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FOREIGN INVESTMENT STATUTE

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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 by means of 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. The 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 currently authorized or to be authorized by the Central Bank of Chile.

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

f) Capitalization of profits qualifying for remittance abroad.

Article 3.– The authorizations of foreign investment will be formalized by 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, should this not be applicable, by the Executive Secretary, and, on the other part, by the persons contributing the foreign capital investment, hereinafter called "foreign investors" for all effects of this Decree Law.

The contracts will state the period within which the foreign investor must bring in the capital. This term will 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, as well as in the case of investments in industrial and non-mining extractive projects for amounts not lower than US$ 50,000,000, currency of the United States of America or its equivalent in other foreign currencies, extend the term up to eight years when the nature of the project so requires it.

TITLE II

RIGHTS AND RESPONSIBILITIES OF FOREIGN INVESTMENT

Article 4.– Foreign investors may transfer their capital and the net profits arising therefrom to other countries. There will be no time limit for the exercise of this right. However, the capital 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 to other countries shall not be less favorable than those applicable to the coverage of imports in general.

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

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

Article 6.– The net proceeds of the sales or liquidations referred to in the preceding article will be free from any tax, impost or charge up to the sum 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 10 years as from the start-up of the company's operations they will be subject to a fixed over-all tax rate of 49.5o/o on taxable income, including taxes applicable under the Income Tax law valid at the time 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 under 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 established in the third paragraph of article 21 of the Income Tax Law, which by virtue of paragraph one of this article affects permanent establishments and companies recipient of foreign investment, with a 49,5% rate, shall be applied in the case of stock corporations and of 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 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 of signing the contract applicable to the import of machinery and equipment not produced in the country and included in the list referred to under number 10, letter B of Article 12 of Decree-Law Nº 825 of 1974. The same invariability will apply to the companies recipient of foreign investment, in which foreign investors participate, for the amount corresponding to such 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 year period referred to in article 7 may be extended in terms compatible with the estimated duration of the project, but under no condition it shall exceed 20 years.

2. Stipulations may be included in the respective contracts regarding the maintenance without variations for the respective foreign investors or companies recipient of the contributions, as from the date of execution of such contracts and while the corresponding term, pursuant to the first paragraph of article 7 or to N° 1 of this article, is still pending, 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 respective contract, with respect to asset depreciation regimes, carry-forward of losses to future financial periods, and start-up and organization expenses. Likewise, the resolution of the Internal Revenue Service authorizing the foreign investor or the company receiving the contribution to keep its accounting in foreign currency, may also be included in the contract.

The rights granted in accordance to the preceding paragraph may be waived once, separately and without distinction, in which case the investor or the recipient company shall be subject to the common regime applicable with respect to the waived right, under the terms sert forth 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, with the exception of that related to the accounting in foreign currency, for which an express waiver will be necessary.

3. In the case of projects which consider the export of all or part of the goods produced, the Foreign Investment Committee may grant to the respective investors or to the companies recipient of the contributions, for terms not exceeding those granted as set forth in the first paragraph of article 7 or in N° 1 of this article, the following rights:

a) Stipulate the maintenance without variation of the legal provisions and regulations in force at the date of execution of the corresponding contract, with respect to the right to export freely.

b) Authorize, without prejudice to the provisions of Decree N° 471 of 1977 of the Ministry of Economics, Development and Reconstruction, 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 authorized in order to pay with it 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 to comply with the remittance abroad of capital or net profits arising from it.

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

The annual taxable profits which, according to the respective balance sheets, may be produced by the permanent establishments of foreign investors or by the corresponding recipient companies, who 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 31st of each year, in the part corresponding to the foreign currency maintained abroad by the investors. Income or other benefits produced by the foreign currency which, according to this provision, may be maintained abroad, will be considered, for all legal purposes, as Chilean source income.

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 Ministry of Economy, Development and Reconstruction, 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.

For further details please contact:

Executive Secretariat
Foreign Investment
Committee

or

any Chilean Embassy