

EMBASSY OF INDIA

SANTIAGO

CHILE

SYSTEMS, PROCEDURES & OTHER RELEVANT
INFORMATION FOR FOREIGN COMMERCIAL
ENTITIES WISHING TO INVEST IN CHILE

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on behalf of the



सत्यमेव जयते

Economic Diplomacy Division
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This market survey aims to provide relevant information to Indian companies willing to evaluate the possibility of investing in Chile, through the creation of a new company or by becoming totally or partially owners of an already existing one.

Therefore, this survey will cover the main aspects of Foreign Direct Investment (FDI) in Chile. This latest should be understood as an investment made by a foreign company or individual in business interests in Chile, in the form of either establishing business operations or acquiring business assets, such as ownership or controlling interest in a Chilean company.

FDI should be distinguished from portfolio investments in which an investor merely purchases equities of foreign-based companies. This type of foreign investment is not part of this survey.

1. General Aspects

1.1 Foreign Investment Climate

Chile has been recognized as one of South America's most promising investment destinations. While the country is well known as the world's largest exporter of copper, it's also the fifth largest exporter of wine and a large regional producer of chemical wood pulp, fish and different varieties of fruits, among other products.

Some benefits of investing in Chile include:

- **Strong Performance:** Despite the current economy slowdown, Chile continues to show promising macroeconomic figures, in terms of GDP, income per capita, competitiveness, etc.
- **Natural Resources:** Chile is the world's largest exporter of traditional copper, as well as lithium and other minerals. In addition, the country has plentiful natural resources with high potential for the development of plants of different NCRE sources, such as sun, wind and water.

- **Stable Government:** Thanks to its political and economic stability, openness to trade and legal security, Chile has maintained an attractive and dynamic business climate for both national and foreign investors.

Foreign Direct Investment (FDI) has been a key element of Chilean national development strategy. The country has a positive disposition toward FDI, with laws and regulations that encourage investment by foreigners and just a few restrictions.

Foreign investors receive treatment like Chilean nationals and laws and practices are not discriminatory against foreign-owned investments. The favourable orientation of Chilean policies toward FDI makes quite improbable that significant changes occur at this regard.

In order to promote Chile as a destination for FDI and provide guidance and support to potential investors, the Chilean government created the Foreign Investment Promotion Agency (APIE), better known as InvestChile. This agency provides a wide range of services at four different stages of investment projects: attraction, pre-investment, landing and after-care.

1.2 Main investment sectors

According to InvestChile, some of the most promising sectors for foreign investment (but not limited to) are the following:

- **Non-Conventional Renewable Energy (NCRE):** The country has great conditions for solar energy production in the world, including 4 thousand hours of sunshine per year in the northern regions and the world's highest levels of solar radiation. Chile also possesses optimal wind, marine, geothermal and hydraulic energy potential. According to E&Y, Chile ranks in the 4th position among countries with greater potential for electric investment in NCRE.
- **Global Services:** Chile ranked first in Latin America, according to the WEF Networked Readiness Index, and as the 9th most attractive country with regards to global services business location, according to the AT Kearney 2016 ranking.

- **Mining Equipment, Technology and Services:** Chile has 29% of the world's copper reserves, 16% of the molybdenum reserves, 15% of the silver reserves, 7% of gold and 54% of the world's lithium reserves. Besides, the country is exporting technology mining services to 39 markets.
- **Food Industry:** Thanks to its climate diversity paired with optimal zoo sanitary and phyto sanitary safety conditions, Chile produces healthy foods and ingredients, accessing to 64% of the world market consumers. The country is one of the 15 largest exporters in the agricultural world and has positioned over 50 products in all the markets in which it participates.
- **Sustainable Tourism:** Chile is the best consecutive adventure tourism destination, according to the last World Travel Awards. Lonely Planet, the Daily Telegraph (UK) and The Guardian (UK) ranked Chile among the top destinations to visit during 2017. Besides, the New York Times (USA) highlighted the Atacama Desert at one of Top 10 Must See in 2017

1.3 Restrictions to Foreign and National Investors

In general terms, Chile does not restrict the right to private ownership or establishment, as well as on foreign ownership or control of business entities or assets in Chile.

Foreign investors have access to almost all economy sectors. An exception is the internal waterways freight transportation sector, where foreign equity ownership of companies is capped at 49%. Chile also has national security restrictions regarding the purchase of real estate by foreigners near land borders.

Some restrictions exist to the right of ownership in the case of strategic activities, such as mining and energy. These restrictions are applicable to both national and foreign investors. According to Chilean Constitution, the State has absolute, exclusive, inalienable and permanent domain over all mineral, hydrocarbon, and fossil fuel deposits within Chilean territory. Nevertheless, the law allows the government to grant concession rights to individuals and companies for exploration and exploitation activities, and to assign contracts to private investors, without discrimination against foreign investors.

Some investment projects require an additional authorization, which are asked to both, foreign and local investors. For instance, investors in telecommunications must in certain cases get licenses, which are limited in number. Copper mining projects require the authorization of the Chilean Copper Commission (COCHILCO). An approval from the Under-Secretariat of Fishing (“Subsecretaría de Pesca”) is requested for investments in the fishing sector. To operate in the banking sector, an authorization from the Bank and Financial Institutions Regulatory Agency (“Superintendencia de Bancos”) is required. The Securities and Exchange Commission (SVS) must authorize projects related to insurance and investment funds.

Besides, projects with a potential environmental impact need to be authorized by the Environmental Evaluation Service (SEA).

2. Legal Framework of Foreign Direct Investment

2.1 Legal Framework

The entering of foreign capital as FDI into Chile under either the Foreign Investment Statute Law 20.848 (enacted in 2016) or Chapter XIV of the Central Bank’s Compendium of Foreign Exchange Regulations (CFER).

2.1.1 Foreign Investment Statute Law 20.848

The Foreign Investment Statute Law 20.848 was enacted on 1 January 2016, to replace the Decree Law 600 (DL 600) that had been in place since 1974.

DL600 regulated the entry of foreign capital as investments into Chile. It provided investors with guaranteed certainties, rights and certain tax advantages. It was utilised by a wide range of industries but mainly in the mining industry.

The Law 20.848 guarantees the full validity of the rights and duties acquired by foreign investors under the DL600 before January 1, 2016.

Some of the main aspects of the Law 20.848 are:

- a. 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 E/India Santiago/Economic Diplomacy Division, MEA

an amount equal to or higher than US\$ 5 million , 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.

- b. It incorporates new criteria to define direct foreign investment. Investments of at least US\$ 5 million 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.
- c. It defines foreign investors as any individual or legal entity incorporated abroad, not residing or domiciled in Chile, which transfers capital to Chile under the terms above said. The foregoing determines who will benefit from and who may join the new investment regime.

Individuals or companies qualifying as foreign investors may ask InvestChile the issuing of a Foreign Investor Certificate, which will entitle them to use the Law 20.848 regime.

The Foreign Investor Certificate confers the following rights for the foreign investor:

- To remit abroad the transferred capital and the net profits generated by the investment, upon fulfilment of the relevant tax obligations.
- To access to the formal banking exchange market to settle or obtain foreign currency.
- Not to be discriminated against when compared to domestic investors.
- To be exempted of Value Added Tax (VAT) on the import of capital goods, provided some requirements are met.

In contrast with previous DL600, the Law 20.848 eliminates the deadline for the entering of foreign capital into the country and the requirement to wait one year from the time that the investment enters the country before remitting the capital.

2.1.1 Chapter XIV of the Central Bank's Compendium (CFER)

This regime requires the foreign investor to register upon the Central Bank the amount to be brought into Chile. The procedure is quite simple, but does not carry all the guarantees that are provided in the case of the Law 20.848. FDI should be valued above US\$ 10.000. The entering of foreign capital under this amount does not require any approval.

2.2 Procedures

To get the above mentioned Foreign Investor Certificate, companies should submit an application form to InvestChile¹, accrediting the materialization of the investment in Chile, including a detailed description of it, and indicating its amount, location and nature.

Companies should also submit the following documents:

- a. Bylaws of the foreign investor duly certified or legalized and registered by a public notary in Chile, depending on the case.
- b. Certificate of Good Standing of the foreign investor, duly certified or legalized and registered by a public notary in Chile, depending on the case.
- c. Power of attorney to represent the foreign investor before InvestChile, duly certified or legalized and registered by a public notary in Chile, depending on the case.
- d. Foreign exchange operation report or equivalent, issued by the Central Bank of Chile, indicating the transfer of the capital to the country.
- e. Legalized copy of the deeds of establishment or increase in equity of the company receiving the investment and any other deeds necessary to accredit materialization of the investment and that the foreign investor has 10% of the control of or stake in it.
- f. Legalized copy of the registration, in force, of the recipient company on the Business Register of the corresponding Real Estate Registration Office.
- g. Any other information which InvestChile deems necessary.

Documents described in letters a, b and c can be submitted either in Spanish or English.

During a period of four years as from 1 January 2016, foreign investors under the Law 20.848 regime may also request to sign a tax invariability contract, in accordance with the terms of

¹The application form is available on InvestChile's website: www.investchile.gov.cl

Articles 7 and 11ter of the repealed Decree Law 600, setting a total income tax rate of 44.5 %.

3. Creation of a new company

Foreign investment usually adopts as business vehicle a corporate or entity form, through the creation of a new company in Chile.

From a tax perspective, there are no special advantages in electing any particular entity form or structure, as all of them are subject to the same total tax burden. Therefore, the final decision should be driven by considerations such as the management of the company, the transfer or sale of the investment, the size of the company, the number of owners and any other particular issues applicable to the investor.

3.1 Types of Corporate or Entity form

There are different types of legal entity structures but the most common are the following:

3.1.1 Shareholders or Partners Corporations

A corporation (known as “Sociedad Anonima” or its acronym SA) requires at least 2 shareholders who are only liable for their respective contributions.

SAs may be publicly traded or closely held. In the first case, the company has issued equity shares registered with the Chilean Securities and Exchange Commission (known as SVS). Registration is voluntary, except when the corporation has 500 or more shareholders, or if at least 10% of its capital stock is held by at least 100 shareholders. Public corporations are supervised by the SVS. All other corporations are closely held and in most cases not subject to the SVS supervision.

Foreign corporations or individuals can hold 100% of SA’s shares.

SAs should be administered by a board of directors appointed by the shareholders, with at least one Chilean representative, whose powers are revocable at any time. Closely held corporations must have at least three board members, public corporations at least five.

3.1.2 Limited Liability Companies

A Limited Liability Company (known as “Sociedad de Responsabilidad Limitada” or its acronym SRL) requires a minimum of two partners and allows a maximum of 50 partners, which liability is limited to the amount of their capital contribution.

Administration may be carried out by the partners or representatives, of which at least one must be domiciled in Chile, even if all partners may be foreigners. SRL’s have no required share capital minimum.

SRLs are not subject to the control of a regulatory authority and have not obligation to file audited accounts or financial statements with the government.

3.1.3 Stock Companies

A stock company (known as “Sociedad por Acciones” or its acronym SPA) combines attributes of a corporation (free assignability of equity interests) with the contractual flexibility of the SRL (i.e. does not require unanimous consent for amendments of its by-laws).

The SPA follows the general guidelines of SA but provides greater flexibility and fewer formalities.

The SPA allows for almost any type of corporate agreement and can be formed by one or more persons (individuals or legal entities), which liability is limited to the size of their shareholdings. In addition, a SPA may sell or re-purchase shares of its own capital more flexibly than an SA and does not need to have a Board of Directors (it may instead have a sole Director known as an “Administrator”).

3.1.4 Branch of a foreign corporation

The Chilean commercial law considers a branch as the locally registered office of a foreign corporation. Its formation implies the acquisition in Chile of a fiscal, legal and commercial presence, and the assets of the branch remain subject to Chilean law, especially to cover its local liabilities.

The branch is considered to be the same juridical entity as the head office. However, it is a permanent establishment, which has autonomy and legal capacity to become a partner or shareholder of local companies or corporations.

No minimum capital is required to establish a branch, unless its capital is registered under a foreign investment regime.

Branches must publish their yearly balance sheet in a local newspaper within the four months following the closing of the financial period.

3.2 Steps to create a new company

As a general rule, the creation of a company requires to follow some pre-defined steps. The process is not complicated and takes See scheme below.

Steps to create a new company



It is worth mentioning that the Chilean Government has implemented a website (www.tuempresaenundia.cl) that allows creating a company in short time and at very reasonable cost and to conduct online almost all the steps mentioned above. Through this platform, entrepreneurs can easily select the type of legal entity they want to create and complete a form in which they specify the characteristics of the company, such as the names of its partners, the legal name, the line of business and capital that the company will have. The people who will be part of the company can identify themselves using an electronic signature. Software will convert all of this information into a definitive document that will then be sent to the Internal Revenue Service and allow the company to begin operating immediately, as well as assign a taxpayer ID number.

Despite the above, in the case of foreign investors, it is highly suggested to hire a local lawyer, which can recommend the most suitable entity form according to company's business objectives and size, as well as to advise about different aspects of doing business in Chile, such as labor, taxes, migration, etc. In addition, it is usual that lawyers act as legal representatives and provide a commercial address (both needed to create any company) to foreign investors, on a temporary basis; they can be later removed and replaced once the company hires a local manager or administrator.

4. Relevant aspects of operating in Chile

Following are some important issues to take into account when starting a new business in Chile and setting up a new company.

4.1 Labour

All Chilean workers must be affiliated to a pension fund administrator (AFP) and a health insurance system which, depending on the employee's preference, may be the state National Health Fund (FONASA) or a private Health Insurance Institution (ISAPRE).

Social security contributions are compulsory and are deducted from the employee's wages, except for accident and disablement insurances which should be paid by the employer. The social security cost borne by a company on behalf of employees ranges in most cases between 0.45% and 5.1%.

Subject to some exceptions, Chilean nationals must be no less than 85% of the company workforce employing more than 25 persons.

The working week may not exceed 45 hours. There are, however, exceptions which are established in the Labour Code.

The minimum monthly wage is set annually by law. Law also establishes all overtime, paid annual vacations, and holidays. Women are entitled to state-funded maternity leave for a period of six weeks before and six months after childbirth.

4.2 Taxes

The corporate tax ranges from 25 to 27% depending on the tax regime (attributed income or partially integrated) adopted by the company.

The Chilean income tax system can be defined as an integrated system, given that the corporate tax may be credited towards final taxes on dividends the owners should pay. These final taxes would be:

- The Global Complementary Tax (“Impuesto Global Complementario”), which levies income of Chilean resident individuals with a progressive tax rate from 0% to 35%.
- The Additional Withholding Tax (WHT), which levies the income of non-resident individuals or entities with a general tax rate of 35%.

As a general rule, resident companies should pay Chilean income tax on their worldwide income. Taxpayers without residence in Chile must pay income tax on their Chilean-source income.

Other relevant taxes are: Value-Added Tax (19%), Duty Taxes (from 0 to 6%), Municipal Tax (0.25 to 0.5% over the tax-adjusted equity) and Real Property Tax (from 1 to 1.2%).

4.3 Bilateral Trade and Investment Agreements

Chile has signed 25 Commercial Agreements with 66 countries, which grant with tariff preferences (up to 100%) to several products.² India and Chile have signed a Partial Scope Trade Agreement (PSA) giving preferences (ranging from 30 to 100%) to a limited list of products.

Indian investors in Chile can benefit of these commercial agreements for the products they import into Chile. They can also take advantage of these agreements in case they export from Chile to other countries, provided that goods fulfil the origin regulations contained in each agreement and the qualification criterion that identifies products as native.

Some agreements signed by Chile include a chapter on investment, which objective is to provide stability and security to investors. The agreement signed between Chile and India do not include this chapter; nevertheless, it does not make a big difference, except in the case of Investment disputes which solving mechanism is currently smoother when a tax treaty exists. Despite of this, almost all clauses included in investment chapters correspond to policies Chile already applies to all foreign investors, regardless of their nationalities.

4.4 Tax Treaties

²Find the list of countries and the complete texts of Commercial Agreements signed by Chile, by clicking on this link: [www.direcon.gob.cl/acuerdos-comerciales/E/India Santiago/Economic Diplomacy Division, MEA](http://www.direcon.gob.cl/acuerdos-comerciales/E/India%20Santiago/Economic%20Diplomacy%20Division,%20MEA)

Currently, Chile has tax treaties in force with 32 countries, but not with India. Under these treaties, residents of foreign countries are taxed at a reduced rate, or are exempt from Chilean income taxes on certain items of income they receive from sources within Chile. These reduced rates and exemptions vary among countries and specific items of income. Currently, there is not tax treaty between Chile and India.

4.5 Visas

If Chilean law does not require foreign investors to get a visa or residence permit since they do not reside in the country on a permanent basis.

Nevertheless, foreign investors who plan to stay in Chile for more than 90 days due to their activities or interests in the country can apply for a Temporary Investor and Businessperson Visa. This type of visa is granted for one year and it is renewable subject to evaluation.

The requirements for obtaining this visa depend on whether the investment project is at the planning stage or already in operation.

4.6 Free Trade Zones

Chile has two free trade zones: one in the northern port city of Iquique (Tarapacá Region) and the other in the far south port city of Punta Arenas (Magallanes Region).

Companies operating in Chilean Free Trade Zones are exempt from corporate income tax, as well as from value added tax (VAT) –in the product’s first sale-, and customs duties as long as goods remain in the FTZ. From January 2017, companies also benefit of a credit for partners and shareholders, consisting in 50% against the Global Complementary Tax or the Additional Tax.

Goods manufactured and/or stored in a FTZ can be freely re-exported to other countries or sent to other free trade zones. They can also be entered for consumption into Chile, in which case they are subject to regular Customs import procedures and to the payment of duties, sale taxes (VAT) and other taxes (i.e. luxury, alcohols, tobacco, etc.), if applicable.

Foreign-owned firms have the same possibilities to operate in in free trade zones as Chilean firms, but should before create a local company. The process for setting up a subsidiary is the same inside as outside the zones, regardless of whether the company is domestic or foreign-owned.

4.7 Intellectual property protection

Even if it is not mandatory, it is strongly recommended that foreign companies register their trademarks, copyrights, patents and trade secrets if they aim to use them in Chile.

It is also advisable that, before using a trademark or logo, companies should check if such signs are already registered in identical terms or in similar terms (from a visual or phonetic point of view).

Trademark protection lasts 10 years and its registration can be renewed indefinitely (for periods of 10 years at a time). According to Chilean law, trademarks cannot be revoked for non-use reasons. The owner of a trademark could authorize a third party to use it under a license contract.

The National Institute of Industrial Property INAPI (www.inapi.cl) is the Chilean agency for registering patents, trademarks, copyrights and appellations of origin.

5. Foreign investment incentives

The country does not offer subsidies specifically to foreign direct investment. Despite of this, foreign investors can benefit of certain incentives in the form of tax credits, tax exemptions and co-funding of R&D and technology projects.

Some of these incentives aim to support the development of new projects and companies (entrepreneurship), while others are available for already existing enterprises.

5.1 Support Program for Projects at a Pre-Investment Stage

The program supports the implementation of pre-investment studies to encourage and accelerate the decision-making process aimed to invest in new projects or to expand the company's current capacities.

It funds up to 70% of the pre-investment studies cost, with a maximum of US\$ 250 M for US\$ 2 million investment projects or higher

This program is managed by the Chilean Economic Development Agency (known as CORFO³). This agency is in charge of improving the competitiveness and the productive diversification of the country, by encouraging investment, innovation and entrepreneurship.

5.2 Implementation of technological Investment Projects

The program supports the implementation of technological investment projects, whether for new projects or the expansion of existing ones.

It fund up to 30% of total investment during the first two years of the project implementation.

The program applies for USD 2 million investment projects or higher and the co- funding is capped at US\$ 5 million per project.

This program is also managed by CORFO

5.3 Grants for innovation

CORFO also grant with subsidies for testing development, experimentation, improvement of processes, design and prototyping construction, among other activities. Depending on the size of the company, it finances a maximum of 50 to 70% of the total project cost, with a maximum funding of US\$ 90.000.

COFO also supports development initiatives related with the adjustment prototype, validation, testing, expansion and approvals. As well as above, it funds a maximum of 50 to 70% (depending on the size of the company) of the total project cost, with a maximum funding of US\$ 300.000.

5.4 Incentives for R&D investments

Investments in research and development (R&D) activities could be deductible as a tax expense. They may be deducted in the same year that they are incurred (whether paid or accrued), or at the taxpayer's option, for up to six consecutive business years.

³For more information on CORFO programs click on this link: www.corfo.cl

Subject to certain conditions, 35% of the investment in R&D (capped at approximately US\$ 1.2 million per year) could be used as a tax credit against First Category Tax, while the remaining 65% could be deductible as a tax expense.

Under this special regime up to 50% of the R&D activity may be developed in a foreign country.

To be eligible, investments should be of a minimum amount of approximately US\$ 8.000 and must be previously approved by CORFO

5.5 Start-up and Scale-up programs

Start-Up Chile (SUP)⁴ is a public startup accelerator created by the Chilean government for high-potential entrepreneurs to bootstrap their startups and use Chile as a platform to expand to other countries. In 2016, Start-Up Chile was selected among the Top 4 accelerators in the world.

SUP offers 2 programs for new entrepreneurs, which are available for Chilean and foreign investors:

- **S Factory program**, consisting on a pre-acceleration program for startups led by female founders. It consists on a 4-month program of workshops and training from experienced entrepreneurs and mentors. It also grants equity-free funds for up to US\$ 15.000.
- **Seed program**, which accommodates during 6 months early stage entrepreneurs to accelerate and support their business. It grants with 90% of total program costs, for a maximum of approx. US\$ 30.000. Startups can also benefit of the use free of charge of a central co-working space for up to 9 months, a one-year working visa and access to different technological services.

Consulting, Import/Export and Franchise companies are not eligible for these programs.

⁴For more information on SUP programs click on this link: www.startupchile.org

All activities are in English and Spanish fluency is not a requirement to apply; nevertheless, it is highly recommended to learn the basics of Spanish as investors will be living in the country.

Applications to both programs should be submitted at some specific application process dates through an online platform created for this purpose.

5.6 Southernmost and Northernmost Regions

Provided certain conditions are met, companies investing in the Southernmost and Northernmost regions of Chile are entitled to a tax credit for investments, consisting of new buildings (except of land cost) and machinery. The tax credit may be up to 32% of the investment.

6. Conclusions

The country offers several investment opportunities in different sectors. Some of the most prominent are mining, non-conventional renewable energies, food industry, tourism and global services, among others

Also, Chile's straightforward and transparent business climate - as well as open and market-oriented policies- has generated huge opportunities for foreign investors to be part of the country's stable economic growth.

Foreign investors have access to almost all economy sectors, with few exceptions. Besides, some activities require previous authorization from competent government agencies. Also, some investment in areas such as mining and energy requires the granting of concessions or contracts from the government. Requirements for authorizations and concessions are the same for local and foreign investors.

The entering of the FDI funds into Chile should be done under the Foreign Investment Statute Law 20.848 or Chapter XIV of the Central Bank's Compendium of Foreign Exchange Regulations (CFER).

FDI in Chile usually implies the creation of a new company. There are several entity forms or structures under which a company can be set up; the choice of the most adequate will

depend on several factors, such as business size, number of owners, management of the company, etc.

The steps to follow to create a new company are well defined and are, in general, quite simple. It is even possible to create a company through an online platform created by the Government. Nevertheless, it is recommended to foreign investors to get advice from a local lawyer, who can even act as legal representative and provide a commercial address (both are requirements for a company creation).

In the investment decision-taking process, there are several aspects the foreign investor should consider and carefully evaluate, such as labour, taxes, visas and others.

Finally, even if the country does not offer subsidies specifically conceived for foreign direct investors, there latest can benefit of certain incentives in the form of tax credits, tax exemptions and co-funding of R&D and technology projects.