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Jorge Carey: “Analyzing the repeal or modification of DL600 is an issue that can be discussed”

Jorge Carey, who has been involved in several businesses with foreign investors, has doubts about a reform, believing that it is not a good idea that this type of changes are implemented by a left or center-left governments because it risks to bring unnecessary (political) noise.

- What is your opinion on Michelle Bachelet’s proposal to repeal DL 600?

Before answering your question, I would like to make certain considerations: normally, investors who invest outside their own countries, closely examine the record of such countries in the last four or five decades in the most relevant issues when making their economic decisions, including the political stability, macroeconomic equilibrium, presence or absence of corruption, access to the foreign exchange markets to repatriate their investments and profits and to service foreign credits, reasonable and foreseeable taxation, implementation of public policies that do not discriminate against foreigners and an effective property protection over their investments and profits. The existence of investment contracts, executed under statutes like DL 600, which guarantee all of the above, may incentivize the making of an investment but are much less important than a positive result of an exam such as the one mentioned above. Indeed, such agreements may be changed by the political will of any future Congress or administration holding power through changes that may deprive them of their legal support, as sadly occurred in the past in Chile through constitutional changes. Moreover, at present, the arbitrary acts of States, including expropriations without fair compensation, are not challenged in the courts of the expropriating country but rather in international tribunals created by international investment protection treaties which cannot be unilaterally terminated with retroactive effects. Answering your question and in view of the above, it appears to me that the repeal of DL 600 is a subject which may be discussed. It should be done, however, without ideological biases and taking into account always the best interests of Chile. But if a possible repeal of DL 600 is made with the declared intent of increasing taxation of foreign investments –and only foreign ones- that, in itself, may be very negative for the flow of new capital into Chile.

- Do you believe that the end of this investment mechanism may affect inflows of investment into Chile?

The great majority of the investments made into Chile under DL 600 probably will not be affected. But the more complex ones, the long term ones, the bigger ones, those which may really interest Chile in mining and energy, possibly yes. To have

assurances that there will be access to the foreign exchange markets in projects which mature in long periods of time or are funded from abroad or which export their products, may be a determining factor for some investors. The drama which foreign investors are presently experimenting in Venezuela and Argentina is an important example of this. In addition, the fear that mining royalties may keep increasing not in line with the general taxation of a country may also be disincentive that can be corrected in a contract with the host country, under certain circumstances. More than special treatments, those who invest in countries that are not their own do not want to be discriminated on the basis of their nationality or the activities they undertake. Investors have the sophistication to search what is the motivation behind the elimination of DL 600 rather than the repeal itself. Irrespective of this, I do not believe it is a good idea that these kind of changes are implemented by a left or center left administration – and at the beginning of its term – because it makes unnecessary noises in relation to a subject where there exists a certain consensus looking into the future.

- In case it were eliminated, ¿which features of DL 600 do you believe it would be necessary to preserve, because of their benefits to foreign companies?

I would like to see in existence a legal body for all investors, which would apply to Chileans as well as to foreigners. This body should guarantee, to all, certain rights such as the access to the foreign exchange market to service international loans, the maintenance of certain levels of taxation during the critical years during which investments mature and the right to not see the benefits of their work and investment adversely affected by future political administrations.