

FOREIGN INVESTMENT STATUTE

DECREE LAW N° 600

FOREIGN CAPITAL INVESTMENT FUND

LAW N° 18,657

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DECREE LAW N° 600 (*)
FOREIGN INVESTMENT STATUTE

TITLE I

FOREIGN INVESTMENT AND THE INVESTMENT CONTRACT

Article 1.- Foreign individuals and juridical entities, and Chilean individuals and juridical entities with residence and domicile abroad, who transfer foreign capital to Chile and enter into a foreign investment contract, will be bound by the regulations of this Statute.

Article 2.- The aforementioned capitals can be brought into the country and must be valued in the following ways:

- a) Freely convertible foreign currency, cleared through the Central Bank of Chile or any other authorized entity, at the highest rate of exchange prevailing in the banking market;
- b) Tangible assets, in any form or condition, which will be brought into the country under the general regulations applicable to imports not subject to exchange coverage. These assets will be valued in accordance with the regular procedures applicable to imports.

(*) The present text, only for publishing purposes, contains the text of Decree Law N° 600 of 1974, including the amendments introduced by Laws N° 18,065, N° 18,474 and N° 18,682, published in the Official Gazette of December 10, 1981, November 30, 1985 and December 31, 1987, respectively.

c) Technology in its various forms, provided it can qualify as capital, which will be appraised by the Foreign Investment Committee within a period of 120 days, taking into account its real price in international markets; should this deadline not be met, the value assigned will be that estimated by the investor through an affidavit.

Under no circumstances shall ownership, use or possession of technology forming part of a foreign investment be transferred separately from the entity to which it was originally contributed, nor will it be subject to amortization or depreciation;

d) Credits associated to foreign investment. General rules, repayment periods, rates of interest and other aspects involved in the negotiation of foreign loans, as well as the surcharges in the total cost for the use of foreign credits, chargeable to the borrower, including commissions, taxes and sundry expenses, will be those 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.- The foreign investment authorizations will be formalized in a contract evidenced by public deed executed by the President of the Foreign Investment Committee on behalf of the Chilean State, should the investment require the agreement of said Committee or, otherwise, by the Executive Secretary; and, on the other part, by the persons contributing the foreign capital investment, hereinafter called "foreign investors" for all purposes of this Decree Law.

The contracts will state the period 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 twelve years in the case of mining investments, when previous explorations are required, depending upon their nature and estimated duration, as well as in the case of investments in industrial or non-mining extraction projects for amounts not lower than US\$ 50,000,000, currency of the United States of America, or its equivalent in other foreign currencies, where the term may be extended for up to 8 years when the nature of the project so requires it.

TITLE II

RIGHTS AND RESPONSIBILITIES OF FOREIGN INVESTMENT

Article 4.- Foreign investors may transfer abroad their capital and the net profits arising therefrom. There will be no time limit for the exercise of this right. The capital, however, may not be remitted before 3 years have elapsed, counted from the date on which it was brought in.

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

The exchange rate applicable to the transfer of capital and profits abroad will be the highest in the banking market.

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

Article 6.- The net proceeds of the sales of liquidations referred to in the preceding article will be free from any tax, impost or charge up to the amount authorized by the Committee for the investment. Any excess thereof will 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 their respective contracts a clause to the effect that, for a period of ten years as from the start-up of the company's operations, they will be subject to a fixed over-all tax rate of 49.5% or to the rates set forth in article 7 bis, as a total income tax burden, considering, for these purposes, the taxes applicable under the Income Tax Law in force at the date the contract is executed. Even if the foreign investor has opted for this fixed rate, he may, once only, waive this right and ask for the application of ordinary tax laws, in which case he will be subject to the general taxation scheme with the same rights, options and obligations pertaining to national investors and, consequently, forfeiting assessment at the agreed fixed rate.

The total tax burden referred to in the preceding paragraph will be calculated by applying to the net taxable income of the First Category tax, determined in accordance with the provisions of the Income Tax Law, the rate corresponding to such Category as set forth by said law. The rate differential necessary to complete the total tax burden guaranteed in said paragraph shall be applied on the corresponding taxable basis, in accordance with the provisions of the Income Tax Law, on the opportunity provided by such law, without the right to deduct credit.

The tax set forth in the third paragraph of article 21 of the Income Tax Law, which by virtue of the first paragraph of this article affects permanent establishments and companies receiving foreign investment with a 49.5% rate, shall be applied, in the case of corporations and joint-stock companies, on the corresponding taxable basis and in proportion to the participation that investors subject to this system may have in the profits of the company. The higher tax will be exclusively beared by these shareholders, and shall be withheld and annually paid by the corresponding company.

Article 7 bis (*).- Instead of the 49.5% indicated in the preceding article, the holder of the investment will be entitled that in his respective contract it is established that a 40 percent rate will be maintained fixed in the terms of the first paragraph of that article, which will be calculated as provided in the second paragraph. In this case, the investor will also be subject, on his remittances or drawings, to the variable supplementary rate which may result from applying the following procedure:

a) The movable average of the amounts remitted, drawn or distributed to the investor subject to this tax during the last 60 months will be determined, including the amount which must be subject to the tax and considering the fractions of days which must be computed as a whole month. The amounts remitted, drawn or distributed during the 60 months will be restated by values equivalent to the monthly tax unit in force in each period. When the investment has less than 60 months, the months existing on the date of the remittance, drawing or distribution which must be taxed, should be considered;

(*) Letter B), article 10 of Law N° 18,682 published in the Official Gazette of December 31, 1987, establishes that these regulations are effective beginning January 1st., 1988, and that they will be applicable from such date on, and therefore will affect disbursements related to foreign investments pursuant to such contracts.

b) The average movable equity pertaining to the investor subject to the tax must be calculated, which will be one twelfth of the equivalent part of the net initial equity of the last five tax periods, or those applicable as per the date of the investment, during which the remittances, drawings or distributions indicated in the preceding letter were made. The net initial equity of the last period will be restated up to the date on which the pertinent amount is to be taxed, including contributions, drawings or equity reductions during the period. The equity pertaining to the investment will be restated in values equivalent to the variation of the respective monthly tax unit. To determine the initial net equity referred to in this letter, the provisions of number 1 of article 41 of the Income Tax Law will apply, even as regards taxpayers authorized to keep their accounting records in foreign currency;

c) The tax applicable to the amount averaged as per letter a), will be calculated by applying a tax schedule, the brackets of which will be formed based on the average equity calculated in accordance with the procedure of letter b). The averaged amount not exceeding 40 percent of the averaged equity will not be subject to tax and on the portion exceeding 40 percent of the average equity, a 30 percent will be calculated; and

d) From the relation between the tax calculated in accordance to the tax schedule and the respective average amount, the average rate will be determined, which will be the rate of the supplementary rate to be applied on the amount to be remitted, drawn or distributed.

In the case of the amounts referred to in articles 58, 60 first paragraph and 61 of the Income Tax Law, the persons who make the remittance, must pay this tax including the corresponding supplementary rate, in the same manner and term applicable to withholdings and provisional payments provided for in number 4 of article 74 and in letter g) of article 81 of said law and on the same taxable income, from which the supplementary rate may not be deducted. Notwithstanding the preceding, taxpayers, except those indicated in number 2 of article 58 of the Income Tax Law, when handing in their yearly tax return, as provided by article 65, must apply the same rates to these taxes as they were subject for each drawing or remittance abroad in the liquidation pertaining to the commercial period, as provided in the second paragraph of article 62 of the mentioned law.

The rates established in the first paragraph of this article as well as the procedure to determine the supplementary rate, will remain invariable for a term of ten years, as of the start-up of the respective enterprise or for a term

of 20 years, in the cases provided for in number 1 of article 11 bis.

The provisions of the preceding paragraphs are notwithstanding the right of the investor to waive, once, the invariability he may have chosen, as provided in the final part of the first paragraph of article 7.

Investors in enterprises not taxed on the basis of full accounting or taxed on assumed income, are not entitled to exercise the option referred to in this article as regards the respective investment.

The provisions of article 11 bis of this Decree Law will be fully applicable to the investors who submit themselves to the invariability established in this article.

Article 8.- Foreign investment and enterprises of which it forms part will be subject to the general indirect taxation and customs regulations applicable to national investment.

Notwithstanding the subsection above, holders of foreign investment brought into the country under the terms of this Decree Law will be entitled to include a clause in their contracts stating that for the duration of the period authorized to effect the agreed upon investment, there will be no changes in the taxes on sales and services and customs duties in force at the time the contract is executed, applicable to the import of machinery and equipment not produced in the country and included in the list referred to in number 10, letter B) of article 12 of Decree Law N° 825 of 1974. The same invariability will apply to companies receiving foreign investment, in which foreign investors participate, for the amounts corresponding to said investment.

Article 9.- Similarly, foreign investment and enterprises in which it participates will also be subject to the general legislation applicable to domestic investment, and will not be discriminated against, either directly or indirectly, save for what is stated in article 11.

Legal or regulatory provisions affecting specific productive activity will be deemed discriminatory should they become applicable to the whole or to the major part of said activity in the country, with the exclusion of foreign investment. Likewise, legal or regulatory provisions which create special regulations for certain sectors of the economy or geographical areas of the country will be deemed discriminatory if foreign investment is refused

access thereto despite complying with the same conditions and requirements demanded from national investment.

For the purposes of this article, a specific productive activity will be that performed by enterprises which come under the same definitions within internationally accepted classifications and which 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 norms be issued, which holders of foreign investment or enterprises with foreign investment participation deem to be discriminatory, they will be entitled to request the removal of the discrimination within one year from the date of issue of such regulations. The Foreign Investment Committee will rule on the petition within 60 days, counted from the date on which the application is filed, either rejecting it or taking the appropriate administrative measures to remove the discrimination or requiring the proper authorities to do so in the event that such measures should go beyond the Committee's authority.

In the absence of a timely ruling from the Committee, or if an adverse ruling is passed, or if it should not be possible to remove the discrimination administratively, the foreign investors or the enterprises 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, justified 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, currency of the United States of America, or its equivalent in other foreign currencies, the purpose of which is the development of industrial or extractive projects, including mining projects, and which are brought into the country pursuant to article 2, the following terms and rights may be granted:

1.- The ten years period referred to in article 7 may be extended in terms compatible with the estimated duration of the project, but under no condition may it exceed 20 years.

2.- The respective contracts may include stipulations regarding the invariable maintenance of the legal provisions and of the resolutions or circular letters issued by the Internal Revenue Service in force at the date of the execution of the respective contract, with respect to asset depreciation regimes, carryforward of losses to future financial periods, and organization and start-up expenses, for the respective foreign investors or the companies receiving such contributions, as of the date such contracts were executed and while the term set forth in the first paragraph of article 7 or in number 1 of this article remains in force. Likewise, the resolution of the Internal Revenue Service authorizing the foreign investor or the company receiving the contribution to keep its accounting records in foreign currency, may also be included in the contract.

The rights granted in accordance with the preceding paragraph may be waived once, separately and indistinctly, in which case the foreign investor or the receiving company will be subject to the common system applicable with respect to the waived right, in the terms described in the final part of the first paragraph of article 7.

In any event, the waiver referred to in the abovementioned article 7, will imply the waiver of the rights referred to in this number, except the right to keep accounting records in foreign currency, for which and express waiver will be necessary.

Should the respective investment contract include more than one foreign investor subject to the tax invariability described in the abovementioned article 7, the waiver of any one of them to such invariability, will imply the waiver of the rights included in this number, with respect to the waiving party, as well as to the rest of the foreign investors or the receiving company, with the exception of the right to carry accounting records in foreign currency, which will require an express waiver. However, the rights set forth in this number will not be considered waived, in the terms described above, when the foreign investors have agreed, in the corresponding investment contract, that said waiver will only be effective when the foreign investor or foreign investors who waive their right to the tax invariability, hold an amount exceeding a determined percentage of the total investment covered by the contract, that has been actually materialized at the date of such waiver. (*)

(*) This clause was set in force as of December 31, 1987, date of publication of Law N° 18,682, according to letter B) of article 10 of the same law.

TITLE III

FOREIGN INVESTMENT COMMITTEE

Article 12.- The Foreign Investment Committee will be the only institution authorized, on behalf of the Chilean State, to accept the inflow of the foreign capital under this Decree Law and to stipulate the terms and conditions of the corresponding contracts.

The Committee will be represented by its Chairman in those cases in which the investments require Committee approval, as set forth in article 16; should this not be the case, it will be represented by its Executive Secretary.

Article 13.- The Foreign Investment Committee will be formed by the following members:

- a) Minister of Economy, Development and Reconstruction
- b) Minister of Finance
- c) Minister of Foreign Affairs
- d) Minister of the appropriate portfolio in the case of investment applications concerning Ministries not represented on this Committee, and
- e) The Director of the National Planning Office.

The Ministers may only be substituted by their legal deputies.

Article 14.- The Committee meetings will be chaired by the Minister of Economy, Development and Reconstruction or, in his absence, by the Minister of Finance, provided at least three of its members attend. Decisions will be adopted by a majority of the members of the Committee and in the event of a tie, the President will have the casting vote; decisions taken shall be recorded in the Minutes. Deputies may attend the Committee 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 authority and fulfill its obligations, the Foreign Investment Committee will have an Executive Secretariat, attached to the Central Bank of Chile, and will 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) Perform information, registration, statistical and coordination functions with respect to foreign investments;
- d) Centralize the information and the results of the supervision which public institutions must exercise with respect to the obligations of foreign investors, or the enterprises in which they participate, and report the irregularities or transgressions that have come to its attention to the appropriate authorities and public institutions, when so instructed by the Foreign Investment Committee;
- e) Carry out and expedite the procedures required by the different public institutions that must report or grant its prior authorization for the approval of the applications that the Committee must resolve and for the prompt execution of the corresponding contracts and resolutions, and
- f) Make enquiries in Chile and abroad regarding the qualification and reliability of the applicants or interested parties.

The Executive Secretariat may request from all the services and enterprises of the public and private sectors whatever reports and information it may require for the fulfillment of its purposes.

An Executive Secretary designated by the President of the Republic, will head the Executive Secretariat.

It will be the Executive Secretary's special duty to promote foreign investment in Chile, carry out the duties assigned to him by the Committee, perform the functions expressly delegated to him by the Committee and act as Secretary at the Committee meetings in which capacity he will bear witness to the motions.

Article 16.- The following foreign investments will 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 normally performed by the State and those carried out in public utility services.

c) Those made in communication media, and

d) Those made by a foreign State or a foreign juristic person of public law.

Article 17.- The foreign investments not covered by the preceding article will be authorized by the Executive Secretary of the Foreign Investment Committee, with the previous approval of the Chairman, without requiring the agreement of the Committee. In any event, he will report on the investments approved, at the following meeting. Should the Chairman of the Committee deem it necessary, he may defer granting his approval and submit these investments for the Committee's decision.

GENERAL PROVISION

Article 18.- The references to D.F.L. N° 258 of 1960 or to its provisions, contained in the laws currently in force, will be understood to be made to this Statute or its pertinent provisions.

FINAL NOTE:

Law N° 18,474, published in the Official Gazette of November 30, 1985, which amended the articles of Decree Law N° 600, of 1974, also contains the following article second.

"Article 2.- Amounts received by local investors who, duly authorized by the Central Bank of Chile, participate in the capital of foreign companies which, in turn, invest in Chile through a permanent establishment of those mentioned in article 58 N° 1 of the Income Tax Law and are subject to the provisions of article 11 bis of Decree Law N° 600 of 1974 and its amendments, shall be exempt from Category taxes and Surtax or Additional Tax of the

Income Tax Law, when said amounts correspond to profits of the permanent establishment for which taxes have already been paid in Chile. These amounts may be distributed or withdrawn at any time, even though the company may have non distributed or non withdrawn taxable profits".

LAW N° 18,657 (*)**FOREIGN CAPITAL INVESTMENT FUND****TITLE I****ON FOREIGN CAPITAL INVESTMENT FUNDS
AND THEIR ADMINISTRATION**

Article 1.- Entities that are authorized, according to Decree Law N° 600 of 1974 or to articles 14 or 15 of the Law on International Exchange, will be eligible to apply to the provisions contained in this Law, prior report from the Superintendency of Securities and Insurance, that are organized as Foreign Capital Investment Funds to receive resources from abroad through the application of participation quotas or to enter resources contributed by foreign institutional investors into the country, which will be destined to the investment of publicly offered securities issued in Chile.

Article 2.- Foreign Capital Investment Fund, hereinafter "the Fund", is the patrimony formed by contributions effected outside the country by natural or juristic persons or, in general, joint entities, for its investment in publicly offered securities whose administration inside the country will be in charge of a Chilean corporation on behalf and at the contributors' risk.

A condition to apply to the provisions contained in this Law will be that the participation quotas issued by the Fund be non- redeemable.

(*) Legal text published in the Official Gazette of September 29, 1987.

For these purposes, the redeemable value of the participation quota will be understood to be granted by the right to receive a proportional part of the net assets of the Fund it represents, or its equivalent in money, before the maturity date established for the Fund.

Article 3.- The following documents shall be presented to the Superintendency of Securities and Insurance prior to the operation of the Fund:

a) Document establishing the creation of the Fund that shall be verified by notary public or its equivalent.

In case of a document written in a foreign language, translation of the document shall be enclosed, certified by the legal representative of the Fund. This information shall be registered at the Superintendency and shall be considered for all legal purposes, as authentic instruments starting on the date of its registration.

Besides, in this case it will be necessary to enclose documents accrediting that the entity is still in force and that it has been legally constituted according to the law in its country of origin, duly legalized;

b) Individualization of the Chilean corporation in charge of the administration of the investments inside the country, enclosing the documents verifying its legal existence;

c) Indication of the patrimony to be entered by the Fund that shall not be less than one million dollars of the United States of America;

d) Duration of the Fund, and

e) Internal operating by-laws of the Fund.

Article 4.- The Fund and the administering corporation shall be subject to the supervision of the Superintendency of Securities and Insurance concerning its operations and to the investment of resources inside the country. For these purposes, the referred Superintendency shall be invested of all the faculties contained in its organic law.

Article 5.- The Fund will have internal by-laws that shall be approved by the Superintendency of Securities and Insurance only concerning regulations on operation, investment, diversification and information relative to the re-

sources in Chile. Such regulations shall contain, at least, the following:

- a) Denomination and term of duration;
- b) Indication of the criteria as to the establishment of remuneration for administration, expenses to be ascribed to the Fund, and similar matters;
- c) Indication of the market and foreign stock exchanges where the Fund's participating quotas will be registered;
- d) Rules concerning the investment of resources in Chile and their diversification, and
- e) Rules concerning information to Fund contributors, accounting of investments and policy applicable to the distribution of benefits.

Amendments to the referred by-laws shall be informed to the Superintendency, that will grant approval for the matters referred to in letter d) above.

Article 6.- The investments of the Fund in Chile, irrespective of the amount of money held in cash or in current account, shall be carried out in:

- a) Shares pertaining to open corporations;
- b) Securities issued or guaranteed until total extinction by the Government;
- c) Securities issued by Banco Central de Chile;
- d) Securities issued or guaranteed until total extinction by banks or by financial institutions;
- e) Letters of credit issued by banks and by financial institutions, or by other authorized entities;
- f) Bonds and negotiable instruments registered in the Securities Register, and
- g) Other securities or documents publicly offered and monetary or financial instruments duly authorized by the Superintendency of Securities and Insurance, under the conditions determined by it.

Article 9.- If there was an excess in investment, the Superintendency shall determine a term for its transfer, that shall not be less than 60 days nor exceed 180 days as of the date the event was notified. Past the determined date and persisting the incompliance, the Fund and the administrating corporation will be subject, as of that date, to general tax regulations. This notwithstanding the corresponding legal punishment.

Article 10.- The Fund shall only have in Chile liabilities originating from the liquidation of operations within the habitual market terms, fees and expenses earned, remuneration for administration, term payment of primary issue of securities and other similar items related to its operation and its correct financial administration, authorized by the Superintendency.

Article 11.- Whatever the amount of capital pledged by the Fund to be entered into the country, the provisions established by this law shall apply only to the amount actually interned within the three years term counting from the date of the authorization of the Fund.

However, if within the term of one year counting from the date of the authorization of the Fund, the latter were not able to obtain the resources needed for the formation of minimum capital indicated in letter c) of article 3, it shall not be eligible to continue operating under the provisions contained in this law.

Article 12.- The administration of the Fund in the country shall be in the hands of a corporation formed exclusively for that purpose, according to the regulations established in articles 126 to 129 of Law N° 18,046.

In order to authorize its existence, the referred corporation shall accredit a capital paid in cash, no lower than 6.000 unidades de fomento (U.F.) for each Fund it administers and, to maintain, permanently, for each Fund it administers, a patrimony equivalent to the figure indicated above.

The administrating corporation shall represent, using its full authority, the Fund in Chile and shall be empowered to oppose the claim and to be summoned, jointly liable with the Fund in the compliance of applicable legal and regulatory provisions.

Article 13.- The operations of the Fund shall be carried out by the administrating corporation acting in behalf of the former, who will be holder of the instruments representing the investments carried out.

The operations concerning the administrative corporation shall be accounted separately.

TITLE I I

EXCHANGE AND TRIBUTARY REGIME

Article 14.- Capital contributions that give origin to the Funds regulated by this law shall be carried out according to the provisions contained in decree law N° 600 of 1974 or in articles 14 or 15 of the Law on International Exchange with the following exceptions:

- a) The investment shall be entered in freely convertible foreign currency, interned through its sale in Banco Central de Chile or in an authorized entity, and
- b) The remittance of contributed capital abroad shall not be carried out prior to five years counting from the date the contribution had been entered.

Article 15.- All amounts remitted that do not correspond to capital originally invested, earned by the investments of the Fund, shall be subject to the flat 10% income tax. This tax shall be retained by the administering corporation at the time the remittance is effected and shall be deposited in the treasury within the period of time established in article 78 of the Law on Income Tax.

The tax referred to in the previous paragraph shall be the only one affecting income generated by the operations of the Fund in the country.

The tax regime shall form part of the foreign investment contract that will be subscribed according to decree law N° 600 of 1974, and shall have guarantee of invariability for the total duration of the respective Fund in the country.

Article 16.- The remuneration or commission received by the administering corporation for the administration of the Fund's portfolio shall be exempt of the tax established in Title II of decree law N° 825 of 1974.

Article 17.- The operation of the Fund in Chile will be subject to Chilean legislation and to the jurisdiction of the courts established in the country.

Article 18.- Foreign institutional investors authorized by Banco Central de Chile or by the Foreign Investment Committee shall be subject to the rules that are applicable established in this law, depending upon the form of materializing the contribution of capital.

In this case, it shall not be mandatory to constitute a corporation of the type referred to in article 12, and the designation of a legal representative domiciled in the country will suffice, bestowed of enough authority, who will be responsible for retaining the tax referred to in article 15 of this law.

