

International **Comparative** Legal Guides



Foreign Direct Investment Regimes **2020**

A practical cross-border insight into FDI screening regimes

First Edition

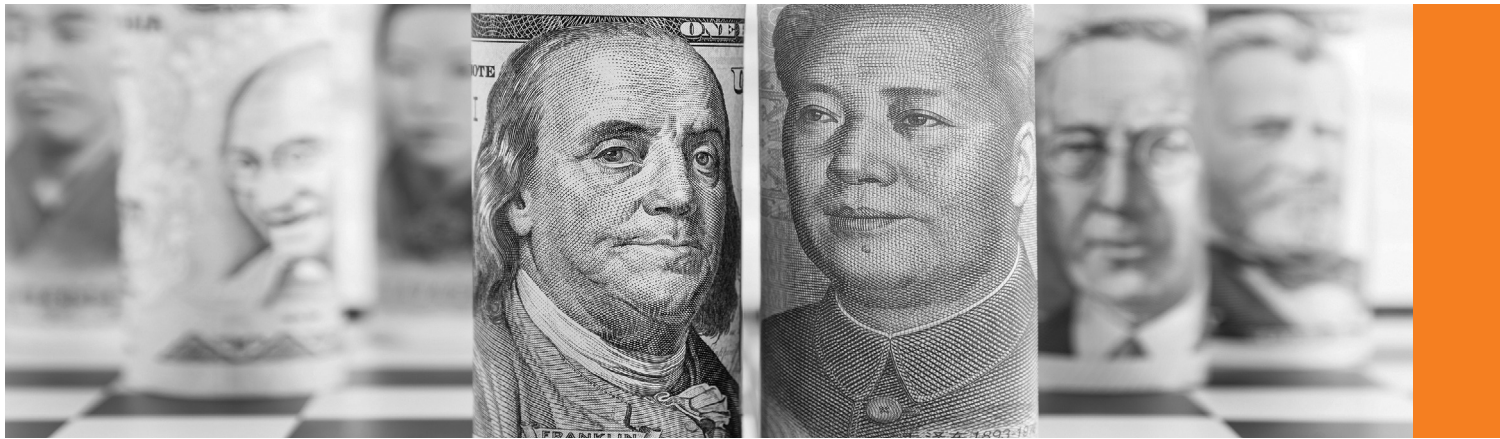
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Uría Menéndez
Waselius & Wist

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ISBN 978-1-83918-010-1
ISSN 2633-3724

Published by

glg global legal group

59 Tanner Street
London SE1 3PL
United Kingdom
+44 207 367 0720
www.iclg.com

Group Publisher

Rory Smith

Publisher

Bianca Carter

Senior Editors

Caroline Collingwood
Rachel Williams

Editor

Sam Friend

Creative Director

Fraser Allan

Printed by

Stephens and George
Print Group

Cover Image

www.istockphoto.com

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Foreign Direct Investment Regimes 2020

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Contributing Editor:

Matthew Levitt

Baker Botts L.L.P.

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Chile

Carey



Diego Peralta



Vesna Camelio

Chile

1 Foreign Investment Policy

1.1 What is the national policy with regard to the review of foreign investments (including transactions) on national security grounds?

The state of Chile encourages foreign investments regardless of their origin or destination. As a basic principle, Law No. 20,848, which establishes the system applicable to direct foreign investment entering Chile as of January 21st, 2016, hereinafter “Law No. 20,848”, sets forth that foreign investors shall be treated in the same manner as local investors. Consequently, it is forbidden to discriminate against a foreign investor or a company which is majority- or minority-owned by these types of investors.

There is no further review of foreign investment on national security grounds. The only limitation a foreign investor will encounter is the fulfilment of Chilean law and sector-specific regulations, which apply equally to both domestic citizens and foreigners.

Notwithstanding, there are two restrictions regarding foreign investment due to national security grounds:

- The first is the prohibition to acquire the domain (or any other right), possession or tenancy of real estate bordering a neighbouring country, which only affects the nationals (persons and corporations) of the respective country. Nevertheless, the President of Chile, by means of a Supreme Decree, may authorise such acquisition based on grounds of national interest.
- The second is the ban on private investment in hydrocarbon exploitation. According to Chilean supreme law, the Political Constitution of the Republic, the state of Chile owns all the hydrocarbons, whether liquid or gaseous, existing on the national territory, the state of Chile having the exclusive right to extract or exploit such hydrocarbon deposits. This restriction affects both nationals and foreigners.

1.2 Are there any particular strategic considerations that apply during foreign investment reviews?

No, as pointed out in question 1.1, there is no such review according to Chilean law. No authority is empowered to restrict foreign investment due to national security grounds. Any foreign investment which properly fulfils the objective requirements established by law will be able to develop any economic activity, regardless of the origin or type of investment or investor.

1.3 Are there any current proposals to change the foreign investment review policy or the current laws?

There are no current proposals to change the current laws relating to foreign investment.

2 Law and Scope of Application

2.1 What laws apply to the control of foreign investments (including transactions) on grounds of national security?

As mentioned in question 1.1, there is no control of foreign investments on grounds of national security other than the two noted restrictions.

2.2 What kinds of foreign investments, foreign investors and transactions are caught? Is the acquisition of minority interests caught?

Please refer to question 1.1 above.

2.3 What are the sectors and activities that are particularly under scrutiny? Are there any sector-specific review mechanisms in place?

Please refer to question 1.1 above.

2.4 How are terms such as ‘foreign investor’ and ‘foreign investment’ specifically addressed in the law?

There are two mechanisms that regulate foreign investment of capital in Chile. These mechanisms are: (i) Chapter XIV of the Compendium of Foreign Exchange Regulations of the Central Bank of Chile (hereinafter, “Chapter XIV”); and (ii) Law No. 20,848.

The terms “foreign investor” and “foreign investment” may vary depending on which of the abovementioned mechanisms is in use.

Chapter XIV offers a quick and relatively free-of-public-authority-intervention system allowing foreign currency to be brought into the country. Investments performed under Chapter XIV must exceed USD10,000. The procedure set forth in Chapter XIV is available to individuals and legal entities, regardless of their domicile or residence. Under this mechanism, foreign investment is understood as the transference into the country of foreign currency or the disposal of funds abroad, in both cases exceeding USD10,000, in order to acquire Chilean assets. The transference of foreign shares or social rights in exchange for Chilean assets is considered a foreign investment as well, if the value of the foreign shares or social right surpasses the mentioned threshold.

Law No. 20,848 establishes a framework for direct foreign investment in Chile, the latter being understood as the transference into the country of foreign capital or assets owned by a foreign investor or controlled by the latter, in an amount equal to or greater than

USD5 million, or its equivalent in other foreign currencies. Under this mechanism, a foreign investor is any individual or legal entity incorporated overseas, and not residing, nor having domicile, in Chile, which transfers capital into Chile under the terms mentioned above, who, in order to use this mechanism, shall require a certificate issued by the Foreign Investment Fostering Agency, evidencing the materialisation of the investment in the country.

2.5 Are there specific rules for certain foreign investors such as state-owned enterprises (SOEs)?

There is no specific rule which sets forth any discrimination regarding the origin of the investment or investor. A state-owned enterprise shall be treated equally with any other domestic or foreign investor.

2.6 Is there a local nexus requirement for an acquisition or investment to fall under the scope of the national security review? If so, what is the nature of such requirement (existence of subsidiaries, assets, etc.)?

Please refer to question 1.1 above.

2.7 In cases where local presence is required to trigger the review, are indirect acquisitions of local subsidiaries and/or other assets also caught?

Please refer to question 1.1 above.

3 Jurisdiction and Procedure

3.1 What conditions must be met for the law to apply? Are there any monetary thresholds?

Please refer to question 1.1 above.

3.2 Is the filing voluntary or mandatory? Are there any filing fees?

Please refer to question 1.1 above.

3.3 In the case of transactions, who is responsible for obtaining the necessary approval?

Please refer to question 1.1 above.

3.4 Can foreign investors engage in advance consultations with the authorities and ask for formal or informal guidance on the application of the approval procedure?

Please refer to question 1.1 above.

3.5 What type of information do investors have to provide as part of their filing?

Please refer to question 1.1 above.

3.6 Are there sanctions for not filing (fines, criminal liability, unwinding of the transaction, etc.) and what is the current practice of the authorities?

Please refer to question 1.1 above.

3.7 What is the timeframe of review in order to obtain approval? Are there any provisions expediting the clearance?

Please refer to question 1.1 above.

3.8 Does the review need to be obtained prior to or after closing? In the former case, does the review have a suspensory effect on the closing of the transaction? Are there any penalties if the parties implement the transaction before approval is obtained?

Please refer to question 1.1 above.

3.9 Can third parties be involved in the review process? If so, what are the requirements, and do they have any particular rights during the procedure?

Please refer to question 1.1 above.

3.10 What publicity is given to the process and the final decision and how is commercial information, including business secrets, protected from disclosure?

Please refer to question 1.1 above.

3.11 Are there any other administrative approvals required (cross-sector or sector-specific) for foreign investments?

Please refer to question 1.1 above.

4 Substantive Assessment

4.1 Which authorities are responsible for conducting the review?

Please refer to question 1.1 above.

4.2 What is the applicable test and who bears the burden of proof?

Please refer to question 1.1 above.

4.3 What are the main evaluation criteria and are there any guidelines available?

Please refer to question 1.1 above.

4.4 In their assessment, do the authorities also take into account activities of foreign (non-local) subsidiaries in their jurisdiction?

Please refer to question 1.1 above.

4.5 How much discretion and what powers do the authorities have to approve or reject transactions on national security grounds?

Please refer to question 1.1 above.

4.6 Can a decision be challenged or appealed, including by third parties? Is the relevant procedure administrative or judicial in character?

Please refer to question 1.1 above.

4.7 Is it possible to address the authorities' objections to a transaction by providing remedies, such as undertaking or other arrangements?

Please refer to question 1.1 above.

4.8 Are there any other relevant considerations? What is the recent enforcement practice of the authorities?

Please refer to question 1.1 above.



Diego Peralta is a partner at Carey and co-head of the firm's Banking and Finance Group. His practice focuses on the creation and structuring of financial products and business financing, both from the lender and the borrower's perspective; on the purchases and sales of companies; on the issuance and placement of debt and equity securities in Chile or elsewhere; as well as on financial regulatory matters.

Mr Peralta has been recognised as a leading lawyer by several prestigious international publications.

He is counsel and member of the Executive Committee of IABA, member of the Council of the Chilean Bar Association and of the Advisory Committee on Capital Markets to the Finance Minister. During 2015, he was also a member of the New Commerce Codification Commission for Chile and part of a working group which analysed a new General Banking Law in Chile.

He graduated from Universidad de Chile.

Carey

Isidora Goyenechea 2800, 43rd floor
Las Condes, Santiago
Chile

Tel: +56 2 2928 2216
Email: dperalta@carey.cl
URL: www.carey.cl



Vesna Camelio is an associate at Carey. Her practice focuses on banking, corporations, foreign investment, capital markets and commercial law. She has been recognised in banking and finance by the international publication *IFLR1000*.

Vesna is member of the panel of arbitrators of the Arbitration Center of the Santiago Chamber of Commerce and is also a member of the Chilean Bar Association.

She graduated from Universidad Católica de Chile and attended a course on Financial Accounting for Lawyers at Universidad del Desarrollo.

Carey

Isidora Goyenechea 2800, 43rd floor
Las Condes, Santiago
Chile

Tel: +56 2 2928 2216
Email: vcamelio@carey.cl
URL: www.carey.cl

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