

FOREIGN INVESTMENT STATUTE  
DECREE LAW 600  
*FOREIGN INVESTMENT COMMITTEE*  
REPUBLIC OF CHILE  
**DECREE LAW 600**

**FOREIGN INVESTMENT STATUTE**

*Restated, Coordinated and Standardized Text of Decree-law N° 600, as of 1974 of the Foreign Investment Statute (published in the Official Gazette en December 16, 1993), established by the Decree having force of law N° 523 of the Ministry of Economy, Development and Reconstruction as of September 3, 1993.*

**Title 1**

**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 and shall be valued in the following forms:

- a) Freely convertible foreign currency, brought into the country through the sale at an entity being authorized to transact within the "Mercado Cambiario Formal" (Formal Exchange Market), which transaction shall be made at the most favorable rate of exchange prevailing in the banking market;
- 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 can qualify as capital, 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;
- d) Credits associated to 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 paid by the borrower for the use of foreign credits, including commissions, taxes and sundry expenses, shall be those currently authorized or to be authorized 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 evidenced in a contract executed by means of a public deed and subscribes, on the one part, by the President of the Foreign Investment Committee on behalf of the Chilean State should the investment require the agreement of said Committee or, should this not be applicable, by the Executive vice-president and, on the other

part, by the persons contributing the foreign capital, hereinafter called "foreign investors" to all effects of this Decree Law.

The contracts shall state the term within which the foreign investor may 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 twelve years in the case of mining investments, when previous exploration is required, depending on their nature and estimated duration thereof; in the case of investments in industrial and non-mining extractive projects for amounts not 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 it.

## **Title II RIGHTS AND RESPONSIBILITIES OF FOREIGN INVESTORS**

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

Capital remittances may be effected only a year after the date such capital has been brought in. Capital increases paid out of 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 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.

For accessing the Formal Exchange Market or remitting capital or profits abroad the Executive vice-president of the Foreign Investment Committee shall issue a certificate stating the amount to be remitted. Such certificate shall be granted or reasonably refused within ten days as 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 out of the proceeds of the sale of the shares or rights representing the foreign investment, or 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 foregoing article shall be exempt from any tax, levy or charge, up to the sum of the materialized investment. Any excess thereof shall be subject to the general rules of tax law.

**Article 7.** holders of foreign investments made under the terms of this Decree-Law are entitled to include in the contracts entered into a clause to the effect that, for a 1 (year period from the commencement of the company's operations, they shall be subject to an effective fixed overall tax rate of 42% on taxable income, including taxes applicable under the Income Tax Law applicable at the time the contract is executed. Even if the foreign investor has decided to claim for the invariability benefit, he may, once only, waive this right and ask for the application

of ordinary tax laws, in which case he shall be under the general taxation scheme with the same rights, options and obligations as national investors consequently, forfeiting the invariability agreed upon.

The effective overall tax burden referred to in the foregoing paragraph shall be computed by applying to the net taxable income of the First Category tax, determined in accordance with the provisions of the Income Tax Law, such rate corresponding to the First Category as is set forth in the said law. Any rate differential 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. To such basis it shall be added an amount equivalent to the First Category tax having been applied to taxable income.

The tax established in the third paragraph of article 21 of the Income Tax Law which by virtue of 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 corporations and joint-stock companies, to the corresponding taxable basis, pro rata the share the investors subject to this system may hold in the profits of the company. Any excess tax shall be exclusively borne by these shareholders and be withheld and annually paid by the corresponding company.

To the effects herein, "commencement of operations" shall mean the commencement 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, should it deal with investments in ongoing activities, the calendar month next succeeding the bringing 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 scheme and to customs regulations applicable to national investments.

Notwithstanding the above subparagraph, holders of foreign investment brought 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 effect the investment agreed upon, there shall be no changes in the taxes 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 number 10, letter B, Article 12, of Decree-Law N' 825 of 1974. The same invariability shall apply to the companies receiving foreign investments, in which foreign investors participate, for the corresponding to such investment.'

**Article 9.** Similarly foreign investment and companies participating therein shall also be subject to the general laws applicable to domestic investment, and shall not be discriminated against, either directly or indirectly, save for the provisions of article 11.

Legal or regulatory provisions affecting specific productive activities shall be deemed discriminatory should they become applicable to the whole or the major part of said activities in the country, to the exclusion of foreign investment. Likewise, legal or regulatory provisions which create special schemes 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 demanded from national 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 bracket in accordance with the Chilean Customs Tariff

Scheme, the same tariff bracket being understood to be one in which goods do not differ by more than one unit in the last digit of the tariff applied to them.

**Article 10.** Should juridical rules deemed to be discriminatory against holders of foreign investment or companies participating therein be issued, they shall be entitled to request to removal of such discrimination, provided the relevant request is made before the lapse of one year from the date of issue of such regulations. The Foreign Investment Committee shall rule on the petition within a term not exceeding 60 days, running from the date on which the application is filed, and either refuse it or take the appropriate administrative steps to remove the discrimination or require the proper authorities to do so in the event that such steps are beyond the scope of competence of the Committee.

In the absence of a timely ruling from the Committee, or if an adverse ruling is passed, or should it not be possible to remove the discrimination administratively, the foreign investors or the companies in which they participate may resort to the ordinary 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, reasonable regulations may be issued limiting access to internal credit by foreign investments covered by this Decree-Law.

**Article 11 bis.** In the case of investments for amounts not under 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 - which are brought into the country pursuant to article 2 - the following terms and rights may be applied:

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 under no condition shall it exceed 20 years.

2. Stipulations may be included in the respective contracts receiving contributions, as from the date of execution of such contracts and for the effective period established in the first paragraph of article 7 or to NI 1 of this article, of the legal provisions and of the resolutions or circular letters which the Internal Revenue Service may have issued, in force at the date of execution of the contract, with respect to asset depreciation regimes, carrying forward of losses and startup and organization expenses. Likewise, the resolution of the Internal Revenue Service authorizing a foreign investor or a company receiving the contribution to keep 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, in which case an investor or company shall abide by 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 mentioned 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 a foreign investor party to such investment contract having claimed the tax invariability benefit prescribed by 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 be expressly waived. At any rate, there shall be no waiver to the rights granted by this paragraph should foreign investors have agreed, as evidenced in the relevant 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 governed by the contract which has effectively materialized at the time of the waiver.

3. In the case of projects which consider the export of all or part of the goods produced, the Foreign Investment Committee may grant the respective investors or the companies receiving contributions, for terms not exceeding those granted under the first paragraph of article 7, or NI 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 return 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 therefrom.

In order to authorize this special regime, the Foreign Investment Committee must previously have a favorable report of the Board of the Central Bank of Chile, which shall set forth the specific manner of operation 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 corresponding 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 st of each year, in the part corresponding 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 Chilean-source income.

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

### **Title III FOREIGN INVESTMENT COMMITTEE**

**Article 12.** The Foreign Investment Committee is a decentralized public law legal person 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 under this Decree-Law and to stipulate the terms and conditions of the corresponding 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. Should this not be the case, it shall be represented by its Executive Vice-President.

The net worth of the Foreign Investment Committee shall comprise:

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 filed ,with 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 replaced 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, provided at least three members attend. Decisions shall be adopted by the simple majority of the members of the Committee and, in case of a tie, the President shall have decisive 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 on 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 of foreign investors, or the companies in which they participate, and inform of the irregularities 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 is authorization prior to the approval of the applications submitted to the Committee and for the prompt execution of the corresponding contracts and resolutions, and
- f) Investigate in Chile or abroad about the suitability and the petitioners' seriousness 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, act as head thereof, and serve as its legal agent, both in and out of court. Such office shall be filled 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 agreements and orders by the Foreign Investment Committee and carry out such acts and duties as this Committee, in the exercise of its powers, may delegate upon *him*;
- b) To submit for the consideration of the Foreign Investment Committee the annual agenda, as well as any other matter calling for the analysis or decision of the Committee;

- c) To prepare a draft annual budget for submission to the Foreign Investment Committee, implement it upon approval 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, serving as Commissioner for Oaths and Recording Secretary;
- e) To appoint and hire personnel and assign them 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 orders of the Foreign Investment Committee and to the provisions of this Decree-Law;
- g) To delegate part of his duties, powers and authorities to officers working at the Executive vice-presidency; and
- b) Generally, to make decisions and give 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 departments or companies of the public and private sectors such reports and background information as he may need 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 US dollars) or its equivalent in other currencies;
- b) Those relating to sectors or activities usually performed by the State and those carried out by public utility companies;
- c) Those made in mass media, and
- d) Those made by a foreign State or a foreign body corporate of public law.

**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 the President, without requiring the agreement of the Committee. At any rate, 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 decision.

#### **GENERAL PROVISIONS**

**Article 18.** The references to Decree having force of law 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.

*Articles 19, 20 and 21, are excluded since they deal with the staff of the Foreign Investment Committee.*

#### **TRANSITORY PROVISIONS**

**Article 1 transitory.** Capital coming from abroad and remaining in the country shall continue to be governed by the laws in force at the time the contribution is authorized or to such laws as they currently abide by.

Notwithstanding the above, foreign investors having claimed the benefits of Decree-Law 600 as of 1974, in force as at the date of publication of this decree in the Official Gazette, may choose to subject themselves to the new regulations, expressly waiving therefor the application of the legal and contractual provisions they were subject to within a one year term as from the publication of this decree-law in the Official Gazette.

Holders of foreign capital referred to in transitory article 2 of Decree-Law 600 as of 1974, in force as at the date of publication of such decree in the Official Gazette, who have not entered into a foreign investment contract may, upon fulfillment of the requirements set forth in the said transitory article 2, choose to claim the benefits contained in the provisions of Decree Law 600 in force at the date of publication of such decree in the Official Gazette or the benefits provided for in the new regulations.

**Article 2 transitory.** If determined that agreements have been previously made that bind the State, the Foreign Investment Committee may, by unanimous consent, enter into foreign investment contracts under terms and conditions different from those resulting from the application of this decree-law within 120 days as from the publication of this decree-law. The concerned parties which, in their opinion, are entitled to take advantage of this provision, shall file the relevant written application to the Executive vice-presidency of the Committee within 60 days from the publication of this decree.