

# FOREIGN INVESTMENT STATUTE

## DECREE LAW 600



Foreign  
Investment  
Committee

Government of Chile

# FOREIGN INVESTMENT STATUTE DECREE LAW 600



FOREIGN INVESTMENT COMMITTEE  
EXECUTIVE VICE-PRESIDENCY

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**DECREE LAW 600****FOREIGN INVESTMENT STATUTE (\*)****Title I****FOREIGN INVESTMENT AND INVESTMENT CONTRACT**

**Article 1.** The regulations of this Statute shall apply both to foreign individuals and body corporates and to Chilean individuals resident and domiciled abroad that transfer foreign capital into Chile and enter into a foreign investment contract.

**Article 2.** The aforementioned capital may be brought into the country and shall be valued in the following forms:

- a) Freely convertible foreign currency, brought into the country through the sale at an entity authorized to operate within the "Mercado Cambiario Formal" (Formal Exchange Market), at the most favorable rate of exchange obtained by the foreign investors at any of the aforementioned entities;
- b) Tangible assets, in any form or condition, which shall be brought into the country under the general regulations applicable to imports not subject to exchange coverage. These assets shall be valued in accordance with the regular procedures applicable to imports;
- c) Technology in its various forms, provided it may be capitalized, which shall be appraised by the Foreign Investment Committee within a period of 120 days, taking into account its effective price in international markets; should the above period lapse without the valuation having been made, the value assigned shall be that estimated by the investor in an affidavit. Under no circumstances shall ownership, use or possession of technology forming part of a foreign investment contract be transferred separately from the entity to which it was originally contributed, nor shall it be subject to amortization or depreciation;

(\*) Restated, Coordinated and Standardized Text of Decree Law N° 600, of 1974, Foreign Investment Statute (published in the Official Gazette on December 16, 1993), established by the Decreto con Fuerza de Ley N° 523 of the Ministry of Economy, Development and Reconstruction dated September 3, 1993. The text includes the changes introduced by Law 20.026, published in the Official Gazette on June 16, 2005 -with changes by Law 20.097 of April 8, 2006- and changes introduced by Law 20.469 of October 21, 2010".

d) Credits associated with a foreign investment. The general rules, terms, interests and other aspects involved in the negotiation of foreign loans, as well as the surcharges on the total cost to be borne by the borrower for the use of foreign credits, including commissions, taxes and all expenses shall be those currently authorized or authorized in the future by the Central Bank of Chile;

e) Capitalization of foreign loans and debts in freely convertible currency, provided such contracts have been duly authorized, and

f) Capitalization of profits qualifying for remittance abroad.

**Article 3.** Foreign investment authorizations shall be recorded in a contract executed by means of a public deed and signed, on the one part, by the President of the Foreign Investment Committee on behalf of the Chilean State in those cases in which the investment require the agreement of that Committee or, in all other cases, by the Executive Vice-President and, on the other part, by the persons contributing the foreign capital, hereinafter called "foreign investors" for all effects of this Decree Law.

The contracts shall state the term within which the foreign investor must bring in the capital. This term shall not exceed 8 years for mining investments and 3 years for all others. The Foreign Investment Committee, however, by unanimous agreement of its members, may extend this limit up to a maximum of twelve years in the case of mining investments, when previous exploration is required, depending on their nature and estimated duration of those explorations; in the case of investments in industrial and non-mining extractive projects for amounts of no less than US\$ 50,000,000 -United States dollars or its equivalent in other foreign currencies- the Committee may extend the term up to eight years when the nature of the project so requires.

## Title II

### RIGHTS AND RESPONSIBILITIES OF FOREIGN INVESTORS

**Article 4.** Foreign investors shall have the right to transfer their capital and the net profits generated by that capital to other countries.

Capital remittances may be carried out only after one year has passed since the date such capital has been brought in. Capital increases financed by profits that could have been remitted abroad may be remitted at any time after fulfilling the relevant tax obligations.

Profit remittances may be carried out at any time.

The conditions applicable to remittances of capital and net profits abroad shall not be less favorable than those applicable to the payment of imports in general.

Transfers of capital and net profits abroad shall be made at the most favorable exchange rate obtained from any entity authorized to transact within the Formal Exchange Market.

Access to the Formal Exchange Market, for remitting capital or profits abroad, requires a prior certificate of the Executive Vice-President of the Foreign Investment Committee, stating the amount to be remitted. Such certificate shall be granted or refused for an expressed cause, within ten days from the date the relevant application is filed.

**Article 5.** The foreign currency required to remit the capital or part thereof may only be purchased with the proceeds from the sale of the shares or rights representing the foreign investment, or from the sale or total or partial liquidation of the companies bought or created with such investment.

**Article 6.** The net proceeds of the sales or liquidation referred to in the previous article shall be exempt from any levy, tax or charge, up to the sum of the materialized investment. Any excess thereof shall be subject to the general rules of the tax legislation.

**Article 7.** Holders of foreign investments made under the terms of this Decree Law are entitled to include in the respective contracts a clause to the effect that, for a ten year period from the initiation of the company's operations, they shall be subject to an effective overall tax rate of 42% on taxable income, in relation to those taxes established in the Income Tax Law in force at the time the contract is executed. The tax referred to in article 64 bis of the Income Tax Law will not be considered for the determination of the effective overall tax rate on taxable income. Even if the foreign investor has opted to request this invariability regime, he may waive this right, only once, and be subject to the application of common tax legislation, in which case he shall remain subject to the general taxation scheme with the same rights, options and obligations as national investors, consequently forfeiting the contractual invariability.

The effective overall tax rate referred to in the previous paragraph shall be calculated by applying to the net taxable income of the First Category tax, determined in accordance with the provisions of the Income Tax regulation, the rate corresponding to the First Category tax as is set forth in the that law. Any rate difference necessary to complete the effective overall tax burden guaranteed in said paragraph shall be applied to the corresponding taxable basis, in accordance with the provisions of the Income Tax Law, plus an amount equivalent to the First Category tax applied to the taxable income.

The tax established in the third paragraph of article 21 of the Income Tax Law -which under paragraph one of this article requires permanent establishments and companies receiving foreign investments to pay an effective 42% rate- shall be applied, in the case of stock companies and joint-stock companies, to the corresponding taxable basis, pro rata the share the investors subject to this regime may hold in the profits of the company. Any excess tax shall be exclusively borne by these shareholders and be shall be withheld and annually paid by the corresponding company.

For the purposes of this law, initiation of operations shall mean the initiation of operations related to the project being financed by the foreign investment, once income is derived from activities within the scope of such project, in the event that the activity carried out is a new project or, if the investments are in ongoing activities, the calendar month following the transfer into the country of any part of the investment.

**Article 8.** Foreign investments and companies participating therein shall be subject to the general indirect taxation regime and to the customs regulations applicable to national investments.

Notwithstanding the above paragraph, holders of foreign investment transferred into the country under the terms of this Decree-Law shall be entitled to include a clause in their contracts stating that, for the term authorized to carry out the stipulated investment, the tax regime on sales and services and customs duties in force at the time of signing the contract, applicable to the import of machinery and equipment not manufactures in the country included in the list referred to in paragraph 10 of letter B, Article 12, of Decree Law N°825 of 1974, will remain invariable. The same invariability shall apply to the companies receiving foreign investments, in which foreign investors participate, for the amount associated to such investment.

**Article 9.** Foreign investment and companies participating therein shall also be subject to the common legislation applicable to domestic investment, and shall not be discriminated against, either directly or indirectly, except as provided in article 11.

Legal or regulatory provisions affecting specific productive activities shall be deemed discriminatory if they become applicable to the whole or the major part of said activities in the country, excluding foreign investment. Likewise, legal or regulatory provisions which create special regimes for certain sectors of the economy or geographical areas of the country shall be deemed discriminatory if foreign investment is refused access thereto, despite their complying with the same conditions and requirements required for domestic investors.

For the purposes of this article, a specific productive activity shall be that performed by companies which fall within the same definitions of internationally accepted classifications and produce goods located in the same tariff classification in accordance with the Chilean Tariff Schedule; the same tariff bracket shall be understood to be one in which goods do not differ by more than one unit in the last digit of the tariff classification.

**Article 10.** In the event that regulations are enacted and the holders of foreign investment or companies participating therein deem that they are discriminatory, they shall be entitled to request the removal of such discrimination, provided that the request is made before the lapse of one year from the date of enactment of such regulations. The Foreign Investment Committee shall rule on the petition within a term not exceeding 60 days from the date on which the application is filed, and either refuse it or take the appropriate the adequate administrative measures to remove the discrimination or require that the proper authorities to do so, in the event that such measures are beyond the scope of the authority of the Committee.

In the absence of a timely ruling from the Committee, or in case of an adverse ruling, or if it is not possible to remove the discrimination through administrative measures, the foreign investors or the companies in which they participate may have recourse to the courts of justice in order to obtain a ruling as to whether or not discrimination exists and, if so, that the general rule of law must be applied.

**Article 11.** Notwithstanding article 9 above, regulations, explicitly explaining the reason for their issuing, may be issued limiting access to internal credit by foreign investments covered by this Decree-Law.

**Article 11 bis.** In the case of investments of amounts of no less than US\$ 50,000,000 -United States dollars or its equivalent in other foreign currencies- the purpose of which is the development of industrial or extractive projects, including mining projects, transferred into the country pursuant to article 2, the following terms and rights may be granted:

1. The ten-year period referred to in article 7 may be extended in such terms as may be compatible with the estimated duration of the project, but in no case shall it exceed a total of 20 years.
2. Stipulations may be included in the respective contracts establishing the invariability for the respective investor, as from the date of execution of such contracts and for the effective period established in the first paragraph of article 7 or to N° 1 of this article, of the legal provisions and of the resolutions or circulars which the Internal Revenue Service may have issued, in force at the date of signature of the respective

contract, with respect to the asset depreciation regimes, carrying forward of losses and startup and organization expenses. Similarly, the resolution of the Internal Revenue Service authorizing a foreign investor or a company receiving the investment to maintain its accounting in foreign currency may also be included in the contract.

The rights granted in accordance with the preceding paragraph may be waived only once, separately and indistinctively, in which case an investor or company shall be subject to the common regime applicable to the waived right, under the terms set forth in the final part of the first paragraph of article 7.

In any event, the waiver referred to in article 7 above shall imply the waiver of the rights set out in this number, save for that related to the accounting in foreign currency, for which an express waiver shall be necessary.

In the event that there is more than one foreign investor party to such investment contract having claimed the tax invariability benefit set out in article 7 referred to above, a waiver by any one of them shall be understood as a waiver to the rights granted by such article both by the waiving party and the other foreign investors or receiving company, save for the right to keep accounting records in foreign currency, which shall require an express waiver. However, there shall be no waiver, as set out above, to the rights granted by this paragraph should the foreign investors have agreed, in the relevant foreign investment contract, that such a waiver shall only become effective if the foreign investors waiving their right to tax invariability hold a share exceeding a certain percentage in the total investment subject to the contract which has been effectively materialized at the time of the waiver.

3. In the case of projects which require the export of all or part of the goods produced, the Foreign Investment Committee may grant the respective investors or the companies receiving the investment, for terms not exceeding those granted under the first paragraph of article 7, or paragraph 1 of this article, the following rights:

- a) To stipulate the invariability of the legal provisions and regulations in force at the date of execution of the corresponding contract, as regards the right to export freely.

b) To authorize special regimes with respect to the repatriation and liquidation of part or the total value of such exports and of indemnities resulting from insurance or other sources. In accordance with such regimes, the maintenance of the corresponding foreign currency abroad may be allowed in order to pay obligations authorized by the Central Bank of Chile, to make disbursements accepted as expenses of the project for tax purposes pursuant to the provisions of the Income Tax Law, or effect remittance abroad of capital or net profits arising there from.

In order to authorize this special regime, the Foreign Investment Committee must previously have received a favorable report issued by the Council of the Central Bank of Chile, which shall set forth the specific operational guidelines for such special regime, as well as the regime, manner and conditions under which the access to foreign currency market shall be granted in order to remit capital and profits abroad. Furthermore, the Central Bank of Chile shall supervise the compliance with the stipulations of the contract relating to these matters.

The annual taxable profits which, according to the respective balance sheets, may be generated by the permanent establishment of foreign investors or the respective investment receiving companies, that for any reason maintain foreign currency abroad in accordance with this letter (b), shall be considered for tax purposes as having been remitted, distributed or withdrawn, as the case may be, on December 31 of each year, in that part which relates to the foreign currency maintained abroad by investors. Income or other benefits produced by the foreign currency which, according to this provision, may be maintained abroad shall be considered, for all legal purposes as income of Chilean source.

These rights may be exercised only when the investment has reached the amount indicated in the first paragraph.

**Article 11 ter.** In case of investments of amounts of no less than US\$ 50,000,000 United States dollars or its equivalent in other foreign currencies, transferred into the country pursuant to article 2, and the purpose of which is the development of mining projects, the following rights may be granted to the foreign investors in respect of those projects, for a term of fifteen years:

1. Invariability of the legal provisions applied at the date of signature of the respective contract regarding the specific tax on mining activities defined in articles 64 bis and 64 ter of the Income Tax Law.

Accordingly, they will not be affected by an increase in the rate, the extension of the calculation base or any other amendment that may be introduced, that makes the specific tax on mining established by articles 64 bis and 64 ter of the Income Tax Law more onerous to the investor.

2. They will not be affected by any new tribute, including royalties, canons or similar tax burden, specifically levied on mining activities, established after the signature of the respective foreign investment contract, that is based on or considers when calculating its base or amount, the incomes on mining activities or the investments, assets or rights used in mining activities.

3. They will not be affected by modifications introduced to the amount or form of calculation of the development and exploration licenses referred to in Title X of Law 18,248, the Mining Code, in force at the time of the signature of the respective contract and which make those licenses more onerous.

4. The term of fifteen years will be counted in calendar years, starting from the year in which the respective company commences operation. The above mentioned rights will consider as the reference point for the invariability granted the rate, tax base and the other elements of the tax in force at the date of the respective foreign investment contract.

The rights established in this article are incompatible with those rights granted in articles 7 or 11 bis of this Decree Law. Regarding the latter, only in regards to the rights which may be granted under paragraphs 1 or 2, excluding the right to maintain accounting in foreign currency. Consequently, the foreign investor that requests the granting of the rights referred to in those articles will not be able to request the granting of the benefits mentioned above.

In order to request the right set out in this article, the foreign investors must commit the respective companies to submit their annual financial statements to external audit and to submit before the Securities and Insurance Supervisor their individual and consolidated financial statements in a quarterly and annual basis, as well as an annual report containing information on the property of the entity. The Securities and Insurance Supervisor, prior consultation with the Foreign Investment Committee, by means of a resolution published in the Official Gazette, will establish the terms and other relevant regulations for the implementation of this rule. If a company does not provide the abovementioned information within the terms set out by the Securities and Insurance Supervisor, all the rights described in this article will automatically be voided for the company and for all the foreign investors that participate therein.

In the respective foreign investment application, the mining project must be described in detail. For this purpose, the description contained in the environmental assessment study referred to in Law N° 19.300, Law of the Environment, may be used. The company that will develop the mining project, if it has already been constituted, must be a party to the application.

The company will maintain the right to the tax invariability established in the respective contract only if at least one of its owners is subject to this article and complies strictly and permanently with the requirements set out for its maintenance. Nevertheless, the rights of the company and the investor will expire if any of the owners of the company that develops a mining project enjoys any of the rights referred to in article 7 or 11bis of this decree law.

However, the rights mentioned in this article may not be granted to companies or foreign investors that request those rights for the development of mining projects, when the company itself or through its owners, has been subject of any of the rights to tax invariability referred to in this decree law. Notwithstanding, a foreign investor may request the rights set out in this article in order to acquire the rights, or shares in companies that enjoy those rights. In such a case, those rights will be granted to the acquiring investor for the remaining term of the tax invariability term of the project being developed by the initial investor.

### Title III

#### FOREIGN INVESTMENT COMMITTEE

**Article 12.** The Foreign Investment Committee is a decentralized public legal entity, having its own assets, domiciled in Santiago. It shall report to the President of the Republic through the Ministry of Economy, Development and Reconstruction. The Committee shall be the only entity authorized to accept on behalf of the Chilean State the inflow of foreign capital from abroad under this Decree-Law and to stipulate the terms and conditions of the respective contracts.

The Committee shall be represented by its President in those cases in which the investments require the Committee's approval, as set forth in Article 16. In all other cases, it shall be represented by its Executive Vice-President.

The assets of the Foreign Investment Committee shall include:

- a) Resources annually allocated under the Budget Law for the public sector or other general or special laws,
- b) Real or personal property, whether corporeal or incorporeal, it may acquire by any way, and
- c) Income received by any way.

**Article 13.** The Foreign Investment Committee shall be formed by the following members:

- a) The Minister of Economy, Development and Reconstruction,
- b) The Minister of Finance,
- c) The Minister of Foreign Affairs,
- d) The relevant Minister, in case of investment applications that refer to activities related to Ministries not represented in this Committee,

e) The Minister of Planning and Cooperation, and

f) The President of the Central Bank of Chile.

The Ministers may only be represented by their legal alternates.

**Article 14.** The Committee's meetings shall be chaired by the Minister of Economy, Development and Reconstruction or, in his absence, by the Minister of Finance, and provided at least three members attend. Decisions shall be adopted by the absolute majority of the members of the Committee and, in case of a tie, the President shall have the tie-breaking vote. Decisions made shall be recorded in the minutes. Alternates may attend the Committee's meetings regularly, with the right to speak, but may cast their vote only in the absence of the member whom they subrogate.

**Article 15.** To exercise its authorities and fulfill its obligations, the Foreign Investment Committee shall have an Executive Vice-Presidency, which shall be empowered to:

a) Receive, study and report the foreign investment applications and other petitions submitted to the Committee;

b) Act as the administrative body of the Committee, preparing such background documents and studies as may be required;

c) Inform of, register, keep statistics of and coordinate foreign investments;

d) Centralize the information and results of the supervision which public institutions must exercise with respect to the obligations assumed by foreign investors, or the companies in which they participate, and report the crimes or transgressions that have come to its attention to the appropriate authorities and public institutions;

e) Carry out and expedite the procedures required by the several public institutions that must report or grant their authorization prior to the approval of the applications submitted to the Committee and for the prompt execution of the related contracts and resolutions, and

f) Investigate in Chile or abroad regarding the qualification and reliability of the applicants or interested parties.

**Article 15 bis.** The Executive Vice-President of the Foreign Investment Committee shall be charged with the management of the Executive Vice-Presidency, who shall be the Head thereof, and serve as its legal representative, both in and out of court. The Executive Vice-President may be removed at any time by the President of the Republic and shall be appointed by the President of the Republic upon recommendation of the Foreign Investment Committee. The Executive Vice-President shall discharge the following duties:

a) To observe and enforce the decisions and instructions of the Foreign Investment Committee and carry out such acts and duties as the Committee, in the exercise of its powers, may delegate upon him;

b) To submit for the consideration of the Foreign Investment Committee its annual plan, as well as any other matter that requires the analysis or decision of the Committee;

c) To prepare a draft annual budget for submission to the Foreign Investment Committee, implement the approved budget and suggest such amendments as may be required for its implementations;

d) To attend, with the right to speak, the meetings of the Foreign Investment Committee and take the measures and steps required for its operation, acting as legal witness to its acts and keeping its minutes;

e) To appoint and hire personnel and assign their duties, and to inform the Foreign Investment Committee of such matters;

f) To acquire, dispose of and manage all kinds of property and execute and enter into all kinds of acts or contracts leading, directly or indirectly, to the fulfillment of its purposes and the discharge of his duties, being always subject to the decisions and instructions of the Foreign Investment Committee and to the provisions of this Decree-Law;

g) To delegate part of his duties, powers and authorities to staff members of the Executive Vice- Presidency; and

h) Generally, to issue decisions and instructions as well as to exercise such other powers as may be required for the proper operation of the Executive Vice-Presidency.

In the absence of the Executive Vice-President, the above duties shall be discharged by the General Counsel, who shall act as his alternate.

The Executive Vice-President may request from all agencies or companies of the public and private sectors such reports and background information as he may require to discharge the Committee's duties.

**Article 16.** The following foreign investments shall require the approval of the Foreign Investment Committee:

- a) Those with a total value exceeding US\$ 5.000.000 (five million dollars of the United States) or its equivalent in other currencies;
- b) Those relating to sectors or activities usually performed by the State and those investments made in public utility companies;
- c) Those made in mass media companies, and
- d) Those made by a foreign State or a foreign public entity.

**Article 17.** The foreign investments not covered by the foregoing article shall be authorized by the Executive Vice-President of the Foreign Investment Committee, upon the approval of its President, without requiring the agreement of the Committee. Nonetheless, the Committee shall be informed of the investments approved at the meeting held immediately after such approval.

Should the President of the Committee deem it necessary, he may defer granting his approval and submit these investments to the Committee's approval.

## GENERAL PROVISIONS (\*)

**Article 18.** The references to the Decreto con Fuerza de Ley N' 258 of 1960, or to its provisions, contained in the laws currently in force, shall be understood as a reference to this Statute or its applicable provisions.

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\* Articles 19, 20 and 21 are excluded, since they deal with the staff of the Foreign Investment Committee. Additionally, Transitory articles 1 and 2 are not included, as their provisions are no longer applicable.