

January, 2016

## NEW DIRECT FOREIGN INVESTMENT LAW

On January 1, 2016 Law No. 20,848 which sets forth a new legal framework for foreign direct investment in Chile (the "New Law") was enacted. The New Law also regulates the effects of contracts entered into during the term of Decree Law No. 600 of 1974 ("DL 600"), in order to guarantee the full validity of the rights and duties acquired by foreign investors under said legal regime. Foreign investors which executed foreign investment agreements with the Republic of Chile under DL 600 before January 1, 2016, will preserve all rights and obligations thereunder.

### *The New Law introduces a series of modifications:*

First, it includes a definition of direct foreign investment, which involves any transfer of foreign capital or assets into Chile, owned by a foreign investor or controlled by it, in an amount equal to or higher than USD5,000,000, through the transfer of freely convertible foreign currency, the contribution of physical assets, the reinvestment of earnings, the capitalization of credits, or the transfer of technology that may be capitalized or credits associated with foreign investments from related parties.

Furthermore, the New Law incorporates new criteria to define direct foreign investment. Under the new criteria, investments of at least USD5,000,000 which are transferred to Chile by means of the acquisition of or participation in the capital or equity of a Chilean company and which result in the control of at least 10% of the voting shares or rights of said company will be considered direct foreign investment

The New Law specifically defines foreign investor as any individual or legal entity incorporated abroad, not residing or domiciled in Chile, that transfers capital to Chile under the terms stated above. The foregoing determines who will benefit from and who may join the new investment regime.

The New Law establishes a series of rights for the foreign investor: (i) to remit abroad the transferred capital and the net profits generated by the investment, upon fulfillment of the relevant tax obligations; (ii) access to the formal (banking) exchange market to settle or obtain foreign currency; and (iii) not to be discriminated against when compared to domestic investors. The New Law grants the above rights without requiring authorization from any foreign investment regulatory entities. Such authorization previously required the execution of a contract between the Republic of Chile, represented by the Foreign Investment Committee, which was responsible for approving the entrance of foreign capital and establishing the terms and conditions of each foreign investment contract (the "Committee"), and foreign investor. In order to evidence the existence of the regime, only an application for a certificate issued by the Agency for Promotion of Foreign Investment will be required, which will be issued only if the USD5,000,000 investment has been materialized or upon the acquisition of assets or participation in the capital or equity of a Chilean company, which grants the control of at least 10% of the voting shares or rights of such company.



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The New Law does not change the rights and obligations contained in Chapter XIV of the Compendium of Foreign Exchange Regulations issued by the Central Bank that apply to loans, investments and capital contributions coming from abroad.

In order to facilitate direct foreign investment, the New Law eliminates: (i) the deadline for the entering of foreign capital into the country and (ii) the requirement to wait one year from the time that the investment enters the country before remitting the capital.

Regarding tax matters, the New Law sets forth a more expeditious procedure to request VAT exemptions in the import of capital goods.

### ***Strategy to promote foreign investment***

The New Law also establishes as a task for the President of the Republic, the development of a strategy for the Promotion of Foreign Investment that includes among its main objectives: (i) foreign investment promotion, (ii) positioning Chile at an international level and as a center for foreign businesses and investments and (iii) facilitating collaboration between foreign investors and domestic companies.

### ***The New Law also creates two new institutions to replace the former Committee with the aim of boosting investment into Chile:***

- Un Comité de Ministros, presidido por el Ministro de Economía, Fomento y Turismo e integrado por el Ministro de Hacienda y los demás ministros con carácter de permanente que determine el Presidente de la República, que tendrá por objetivo principal asesorar al Presidente en la promoción de la inversión extranjera.
- La Agencia de Promoción de la Inversión Extranjera, en calidad de sucesora del antiguo Comité. Esta agencia tendrá como principales funciones promover y atraer el ingreso de capitales e inversiones extranjeras, y establecer las instancias de coordinación que el Comité de Ministros le encomiende para lograr con mayor éxito la promoción de la inversión extranjera en Chile y emitir los certificados a los inversionistas extranjeros para habilitar el acceso al régimen de inversiones, entre otras.