FOREIGN INVESTMENT STATUTE

DECREE LAW 600

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DECREE LAW N° 600 (1)

FOREIGN INVESTMENT STATUTE

TITLE I

FOREIGN INVESTMENT AND THE INVESTMENT CONTRACT

Article 1.- Foreign individuals and legal entities, as well as Chilean individuals and legal entities residing and domiciled abroad, transferring foreign capitals to Chile and entering into foreign investment contracts, shall be subject to the rules of this Statute.

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

a) Freely convertible foreign currency, brought into the country by means of the sale at any entity authorized to operate in the official currency exchange market, which shall be transacted at the most favorable rate obtainable by the foreign investor.

b) Tangible assets in any form or condition, brought into the country under the general regulations applicable to imports not subject to exchange coverage. These assets shall be valued in accordance with general procedures applicable to imports.

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(1) This edition is not an official translation and it is prepared only for promotional purposes. It contains the text of Decree Law N° 600 of 1974, including modifications introduced by Laws N°s 18,065; 18,474; 18,682; 18,840 and 18,904, published in the Official Gazette of December 10, 1981; November 30, 1985; December 31, 1987; October 10, 1989 and January 25, 1990, respectively.

c) Technology in its various forms, provided it may be capitalized, which shall be appraised by the Foreign Investments Committee, taking into consideration its actual value in the international market, within a period of 120 days; should this deadline not be met, the value assigned shall 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 linked to a foreign investment. General conditions, repayment periods, interest rates and other terms of foreign loans agreements, as well as costs charged to the borrower for those loans, including commissions, taxes and miscellaneous expenses, shall be those authorized or to be authorized by the Central Bank of Chile.

e) Capitalization of foreign loans and debts, in freely convertible currency, under duly authorized agreements.

f) Capitalization of profits qualifying for remittance abroad.

Article 3.- Authorizations for foreign investment shall be legalized by contracts executed by public deed, signed on behalf of the Chilean State by the President of the Foreign Investments Committee when the investment requires the approval of the Committee, or by the Executive Secretary when such approval is not required, and by the representatives of the individuals or entities contributing the foreign capital, hereinafter called "foreign investors" for all effects and purposes of this Decree Law.

The contracts shall state the time frame for the foreign investor to bring the capitals into the country. This period shall not exceed eight years for investments in mining projects and three years for all others. The Committee may, by unanimous decision, extend this period up to twelve years in the case of mining investments, when previous explorations are required and depending upon their nature and estimated duration. In the case of investments in industrial, or nonmining projects for amounts not less than US$ 50,000,000.-, or its equivalent in other foreign currencies, the period may be extended for up to eight years if the nature of the project so requires.

TITLE II

RIGHTS AND RESPONSIBILITIES OF FOREIGN INVESTORS

Article 4.- Foreign investors may transfer abroad capital and net profits arising from their investments. There shall not be time restriction to exercise this right. However, at least three years must have elapsed from the date the capital was brought into the country before it may be remitted abroad.

The rules applicable to capital and net profit remittances may not be less favorable than those applicable to the payment of imports in general.

The exchange rate applicable to capital and profit transfers abroad shall be the most favorable obtainable by the foreign investors from any of the institutions authorized to operate in the official currency exchange market.

Article 5.- The foreign currency required to repatriate capital or part of it, may only be purchased with the proceeds of the sale of shares or rights representative of the foreign investment, or with the total or partial sale or liquidation of the business enterprises acquired or established with the said investment.

Article 6.- Net resources received from the sale or liquidation referred to in the preceding Article, will be free from any tax, duty or charges, up to the amount of the investment authorized by the Foreign Investments Committee. The surplus thereof shall be subject to the general tax rules of the country.

Article 7.- Titleholders of foreign investments made under this Decree Law are entitled to include in their respective contracts a clause to the effect that, for a period of ten years, beginning on the start-up date of the business enterprise, they shall be subject to a fixed overall tax rate of 49.5% or to the rates set forth in Article 7 bis, as a total income tax burden, considering for this purpose the taxes applicable under the Income Tax Law in force at the date the contract is executed. If the foreign investor has opted for the invariable tax rate, he shall have the right to waive the fixed rate once, and instead, be taxed in accordance with the regular tax laws. In

that case, he shall be subject to the alternatives of the general tax law, with the same rights, options and obligations applicable to local investors, forfeiting the agreed fixed rate definitively.

The total tax liability referred to in the preceding paragraph, shall be calculated by applying to the net taxable income of the First Category (determined in accordance with the provisions of the Income Tax Law) the rate for that category, as established in the said law. The difference in rates needed to complete the total guaranteed tax liability in the aforementioned paragraph, shall be applied on the respective taxable base without the right to deduct any credit, in accordance with the stipulations of the Income Tax Law and at the time indicated in the said law.

The tax liability established in the third paragraph of Article 21 of the Income Tax Law, which, based on the first paragraph of this Article applies the rate of 49.5% to permanent establishments and companies receiving foreign investments, shall be levied in the case of corporations and joint-stock companies on the respective taxable bases and in proportion to the corresponding participation on the profits of the company shared by investors under this system. The additional tax shall be assumed exclusively by these stockholders and must be withheld and paid annually by the respective company.

Article 7 bis (2).- Instead of the 49.5% rate indicated in the preceding Article, the foreign investor is entitled to have included in his contract a clause stipulating that the rate of 40% shall be maintained unchanged in accordance with the terms of the first paragraph of Article 7 and that the tax liability shall be calculated as indicated in the second paragraph of the same Article.

In this case the investor shall also be affected, on the remittances or withdrawals, by the variable supplementary rate resulting from the application of the following procedures:

a) A calculation of the moving average profits remitted, withdrawn or distributed during the last sixty months will be made for investors subject to this tax, including the amount which must be subject to the tax;

(2) 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 shall only apply to foreign investment contracts signed after that date, and consequently shall affect the remittances, withdrawals or distributions made in reference to investments covered by such contracts.

fractions of days calculated under these circumstances shall be considered as whole months. The amounts remitted, withdrawn or distributed during the sixty months, shall be restated in values equivalent to the variation of the monthly tax unit (UTM) in effect during each period. When the investment is less than 60 months old, the months considered shall be those elapsed as of the date of the remittance, withdrawal or distribution subject to taxation;

b) The moving average capital corresponding to the investor subject to the tax shall be calculated as one-twelfth of the moving average of the equivalent part of the initial equity capital of the last five taxable periods, or those periods applicable according to the date of the investment, during which remittances, withdrawals or distributions provided in a) were made. Initial equity capital of the last period shall be restated up to the date on which the respective amount must be taxed, including contributions, withdrawals or equity reductions occurring during the period. Capital corresponding to the investment shall be restated in amounts equivalent to the variation of the respected monthly tax unit (UTM). To determine the initial equity capital referred to in this paragraph, the provisions of number 1 of Article 41 of the Income Tax Law shall apply, including in reference to taxpayers authorized to keep their accounting records in foreign currency.

c) The tax corresponding to the amount averaged according to letter a), shall be calculated by using a tax schedule, with tax brackets determined based on the average equity calculated according to the procedure in letter b): The average amount not exceeding 40% of the average equity shall not be taxed and on the portion exceeding the 40% average equity, a 30 percent shall be calculated, and

d) The average rate shall be determined from the relationship between the tax calculated according to the tax schedule and the respective average amount, and this will become the supplementary tax rate to be applied on the amount remitted, withdrawn or distributed.

Regarding amounts referred to in Articles 58, 60 first paragraph, and 61 of the Income Tax Law, the entities making the remittances must pay this tax, including the corresponding supplementary rate, in the same manner and terms applicable to withholdings and provisional payments provided for in number 4 of Article 74 and in letter g) of Article 84 of the said law, and on the same taxable income, from which the supplementary rate may not be

deducted either. Notwithstanding the preceding, tax payers, except those indicated in number 2 of Article 58 of the Income Tax Law, when filing their annual tax returns, as provided by Article 65, must apply the same rates of this taxes as were applied to each withdrawal or remittance abroad, in the same returns for the corresponding period, as provided in the second paragraph of Article 62 of the said law.

The rates established in the first paragraph of this Article, as well as the procedure to determine the supplementary rate, shall remain unchanged for a period of ten years, beginning on the start-up date of the respective business enterprise, or for a term of 20 years in the cases provided for in number 1 of Article 11 bis.

The provisions in the previous paragraphs does not affect the right of the investor to waive once the fixed rate that he may have chosen, as indicated at the end of the first paragraph of Article 7.

Investors in business not taxed on the base of full accounting, or taxed on estimated income, are not entitled to exercise the option referred to in this Article regarding their investment.

The provisions of Article 11 bis of this Decree Law shall be fully applicable to investors choosing the fixed rate established in this Article.

Article 8.- Foreign investment and participating business enterprises shall be subject to the general indirect taxation rules and to the customs regulations applicable to the local investors.

Notwithstanding the stipulations of the preceeding paragraph, titleholders of foreign investments brought into the country under the terms of this Decree Law, shall be entitled to include a clause in their contracts to the effect that during the period that it takes to formalize the agreed investment, tax rules on sales and services and customs regulations, related to the importation 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 825 of 1974, shall remain the same as those in effect at the time that investment contract is executed. The same invariability shall apply to companies in which foreign investors participate for the amounts corresponding to the said investment.

Article 9.- Foreign investment and business enterprises in which the

investors participate shall also be subject to the general legislation applicable to local investors, and shall not be discriminated against, either directly of indirectly, except as stated in Article 11. Likewise, legal or regulatory provisions which create special regulations for certain sectors of the economy or geographical areas of the country shall be deemed discriminatory if the foreign investor is denied access despite complying with the same conditions and requirements demanded from local investors.

For the purposes of this Article, a specific productive activity shall be that performed by enterprises which come under the same definition within internationally accepted classifications and which produce goods located in the same tariff bracket according to the Chilean Customs Tariff Schedule. The same tariff bracket being understood to be the one in which goods do not differ by more than one unit in the last digit within their classification.

Article 10.- If new legal regulations are established, which foreign investors or business enterprises with foreign capital participation deem to be discriminatory, they shall be entitled to request the removal of these regulations within one year from the date of their enactment. The Foreign Investments Committee shall rule on the petition within sixty days, counted from the date on which the application is filed, either rejecting or taking the appropriate administrative measures to remove regulation, or requiring the proper authorities to do so in the event that such policy should go beyond the Committee's authority.

In the absence of a timely ruling from the Committee, or if an unfavorable ruling is passed, or if it is not possible to eliminate administratively the discriminatory legislation, foreign investor or related companies may resort to the regular courts of justice in order to obtain a ruling as to whether or not discrimination exists, and if so, that the general legislation be applied.

Article 11.- Notwithstanding Article 9 above, justified regulations may be issued limiting access to local financing by foreign investments covered by this Decreed Law.

Article 11 bis.- In the case of investments totalling no less than US$ 50,000,000.-, or its equivalent in other foreign currencies, for the purpose of the development of industrial or extractive projects, including mining, and 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 may it exceed twenty years.

2. The respective contracts may include stipulations regarding the invariability of legal provisions and of resolutions issued by Chile's Internal Revenue Service, in force at the time of the execution of the contract. This with respect to asset depreciation rules, carry-over losses to future financial periods, 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 period set forth in the first paragraph of Article 7, or in number 1 of Article 11 bis remains in force. Likewise, the resolution of the Internal Revenue Service authorizing the foreign investor or the company receiving the foreign capital 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 recipient company shall be subject to the regular system applicable to the waived right, in the terms described at the end of the first paragraph of Article 7.

   In any event, the waiver referred to in Article 7 shall imply the waiver of the rights referred to in this number, except the right to keep accounting records in foreing currency, for which an explicit waiver will be necessary.

   If the respective investment contract includes more than one foreign investor subject to the fixed tax rate described in Article 7, the waiver of any of them to such rate, shall imply the renounciation of the rights included in this number 2 with respect to the waiving party, as well as to the rest of the foreign investors of the recipient company, with the exception of the right to carry accounting records in foreign currency, which shall require an explicit waiver. However, the rights stated in this number shall not be considered waived, when the foreign investors have agreed in their contracts that the said waiver shall only be effective when the foreign investors waiving their right to a fixed tax rate hold an amount exceeding a determined percentage of the total investment included in the contract which may have been materialized as of the

date of such waiver (3).

3. If the projects consider the exportations of parts or all of the goods produced, the Foreign Investments Committee may grant the following rights to the respective investors or to the companies receiving the foreign capital for terms not exceeding those granted in accordance with the stipulations of the first paragraph in Article 7, or in number 1 of this Article:

   a) Stipulate the invariability of the legal provisions and regulations in force at the time of execution of the contract, with respect to the right to export freely.

   b) Authorize, notwithstanding the provisions of the 1977 Decree N° 471 of the Ministry of Economy, Reconstruction and Development, special rules regarding the return and liquidation of part or the total value of such exports, as well as compensation resulting from insurance or other sources. In accordance with such rules, the retention of the corresponding foreign currency abroad may be authorized by the Central Bank of Chile in order to pay for debts previously authorized by the Central Bank of Chile, to made 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.

The Foreign Investments Committee must have a favorable report from the Executive Committee of the Central Bank of Chile before authorizing this special rule (4), which will state the specific operational procedure of such rule, as well as the method and conditions under which access to the foreign currency market shall be granted in order to return capital and profits to the country of origin. Furthermore, the Central Bank of Chile shall supervise the compliance with the stipulations of the contract relating to these matters.

The annual taxable profits generated according to the respective balance sheet, by permanent businesses of foreign investors or by the correspond-

(3) This last paragraph is valid starting December 31, 1987, on which date Law N° 18.862 was published in accordance with letter b), Article 10 of the same law.

(4) The functions and authority granted in this paragraph to the Executive Committee of the Central Bank of Chile should be considered as referred to the Council of the said Bank, in accordance with the provisions of letter c) Article 1 of Law N° 18.970.

ing recipient companies, which for any reason maintain foreign currency abroad in accordance with this letter b), for tax purposes, shall be considered as remitted, distributed or withdrawn, as the case may be, as of December 31 of each year. Income or other benefits originated by the foreign currency maintained abroad shall be considered as income from Chilean sources for all legal purposes.

TITLE III

FOREIGN INVESTMENTS COMMITTEE

Article 12.- The Foreign Investments Committee is an independent governmental legal entity with its own equity, domiciled in the city of Santiago, Chile, whose relationship with the President of the Republic shall be through the Ministry of Economy, Reconstruction and Development. The Committee shall be the only institution authorized to accept the inflow of foreign capital under Decree Law 600 and to stipulate the terms and conditions of the corresponding contracts on behalf of the Chilean State.

The Foreign Investments Committee shall be represented by its President in those cases where investment applications require the Committee's approval, as stated in Article 16; otherwise, it shall be represented by its Executive Secretary.

The Foreign Investments Committee's equity shall be constituted by the following:

a) Funds allocated annually in the public sector's Budget Law, or other general or special laws.

b) Assets and real estate properties, including tangible and intangible assets acquired by the Committee for any reason, and

c) Income received for any other reason.

Article 13.- The Foreign Investments Committee shall be constituted by the following members:

a) The Minister of Economy, Reconstruction and Development.
b) The Minister of Finance.
c) The Minister of Foreign Affairs.
d) The Minister of the corresponding portfolio in the case of investment applications involving Ministries not represented in the Committee.
e) The Minister of the National Planning Office.
f) The President of the Central Bank of Chile.

The Ministers may be substituted by their legal deputies.

Article 14.- The Committee meetings shall be chaired by the Minister of Economy, or in his absence, by the Minister of Finance, provided that at least three of its members are present. Decisions shall be ratified by a majority of the members of the Committe, and in the event of a drawn, the President shall cast the decisive vote and all resolutions adopted must be recorded in the corresponding Minutes of the proceedings. Deputy Ministers may attend the meetings regularly, with the right to voice their opinions, but may only vote in the absence of their immediate superiors.

Article 15.- To exercise its authority and to fulfill its duties, the Foreign Investments Committee shall have an Executive Secretariat with the following functions:

a) Receive, study and report to the Committee all foreign investment applications and other related matters submitted to the Committee's consideration;

b) Act as the administrative branch of the Committee preparing the required studies and background documents;

c) Carry out all functions related to information, registrations, statistical analysis and coordination of all foreign investment activities;

d) Centralize the information and the result of the supervision exercised by public institutions with respect to the obligations of foreign investors, or the enterprises in which they participate, reporting infractions or breaches of contract to the competent authorities and public institutions.

e) Perform and help expedite the procedures required by the different public institutions that must report or grant their prior authorization to

the applications presented to the Committee for the prompt execution of the corresponding contracts and resolutions, and

f) Make inquiries in Chile or abroad regarding the authenticity and reliability of the applicants or other interested parties.

Article 15 bis.- The management of the Executive Secretariat of the Foreign Investments Committee shall be the responsibility of the Executive Secretary, who shall be its Chief Executive and shall represent the Committee in legal, court and out-of court proceedings.

The Executive Secretary shall be appointed exclusively by the President of the Republic, upon nomination by the Foreign Investments Committee, and the appointee shall perform the following functions:

a) Comply with and supervise the execution of resolutions and instructions of the Foreign Investments Committee and perform acts and functions entrusted to him by the Committee pursuant to its authority.

b) Propose to the Foreign Investments Committee an annual program for the institution, as well as any other matters deserving the examination or resolution of the Committee;

c) Prepare an estimated annual budget to be submited to the Foreign Investments Committee's consideration, execute the approved budget and propose amendments that may be required during its execution;

d) Attend the meetings of the Foreign Investments Committee with the right to voice his opinion, making the necessary arrangements to carry on the meetings and to act as witness and recording officer.

e) Appoint and hire personnel, assigning their duties, reporting such actions to the Committee.

f) Acquire, sell and manage all assets and execute or formalize any act or contract, directly or indirectly, meant to achieve its functions and objectives, abiding by the resolutions and directions of the Foreign Investments Committee, as well as by the stipulations of this Decree Law.

g) Delegate part of his functions, power and authority to other members of the Executive Secretariat.

h) In general, to prescribe the resolutions and provisions, and to exercise all other powers necessary to assure the fulfillment of the objectives of the Executive Secretariat.

In the absence of the Executive Secretary the above-mentioned powers will be performed by the General Comptroller, who shall substitute the Executive Secretary.

The Executive Secretary is entitled to request from all public or private entities any report and/or information deemed necessary to accomplish the Foreign Investments Committee's objectives.

Article 16.- The following foreign investments shall require the Foreign Investments Committee's approval:

a) Those whose total value exceeds US$ 5,000,000.- (five million US dollars) or its equivalent in other currencies.

b) Those related to sectors or activities normally performed by the State, as well as those related to public services.

c) Those related to communications media, and

d) Those made by other States of foreign government agencies.

Article 17.- Foreign investments not covered in the preceding Article, shall be authorized by the Executive Secretary of the Foreign Investments Committee, previous approval of its President, without requiring the agreement of the Committee itself. In any event, at the following meeting, the Executive Secretary shall report to the Committee on the investments approved. If the Foreign Investments Committee's President deems it convenient, he may defer granting his approval and submit the investment to the full Committee's approval.

GENERAL PROVISION

Article 18.- Reference to Decree with Force of Law N° 258 of 1960, or to its provisions, contained in the laws currently in force, shall be understood to be made to this Statute or its pertinent provisions as well.

FINAL NOTE

Law N° 18.474, published in the Official Gazette of November 30, 1985, amended the Articles of Decree Law N° 600 of 1974, amendments which are incorporated in the above text. The following Article is also included in Law N° 18.474.

"Article 2.- Amounts received by local investors, duly authorized by the Central Bank of Chile to participate in the capital of foreign companies which invest in Chile through a permanent establishment, such as those referred to in Article 58 N° 1 of The Income Tax Law, and subject to the provisions of Article 11 bis of Decree Law N° 600 of 1974, and its amendments, shall be exempt from Category Taxes, Surtaxes or Additional Taxes provided in the Income Tax Law, when the said amounts correspond to profits of the permanent business for which taxes have already been paid in Chile. This amount may be distributed or withdrawn at any time, even though the company may have undistributed or retained taxable profits".