

FDI Guide
Chile

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Foreword: A specific chapter is dedicated to the new (EU) Regulation 2019/452 of 19 March 2019 creating a framework for the screening of foreign direct investment (FDI) into the European Union through a combination of: (1) mandatory information by the Member State receiving a filing under its FDI regime of all other Member States and the European Commission; and (2) the possibility for the latter to make comments or issue opinions to the former.

	Topic	Explanation/Description of what is expected	Chile
1.	Principle	Describe if the FDI regime is built by exception to a principle of freedom of investment or whether restrictions to transferring funds to and from your country apply generally.	<p>Regime by exception</p> <p>Law No 20,848 establishes the framework for FDI in the Republic of Chile, which contemplates a regime of broad freedom for FDI. In this sense, Article 9 of Law No 20,848 establishes the principle of no arbitrary discrimination, stating that foreign investors are subject to the same legal regime applicable to domestic investors. Both must comply with the provisions contained in Chilean law and with specific conditions established for each economic sector. Therefore, there are no general restrictions or limitations for FDI.</p> <p>However, on national security grounds, there are two limited exceptions to the above-mentioned principle:</p> <ul style="list-style-type: none"> • prohibition to acquire the domain (or any other kind of right) over real estate located in border zones, unless authorised by the President of the Republic by means of a supreme decree; however, this restriction only affects nationals (persons and corporations) of the respective border country; and • prohibition to exploit through private capital the national reserves of liquid and gaseous hydrocarbons; this exception applies to national and foreign investors.

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			<p>Furthermore, the Compendium of Foreign Exchange Regulations of the Central Bank of Chile (the ‘Compendium’), more specifically, Chapter XIV, provides a quick and relatively free of public authority intervention system that allows foreign exchange above US\$10,000 to enter the country without further control. Transactions below that level are not regulated. The procedure set forth in the Compendium is available to individuals and legal entities, regardless of their domicile or residence.</p>
2.	<p>Legal regime Authority(ies) in charge</p>	<p>Describe source(s).</p> <p>Name of authority in charge of applying the FDI rules (Minister/Agency/...).</p>	<p>There are two main legal sources that regulate foreign investment in Chile: (1) the Compendium; and (2) Law No 20,848.</p> <p>Among the institutions that play a relevant role in the development of FDI are:</p> <ol style="list-style-type: none"> 1. the Foreign Investment Promotion Agency (Agencia de Promoción de la Inversión Extranjera or APIE), responsible for promoting and attracting foreign investment to Chile, along with certain minor administrative related tasks; and 2. (ii) the Central Bank of Chile, which is responsible for overseeing compliance with the investment rules contained in the Compendium.
3.	<p>Transactions that may be subject to FDI</p> <ul style="list-style-type: none"> • Type • Materiality thresholds • Rights of evocation 	<p>Describe the nature of the transactions that may be subject to FDI rules.</p> <p>In the case of share acquisition, specify if the FDI regime is triggered only beyond a certain threshold and, if so, describe such a threshold.</p>	<p>The general rule is that no transactions are subject to FDI control, and they can be freely executed if they comply with Chilean law.</p> <p>Law No 20,848 establishes, for definition purposes, that FDI means the transfer to Chile of foreign capital or assets owned or controlled by a foreign investor for an amount equal to or greater than US\$5m, or its equivalent in other currencies, made through freely convertible currency, physical goods in any condition, reinvestment of profits, capitalisation of credits, technology susceptible of being capitalised or credits associated with foreign investment from related companies.</p> <p>Likewise, Law No 20,848 considers as foreign investment, within the same amount threshold expressed above, investment that is transferred to Chile for the purpose of, directly or indirectly, acquiring or participating in the equity of a company or in the capital of a company incorporated in Chile under Chilean law, which gives the investor control of at least ten per cent of the voting rights of the shares of such company, or of an equivalent percentage if it is not a stock company.</p>

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			<p>On the other hand, the Compendium establishes as foreign investment the transfer to Chile of foreign currency or disposition of funds abroad, with the purpose of acquiring assets in Chile, provided that the amount of the currency exceeds USD 10,000. In this scenario, the transaction must be reported to the Central Bank, according to established regulations. Additionally, the transfer and/or acquisition of foreign shares or social rights in exchange for Chilean assets are considered foreign investment as well if the value of the foreign shares or social rights surpasses the aforementioned threshold.</p>
		<p>Are indirect acquisitions of assets or shares in the jurisdiction subject to the relevant FDI rules (acquisitions in a parent company outside the jurisdiction)?</p> <p>Are shares transfers involving a group company internal restructuring covered?</p> <p>Are greenfield investments covered?</p>	<p>All these transactions are subject to the above-mentioned general rule and, therefore, are not subject to any FDI approval procedure. Additionally, if they comply with the requirements set forth above, they will be able to be treated as FDI under Chilean law.</p>
		<p>Does the FDI authority (or another type of governmental authority) have a power of evocation/ex officio/call-in powers? If so, please describe.</p>	<p>Relevant institutions only supervise compliance with applicable regulations and have no further rights to intervene in the investment process. Nevertheless, in the case of non-compliance with the reporting obligation contained in the Compendium, the Central Bank of Chile may impose fines on the foreign investor.</p>
4.	<p>Sectors falling under the FDI scope</p>	<p>Describe the economic sectors for which the FDI regime will apply. If relevant, explain for each sector the level of flexibility that the authority may apply (or not) in evaluating whether FDI rules should apply.</p> <p>Are there sector-specific stricter limits on foreign investment that will apply such as a lower threshold of investment by foreign interests or sectors for which no foreign investment is possible? If yes,</p>	<p>Foreign investment will be considered independent of the area in which the investment is made, as long as it complies with the conditions established by Law No 20,848 and the Compendium.</p> <p>However, as mentioned above, there are exceptions regarding real estate located near to borders, and in connection with the exploitation of hydrocarbons.</p>

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		which sectors (eg, nuclear energy/agriculture)?	
5.	Qualified investors	Describe the main characteristics of investors that fall under the FDI regime and if there are nuances depending on their origin (eg, EU v not EU).	Law 20,848 defines foreign investor as any individual or legal entity incorporated abroad (without any difference regarding its jurisdiction of origin), not resident or domiciled in Chile, that transfers capital to Chile, under the terms established in this law. Being qualified as a foreign investor according to this law depends on whether or not the foreign investor applies for the certificate that evidences such quality before the APIE. Obtaining this certificate is voluntary; however, it will bring several positive effects to the foreign investor, such as being officially recognised as a foreign investor.
6.	Procedure 6.1 Before or post-closing filing		<p>As previously mentioned, no approval is required; however, in the case in which the Compendium's regulations apply, notification may be required.</p> <p>According to the Compendium, the moment at which the Central Bank of Chile must be notified (however, no approval is required) of the transaction and/or investment that has relevance in Chile will depend on: (1) whether the funds have been remitted to the country; or (2) if the transaction that qualifies as foreign investment has been carried out abroad and the funds have not been remitted.</p> <p>If the foreign currency has been remitted to Chile, a distinction must be made as to whether or not the amount of the foreign currency exceeds USD 1m. If it exceeds that amount, it must be reported through a Chilean Formal Exchange Market entity (Entidad Mercado Cambiario Formal or EMCF) prior to or at the same time the currency enters Chile. If it does not exceed that amount, the EMCF entity must submit a form (<i>Planilla</i>) to the Central Bank at a time no later than 10 am on the following day after the entry of the investment to the country.</p> <p>In the case in which the transaction has been carried out abroad and the funds have not been remitted into Chile, the transaction shall be reported to the Central Bank by the interested party within the first ten days of the month following the one in which the transaction was executed.</p>
7.	6.2 In the case of pre-closing filing	Mandatory/optional filing	It is not necessary to present authorisation for the execution of foreign investment under Chilean law; however, according to the characteristics of the investment, it may be necessary

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			<p>to report it to the Central Bank of Chile, within the deadlines indicated in the Compendium, subject to fines for failure to comply with such an obligation.</p> <p>Under Law No 20,848, there is no mandatory term for requesting a certificate for foreign investment because requesting a certificate is voluntary. It is only a document that officially certifies the condition of being a foreign investor under Chilean law.</p>
8.	6.3 In the case of post-closing, what are the powers of the authority?		In the event that the obligation to report to the Central Bank in the terms established in the Compendium has not been complied with, the foreign investor may be subject to the corresponding fines. Nevertheless, the investment may not be denied/paralysed by the Chilean Central Bank.
9.	6.4 Advance ruling	Explain, if it is possible to obtain a pre-ruling from the authority as to whether the transaction falls under the FDI rules and, as the case may be, describe the process to be followed.	Chile follows an objective criterion as to whether or not the operation corresponds to foreign investment, and in this case, according to the rules of the Compendium, the foreign investor may have to report the transaction to the Central Bank, but not request authorisation from the Central Bank, nor prior evaluation as to whether or not it corresponds to foreign investment to the Central Bank or any other institution.
10.	6.5 Timing of various steps (i) Filing	How much lead time is required?	Not applicable.
11.	(ii) Review by the authority	Specify the timing available to the authority; indicate if the timeframe is mandatory or not and describe what other flexibility may exist <i>de facto</i> or <i>de jure</i> .	Not applicable.
12.	(iii) Negotiation with the authority	Describe how to handle the relationship with the authority, including when approval is subject to commitments from, or conditions imposed on, the investor.	Not applicable.

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		Are there any guidelines issued by the authority?	Not applicable.
13.	(iv) Filing fees	Is there a filing fee?	There are no filing fees for notifiable transactions under the Compendium or for obtaining a certificate from the APIE.
14.	(v) Information needed for filing	What information about the investor is required? Are there any thresholds for the identity and nationality of minority passive shareholders? Information on other FDI approvals by other authorities?	Not applicable.
15.	(vi) Final decision	Indicate if the final decision is to be issued within a set timeframe and what are the consequences if the authority does not issue a decision within the set timeframe.	Not applicable.
16.	Conditionality of approval (i) Type of conditions or commitments	Describe the type of conditions or commitments to which FDI approval may be subject. Specify their usual duration. Specify what powers the authority may exercise to control/monitor the satisfaction of such conditions/commitments.	Not applicable.
17.	(ii) Level of discretionary power of the authority	Indicate if it exists and, if so, describe exceptional circumstances that have led to the use of such discretionary power.	There is no discretion for authorities to apply the Compendium or Law No 20,848.
19.	(iii) Risk of veto	Describe a topical case.	The competent authorities have no veto rights.

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		Statistics	
20.	Role of other national authorities	Indicate if other authorities or administrations (eg, Army or Defence Minister) can get involved and, if so, how (by the authority or otherwise) and how much influence it may exercise.	The intervention of other national authorities is not contemplated for FDI reasons. However, other authorities may intervene in the transaction as per applicable law regarding their own competences (eg, antitrust and environmental).
21.	Sanctions	Describe the type of sanctions that may be imposed by the authority in the case of:	In the case of failure to comply with the notification obligations to the Central Bank of Chile as set forth in the Compendium, the Central Bank may impose fines of up to twice the amount of the foreign exchange transaction. Under Law No 20,848, no fines are contemplated.
		<ul style="list-style-type: none"> breach of conditions and/or commitments attached to the approval; and 	
		<ul style="list-style-type: none"> investment carried out without prior approval. 	Not applicable.
	Covid – special regime	Please describe specific rules applicable as a result of Covid-19 pandemic.	Chile has not adopted special rules or norms regarding FDI due to Covid-19.