first budget of the Foreign Investment Promotion Agency and will transfer to it the funds of the body that transfers personnel or goods and may for this purpose create, eliminate or modify budget chapters, allocations and items where appropriate. A copy of the said decree will be sent to the Finance Commissions of the Chamber of Deputies and the Senate.

Seventh Article

The increased fiscal spending arising from the application of this law during the budget year in which it enters into force will be financed out of the budget of the Foreign Investment Committee and, if this is insufficient, out of the resources allocated to the Public Treasury under the Public Sector Budget Law. In subsequent years, the increased spending will be financed out of the resources envisaged in the corresponding public sector budget laws."."

And as I have approved and sanctioned it, let it be promulgated and implemented as Law of the Republic.