FOREIGN INVESTMENT STATUTE

DECREE LAW 600

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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 subscribe a foreign investment contract, will be subject to the provisions of this Statute.

Article 2.- The aforementioned capital may be brought into the country and must be valued by the following methods:

a) Freely convertible foreign currency, brought in by means of its sale to an entity authorized to operate in the Formal Exchange Market, at the most favorable exchange rate that foreign investors may obtain from any of such entities;

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

(*) This is a non-official translation, prepared for informational purposes only, of Decree Law 600 of 1974 and its amendments introduced by Laws 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 qualifies as capital, which shall be valued by the Foreign Investment Committee within a period of 120 days, taking into account its real price in international markets; should said period expire without such valuation having been made, the value assigned shall be that estimated by the investor through a sworn affidavit.

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

d) Credits associated with a foreign investment. The general provisions, tenor, rates of interest and other conditions regarding the contracting of foreign credits, as well as the surcharges to be paid by the debtor as part of the total cost for the use of foreign credits, including fees, taxes and expenses of any type, 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, provided such contracts have been duly authorized, and

f) Capitalization of profits qualifying for remittance abroad.

Article 3.- Foreign investment authorizations shall be evidenced by contracts executed by public deed subscribed, on the one hand, by the President of the Foreign Investment Committee on behalf of the Chilean State, in the case of an investment, that requires the agreement of said Committee, or otherwise by the Executive Secretary; and, on the other hand, by the persons contributing the foreign capital, hereinafter called "foreign investors" for all purposes of this decree law.

The contracts shall state the period within which the foreign investor must bring in the capital. This period 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 period to up to 12 years in the case of mining investments, when prior explorations are required, depending upon their nature and estimated duration; and, in the case of investments in industrial or non-mining extraction projects for amounts not less than US$ 50,000,000, currency of the United States of America, or its equivalent in other foreign currencies, may extend the period to up to 8 years if the nature of the project so requires.

TITLE II

RIGHTS AND RESPONSIBILITIES OF FOREIGN INVESTMENT

Article 4.- Foreign investors may transfer abroad their capital and the net profits arising from their investments. There shall 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 the remittance of capital and net profits abroad shall not be less favorable than those generally applicable to the payment of imports.

The exchange rate applicable to the transfer of capital and net profits abroad shall be the most favorable obtainable by foreign investors from any of the entities authorized to operate in the Formal Exchange 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 of the total or partial sale or liquidation of the enterprises acquired or established 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 amount of the investment authorized by the Committee. Any excess over this amount shall be subject to the general rules of the tax legislation.

Article 7.- Holders of foreign investments carried out under the provisions of this decree law shall have the right to include in their respective contracts a clause to the effect that, for a ten year period counted from the start-up date of the company's operations, 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 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 tax rate, he shall have the right, only once, to renounce that rate, and to be taxed instead in accordance with the ordinary tax regime; in such case he shall be subject to the general tax law with the same rights, options and obligations pertaining to local investors

and, consequently, definitively forfeiting the agreed fixed rate.

The total tax burden 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 corresponding to such Category as set forth in said Law. The rate differential necessary to complete the total tax burden guaranteed in said paragraph shall be applied to the corresponding taxable base, in accordance with the provisions of the Income Tax Law, at the time provided by such law, without the right to deduct any credit.

The tax established in the third paragraph of Article 21 of the Income Tax Law, which by virtue of the first paragraph of this article imposes a 49.5% rate upon permanent establishments and companies receiving foreign investment, shall be applied, in the case of stock corporations and joint-stock companies, on the corresponding taxable base and in proportion to the participation that investors subject to this system may have in the profits of the company. The additional tax shall be borne exclusively by these shareholders, and shall be withheld and paid annually by the corresponding company.

Article 7 bis (*).- Instead of the 49.5% rate indicated in the preceding article, the holder of the investment shall have the right to have stipulated in his respective contract, that a 40 percent rate shall be maintained unchanged in accordance with the first paragraph of said article, which will be calculated as set forth in its second paragraph. In this case, the investor shall also be subject, on his remittances or withdrawals, to the variable supplementary rate resulting from applying the following procedure:

a) The rolling average profits remitted, withdrawn or distributed during the last 60 months will be determined for investors subject to this tax, taking into account the amount that is subject to tax and considering as whole months the fractions of days that are computed for such purpose. The amounts remitted, withdrawn or distributed during the 60 months shall be restated in values equivalent to the variation of the monthly tax unit in force in each period. When the investment has

(*) Letter B), Article 10 of Law 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 subscribed as from such date, and therefore shall affect remittances, withdrawals or distributions carried out with respect to investments pursuant to such contracts.

existed less than 60 months, the months taken into account shall be those elapsed as of the date of the remittance, withdrawal or distribution subject to taxation;

b) The rolling average capital of the investor subject to taxation shall be calcultated, which shall be one twelfth of the rolling average of the rolling average of the equivalent part of the net initial capital of the last five taxable periods, or such lesser number of periods depending upon the date of investment, during which the remittances, withdrawals or distributions referred to in the preceding letter were carried out. The net initial capital of the latest period shall be restated up to the date on which the pertinent amount is to be taxed, including contributions, withdrawals or reductions occurring during the period. Capital corresponding to the investment shall be restated in values equivalent to the variation of the respective monthly tax unit. To determine the initial net capital referred to in this letter, the provisions of number 1 of Article 41 of the Income Tax Law shall be applied, which shall similarly be applicable to taxpayers authorized to keep their accounting records in foreign currency;

c) The tax applicable to the amount averaged according with letter a), shall be calculated by applying a tax rate schedule, the brackets of which shall be defined on the basis of the average capital calculated in accordance with the procedure of letter b). The averaged capital amount not exceeding 40 percent of the average capital shall not be subject to tax, and on the portion exceeding said 40 percent, a 30 percent rate shall be applied; and

d) From the relation between the tax calculated in accordance with the tax rate schedule and the respective average amount, the average rate shall be determined, which shall become the supplementary tax rate to be applied to the amount remitted, withdrawn 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 carry out the remittance, shall pay this tax, including the corresponding supplementary rate, in the same manner and time period applicable to withholdings and provisional payments established in number 4 of Article 74 and in letter g) of Article 84 of said law and on the same taxable income, from which the supplementary rate may not be deducted. Notwithstanding the foregoing, and with the exception of those referred to in number 2 of Article 58 of the Income Tax Law, taxpayers, when filing their annual tax pursuant to the provisions of

Article 65, must apply the same rates of these taxes to which they were subject for each withdrawal or remittance abroad in the liquidation required for the commercial year, as established in the second paragraph of Article 62 of the referenced law.

The rates established in the first paragraph of this article, as well as the procedure for determining the supplementary rate, shall remain unchanged for a period of ten years, counted from the start-up date of the respective company, or for a period of up to 20 years, in the cases contemplated in number 1 of Article 11 bis.

The provisions of the preceding paragraphs shall not affect the right of the investor to waive, once only, the fixed rate he may have chosen, pursuant to the final part of the first paragraph of Article 7.

Investors in companies who are not taxed on the basis of full accounting or are taxed on an assumed income basis, 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 the investors who chose the fixed rate established in this article.

Article 8.- Foreign investment and enterprises in which such investment is made shall be subject to the indirect taxation and customs regime generally applicable to domestic investment.

Notwithstanding the above subparagraph, holders of foreign investment subject to the provisions of this decree law shall have the right to include in their contracts a clause stating that during the period in which the authorized investment is being carried out, there shall be no changes in sales and service taxes and customs duties in force at the time of the execution of the contract, applicable 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. The same invariability shall apply to companies receiving foreign investment, in which foreign investors participate, up to the amounts corresponding to said investment.

Article 9.- Similarly, foreign investment and firms in which such investment is made shall also be subject to the legislation generally applicable to domestic investment, and shall not be discriminated against, either directly or indirectly, except as provided in Article 11.

Legal or regulatory provisions affecting a specific productive activity shall 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. Similarly, legal or regulatory provisions which create special regimes for certain sectors of the economy or geographical areas of the country shall be deemed discriminatory if foreign investment is refused access thereto despite complying with the same conditions and requirements imposed upon local investment.

For the purposes of this article, a specific productive activity shall be understood to mean that carried on by enterprises which come under the same definition in accordance with internationally accepted classifications and which produce goods located in the same tariff bracket in accordance with the Chilean Customs Tariff Schedule, the same tariff bracket being understood to mean that by which goods do not differ by more than one unit in the last digit of said Tariff Schedule .

Article 10.- Should juridical norms be issued, which holders of foreign investment or firms with foreign investment participation deem to be discriminatory, they shall be entitled to request the elimination of such discrimination within a period of one year from the date of issue of said provisions. The Foreign Investment Committee shall rule on the petition within 60 days from the date on which the application is filed, either rejecting it or adopting the administrative measures needed to eliminate the discrimination or requiring the proper authorities to do so in the event that such measures were to exceed the powers vested in the Committee.

In the absence of a timely ruling from the Committee, or if an adverse ruling is issued, or if it should not be possible to remove that discrimination by administrative means, the foreign investors or the firms in which they participate may resort to the ordinary courts of justice in order to determine whether discrimination exists, or not, and, if so, that the general law must be applied.

Article 11.- Notwithstanding the above Article 9, regulations may be issued, when justified, limiting access to internal credit by foreign investments covered by this decree law.

Article 11 bis.- In the case of investments of amounts not less than 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 in-

dustrial or extractive projects, including mining projects, and which are brought into the country pursuant to Article 2, the following time periods and rights may be granted:

1. The ten year period referred to in Article 7 may be extended for periods compatible with the estimated duration of the project, but under no circumstances may it exceed 20 years.

2. The respective contracts may stipulate the maintenance withouh variation of the legal provisions and of the resolutions or circular letters issued by the Internal Revenue Service in force at the time of the execution of the respective contract with respect to asset depreciation, carryforward of losses to future taxable periods, and organizational and start-up expenses, for the respective foreign investors or the companies receiving such contributions, as of the date such contracts are subscribed and while the term set forth in the first paragraph of Article 7 in number 1 of this article remains in force. Similarly, the resolution of the Internal Revenue Service authorizing the foreign investor or the company receiving the contribution, as the case may be, 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, one time only, separately and indistinctly, in which case the foreign investor or the receiving company will be subject to the system generally applicable with respect to the waived right, on the terms specified in the final part of the first paragraph of Article 7.

   In any event, the waiver referred to in the above referenced Article 7, shall imply the waiver of the rights referred to in this number, except for the right to keep accounting records in foreign currency, which shall require an express waiver.

   Should the respective investment contract include more than one foreign investor subject to the tax invariability specified in the above referenced Article 7, the waiver of any one of them of such invariability, shall have the effect of waiving the rights included in this number, with respect to the waiving party, as well as with respect to the remaining foreign investors or the receiving company, with the exception of the right to carry accounting records in foreign currency, which shall require an express waiver. However, the rights set forth in this number shall not

be considered waived, under the circumstances above described, when foreign investors have agreed, in the corresponding investment contract, that said waiver shall only be effective when the foreign investor(s) who waive the right to tax invariability, are holders of an amount exceeding a determined percentage of the total investment covered by the contract, that has actually been materialized at the date of such waiver. (*)

3. In the case of projects which contemplate the export of part or all of the goods produced, the Foreign Investment Committee may grant, to the respective investors or to the companies receiving the contributions, for periods of time not exceeding those granted in accordance with the provisions set forth in the first paragraph of Article 7 or in number 1 of this article, the following rights:

   a) Provide for the invariability of the legal provisions and regulations regarding the right to export freely, in force at the date of execution of the corresponding contract;

   b) Without prejudice to the provisions of Decree 471 of 1977 (**), of the Ministry of Economics, Development and Reconstruction, authorize special regimes with respect to the return and sale of part or all of the value of such exports and 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 such foreign currency, 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 their investments.

In order to authorize this special regime, the Foreign Investment Committee must previously receive the favorable report of the Executive Committee of the Central Bank of Chile (***), which shall set forth the specific methods by

(*) This clause was put in force as of December 31, 1987, date of publication of Law 18,682, according to letter B) of Article 10 of said law.

(**) Provisions of Decree N° 471 must be understood referred to Title VIII of the Constitutional Organic Act of the Central Bank of Chile, by which said Decree was repealed.

(***) The responsibilities and authority entrusted in this paragraph to the Executive Committee of the Central Bank of Chile, should be understood to mean the Council of said Institution, in accordance with the provisions of letter c), Article 1 of Law 18,970.

which such special regime shall operate, as well as the regime, manner and conditions under which access to the foreign currency market will be granted in order to remit capital and profits abroad. Furthermore, the Central Bank of Chile shall supervise compliance with the stipulations of the contract regarding these matters.

The annual taxable profits which, according to the respective balance sheet, may be obtained by the permanent establishments of foreign investors or by the corresponding recipient companies, who for any reason maintain foreign currency abroad in accordance with the terms of this letter b), shall be regarded for tax purposes as having been remitted, distributed or withdrawn, as the case may be, on December 31 of each year, in the portion corresponding to the foreign currency maintained abroad by the investors. Income or other benefits produced by the foreign currency which, in accordance with this provision, may be maintained abroad, shall be regarded, for all legal purposes, as Chilean source income.

TITLE III

FOREIGN INVESTMENT COMMITTEE

Article 12.- The Foreign Investment Committee is a juridical person of public law, functionally decentralized, that possesses its own assets and has its domicile in the city of Santiago, which is related to the President of the Republic through the Ministry of Economics, Development and Reconstruction. The Committee shall be the only institution authorized on behalf of the Chilean State to accept the inflow of foreign capital under this decree law and to establish the terms and conditions of the corresponding contracts.

The Committee shall be represented by its President in cases in which the investments require the Committee's approval, as set forth in Article 16; otherwise, it shall be represented by its Executive Secretary.

The assets of the Foreign Investment Committee shall consist of the following:

a) Funds annually assigned to the Committee by the Budget Law of the public sector or other general or specific laws;

b) Personal and real property, whether tangible or intangible, acquired by any means; and

c) Income accrued by any means.

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

a) Minister of Economics, Development and Reconstruction;
b) Minister of Finance;
c) Minister of Foreign Affairs;
d) Minister of the appropriate specialty in the case of investment applications relating to matters concerning Ministries not represented on this Committee;
e) The Director of the National Planning Office (*), and
f) The President of the Central Bank of Chile.

The Ministers may only be substituted by their legal alternates.

Article 14.- The Committee meetings shall be presided by the Minister of Economics, 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. Alternates may regularly attend the Committee meetings with the right to be heard, but may cast their vote only in the absence of the member for whom they are alternates.

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

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 the background documents and studies as may be required;

c) Perform functions of information, registration, statistics and coordina-

(*) By Law N° 18,989, published in the Official Gazette on July 19, of 1990 it became Minister of Planning and Cooperation.

tion with respect to foreign investments;

d) Centralize the information and the results of the supervision which public institutions must exercise regarding the obligations of foreign investors, or the firms in which they participate, and report to the competent authorities and public institutions; the offenses or breaches that may have come to its attention;

e) Carry out and expedite the procedures required by the different public institutions that must report or grant their 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 or abroad regarding the qualifications and reliability of the applicants or interested parties.

Article 15 bis.- The management of the Executive Secretariat of the Foreign Investment Committee shall be carried out by the Executive Secretary, who shall be the head of such Secretariat and shall represent the Committee in legal, court and out-of-court proceedings. The appointment of the Executive Secretary shall be made by the President of the Republic at his sole discretion, upon recommendation of the Foreign Investment Committee, and his duties shall specially be:

a) Comply with and supervise the execution of the resolutions and instructions of the Foreign Investment Committee and carry out the acts and functions entrusted to him by the Committee pursuant to its authority;

b) Propose to the Foreign Investment Committee the annual program of the institution as well as any other matter deserving the study and resolution of said Committee;

c) Prepare the draft annual budget to be submitted to the Foreign Investment Committee's consideration, execute the aproved budget and propose the amendments that may be required during its execution;

d) Attend the meetings of the Foreign Investment Committee with the right to be heard and make the arrangements necessary to its functioning and, for that purpose, he shall act as recording officer and shall be responsible for the Minutes of said meetings;

e) Appoint and employ personnel and assign their functions, all of which he shall report to the Foreign Investment Committee;

f) Acquire, transfer and manage all type of assets and execute or formalize any act or contract directly or indirectly necessary to achieve the purposes and functions of the Foreign Investment Committee, pursuant to the resolutions and instructions of said Committee and of this decree law;

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

h) In general, prescribe resolutions and instructions and exercise all the other powers as may be necessary, to assure the proper functioning of the Executive Secretariat.

The above mentioned powers, in absence of the Executive Secretary, shall be performed by the General Counsel who shall serve as his alternate.

The Executive Secretary shall be entitled to request from all services and enterprises of the public and private sectors, whatever reports and information he may deem necessary for the fulfillment of the purposes of the Committee.

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 normally performed by the State and those carried out by public utility services;

c) Those related to communications media; and

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

Article 17.- The foreign investments not covered by the preceding article shall be authorized by the Executive Secretary of the Foreign Investment

Committee, with the prior approval of its President, without requiring the agreement of the Committee. In all cases, he shall report to the Committee on the investments approved, at the next meeting. Should the President of the Committee deem it appropriate, he may defer granting his approval and submit these investments to a decision by the Committee.

GENERAL PROVISION

Article18.- The references to D.F.L. 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.

FINAL NOTE

Law 18,474, published in the Official Gazette of November 30, 1985, modified as indicated, the articles of D.L. 600 of 1974, amendments that are icorporated into the text set forth above. This law also contains the following Article 2.

"**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 such as those mentioned in Article 58 number 1 of the Income Tax Law and are subject to the provisions of Article 11 bis of Decree Law 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 "taxable profits that have not been distributed or withdrawn".