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LEGAL MEMORANDA

CHILEAN FOREIGN INVESTMENT STATUTE*

In view of the provisions of Decree Laws Nos. 1 and 128 of 1973, 527 of 1974; 990 of 1976, and

CONSIDERING:

1. That due to the Additional Protocol to the Cartagena Agreement, signed on October 5, 1976, Chile no longer belongs to the Cartagena Agreement, ceasing in its obligations derived under such Agreement, its Protocols, Decisions and Resolutions, except for the rights and obligations originated by Decisions Nos. 40, 46, 56 and 94, which are still in force;

2. That as a consequence of what is expressed in the preceding paragraph, and in accordance with what is provided in Decree Law 1642 of 1977, Decision No. 24 of the Commission of the Cartagena Agreement that contains the system for the treatment of foreign capitals, as well as of trademarks, patents, licenses and royalties, no longer forms part of Chilean legislation on the matter, and therefore its application is not mandatory for the treatment of foreign investments in Chile;

3. That with the experience gathered to date in the application of Decree Law No. 600, of 1974, it is possible to appreciate aspects in which the system applicable to foreign investment can be improved;

4. That in relation to the above, the coherence and stability of tax, foreign exchange, tariff, foreign trade, monetary and labor policies, make it advisable to dictate objective norms applicable to any foreign investment, in the same conditions, with procedural and substantive rules that eliminate discretionality and bureaucratic obstacles;

5. That notwithstanding the above, it has been considered convenient to allow the investor to apply for a guarantee of tax invariability, that in this case also guarantees a fixed tax rate, all of which represents a substantial stability in its activities in Chile.

*This is a translation of Decree Law No. 1748, Mar. 11, 1977, published in Official Gazette, No. 29712, Mar. 18, 1977.

The Government of the Republic of Chile has resolved to enact the following:

DECREE LAW

Article One. The following substitutes the text of Decree Law No. 600 of 1974 on the Foreign Investment Statute and subsequent amendments which have been therein incorporated, maintaining the same number of Decree-Law:

FOREIGN INVESTMENT STATUTE

TITLE I

Foreign Investment and Investment Contract

Article 1. The foreign natural and juridical persons and the Chilean natural or juridical persons residing or domiciled abroad, who transfer foreign capitals to Chile and who enter into a foreign investment contract, will be ruled by the provisions of the present Statute.

Article 2. The capitals referred to in the preceding paragraph may be brought into the country and must be valued as follows:

(a) Freely convertible foreign exchange, which must be sold to the Central Bank of Chile, or to an authorized institution, and that will be transacted at the highest exchange rate of the bankers' market;

(b) physical assets, in all their forms and conditions, which will be brought into the country under general provisions that are applied to imports without exchange coverage. These assets will be valued in accordance with the general procedures applicable to imports;

(c) technology in all its forms when it can be capitalized, which will be valued within a period of 120 days by the Committee of Foreign Investments, taking into account its real price in the international market. If this valuation has not been made and the time has elapsed, the sworn estimation of the contributor will be accepted.

The ownership, use and enjoyment of the technology which forms part of a foreign investment may not be assigned in any way separately from the enterprise to which it has been contributed, nor will it be subject to amortization or depreciation;

(d) credits that are linked to foreign investment. The general provisions, the interest, terms and other conditions of the foreign credits that are contracted, as well as the surcharges that may be requested in the total cost that must be paid by the debtor for the use of foreign credits, including commissions, taxes and all other expenses, will be those authorized by the Central Bank of Chile;

(e) capitalization of credits and foreign debts in freely convertible foreign exchange, the contracting of which has been properly authorized, and

(f) capitalization of profits with the right to be remitted abroad.

Article 3. The authorizations for foreign investments will be evidenced by contracts that will be entered into and raised to public deed, and which will be signed on one part on behalf of the State of Chile by the President of the Foreign Investment Committee when the investment requires a resolution of such Committee, or by the Executive Secretary if otherwise, and on the other part by the contributors of foreign capitals, who shall be called "foreign investors" for all purposes of the present decree-law.

The contract will contain the period within which the foreign investors must bring in these capitals. This period will not exceed 8 years in mining investments and 3 years for the rest. The Committee of Foreign Investments, by unanimous resolution may, in the case of mining investments, extend the period up to 12 years when prior explorations are required, considering the nature and estimated duration of these.

TITLE II

Rights and Obligations of the Foreign Investment

Article 4. The foreign investors may transfer abroad their capitals and net profits derived therefrom. There will be no time limit for the exercise of this right. However, the capitals may not be remitted abroad before 3 years have elapsed since their admittance.

The regime applicable to the repatriation of capital and remittance of net profits cannot be more unfavorable than that which rules the foreign exchange coverage of imports in general.

The exchange rate applicable for the transfer abroad of the capital and the profits shall be the highest in the bankers' market.

Article 5. The necessary foreign currency to fulfill with the repatriation of the capital or part of it, may only be purchased with the proceeds of the sale of the shares or rights representing the foreign investment, or the sale or liquidation of enterprises acquired or formed with such investment.

Article 6. The net proceeds derived from the sale or liquidations mentioned in the preceding article shall be exempted from all contributions, taxes or assessments up to the amount of the investment authorized by the Committee. Any excess on such amount shall be subject to the general rules of tax legislation.

Article 7. The holders of the foreign investments under the present decree law shall be entitled to a provision in their respective contracts establishing that an invariable tax rate of 49.5% will be levied on the income to which they will be affected, and will be maintained for a period of 10 years as from the start-up of activities of the respective enterprise, considering for these purposes the Income Tax Law and Housing Tax, which must be applied under the general provisions in force at the date of entering into the contract. Even if the foreign investor has applied for this invariability, he will be entitled, once, to waive it and come under the common tax regime, in which event he will be subject to the general tax legislation, with the same rights, options and obligations that apply to national investors, thus losing definitively the invariability convened.

Article 8. The common indirect tax and tariff regime applicable to national investments will be applied to foreign investments and to those enterprises with foreign participation.

Notwithstanding what is stated in the preceding paragraph, the holders of foreign investments, under the present decree law, shall be entitled to a provision in their respective contracts that for the time that it takes to carry out the investment agreed to, they will have the right to invariability on sales and services taxes and also of tariffs applicable to their imports of machinery and equipment that is not produced in the country and which is included in the list referred to in No. 10 of letter B of Article 12 of Decree law No. 825, of 1974, in force on the date the contract is entered into.

Article 9. Likewise, foreign investment and the enterprises where it has some participation shall also be governed by the common legal regime

applicable to national investment, and there shall be no direct or indirect discrimination in respect thereof, with the sole exception of what is provided in article 11.

The legal provisions or rulings related to certain production activities will be considered discriminatory if they should be applied in general or to a major part of that productive activity in the country, with exclusion of the foreign investment. Likewise, the legal provisions or rulings which establish exceptional regimes for certain activities or zones, will be considered discriminatory if the foreign investment should not have access thereto, in spite of fulfilling the same conditions and requirements that are imposed on national investment to enjoy that right.

For the purposes of the present article it is understood by certain productive activity that which is developed by enterprises with the same definition in accordance with internationally accepted classifications, and that produce goods placed in the same customs tariff schedule in accordance with the Customs Tariffs of Chile, understanding as "same customs tariffs position" that which does not have a difference between products of more than one unit in the last digit of the tariff schedule.

Article 10. Should legal provisions be enacted which the holders of foreign investments or the enterprises in whose capital foreign investment participate deem as discriminatory, they may request that the discrimination be eliminated, provided a period of over one year has not elapsed since the dictation of such provisions. The Committee of Foreign Investments, in a term not exceeding 60 days counted as from the date, of the application, will make a decision thereon, rejecting it or taking the necessary administrative steps to eliminate the discrimination or requesting the pertinent authority to take these steps, if such measures were beyond the faculties of the Committee.

In the event of lack of resolution from the Committee, or a refusal, or should it not be possible to eliminate the discrimination administratively, the holders of the foreign investments or the enterprise in whose capital it participates, may resort to the regular courts in order that the latter may declare whether there is discrimination or not; and if in the affirmative, that general legislation should be applied thereto.

Article 11. Notwithstanding what is established in Article 9, investments included in this decree-law may be subject to limitations on their access to internal credit by well-founded provisions.

TITLE III

Foreign Investment Committee

Article 12. The Foreign Investment Committee will be the sole institution authorized on behalf of the State of Chile to accept the contribution of foreign capitals under the present decree-law.

The Committee will act represented by its President in the case of investments which require the resolution of the Committee as provided in article 16; otherwise it will be represented by its Executive Secretary.

Article 13. The Committee of Foreign Investments will be composed of the following members:

- a) The Minister of Economy, Development and Reconstruction;
- b) the Minister of Finance;
- c) the Minister of Foreign Affairs;
- d) the Minister of the corresponding portfolio, in the case of applications for investments dealing with matters concerning Ministries that are not represented in this Committee;
- e) the Director of the National Planning Bureau.

The Ministers may only be substituted by their legal alternates.

Article 14. The Committee meetings will be presided by the Minister of Economy, Development and Reconstruction and, in his absence, by the Minister of Finance, provided at least three of its members are present. Resolutions will be taken by the absolute majority of the members attending and in the event of a tie the President will decide, and evidence will be left in the minutes of the resolutions taken. The alternate members may attend the meetings regularly with right to voice, but they will only be entitled to vote in the absence of the regular member for whom they substitute.

Article 15. For the fulfillment of its faculties and obligations, the Committee of Foreign Investments will have an Executive Secretariat that will be ascribed to the Ministry of Economy, Development and Reconstruction and that will have the following faculties:

- (a) to receive, study and report on the applications for foreign investments and others that are presented for the consideration of the Committee;

(b) to act as administrative body of the Committee, preparing the data and studies required;

(c) to inform, register, prepare statistics and coordinate all matters with regard to foreign investments;

(d) to centralize the information and the result of the control that must be exercised by the public entities with respect to the obligations contracted by the holders of foreign investments or the enterprises in which these participate, and report the offenses or violations that come to its attention to the competent public authorities, when thus instructed by the Foreign Investments Committee;

(e) to carry out and activate the negotiations with the different entities that must inform or give their prior authorization for the approval of the different applications that the Committee must resolve upon, and for the proper materialization of the corresponding contracts and resolutions;

(f) to investigate in Chile or abroad regarding the qualifications and integrity of the applicants or interested parties;

The Executive Secretariat may request from all the services or public and private sector enterprises, the reports and data required for the fulfilment of its objectives;

The Executive Secretariat will be directed by an Executive Secretary who will be of the exclusive confidence of the President of the Republic;

The Secretary will especially promote foreign investments in the country, carry out the work determined by the Committee, execute the functions that the Committee expressly delegates to him and act as Secretary of Minutes in the meetings, for which he will have the nature of a Minister of Faith.

Article 16. The following foreign investments will require the authorization of the Committee of Foreign Investments:

(a) those amounting to more than \$5,000,000 (five million dollars) or the equivalent in other currencies;

(b) those referred to sectors or activities normally developed by the State or those which are made in public services;

(c) those which are made in the mass media, and

(d) those which are made by a foreign State or by a foreign public corporation.

Article 17. The foreign investments not contemplated in the preceding article shall be authorized by the Executive Secretary of the Committee of Foreign Investments, with the previous conformity of its President and no resolution from the Committee will be required, but in any event the Secretary will report on the investments approved at the next session held subsequent to his authorization. If the President of the Committee considers it advisable, he will defer his agreement and will submit these investments to the approval of the Committee.

GENERAL PROVISIONS

Article 18. The reference regarding DFL 258 of 1961 or its provisions, contained in the general legislation, will be understood to be made to the present Statute or the pertinent provisions thereof.

TRANSITORY PROVISIONS

Transitory Article 1. Foreign capital at present in the country will continue to be ruled by the legal provisions in force at the time the contribution was authorized, or by those by which they are now ruled.

Notwithstanding the preceding paragraph, the foreign investments that have been admitted under the rules of decree-law No. 600 of 1974, in force at the time of the publication of the present decree-law in the Official Gazette, may choose to come under its new provisions, expressly waiving in this case the application of the legal and contractual provisions under which they were ruled. They will have one year to exercise this right, counted as from the date of the publication of the present decree law in the Official Gazette.

The holders of foreign capitals referred to in transitory article 2 of Decree-Law No. 600, of 1974, in force until the date of the publication of the present decree-law in the Official Gazette, who have not entered into a foreign investment contract, provided they have fulfilled the requirements established in the aforementioned transitory article 2, may opt to come under the provisions of Decree No. 600 in force until the date of publication of the present decree-law in the Official Gazette, or its new provisions.

Transitory Article 2. The Committee of Foreign Investments, by unanimous resolution, within the period of 120 days as from the date of publication of this decree-law, may convene foreign investments contracts in conditions other than those resulting from the application of the present decree-law, when it determines that previous obligations that bind the State exist. Those who consider that they are entitled to come under this provision must request it in writing from the Executive Secretariat of the Committee, in the period of sixty days as from the publication of the present decree-law.

Article Two: Article 17 of Law 7747 is repealed.

Article Three: The phrase "once the favorable report from the Committee of Foreign Investments has been issued" substitutes "once report from the Committee of Foreign Investments has been issued", in article 5 and in paragraph 2 of article 9 of Decree-law No. 1557 of 1976.

This decree-law must be registered with the General Comptroller of the Republic, published in the Official Gazette and inserted in the Official Compilation of such Comptrollership.

AUGUSTO PINOCHET UGARTE, General of the Army, President of the Republic.

JOSE T. MERINO CASTRO, Admiral, Commander in Chief of the Navy.

GUSTAVO LEIGH GUZMAN, Air General, Commander in Chief of the Air Force

CESAR MENDOZA DURAN, General, General Director of the Police

ARTURO YRARRAZAVAL

Philippi, Yrarrazaval, Oyarzun & Cox
Santiago, April 1977