

NEW FOREIGN INVESTMENT REGIME, LAW 20.848

Law 20.848 of 2015 established a new framework for foreign investment in Chile and created the Foreign Investment Promotion Agency (APIE), **also known as “InvestChile”**, as the **successor and legal continuation of the former Foreign Investment Committee**.

The principal characteristics of this new framework for foreign investment in Chile are as follows:

- I. The Law defines **FOREIGN DIRECT INVESTMENT (FDI)** and sets out its component elements, which are:¹
 - 1) Transfer of the investment: There must be a transfer of overseas capital or assets of the foreign investor, or of an entity controlled by the foreign investor, to Chile from abroad.
 - 2) Minimum amount of the investment: The transfer must be for at least US\$5 million or its equivalent in other currencies.
 - 3) FDI will also be considered to include investments materialized, directly or indirectly, through the acquisition of, or partnership in, the ownership of the company or in the capital of the company receiving the investment, established in Chile in accordance with Chilean law, providing such investments give the investor control of at least:
 - 10% of the recipient company's voting shares; or
 - An equivalent percentage of the share capital if it is not a stock company or in the equity of the company in question.

¹ Article 2 states: 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 in the form of 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 associated 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, established 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 equity of the company in question.

- 4) As regards the forms which an investment can take, the amount transferred to Chile can be in:
- a. Freely convertible foreign currency;
 - b. Physical goods in all their forms or states;
 - c. Reinvestment of profits;
 - d. Capitalization of loans;
 - e. Technology in all its forms provided it may be capitalized;
 - f. Loans associated to the foreign investment from related companies.

II. The Law also specifies who will be considered **FOREIGN INVESTORS**, indicating in Article 3 that these will be understood as those investors who meet the following requirements:

- Natural person or legal entity established overseas;
- Not resident or domiciled in Chile;
- That transfers capital to Chile in accordance with the terms of Point I above.

III. **FOREIGN INVESTOR CERTIFICATE**

Those who qualify as foreign investors may, if they wish, ask InvestChile to issue them a Foreign Investor Certificate, which will entitle them to use the regime established in Law 20.848. This certificate will be issued within 15 working days² as from the presentation of all the information required by InvestChile.

• **RIGHTS CONFERRED BY THE FOREIGN INVESTOR CERTIFICATE**

1. **To repatriate the capital transferred.**
2. **To remit the liquid profits** generated by the investment, subsequent to compliance with the corresponding tax obligations established under Chilean law.

² Article 25 of Law 19.880. "Calculation of time limits on the administrative procedure. The time limits in days established in this law refer to working days where non-working days are understood to be Saturdays, Sundays and public holidays (...)"

3. To access the formal foreign exchange market in order to:

- a. Exchange the currency that constituted the investment;
- b. Obtain the necessary foreign currency to repatriate the capital invested;
- c. Obtain the necessary foreign currency to remit the liquid profits generated by the investment, subsequent to compliance with the corresponding tax obligations established under Chilean law.

The exchange rate will be that freely agreed by the parties.

4. Not to be subject to arbitrary discrimination, either directly or indirectly.

Foreign investors are governed by the same common legal regime applicable to domestic investors and may not be discriminated against, either directly or indirectly.

5. Exemption from Value Added Tax on the import of capital goods.

Foreign investors and the companies receiving their investments may request exemption from this tax for the capital goods imported and used for the development, exploration or exploitation in Chile of mining, manufacturing, forestry, energy, infrastructure, telecommunications and research or technological, medical or scientific development projects, among others, that imply investments for an amount of at least US\$5 million.

In order to obtain this exemption, the interested party must present a request to the Finance Ministry, along with the Foreign Investor Certificate issued by InvestChile. The Ministry will verify and certify compliance with the corresponding requirements, doing so within 60 calendar days as from presentation of the request, after which it will have five working days in which to issue its resolution.

In the case of projects that are implemented by stages or that complement or expand an investment project for the initial stage of which exemption was granted, the Finance Ministry will extend the exemption to new capital goods, providing the investor presents a copy of the resolution granting the original exemption and accredits that these goods correspond to different stages of the same project.

- **APPLICATION TO INVESTCHILE FOR CERTIFICATE**

Foreign investors who wish to obtain this certificate should present an application using the form available for this purpose on InvestChile's website, accrediting materialization of the investment in Chile and including a detailed description of it, indicating its amount, location and nature.

The following documents should also be included with the application:

Natural Person

1. Photocopy of passport.
2. If presented by the foreign investor's representative, sufficient power of attorney for this purpose.
3. Certificate of domicile or tax residence overseas in Spanish or English, duly certified or legalized and registered by a public notary in Chile, depending on the case.
4. Foreign exchange operation report or equivalent, issued by the Central Bank of Chile, indicating the transfer of the capital to the country.
5. Legalized copy of the deeds of establishment or increase in equity of the company receiving the investment and any other deeds necessary to accredit materialization of the investment and that the foreign investor has 10% of the control of or stake in it.
6. Legalized copy of the registration, in force, of the recipient company on the Business Register of the corresponding Real Estate Registration Office.
7. Any other information which InvestChile deems necessary.

Legal Entity

1. Bylaws of the foreign investor in Spanish or English, duly certified or legalized and registered by a public notary in Chile, depending on the case.
2. Certificate of Good Standing of the foreign investor in Spanish or English, duly certified or legalized and registered by a public notary in Chile, depending on the case.

3. Power of attorney to represent the foreign investor before InvestChile in Spanish or English, duly certified or legalized and registered by a public notary in Chile, depending on the case.
4. Foreign exchange operation report or equivalent, issued by the Central Bank of Chile, indicating the transfer of the capital to the country.
5. Legalized copy of the deeds of establishment or increase in equity of the company receiving the investment and any other deeds necessary to accredit materialization of the investment and that the foreign investor has 10% of the control of or stake in it.
6. Legalized copy of the registration, in force, of the recipient company on the Business Register of the corresponding Real Estate Registration Office.
7. Any other information which InvestChile deems necessary.

IV. TRANSITORY PROVISIONS

1. Validity of foreign investment contracts signed under DL 600

Foreign investment contracts signed between the State of Chile and foreign investors under Decree Law (DL) 600 before 1 January 2016 will remain in force, along with all the rights and obligations envisaged in them. They will be administered by the Foreign Investment Promotion Agency as the successor and legal continuation of the Foreign Investment Committee.³

2. Right to sign tax invariability contracts

During a period of four years as from 1 January 2016, foreign investors may ask the Agency for authorization to sign tax invariability contracts according to the terms, time frames and conditions established in Articles 2, 7 and 11ter of DL 600, setting a total income tax rate of 44.5 %. Foreign investors using this benefit will also have access to the regime established in Law 20.848.⁴

³ Article 1.- 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, Economic 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.

⁴ Article 2.- Notwithstanding the terms of the second paragraph of Article 9 of Law N° 20.780, as from 1 January 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, Economic Development and

Reconstruction, which establishes the rewritten, coordinated and systematized text of Decree Law N° 600 of 1974. These applications must be presented to 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, Economic 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.