

**OECD REVIEWS  
OF  
FOREIGN  
DIRECT  
INVESTMENT**

**CHILE**

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# ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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CHILE

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## Foreword

Relations between the OECD and Latin America are intensifying, particularly in the area of foreign direct investment. Latin America is becoming, once again, a major recipient (and even source) of foreign investment, and its policies towards foreign investment are converging rapidly on OECD norms. Two OECD Workshops were held in Brazil in 1996 and 1997 to discuss investment policies in Latin America and multilateral rules on investment. Argentina, Brazil and Chile have all requested observership on the OECD Committee on International Investment and Multinational Enterprises (CIME), the intergovernmental body that is responsible for the OECD instruments that stipulate liberalisation of members' rules governing treatment of foreign direct investors. These countries have also indicated their willingness to adhere to the 1976 Declaration on International Investment and Multinational Enterprises and related Decisions and Recommendations of the OECD Council. The 1976 Declaration sets standards of liberalisation and protection for foreign-owned enterprises that are already established on each party's territory and establishes voluntary guidelines for such enterprises in the host country.

At present, Argentina is now an observer and has adhered to the 1976 Declaration. Chile has already submitted its foreign direct investment policies to an examination by the CIME held in November 1996 as part of its request to become an observer in the Committee and to adhere to the 1976 OECD Declaration. Brazil will be examined. This report presents the result of the CIME's examination of Chile's foreign investment policies. Factual updating has been made through March 1997. The report was approved and derestricted by the OECD Council on 24 April 1997.



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## Summary and conclusions

For a relatively small country located far from most major markets, Chile has been remarkably successful at attracting inward investment. Over the period 1985-1995, Chile was the tenth largest recipient of foreign direct investment (FDI) inflows among non-Member countries and the twenty-eighth worldwide. Over 85 per cent of its inflows originated from OECD countries. Much of this investment has typically been in mining, owing to the country's rich endowment of natural resources such as copper. But investment in services represents an increasing share of the total. Chile is also becoming a major regional investor in Latin America, *i.a.* participating in privatisations in Argentina, Brazil and elsewhere.

Over the past two decades, Chile has had some of the most liberal economic policies in Latin America. Indeed, it has been a trailblazer within Latin America in terms of its early attempts to attract inward investment through an outward-looking strategy. Investors are generally welcomed. Once established, they are treated – with some exceptions – no less favourably than Chilean firms in like circumstances and in some instances even better. The maintenance of exchange controls for the purposes of monetary stability nevertheless has certain implications for inward investment. Not only does it necessitate a registration system for investors, it also implies that capital cannot be repatriated for one year and that foreign loans are subject to a reserve requirement in terms of a non-interest bearing deposit at the Central Bank for one year (which can be replaced by the payment of the equivalent in foregone interest). This system of exchange controls can be considered as an impediment to inward investment.

Foreign investors wishing to benefit from a binding contract with the State of Chile, which offers certain fiscal and other advantages by providing long-term predictability, must submit their request to the Foreign Investment Committee

(FIC) for authorisation under Decree Law 600 (DL 600). However, the procedure via the FIC is only one of two methods of bringing foreign capital into Chile. Investors not permitted or willing to sign a contract with the FIC can invest freely through the Central Bank instead. The DL 600 therefore does not constitute a barrier, per se, to foreign investment in Chile. In spite of the authorisation procedure, almost 90 per cent of foreign direct investment has come in through DL 600 in the past three years.

In other areas, Chilean policies generally conform to OECD standards concerning direct investment flows. In particular:

- foreigners are able to invest freely in Chile, subject to the requirements of exchange controls, through the Central Bank;
- sectoral restrictions on the entry, establishment and operation of foreign investors and their investments are limited;
- few exceptions to National Treatment exist and the application of the regulations concerned is liberal in practice;
- Chile has no restrictions on the purchase of real estate by foreign investors except in State-owned land in border areas;
- Chile accords National Treatment to enterprises from OECD countries.

There remain, nevertheless, areas where Chilean policies and practices do not always match norms within OECD countries:

- the minimum capital contribution of 30 per cent for investment projects submitted to the Foreign Investment Committee under DL 600;
- the reserve requirement for portfolio investment and credits whereby 30 per cent of the principal must be maintained in a non-interest-bearing deposit at the Central Bank for one year;
- Chilean policies relating to intellectual property rights, such as the length of patent protection and pipeline protection while new products are being developed;
- the bilateral investment treaties, in particular the fact that a choice for either domestic or international arbitration in disputes precludes a choice for the other option later on in the process;
- Chilean competition policy, which could be more active, in particular to promote demonopolisation.

Chile shares with OECD countries the same fundamental principles guiding foreign investment policy. FDI relations between Chile and OECD countries are extensive and dynamic. Chile has adhered to the various components of the 1976 OECD Declaration on International Investment and Multinational Enterprises and its related Decisions and Recommendations, as well as to the OECD Recommendations on Bribery in International Business Transactions. The Chilean authorities accept the commitments on National Treatment, the provisions of the Guidelines for Multinational Enterprises as well as those of the instruments on Incentives and Disincentives and Conflicting Requirements (a summary of these provisions is presented in Annex 4). They are also prepared to participate fully in the implementation of these instruments, including subjecting their exceptions to National Treatment to periodic examinations by the Organisation.

In pursuance to its obligations under the National Treatment Instrument, Chile has notified to the OECD its exceptions to National Treatment of foreign-owned firms in its territory. These concern the repatriation of capital within the first year of the investment, radio broadcasting, international road transport, shipping and air transport, fishing, mining and publishing (see Annex 1). Measures affecting foreign-owned enterprises and reported for transparency involving public order and essential security concern the defence industry, nuclear energy, shipping, and the acquisition of State-owned land in border areas by investors from neighbouring countries. Other measures reported for transparency are the requirements for directors of companies involved in maritime and air transport, radio and television broadcasting and in publishing to have Chilean nationality. There are also nationality requirements concerning personnel of enterprises with more than 25 employees.



## *Chapter 1*

# **Direct investment and the Chilean economy**

The Chilean economy has grown continuously for twelve years, at an average rate of six per cent in real terms. This trend is likely to continue in the immediate future. Domestic savings and investment are both around 25 per cent of GDP. Many of the reforms such as privatisation and tariff reductions which many other developing countries started in the early 1990s had already been undertaken since the 1970s in Chile. With the exception of certain strategic sectors, the role of the State in the economy is limited. The privatisation process has even encompassed pensions.

Chile has been a major recipient of foreign direct investment (FDI) outside of the OECD area, in spite of the small size of the Chilean market with a population of only 14 million. As a result, foreign investment plays a major role in the Chilean economy, particularly in the mining sector even though Chile's largest copper producer is still in State hands. On the outflows side, Chilean firms with years of experience in a competitive home environment are becoming important investors within their own region in countries which have only just opened up their markets. The service sector is a rapidly growing component of these outflows.

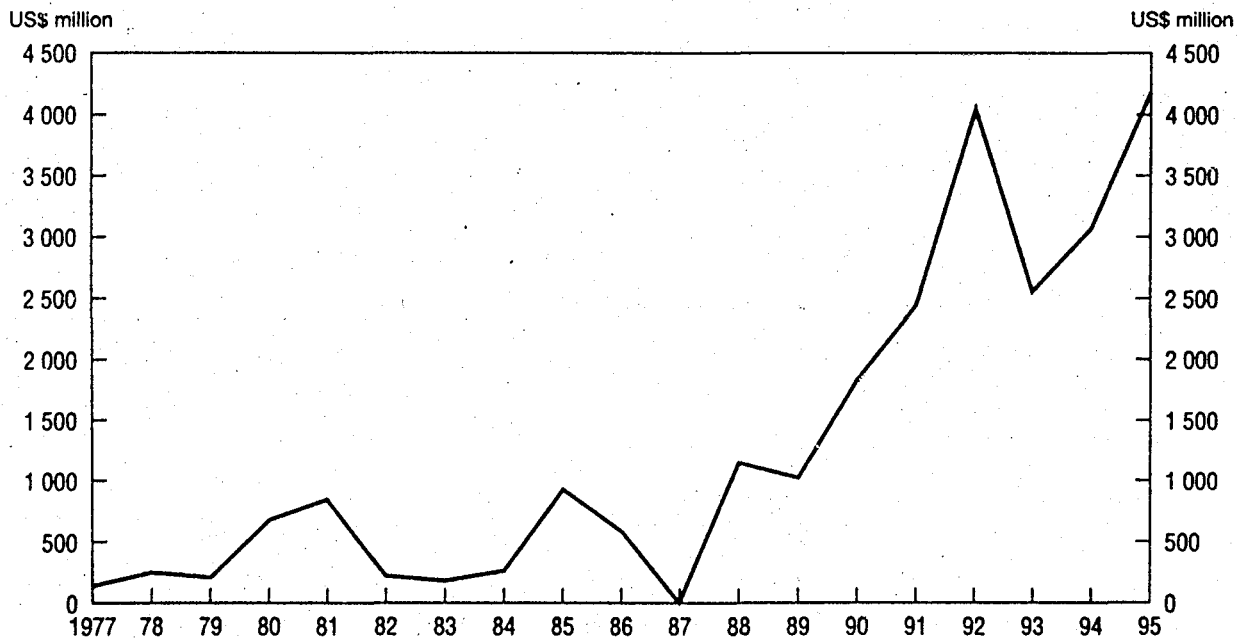
### **A. Foreign investment in Chile**

Chile ranks tenth among non-OECD countries as a recipient of inward investment since 1985 and twenty-eighth world-wide. Cumulative inflows since 1985 exceed inflows into many smaller OECD countries. As a share of GDP or gross fixed capital formation, inflows into Chile surpass those into many

other countries receiving direct investment, particularly in Latin America. Inflows between 1986 and 1990 amounted to 20.6 per cent of gross fixed capital formation in Chile, compared with 4.6 per cent in Latin America as a whole. From 1990 to 1993, the shares were 8.5 per cent and 6.1 per cent respectively. Chart 1 shows inflows since 1980. As for all countries, inflows tend to be cyclical, though there is a clear upward trend over time.

The Chilean Government has been in the forefront of moves within the region to restore investor confidence and to promote inward investment as part of the process of economic reform. It was among the first to introduce both formal debt-equity conversion and privatisation programmes in the 1980s. The primary mechanism for debt-equity swaps was through Chapters XVIII and XIX of the Compendium of Foreign Exchange Regulations. Chapter XIX was the most common vehicle because of its implicit subsidy for purchasers of debt. Investors could purchase shares in a company with the debt papers credited at face value. The discount for debt has been estimated at 40 per cent of the investment by the Central Bank. To offset this implicit subsidy, the Government stipulated that

Chart 1. Direct investment in Argentina, 1977-1995



Source: International Monetary Fund, Argentine Ministry of Economy.

capital invested under Chapter XIX could not be repatriated for ten years and profits for four years. The mechanisms were put in place starting in 1985. In 1990, prices in the secondary market for Chilean debt rose sharply due to the increased confidence in the Chilean economy and its performance. The Central Bank decided to loosen the regulations, and the strict capital repatriation and profit remittance rules were liberalised. By 1991, Chapter XIX had largely outlived its usefulness and the programme was officially terminated in 1995.

The breakdown among the three principal channels for FDI into Chile – Decree Law 600 (DL 600) and Chapter XIV and Chapter XIX for debt-equity conversions – can be seen in Table 1.<sup>1</sup> From 1986 to 1990, UNCTAD estimates that debt-equity conversions outnumbered conventional FDI by a factor of five to one, although the Chilean authorities suggest a lower ratio of three to one. In certain years, they were almost the exclusive method of entry by foreign firms into Chile. The demise of such swaps in no way inhibited inflows in later years, however. The debt-equity conversion system was designed to reduce the country's external debt while promoting inward investment in the economy. Foreign investors largely avoided Latin America in the aftermath of the debt crisis.

Table 1. FDI inflows into Chile by method of entry

US\$ million

	Investments under DL 600			Chap. XIV	Chap. XIX	TOTAL*
	Capital	Associated credits	DL 600 Total			
1985	129	38	167	6		173
1986	171	88	259	10	256	525
1987	286	256	542	18	786	1 346
1988	298	548	846	20	796	1 662
1989	523	452	975	22	1 107	2 104
1990	511	810	1 321	34	355	1 710
1991	571	409	981	97	(40)	1 038
1992	693	307	1 000	170	(32)	1 138
1993	888	840	1 728	196	(55)	1 869
1994	1 541	977	2 518	363	(104)	2 777
1995	1 762	1 289	3 051	393	(214)	3 230

\* The total does not compare with the IMF figures in Chart 1 for reasons explained in Section C of this chapter.  
Sources: Foreign Investment Committee, Central Bank of Chile.

On 25 June 1996, Chile concluded an association agreement with the Mercosur countries. Although Chile will not adopt the higher common external tariff of the Mercosur customs union, the move nevertheless indicates a willingness to integrate more closely with neighbouring countries. Chilean exports to the rest of Latin America may still constitute only a small share of total exports, but Chilean firms are fast becoming important direct investors within the region. Chile's association agreement stipulated that investment matters would continue to be covered by existing bilateral investment treaties rather than by the two Mercosur protocols for the protection and promotion of investment. From the Chilean perspective, established foreign-controlled enterprises are treated as Chilean firms.

Given the small size of the Chilean economy and the historically poor degree of integration within the region, this investment is heavily concentrated in mining and services, with very little in manufacturing (Table 2). This concentration is partly a reflection of the distribution of economic activities across sectors in Chile. The recent association agreement with Mercosur may open up opportunities in other sectors.

The chief attraction of Chile as a location for foreign investment is in the mining sector. Chile accounts for about one-third of the production of copper world-wide, a share which, by some estimates, could exceed 40 per cent by the year 2000. The mining sector accounts for over one half of total cumulative

Table 2. **Materialised inward investments under the DL 600, by sector**  
1974-May 1996

	US\$ million	%
Services	4 083	24.1
Industry	2 744	16.2
Mining	8 990	53.0
Agriculture and fishing	168	1.0
Construction	309	1.8
Transport	139	0.8
Forestry	145	0.9
Fisheries	130	0.8
Utilities	248	1.5
<b>Total</b>	<b>16 955</b>	

Source: Foreign Investment Committee.



investments in Chile and also represents almost one half of total Chilean exports. The significance of the mining sector accounts both for the wide variety of source countries for inward investment and for the relative diversity of Chilean export markets. Although the State retains the absolute and exclusive ownership of the country's mines and the largest copper producer in Chile (and indeed worldwide) is the State producer Codelco, foreign mining companies can participate actively in the sector, both through concessions and in joint ventures with Codelco. By the year 2000, it is expected that foreign investors will account for approximately 65 per cent of Chile's mining production. The prominence of the mining sector partly explains the emphasis on stability and predictability inherent in Chile's policies towards foreign investment, given the long term nature of these investments.

The services sector has also attracted relatively large amounts of inward investment. Because Chile has a longer track record of privatisation and deregulation than its neighbours, the services sector has also seen the growth of outward investment from Chile. More than one half of the 30 private banks are foreign-owned, representing about one fourth of total banking assets in Chile.<sup>2</sup> There is also important foreign minority participation in Chilean banks. The interest of foreign banks in investing in Chile stems partly from the desire to serve multinational customers from the home country in that market. Another reason is the regulatory reforms of the past decade which have made Chile's financial system the most developed in Latin America according to international risk management companies.<sup>3</sup> Foreign securities firms are now active, not only in banking, but also in insurance, securities, pension funds and leasing. Part of the attraction of the Chilean market for these firms has been the privatisation of the pension fund system. Private pension funds now account for US\$24.2 billion in assets under management, *i.e.* about US\$1 700 per capita.

Foreign investment in the manufacturing sector has been less noticeable, partly because Chile is a small and remote market, in a region where barriers to trade have traditionally been high. For US investors, for example, the stock of manufacturing investment in Chile is barely more than one per cent of the total. The recent association agreement with Mercosur may well provide additional opportunities for attracting inward investment in this sector, depending on the costs of doing business in Chile relative to in the other signatory countries. Mercosur firms might also choose to produce in Chile, particularly when output

Table 3. **Materialised inward investments under the DL 600,  
by country**  
1974-May 1996

	US\$ million	%
US	6 769	39.9
Canada	2 178	12.8
Spain	975	5.8
UK	966	5.7
Finland	804	4.7
Australia	601	3.5
Japan	522	3.1
South Africa	480	2.8
Netherlands	436	2.6
New Zealand	412	2.4
Switzerland	266	1.6
Argentina	263	1.6
Cayman Islands	248	1.5
France	237	1.4
Panama	174	1.0
Germany	167	1.0
Bermuda	163	1.0
Other	1 295	7.6
Total	16 955	

Source: Foreign Investment Committee.

is destined for markets in Asia, given the strong Asian orientation of Chile's trade flows (almost half of Chile's trade is with Asia).

By country of origin, Table 3 reveals several countries which are not traditionally known as substantial investors outside of their own region, such as South Africa, Finland, Australia and Canada. The reason for their prominence is simply the result of the overwhelming importance of mining in total inflows and the presence of large mining firms in these countries. The presence of investors from the United States, the United Kingdom and Spain all reflect historical links with the Chilean economy. Japanese firms have not been significant investors in Chile.

## B. Outward Chilean investment

Chilean firms have become important investors abroad, principally within their own region, in the 1990s. Although direct investment in South America is

still dominated by the large multinational enterprises (MNEs) from Europe and North America, Chilean investors are nevertheless carving out a niche in certain sectors. With a decade lead over firms in neighbouring countries in operating in a competitive and deregulated environment, Chilean firms are now capitalising on their managerial, marketing and technological experience to invest in privatised firms in Argentina, Brazil and Peru among others. In some cases, Chilean firms are pursuing joint ventures with MNEs from OECD countries in South America. In others, it is the foreign-owned subsidiary in Chile which is investing abroad. Regardless of who controls the investing firm, these outward investments are a testament to the advanced stage of liberalisation of the Chilean economy compared to the rest of the region.

Outward investment is likely to have been encouraged by the recent liberalisation of capital market regulations. Chilean firms (especially banks, pension funds, mutual funds and security rating agencies) have increasingly begun to invest directly and indirectly in foreign markets, principally Argentina, Peru and Brazil. These overseas investors can now receive a credit against first-category tax (*i.e.* a corporate tax of 15 per cent on the company's taxable income, see the section on "The tax regime applying to foreign direct investment", below) for tax paid in the host country.

In the early stages of a firm's expansion, the initial impetus for investing abroad is likely to come from a desire to spread beyond the confines of the domestic market. Given the small size of Chile's economy, this point has been reached more quickly in Chile than elsewhere in South America. This outward movement in turn encourages domestic suppliers to follow their clients abroad. Chilean banks, for example, are highly capitalised and profitable and are interested in expanding abroad partly to respond to the needs of Chilean corporate clients who have already invested abroad.

Statistics of overseas investment are obtained from two sources. Although they vary greatly in value terms, they tell much the same story in terms of trends and destination of investments. The first come from the Central Bank of Chile as reported under Chapter XII of the Foreign Exchange Regulations. The second are from the Santiago Chamber of Commerce and rely on investments abroad reported in newspapers.<sup>4</sup> As seen in Chart 1, which shows outflows over time as recorded by the Central Bank and reported by the IMF, outflows started to take off in 1991 and rose rapidly to a peak of US\$883 million in 1994. The drop

in 1995 may stem from the focus of investors on the Argentine market which went into deep recession in that year. The estimate for 1996 suggests that the upward trend may have been revived. In total, over US\$3 billion have been invested abroad by Chilean firms from 1975 until the end of May 1996, almost all of which occurred in the past five years. The Chamber of Commerce finds a similarly dramatic upward trend in the 1990s, with total outflows in that period estimated at almost US\$9 billion arising from more than 400 projects. The Foreign Investment Committee has made estimates of outflows on a similar basis and found a similar total of US\$8.6 billion from over 600 projects.

According to the Chamber of Commerce, these investment flows are roughly equally divided between privatisations (29 per cent), establishments (27 per cent), mergers and acquisitions (26 per cent) and reinvested earnings (19 per cent). This last category should increase in the future as Chilean investments abroad mature.

By destination, outflows are heavily concentrated in South America. Table 4 compares the distribution of Chilean outward investment from the two sources. The actual levels of investment recorded differ greatly, as one might expect given

Table 4. Chilean investment abroad by destination  
US\$ million

Total outflows 1990-1995			Outflows reported under Chapter XII 1975-May 1996		
Argentina	5 549.7	62.2%	Argentina	1 338.3	43.0%
Peru	1 925.1	21.6%	Panama	309.7	10.0%
Brazil	415.0	4.7%	Peru	263.6	8.5%
Bolivia	258.3	2.9%	Curacao	237.1	7.6%
Colombia	157.2	1.8%	Brazil	184.5	5.9%
Ecuador	73.2	0.8%	Channel Islands	141.1	4.5%
US	65.0	0.7%	British Virgin Islands	128.3	4.1%
Cuba	61.4	0.7%	Bolivia	128.0	4.1%
Panama	60.9	0.7%	UK	75.8	2.4%
Paraguay	55.5	0.6%	Colombia	71.4	2.3%
Channel Islands	50.2	0.6%	US	48.2	1.5%
UK	45.1	0.5%	Liberia	24.6	0.8%
Mexico	40.8	0.5%	Uruguay	21.0	0.7%
Uruguay	20.1	0.2%	Ecuador	18.1	0.6%
Others	147.4	1.7%	Others	107.1	3.4%
<b>Total</b>	<b>8 924.6</b>		<b>Total</b>	<b>3 111.7</b>	

Source: Chamber of Commerce of Santiago.

Source: Banco Central de Chile.

the different reporting methodologies. Nevertheless, the ranking of countries is similar. The only major difference is the importance of offshore financial centres, principally in the Caribbean but also in Europe. These locations rank more highly in the Central Bank statistics than they do in the others. The presence of such countries as destinations for FDI is a common feature of those home countries with some form of control of capital though it is by no means unique to those countries. Table 4 demonstrates the overwhelming importance of the local region for outward Chilean investment. South America takes two thirds of the investment in the Central Bank figures and 95 per cent in those from the Chamber of Commerce. Argentina is by far the favourite location, with Chilean firms participating actively in the privatisation of public utilities there.

By sector, the two sources provide differing results (Table 5). Outward investment reported to the Central Bank is heavily concentrated in services, reflecting the significant foreign acquisitions by Chilean and foreign-owned banks operating in Chile, the overseas expansion of the Chilean telecommunications company Entel, as well as the acquisitions of recently privatised utilities in countries such as Argentina. The Chamber of Commerce figures provide a very different picture, as is often the case when FDI data and mergers and acquisitions figures are compared. Most outward investment has been in the energy sector (mining) and in manufacturing.

Table 5. Chilean investment abroad by sector  
US\$ million

Outflows 1990-1995			Outflows reported under Chapter XII 1974-May 1996		
Energy	4 112	46.1%	Finance, insurance, real estate, services	1 667	53.6%
Industry	2 540	28.5%	Transport, storage, communications	409	13.1%
Commerce	701	7.9%	Manufacturing	405	13.0%
Banking	649	7.3%	Electricity, gas, water	310	9.9%
Pension funds, Insurance	321	3.6%	Commerce	123	4.0%
Services	169	1.9%	Construction	91	2.9%
Finance	145	1.6%	Mining	80	2.6%
Communications	129	1.4%	Agriculture, fishing	18	0.6%
Other	159	1.8%	Communal and social services	9	0.3%
<b>Total</b>	<b>9 305</b>		<b>Total</b>	<b>3 112</b>	

Source: Santiago Chamber of Commerce.

Source: Banco Central de Chile.

### C. Definition of FDI and other methodological issues

The figures for FDI in Chile are comprised of three elements. The first is materialised investments and associated credits as reported to the Foreign Investment Committee under the DL 600 programme. The second is investment approved by the Central Bank through Chapter XIV of the Compendium of Foreign Exchange Regulations. The third channel is through Chapter XIX of the same Compendium which relates to debt-equity swaps. The latter channel ceased to be operational in the early 1990s as the price of Chilean debt in secondary markets rose and has since been eliminated as an option for investors. The three channels for inward investment are largely complementary and hence do not appear to lead to a double counting of inflows.

The relative importance of each channel was shown in Table 1. The totals for inflows in Table 1 are much higher than those provided by the IMF and shown in Chart 1 because the IMF appropriately subtracts re-exports of capital. The IMF also excludes associated credits. If such credits were to be included, as arguably they should, they would add roughly US\$4.5 billion to total inflows since 1990, pushing Chile ahead of Hong Kong and Chinese Taipei as a recipient for inward FDI in the 1990s.

These reporting mechanisms cover all foreign investment, making it difficult to distinguish between portfolio and direct investment in the figures. Statistics on portfolio investments are restricted to purchases of American Depository Receipts (ADRs) issued by Chilean companies, certain investment funds and bond purchases; all the rest is considered direct investment. There is, for example, no lower limit of share ownership below which an investment is not considered to be direct investment. Although portfolio flows are discouraged by the requirement of one year residency of capital before it can be repatriated (see below), it is nevertheless possible that certain long-term portfolio flows are included in the totals. The DL 600 figures, for example, include foreign investment channelled through Foreign Capital Investment Funds (FICE) which allow foreign investors to acquire listed shares in domestic exchanges. These portfolio investments generally represent under 10 per cent of total inflows.

For a rough test of the degree to which the Chilean figures might over-report inflows, it is possible to compare Chilean inflows with what major investors report as having been invested. The US Department of Commerce reports a stock

of US investment in Chile at the end of 1994 of US\$4.5 billion, compared with materialised US investments under DL 600 of US\$4.7 billion as of the end of 1994 and an additional US\$274 million invested through Chapter XIV. Direct investment by US firms in Chile represents 40 per cent of the total. A difference of only ten per cent between Chilean and US reported FDI therefore suggests that the overall total for investment in Chile may not be far out of line with what would have been reported had Chile followed more closely the OECD Benchmark Definition of FDI. Given that it is the deliberate policy of the Chilean Government to discourage short term capital inflows, it is not surprising that a high share of total inward investment appears in the form of direct investment which is necessarily long term in nature.





## *Chapter 2*

# **General regulations on FDI**

### **A. Overview**

Chile has traditionally had a foreign investment regime relatively favourable to inward flows. The only exception occurred in the early 1970s when the country acceded to the Andean Pact. Through Decision 24, in 1971 the Andean Pact established a restrictive foreign investment framework which led to a reduction of foreign participation in local companies, the elimination of foreign capital in crucial sectors and limits on profit remittance. The Pact implemented an obligatory registration of investments with the national authorities and prohibited the granting of state guarantees for private credit or access to long-term internal credit. It also established limits on technology contracts and on the use of patents and brands and provided incentives for the transfer of ownership of enterprises to local investors.

This scenario profoundly changed for Chile, when in 1974 it left the Andean Pact and became one of the first countries in Latin America to eliminate barriers to entry for foreign capital. The old Andean Pact obstacles were replaced with non-discriminatory mechanisms, such as the Foreign Investment Statute or DL 600, which provided incentives and guarantees.

Foreign investment policy is based on juridical and economic principles compatible with the State Constitution, which guarantees the right of any local or foreign person to develop any economic activity, as long they respect legal regulations that govern the activity and do not harm the moral or public order or national security. There are no general economic activities reserved for the State. The Constitution provides for the full protection of private property. Specific constitutional clauses must be invoked to expropriate property, a procedure that

can only be justified in the name of public use or national interest and which requires the ratification of the expropriation law by the Congress.

In the area of foreign investments, the policy of the last two decades has been based fundamentally on non-discriminatory treatment. This principle of equality before the law guarantees that the State of Chile and its organisms will give equal treatment to locals and foreigners in the economic sphere and that both groups will have full access to all the productive sectors of goods and services. The principle is not absolute, however: a limited number of special restrictions exist in certain sectors. Legal provisions or regulations in connection with a given productive activity are considered discriminatory if they apply to much or most of the activity in the country but exclude the foreign investor. Foreign investors are subject to the same juridical regime as local investors.

In the labour sphere, foreign workers in Chile are subject to the same laws as local workers. Nevertheless, in certain activities, such as the merchant marines and the mass media, the law requires that the presidents, managers and the majority of directors or administrators hold Chilean citizenship. Moreover, the Labour Code stipulates that at least 85 per cent of a company's personnel must be Chilean, with the exception of those companies with fewer than 25 employees (the management or administration of the company is not included in the percentage calculation). Technicians with skills unavailable in Chile and those foreigners with more than five years of residence in Chile are excluded from this calculation.

To establish a branch in Chile, a foreign investor must present a Spanish translation of the articles of incorporation of the company, nominate a legal representative, establish a domicile and advise on the capital with which the branch will operate in Chile. Foreign corporations are fully liable for the activities of their branches in Chile. The establishment of branches nevertheless involves simpler procedures and less stringent capital requirements. Minimum capital requirements apply to branches in banking, insurance agencies, pension funds, health care, brokers and mutual funds.

## **B. General requirements**

The existence of controls on capital flows into Chile requires some form of registration procedure for inward investment. Currently, there exist in Chile two

instruments through which foreign direct investment is channelled. The first is the Foreign Investment Statute or Decree Law 600 which establishes a mechanism of authorisation and registration of the investment through the Foreign Investment Committee (FIC). The second instrument is Chapter XIV of the Compendium of International Exchange Regulations of the Central Bank of Chile through which foreign investors can register with the Bank.

Investors are free to choose which authorisation procedure they wish to use. There is no obligation to channel capital through the FIC, although most investors seem to prefer the security which the investment contract affords. Investments through the Committee have been almost five times greater than through the Central Bank since 1992. Although the procedure via the Committee acts as a screening mechanism for inward investment, its impetus arose from the need to restore the confidence of international investors reluctant to invest in Chile given the political upheavals of the 1970s.

Foreign investors are guaranteed access to the formal foreign exchange market (representing banks and other authorised entities) for repatriating capital, remitting profits, foreign trade procedures and other transactions. Capital may only be remitted one year or more after the date of entry and after liquidation in the formal foreign exchange market. Since this restriction particularly affects foreign-controlled enterprises in the post-establishment phase, it needs to be entered as an exception to the National Treatment Instrument. Profit remittances are not subject to any restrictions, but they do face a withholding tax of 35 per cent, from which corporate income taxes are deductible. Portfolio investments and credits are subject to a reserve requirement whereby 30 per cent of the principal must be maintained in a non-interest-bearing deposit for one year, regardless of the term of the loan. Alternatively, an investor can pay the equivalent of the foregone interest, currently 3.1 per cent, and dispense with the reserve requirement. All transactions not expressly described in the Constitutional Organic Law of the Central Bank nor in the Compendium of International Exchange Regulations and not requiring registration can be carried out without previous authorisation.

#### *a) The Foreign Investment Statute or Decree Law 600*

The legal provisions that have regulated foreign investment in Chile since 1974 are established in the Foreign Investment Statute, commonly known

as Decree Law 600 or DL 600. This law forms the basis for a contract between the investor and the State of Chile. It deals primarily with direct investment, but transfers to establish foreign capital investment funds are also channelled through the Statute. The Law applies to foreign individuals and legal entities and to Chileans residing abroad.

Decree Law 600 is administered by the Executive Vice-Presidency of the Foreign Investment Committee, an autonomous, public organism with ministerial status. The Committee is presided by the Minister of Economy and is, furthermore, composed of the Ministers of Finance, Foreign Relations, and National Planning, and the President of the Central Bank. The Committee establishes the policies and procedures for foreign investment and has the authority to approve or reject investment applications. All investment applications via DL 600 that represent a value of more than US\$5 million, or its equivalent in another currency, require the Committee's authorisation. In addition, those investments which relate to activities generally performed by the State or involving public services, those which pertain to the communications media and those which are made by other States or foreign governments are also subject to authorisation by the Committee. Foreign investments not included in this list are authorised by the Executive Vice President of the Committee, with the prior approval of its President and without the need for a formal review by the Committee. The FIC is authorised to research foreign investment in Chile and to solicit information from foreign investors whenever it is deemed necessary. The Committee has powers to investigate a potential investor both within Chile and abroad.

According to the Chilean authorities, there is transparency regarding the implementation of DL 600. Press conferences are held after each meeting of the Committee, and there are annual reports and statistics published.

Authorisations granted by the FIC seek to assure that the economic activities carried out by the foreign investor in Chile are undertaken in such a manner as to preserve public morality, public order and national security, as established in the Chilean Constitution. In fact, no investments have been refused on these grounds; if the pertinent laws had been broken after the investment was made, the ordinary law enforcement mechanisms could have been activated. The Committee does not take into account any commercial or financial aspects as a basis for their decision. The authorisation procedure was slightly amended in 1996 so as to ensure that it will apply to long-term direct rather than short-term and speculative

investment. Two intended investments were subsequently refused under DL 600 because the FIC did not consider these direct investments. However, in any such case the investors concerned are free to enter Chile through the Central Bank's Chapter XIV mechanism. In this sense, the FIC does not block an investment but rather declines to sign an investment contract with that investor.

Although there are no performance requirements in the investment contract signed between the FIC and the foreign investor, Chile does nevertheless make benefits to the three foreign automobile assembly plants contingent on certain conditions such as local content. These will be eliminated by virtue of the TRIMs agreement by the year 2000 at the latest.

The foreign investment contract can only be modified with the consent of both parties, thus representing a guarantee for the investor since the State alone cannot modify the content of the contract even by passing a law. While the foreign investment contract does not ensure that an investment will not be expropriated, it does guarantee that, in the case of expropriation, the same regulations will apply to both Chileans and foreigners.

A foreign investment has an indefinite duration, but some of the benefits which the investors can access through DL 600 are limited in time, such as the invariable tax regime which could be agreed in the foreign investment contract for a 10-year period and which could be extended to 20 years if the conditions expressed in Article 11 bis of the DL 600 are met, *i.e.* that the amount of the investment exceeds the equivalent of US\$50 million and that the purpose of the investment is to carry out industrial or resource extraction projects, including in mining. There are no limits to the share of foreign capital in the ownership of the enterprise receiving the investment: foreign investors can fully own a subsidiary in Chile. Only the foreign share of companies with mixed local and foreign ownership enjoy the benefits established by DL 600, however (see below).

The contract further stipulates that the foreign investment and the enterprises participating in it shall be subject to the regular legal regime that applies to national investment, with no direct or indirect discrimination. If legal provisions are issued which the investor considers discriminatory, the investor may within one year request that the discrimination be eliminated. The FIC then has 60 days to pronounce itself by either rejecting the request or by adopting the respective administrative measure in order to eliminate the discrimination or to require the competent authorities to take such measures if they are beyond the powers of the

Committee. If the Committee fails to take appropriate action or if it fails to eliminate the discrimination administratively, the investor may resort to the ordinary justice system for a ruling. The only exception to this principle of non-discrimination concerns possible restrictions on access to local financing imposed on foreign investors if credit conditions necessitate it. Since this potential discrimination applies only to DL 600 investors, it may be avoided by channelling the investment through the Central Bank instead of the FIC.

### *Investment procedures*

Under the Statute's provisions, foreign capital can be brought into the country and valued through procedures particular to each form of capital contribution; they are the following:

- i) Freely-convertible foreign currency brought into the country through an entity authorised to operate in the formal exchange market, converted at the most favourable exchange rate available to foreign investors.
- ii) Goods of all kinds, which are brought into the country subject to the general regulations for imports without foreign exchange cover. These goods are valued according to the regular procedures applied to imports.
- iii) Technology, in all of the forms in which it can be capitalised, is valued by the FIC within a 120-day period, based on the actual price in the international market. If no valuation has been made within this period, the investor's sworn estimate is used. The ownership and use of the technology may not be transferred separately from the company receiving the technology, and the technology cannot be amortised or depreciated.
- iv) Any credits associated with a foreign investment must be channelled through the Central Bank which establishes general regulations, time periods, interest and other terms applicable to foreign credit, and the fees that may be charged for the total cost payable by the debtor for the use of external credits, including commissions, taxes, and expenses of any kind. The FIC may require that the associated credit-equity capital ratio not exceed limits established by the Central Bank. Since 1995, a minimum of 30 per cent of the authorised investment must be a capital contribution, and associated credit can represent a value of no more than 70 per cent of the investment.

- v) Capitalisation of external credits and debts and profits in freely convertible currencies when incurred with due authorisation.
- vi) Capitalisation of profits eligible for transfer abroad.

The following application procedures apply under DL 600:

- i) The application should be presented by the investor or its legal representative, duly signed before a notary.
- ii) The application specifies the investor and its legal representative. It includes a brief description of the project, including the amounts, terms, forms of capital contributions and tax regime.
- iii) Once the application is approved, the investor will receive a draft of the foreign investment contract to be signed with the State of Chile. This will be recorded in a public deed which contains all the rights and obligations indicated in Decree Law 600 which has the character of contract law. This contract can only be modified by agreement of both parties.
- iv) The procedures from the presentation of the application through the signing of the respective contract take approximately 20 days. The investor may not enter currency into Chile before this date except with the specific approval of the FIC.
- v) The investor may, at any time, request the modification of the contract, whether to change the purpose or assign contract rights to another foreign investor. It is not possible to increase the amount of the investment by modification of the contract, but the procedure to apply for another contract is greatly simplified by the fact that the FIC already possesses the necessary documentation.

Investors under DL 600 enjoy certain potential benefits which are not available to foreign firms channelling funds through the Central Bank. Although there are no special taxes for foreign investment, under DL 600 the foreign investor has the right to opt for a system of invariable taxation. Through this mechanism, the foreign investor is subject to a tax rate of 42 per cent (compared to a current tax rate of 35 per cent) during a maximum period of 20 years. The investor choosing this option can switch one time to the regular regime. In addition, industrial or resource extraction projects which represent an investment of US\$50 million or greater are entitled to use an offshore account. Investors may

also benefit from invariable value-added tax and customs duty regimes for capital goods imported for the investment project.

***b) Chapter XIV: The Central Bank's foreign exchange regulations***

The Compendium of Foreign Exchange Regulations of the Central Bank of Chile regulates, among other things, foreign exchange operations, capital remittances and access to the foreign exchange markets. Chapter XIV of the Compendium defines the general regulations relating to investments, capital contributions and foreign credit. The investments or capital contributions channelled through this mechanism can only be materialised in the form of freely convertible foreign exchange.

For capital contributions that are not external credits, Chapter XIV establishes the following provisions:

- i)* Foreign investors who carry out capital contributions must request an authorisation from, and register the contribution with, the Central Bank of Chile. This procedure is carried out through the banking system, prior to the liquidation of the foreign exchange.
- ii)* The capital transferred into the country must be converted through the official exchange market which is freely agreed upon.
- iii)* The profits generated by the investment or contribution can be repatriated at any time, without any restrictions, after having paid the 35 per cent withholding tax.
- iv)* The re-export of the capital contribution can only occur one year after the date of liquidation. After this period, the investor can remit all or some of the initial contribution.

The Central Bank is not entitled to reject an investment; it may only impose certain conditions based on monetary policies as established in the Constitutional Organic Law of the Central Bank on the transfer of funds into and out of Chile (such as the one-year retention requirement). The companies that are constituted by the capital contributions channelled through Chapter XIV are subject to local regulations. They enjoy National Treatment, including access to the local capital market, but are excluded from the benefits included in the Foreign Investment Statute (DL 600).



### **C. The tax regime applying to foreign direct investment**

Profits generated by a foreign company can be remitted in foreign currency once the investor has paid the corresponding taxes. The tax rate for profit remittance is 35 per cent, of which the First Category Income Tax (corporate tax) of 15 per cent constitutes a credit, implying an effective withholding tax of 20 per cent. Reinvested earnings are not subject to additional taxes. In addition, the following tax rates apply to various capital transactions between the Chilean affiliate and the foreign parent<sup>5</sup>.

- i)* Interest on foreign credit is subject to the 35 per cent withholding tax, except when paid to foreign banks or financial institutions and authorised by the Central Bank in which case the payment is subject to a rate of 4 per cent. This latter case applies particularly to credits associated with foreign investment under DL 600 or Chapter XIV.
- ii)* Royalties from patents, brands, formulas and other such property of entities with residence outside of Chile are subject to a withholding tax rate of 35 per cent. Some royalties may be taxed at a higher rate, up to 80 per cent, when they are deemed by the President of Chile to be either unjustifiable or unproductive for the country's economic development. Currently, no royalties are subject to this higher rate. Royalties are deductible if they are necessary to produce income.
- iii)* Payments for technical, consulting, or engineering services, carried out in Chile or abroad by companies with foreign residence are subject to a tax rate of 20 per cent.
- iv)* Premiums to foreign insurance companies insuring assets that are permanently in Chile are subject to an additional tax of 20 per cent, or 2 per cent for reinsurance premiums.
- v)* Capital goods are exempt from the value-added tax under DL 600.
- vi)* Imported goods are subject to an ad valorem charge of 11 per cent, with the exception of those goods which enjoy preferential tariffs as part of bilateral trade agreements.

### **D. Real estate**

There are two types of restrictions on the acquisition of real estate in Chile. The first applies to real estate acquisitions in frontier land which is informally

estimated to include 60 per cent of all land area in Chile. Immovable property located on frontier land may not be acquired, either as property or in another form, by citizens from neighbouring countries or by corporations with the principal seat in a neighbouring country, with 40 per cent (raised from 20 per cent) or more of their capital retained by nationals from those countries or with effective control exercised by those individuals. An investor from a neighbouring country may apply to have this restriction set aside by presidential decree. Discussions are presently underway to establish a mining investment co-operation agreement with Argentina. The domestic law with reference to the economic development of the Arica region also establishes exceptions to the general law.

The second type of restriction covers all foreign investors but concerns only State-owned land within the borderland zone defined as all territory within 10 km of the border and 5 km of the coast. Ownership, rights derived from rental or any other right over State land within the borderland zone may only be transferred to Chilean individuals or Chilean juridical persons.<sup>6</sup> Such Chilean juridical persons may be fully foreign-owned in this case, with the exception of investors from neighbouring countries. Oceanfront land up to 80 metres from the high tide point on the coast which belongs to the State may not be sold by the State.

As the second restriction allows established Chilean corporations to be fully owned by firms from OECD countries, it does not violate the principle of National Treatment vis-à-vis OECD countries. Since Argentina has adhered to the 1976 Declaration and Decisions, however, the restriction on the ownership of both State and non-State land in the borderland zone by investors from neighbouring countries has been listed as a transparency measure in the National Treatment Instrument.

Mining concessions are not awarded to private investors in areas declared "important for national security in relation to mining", although this concept is not defined and no area is set aside on that basis. It would be a matter of interpreting the law if the authorities decided to apply this legislation.

## **E. Privatisation**

The process of privatisation began much earlier in Chile than in the rest of Latin America. In 1974, the Government embarked on a rapid privatisation programme. Firms which had been nationalised in the early 1970s were often

returned to their former owners in exchange for commitments for capital investment. In 1974 alone, 325 firms were privatised. During this phase of Chilean privatisation, which lasted until 1978, the State received payments from privatisation amounting to US\$582 million. In this first phase, the Government lacked any method for selecting appropriate buyers or for supervising ownership relationships: an investor only needed to make a down-payment, while the state holding company, *Corporación de Fomento* (CORFO), provided a loan for the balance. This policy resulted from the lack of liquid assets or working capital of Chilean investors following the inflation of the early 1970s. The absence of any screening of investors based on solvency considerations or on previous management experience was intended to increase the number of potential bidders at the auctions.

These privatisation policies encouraged risk-taking on the part of investors and led to greater indebtedness on their side. They constituted one of the chain of events which led to the banking crisis of the early 1980s. As a result of the crisis, the Government was forced to take over some insolvent banks and to liquidate others. The second phase of privatisation occurred in 1984 and 1985 with the aim of re-privatising these banks, financial institutions and other enterprises that had returned to *de facto* State ownership as a result of the economic and financial crisis of 1982-1983.<sup>7</sup> Many of these firms had already been privatised in the first round of privatisation in the 1970s. Care was taken not to repeat the mistakes of the early phase of privatisation. Bidders were prequalified mostly on the basis of solvency, and divestitures occurred on a cash basis. As a general rule, foreigners did not participate in these operations, but they did buy into these firms following privatisation. To spread ownership more widely within the Chilean economy, the State offered new share issues to the general public, with low interest credit and a small downpayment. Fiscal policies were then designed to encourage these "popular capitalists" to keep their shares. A percentage of shares was sometimes sold directly to foreign investors at this point, such as occurred with the two largest pension fund management companies.

The third phase of privatisation, which began in 1985, encompassed those large firms that traditionally have been state-owned in most OECD and non-OECD countries (*e.g.* utilities, communications, transport). Roughly 30 per cent of the large public enterprises were privatised, yielding revenues of US\$1.2 billion.<sup>8</sup> The share of privatised firms among public enterprises would be much higher if Codelco, the State-owned copper producer, were excluded.

Privatisation of enterprises providing basic public services was deemed to be politically sensitive and hence proceeded in stages. First, these enterprises were turned into corporations, and a supervisory authority was established. Then, up to 30 per cent of shares were sold, some of which were distributed to workers and management. In the final phase, majority private control was permitted. Pension funds became major shareholders in this period, acquiring 25 per cent of the shares in most privatised firms.<sup>9</sup> Foreign investors participated actively in this phase of privatisation, encouraged by the debt-equity swaps. In the case of *Telefonos de Chile*, for example, 30 per cent of the shares were auctioned internationally. Through such swaps, foreign firms acquired over 20 per cent of the shares of the firms privatised during this period.

While few firms remain to be privatised in Chile, the public sector still accounts for a relatively high share of GDP – roughly 13 per cent. Much of this is accounted for by Codelco in copper and ENAP in petroleum. Codelco was nationalised by the Allende Government and remains in State hands today. Codelco and ENAP cannot be privatised without changing the Constitution. In spite of a long history of privatisation in Chile – with 550 firms privatised between 1973 and 1989 – a number of enterprises remain to be privatised (see below; Annex 3 provides a survey of state-owned companies). Unlike in Argentina, the State did not make it a policy of retaining “golden shares” in privatised enterprises, although the state development agency CORFO holds shares in certain privatised entities. One criticism that has been made of the Chilean privatisation process is that insufficient attention was paid to the development of an active competition policy with the result that certain activities continued to be monopolies after privatisation.<sup>10</sup>

It is difficult to assess the importance of foreign investors in the privatisation process because of absence of any record of when a foreign firm gained effective control of a privatised entity. Debt-equity swaps were an important mechanism to acquire shares in these companies, but they were not limited only to privatised firms. Government efforts to distribute share ownership may have had the effect of limiting the ability of foreign investors to gain control of a firm, but in several large privatisations, foreign investors were sold a large enough part of the company in order to gain control.

Future privatisation projects include water distribution and water and sewage treatment (with private firms owning up to 65 per cent of the sector) and the

electricity company Colbún. In addition, ports and new roads will be managed by private companies and investors will be able to construct new harbours. There is no discussion of privatising Codelco, the *Banco del Estado* and the State television channel. There are nevertheless plans partly to privatise Codelco's Tocopilla power plant and also its works plant in order to raise capital for investment. In many sectors dominated by public firms, the State will nevertheless increasingly allow private participation in the sector, such as through build-operate-transfer concessions, joint ventures between public and private firms and new investments by private firms. Production of copper by private enterprises overtook that of Codelco in 1994 for the first time since the nationalisation of Codelco in 1971. Other public entities such as the oil producer ENAP will disappear by attrition as domestic oil reserves are depleted.

## **F. Monopolies and concessions**

The State and its organisms can develop business activities under general law. For the State to engage in new economic activities, however, it requires the approval of a "special quorum" in Congress consisting of an absolute majority of all Congressmen. Table 6 lists monopolies and concessions in Chile. All monopolies and concessions are controlled at the national level.

Table 6. **Monopolies and concessions**

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### **1. Public monopolies**

- Exploitation and exploration of hydrocarbons, lithium, uranium and some other minerals are reserved to the State (concessions by operating contracts are granted to private enterprises).
- Ports and airports.
- Pawn shops.
- Post office services.
- Sanitary services (one company in each region).

### **2. Private/mixed monopolies**

- Electrical distribution and transmission companies.
- Water companies.
- Local telephone services (in the process of dissolution).
- Gas and oil pipelines.

### **3. Concessions**

- Gambling.
  - Aquaculture.
  - Ports.
  - Road transport.
-

## **G. Investment incentives**

The Chilean Government does not generally include major incentives for local or foreign investment. Nevertheless, foreign investors and the companies receiving the investment are exempt from paying a VAT tax of 18 per cent on capital goods that form part of a foreign investment project, formally arranged with the State, in accordance with the dispositions of DL 600. Furthermore, for investors whose objective is to develop industrial or resource extractive projects representing a value of at least US\$50 million, the Statute establishes the following benefits:

- i)* Extension of the regime of invariable taxation to a period of 20 years;
- ii)* The contracts may stipulate that certain legal rules established by the Internal Revenue Service be maintained invariable; and
- iii)* The authorisation to maintain foreign exchange, as payments for exports, abroad.

Complementary to the benefits established in the Foreign Investment Statute, companies with local or foreign ownership can access any of the following incentives;

- i)* In forestry activities, there exists a subsidy equivalent to 75 per cent of the area to be forested that forms part of the management plan, and also in the case of land suitable for forestation; in addition, work previous to establishment receives a credit, and land especially suitable for forestation is exempt from a property tax;
- ii)* Incentives to promote industries in certain outlying zones of the country include income tax and VAT exemption, and credit for the work force;
- iii)* A company receiving investment that engages in export activities can access certain tariff benefits (refund system for customs charges and other import levies, differed payment and credits for capital goods, and pay-back of the value added tax).

## **H. Government procurement**

Chile lacks a single procurement system or procedure for the public sector. Public procurement should observe the principles of non-discrimination, effi-

ciency, transparency and integrity embodied in constitutional and legal standards. The Office of the Comptroller General, an independent agency, is responsible for maintaining these principles. Public entities and municipalities (local governments) are responsible for their own procurement, and, according to the authorities, more autonomy has been granted to these entities. Enterprises owned by the State which are run on private sector parameters (*i.e.* to be profitable) are free to determine their own purchasing policies and to make their own independent purchases and they apply the same economic criteria as private enterprises for such purposes. Supplies are obtained indistinctly from both national and foreign suppliers. Purchase systems are, in some cases, governed by executive orders. In Chile, two institutions are in charge of acquiring, storing and distributing movable goods (*bienes muebles*): the State Directorate of Provisioning (*Dirección de Aprovisionamiento del Estado*, known as DAE)<sup>11</sup> and the National Health Provision Centre (*Central Nacional de Abastecimiento de Salud*, known as CENABAS). It is not mandatory for public entities to purchase from these two institutions. Public procurement carried out by DAE represents around three per cent of total public procurement. The Directorate will normally purchase a domestically produced good rather than a foreign good, if the national good is of equal price and quality.<sup>12</sup> This policy does not apply to purchases undertaken by the rest of the public entities.

The Chilean Government has not signed the World Trade Organisation (WTO) agreement on public procurement because, unlike Chilean regulation, the agreement does not provide for National Treatment at the subnational level and because it regards implementation and management of the Agreement as complex, bureaucratic and expensive.

## **I. Investment protection and double taxation**

### **a) Investment protection**

In the case of an expropriation with proper legal justification, the investor has the right to be indemnified. If the parties do not agree on the value of the indemnification, the courts will determine the value of the property being expropriated. The cash down-payment will be made before possession of the property is taken.

Investors can invoke investment promotion and protection agreements directly before a court of justice. Once an agreement is published in the Official Daily, the State, courts and all relevant authorities must follow its stipulations. Although the Constitution does not explicitly refer to the judicial nature of international agreements, they are treated as law. For this reason, the local judiciary assigns the same value and authority to such an agreement as to domestic law.

Chile is a member of the Investment Centre for Settlement of Investment Disputes (ICSID). When conflicts arise in the area of foreign investment, the investor has legal recourse, either to the court having jurisdiction over the area in which the investment was made or to international arbitration. Moreover, in 1990 Chile initiated a negotiation process of bilateral Investment Promotion and Protection Agreements so as to further strengthen and improve the juridical conditions for foreign investment. These accords, like local regulations, have been based on the principles of non-discrimination, most favoured nation status, and the right to appeal decisions. The BITs allow investors to choose between Chilean courts and international arbitration, but the choice of one option precludes that of the other at any point in the process.

Chile has signed various free-trade agreements with Latin American countries. Its recent free-trade agreement with Canada contains a chapter on investment largely based on the North American Free Trade Agreement (NAFTA). Within the scope of the NAFTA there is a working group on investment.

The agreements also guarantee property rights and explicitly state that expropriation procedures must be justified by the Law and must involve proper indemnification. At the same time, they ensure the free transfer of funds in areas such as capital repatriation, profits, expenditure payments, credits, export and import payments, in addition to generally ensuring all kinds of unrestricted transfers or payments related to investment activity. Moreover, the investment promotion and protection agreements grant the investor access to non-commercial risk insurance that international (MIGA) and governmental (OPIC) agencies offer, with reasonable premiums.



**b) Double taxation agreements**

Chile currently has only one double taxation agreement – with Argentina – signed in 1976 and in force since 1986. A bill is currently before Congress which seeks to amend the income tax code and which would facilitate the adoption of further agreements in this field. The negotiation process would then be open to all interested countries.

A number of double taxation agreements have been signed in relation to air and maritime transport. The following countries have signed agreements with

**Table 7. Investment promotion and protection agreements**  
Current situation of each agreement and the participating countries

Situation of the agreement	Latin America	Europe	Asia-Pacific
Negotiation phase	Peru*	Austria Hungary* Netherlands Russian Federation Turkey	Indonesia* New Zealand Singapore
Signed	Costa Rica Cuba El Salvador Guatemala Honduras Nicaragua Panama Paraguay Uruguay	Germany** Greece Poland Portugal Romania Switzerland** Ukraine United Kingdom	Australia Philippines Korea
Approved by Congress	Bolivia Brazil	Belgium	
In force	Argentina Ecuador Venezuela	Croatia Czech Republic Denmark Finland France Italy Norway Spain Sweden	China Malaysia

\* Initialled.

\*\* Signed in 1991; presently being renegotiated.

Source: Ministry of Foreign Affairs, Chile.

Chile concerning both air and maritime transport: Brazil, Colombia, Venezuela and Canada. Spain, the United States, France, Germany, and Uruguay have signed agreements with Chile concerning just air transport. Singapore has an agreement in maritime transport, and Paraguay has an agreement in land and air transport.

*c) Intellectual property rights*

The Chilean Constitution grants full protection to intellectual property rights and remits details to special laws on each particular right, such as the Copyright Law of 1970 (amended in 1972, 1985, 1990 and 1992) which provides the basic legislation and the Industrial Property Law of 1991 which provides for the regulations of patents, models, industrial designs and trademarks.

Trademark protection is based upon registration. The law, however, provides for the protection of foreign trademarks whenever they may be affected by a local application for registration. Registrations are granted for ten years which may be renewed indefinitely.

Patents are granted for all inventions meeting the basic requirements of patentability. Exceptions to patentability are very few and are usually contained in other laws: scientific discoveries; financial and commercial schemes; new animal races; surgical and therapeutic methods for human and animal treatment; and methods of diagnosis for humans and animals. The Chilean Industrial Property Law allows for full pharmaceutical patentability (both processes and products). Patent protection is granted for 15 years as of the date of grant. The period between filing and grant is, however, subject to protection in case of infringement. Pipeline protection while new products are being developed is not available in Chile.

Chilean Law provides for the possibility of a kind of confirmation patent for inventions based upon foreign patents or foreign pending applications, provided the subject matter is not commercially known in Chile. New plant varieties are also the subject of strong protection through a different law, administered by the Minister of Agriculture.

Chile is a member of the World Intellectual Property Organisation (1975), the Bern Convention for the Protection for Literary and Artistic Works (1975), the Universal Copyright Convention (1955), the Rome Convention for the Pro-

tection of Performers, Artists, Producers of Phonograms and Broadcasting Organisation (1974), the Paris Convention for the Protection of Industrial Property (1991) and the Geneva Phonograms Convention (1977). It is not a member of the Madrid International Agreement on the Registration of Trade Marks.



### *Chapter 3*

## **Sectoral restrictions**

The Foreign Investment Statute does not establish any kind of restrictions for foreign investors; they have access to all productive activities and face no limits on their involvement in an investment project. In certain productive activities, however, there are some areas where foreigners face constitutional and legal regulations which limit or restrict their full participation. These areas are described below. In addition, certain activities and assets are reserved exclusively to the State.

In a number of sectors, discussed below, minimum ownership requirements exist for Chilean nationals, which include Chilean enterprises. Since an enterprise established in Chile and incorporated under Chilean law is considered to have Chilean nationality, even if it is fully foreign-owned, this does not by itself constitute a restriction on foreign-controlled enterprises established in Chile and, hence, not an exception to the National Treatment Instrument (it would, however, be a restriction on establishment under the Capital Movements Code). While this principle applies generally, there are nevertheless specific sectors where the requirements of ownership preclude foreign majority participation. In these cases, an exception to National Treatment would need to be lodged.

### **A. Mining**

The 1980 Constitution stipulates that the State has absolute, exclusive, inalienable and permanent ownership of all mining resources, but it allows for the exploration and exploitation of mining deposits by local and foreign private agencies via mining concessions. Concessions are guaranteed by the law courts

and can be mortgaged or transferred. The concessionaire enjoys all relevant exploration and exploitation rights for all mines within the area covered by the concession and is to be compensated at full market rates should the property be expropriated.<sup>13</sup>

The following minerals are specifically excluded from mining concessions owing to their strategic importance: hydrocarbons, lithium and offshore minerals, and those located in areas important for national security in mining. The Constitution stipulates that exploration and exploitation of these substances can be undertaken directly by the State or its enterprises, or, by Presidential decree, through administrative concessions or operating contracts to private investors, under the conditions established for each case by Presidential decree. Currently, there are only operating contracts in force. These concessions and contracts may be terminated by the State at any time, subject to the payment of appropriate compensation. Foreign investors may also be awarded concessions for these substances subject to the same conditions. The State no longer holds a monopoly on the exploration and exploitation of nuclear materials, but it reserves the first option to buy thorium and uranium at international market prices.

A new law authorises the state-owned copper company, *Corporación del Cobre* (Codelco), to make available third party rights to properties in its possession, subject to the prior approval of the Chilean Copper Commission. Such property rights must refer to deposits that are presently being exploited, with the exception of those that Codelco plans to repossess or expand by means of direct exploitation. Similarly, Codelco is authorised to transfer to the National Mining Company (ENAMI) those properties which contain deposits that are not being exploited, as long as their potential mining resources and level of production do not fall within the normal exploitation plans of Codelco. These transfers can be free of charge or otherwise. Joint ventures and other associations with third parties, like transfers to ENAMI, can only be effected in the case of mining deposits that have been, at the very least, subject to preliminary exploration by Codelco.

## **B. Banking**

Two major banking laws entered into force in July 1995 and June 1996 respectively. Both deal with the outstanding subordinated debt that five banks

still maintain with the Central Bank as a result of the deep banking crisis of the early 1980s. A revision of the General Bank Law, originally passed in 1925, is pending in Congress; it envisages amendments in two major areas:

- New activities are authorised, including opening new branches at home and abroad. Under the new law, banks can enter the businesses of factoring, securitisation, insurance brokerage (except retirement annuities), and Foreign Capital Investment Funds.<sup>14</sup> Chilean banks are also able to open foreign branches and subsidiaries and to invest in foreign banks.
- Tougher solvency requirements establish new capital and risk standards based on bank assets rather than liabilities as was done previously. The law previously required that commercial banks have a minimum of approximately US\$10 million in paid-in capital and reserves. In addition, the bank had to keep a "legal reserve fund" for a sum equivalent to 25 per cent of the paid-in capital and reserves. The new standards imply a capital/asset ratio of 8 per cent, in accordance with the Basle standards. However, a 10 per cent requirement is imposed on banks with a commercial presence abroad, to provide an extra safety margin in view of the strong orientation of internationally operating Chilean banks on South America. At present almost all banks meet the 8 per cent standard, most of their capital being in tier 1.

One Chilean bank remains in the hands of the State, the *Banco del Estado*. The bank's main function is to serve geographical and financial areas which are not adequately covered by existing banks: providing services to the public sector, savings accounts for small individual savers and loans for low-income housing and small-and medium-sized enterprises. There are, however, no statutory limitations on what the bank can do, although it is subject to the General Bank Law. According to one authoritative study, it is not seen as a major direct competitor to the commercial banking system.<sup>15</sup>

Foreign banks can engage in the same range of activities as domestic banks. The only instance of discriminatory treatment, an alternative minimum tax on branches of foreign banks (designed to prevent transfer pricing), was repealed in 1993.<sup>16</sup> They can issue credit cards and offer ATM services and can fund themselves through deposits. They are permitted to deal in foreign exchange through the official exchange market on the same terms as domestic banks. Both

foreign and domestic banks face controls on all credit inflows except supplier credits. They are required to deposit 30 per cent of all inflows in a non-interest-bearing reserve for one year or pay the Central Bank the tax equivalent to the interest foregone.

Foreign banks are allowed to establish either as branches or subsidiaries, although in the latter case it must be through the acquisition of an existing bank: new banks (domestic or foreign) have not been allowed to enter the market since the financial sector crisis in the early 1980s. Branches and subsidiaries are subject to the same regulations and supervision and can perform the same activities. An investor must assign a minimum capital endowment of US\$12 million before establishing a branch.<sup>17</sup> This endowment does not apply to future branches by the same investor. Foreign investors show only a slight preference for branches. It has been argued that the Superintendency appears to prefer branches because the legal liability of a foreign branch extends to the parent institution.<sup>18</sup> However, this goes back, reportedly, to a single case that is not indicative of a general policy.<sup>19</sup>

The acquisition of more than 10 per cent of the stock of a Chilean bank requires the authorisation of the Superintendent of Banks. The reasons for potential rejection are expressly stated in the law, particularly if the investor has proven bad conduct in the financial area in the past. The investor can appeal in the courts. The proposed new banking law will lessen the burden of proof of the Superintendent and allow greater flexibility to reject the acquisition. Foreign investors hold shares exceeding 10 per cent in a number of Chilean banks.

### **C. Other financial institutions**

There is no legal discrimination or restriction against foreign securities firms, but foreign brokerage firms wishing to operate in the securities markets must establish subsidiaries in Chile before being allowed to establish a branch. Subsidiaries in the insurance sector must establish a capital endowment. Banks may conduct securities business through legally separate affiliates. To participate in managing the private pension fund system, an investor must establish an *Administrador de Fondos de Pension* (AFP) which must be a Chilean juridical person (100 per cent foreign ownership is nevertheless permitted) registered with the Chilean AFP Superintendency.



## D. Shipping

Only a Chilean individual or a Chilean juridical person may register a vessel in Chile. A corporation must be constituted in Chile with principal domicile and real and effective seat in the country. In addition, its president, manager and majority of the directors or administrators must be Chilean and more than 50 per cent of its equity capital must be held by Chilean individuals or juridical persons. For joint ownerships, the majority of the owners must be Chilean with domicile<sup>20</sup> and residency in Chile, the administrators must be Chilean individuals and the majority of the rights of the joint ownership must belong to a Chilean individual or juridical person. A corporation/joint ownership with ownership participation in a corporation/joint ownership that owns a vessel has to comply with all the aforementioned requisites. An exception to National Treatment is therefore necessary concerning vessel registration.

Special vessels,<sup>21</sup> excluding fishing vessels, owned by foreign individuals or juridical persons may be registered in Chile if the owner's domicile is in Chile and if either the principal head office is in Chile or the owner is undertaking a profession or commercial activity in a permanent way in Chile. The maritime authority (*Dirección Marítima*) may, for reasons of national security, impose certain special restrictions on the operation of these vessels in certain maritime zones. The maritime authority may concede a better treatment based on the principle of reciprocity.

Cabotage is reserved to Chilean vessels at least 50 per cent Chilean-owned, including the transportation of passengers and cargo on seas, rivers and lakes between points on the national territory and between such points and naval installations in territorial waters or in the Exclusive Economic Zone. Cargo owners may nevertheless accept tenders from foreigners for shipments over 900 tons, but the foreign company must add a 11 per cent tariff to its bid. It will only be awarded the contract if the bid plus the tariff is less than that of a Chilean firm.

Invoking the reciprocity principle, Chile may demand that cargo shipped by sea to and from the country is carried by ships flying the Chilean flag. Chile does not apply this reciprocity automatically however, and freedom of entry is the general rule. In tugging activities performed in Chilean ports, only tugboats flying the Chilean flag shall be used.

In order to fly the national flag, the captain, officers and crew of Chilean vessels must be Chilean individuals registered with the relevant authorities. Nevertheless, the *Dirección Marítima*, on the basis of a motivated resolution, shall, authorise the hiring of foreign personnel, on a temporary basis if essential, with the exception of the captain. Professional titles and licences granted by a foreign country shall be considered valid for the discharge of officers' duties on national vessels pursuant to a motivated resolution issued by the *Dirección Marítima*.

Shipping agents or representatives of ship operators, owners or captains, whether they are individuals or legal entities, must, among other things, be Chilean. The following natural or juridical persons must also be Chilean: agents responsible for stowing, unstuffing and mooring; persons responsible for unloading and transferring goods and generally using Chilean continental or insular ports; and persons wishing to work as multimodal operators in Chile.

## **E. Fishing**

Only Chilean individuals, juridical persons constituted in accordance with Chilean law or foreigners with permanent residency in Chile may hold a permit or concession to carry out aquaculture or fishing activities. The local presence requirement only applies to juridical persons in aquaculture. Natural foreign persons are not permitted to engage in this activity. The participation of foreign capital in the ownership of the corporation must be approved by the official entity empowered to authorise the respective foreign investment, in accordance with the laws and regulations in force.

Only Chilean vessels are permitted to fish in interior waters, in the Territorial sea and in Chile's Economic Zone. Chilean vessels are those defined in the Navigation Act (*Ley de Navegación*). Extractive industrial fishing activities are reserved to Chilean-registered vessels. Registration of vessels is subject to the same restrictions as stipulated above for maritime transport and therefore requires an exception to National Treatment. An owner (individual or juridical person) of a fishing vessel registered in Chile prior to 30 June 1991 is not subject to the nationality requirement, however.

Fishing vessels specifically authorised by the maritime authorities, pursuant to powers conferred by law in cases of reciprocity granted to Chilean vessels by other States, may be exempted from the above mentioned requirements on equivalent terms provided to Chilean vessels by that State.

Access to small-scale fishing activities is only granted to Chilean individuals, foreign individuals with permanent residency in Chile or a corporation constituted by individuals as aforementioned. Since this requirement restricts access to small-scale fishing by companies established in Chile, but constituted by non-residents, it counts as an exception to the NTI.

Only Chilean nationals or foreigners with domicile in Chile may act as fishing boat captains, machinists, machine operators, sea-faring or small-scale fishermen, industrial or maritime trade technical employees, and as industrial and general ship service crews on fishing factories or fishing boats when so requested by ship operators as essential to the initial activities of the work.

#### **F. Air transport**

Only Chilean individuals or juridical persons may register an aircraft in Chile. A juridical person must be constituted in Chile with principal domicile and real effective seat in Chile. In addition a majority of its ownership must be held by Chilean individuals or juridical persons, which in turn must comply with the aforementioned requisites, thus constituting an exception to National Treatment. The president, manager and a majority of directors or administrators of the corporation must be Chilean.

Air transport services may be provided by Chilean or foreign juridical persons subject to the condition that, along the routes in which they operate, foreigners grant similar conditions to Chilean aviation corporations when so requested. The *Junta Aeronáutica Civil*, by means of a justified resolution, may terminate, suspend or limit cabotage or any other class of commercial aviation services carried out solely in Chilean territory by foreign corporations or aircraft if in their country of origin the right to equal treatment for Chilean corporations and aircraft is denied. Commercial aircraft not operating on a regular basis shall not be allowed to carry passengers, cargo or mail in Chilean territory without prior authorisation by the *Junta de Aeronáutica Civil*.

Foreign aviation personnel are allowed to work in that capacity in Chile provided that the licence or work permit granted by a foreign country is validated by Chilean civil aviation authorities. In the absence of an international agreement regulating such validation, the work permit is granted under conditions of reciprocity. In that case, it must be shown that, inter alia, the requirements for issuing or validating such licences and authorisations meet or exceed the standards required in Chile for analogous cases.

### **G. Road transport**

Under a multilateral treaty within the context of the Latin-American Integration Association (ALADI), international road transport will be reserved to companies controlled by citizens of signatory countries (Argentina, Bolivia, Brazil, Chile, Paraguay, Peru and Uruguay). As in the case of Argentina, this measure requires an exception to National Treatment for Chile.

### **H. Telecommunications**

Holders of a telecommunications concession must be juridical persons, constituted and domiciled in Chile. Foreign-owned firms can also fulfil these criteria. The disposition, rental, transfer or rights of usage of a concession or permit must be authorised by the *Subsecretaría de Telecomunicaciones*.

### **I. Broadcasting**

The National Board of Television may decide to require that up to 40 per cent of programmes aired by television channels without charge be Chilean productions, however this restriction is not always applied.

The owner and director or acting director of a concession for radio stations must be Chilean with domicile and residency in Chile. If the holder of the concession is a corporation or a joint ownership (*comunidad*), it is considered Chilean if 85 per cent of the equity capital or joint ownership rights are held by Chilean individuals or juridical persons (defined again as 85 per cent Chilean capital ownership). The president, directors, managers, administrators and legal

representatives of the corporation owning a commercial television station must be Chileans. In addition, the director or acting director must have domicile and residency in Chile.

## **J. Publishing**

The owner of a magazine, a daily or weekly domestic newspaper or a national news agency must be Chilean with domicile and residency in Chile. If the owner is a corporation or a joint ownership, it is considered Chilean if 85 per cent of the equity capital or joint ownership rights are held by Chilean individuals or Chilean juridical persons (based on 85 per cent Chilean capital ownership). In addition, the director and the acting director must be Chilean with domicile and residency in Chile. The exceptions to these rules are technical and scientific publications, any publishing in a foreign language and magazines of an international character printed in Chile and distributed in Chile and abroad. There is currently a draft law in Congress aimed at liberalising this sector.



## Notes

1. See Section B "General requirements" for more information about each method for investing capital in Chile.
2. In addition to the 30 private banks, there is also a State-owned Banco del Estado and four *financieras* or consumer finance companies which are not allowed to offer current accounts or to handle international business.
3. As reported in documentation from the *Superintendencia de Bancos e Instituciones Financieras*.
4. The Central Bank figures are more closely linked to the balance of payments concept of FDI and hence are a better source in terms of comparability with other countries. At the same time, however, the figures from the Chamber of Commerce which focus on overseas investments which are not always financed from the home country give a better idea of the overall importance of Chilean firms within the region.
5. Sources for this section include the Government of Chile, Price Waterhouse, the Economist Intelligence Unit and the APEC Secretariat.
6. There is no specific definition for the purposes of this legislation. Therefore, the definition would be in accordance with general law which includes the concept of a juridical person constituted or duly organised in accordance with Chilean law.
7. Raul E. Saez, "Financial Aspects of Privatisation in Chile", in *Privatisation in Asia, Europe and Latin America*, OECD, Paris 1996, p. 171.
8. Rolf Lüders, "The Success and Failure of State-owned Enterprise Divestitures in a Developing Country: The Case of Chile", *Columbia Journal of World Business*, Spring 1993.
9. As of the end of 1992, 24 per cent of the accumulated pension funds was invested in shares of publicly traded joint-stock companies, and of this, 86 per cent was in shares of formerly state-owned enterprises. Saez (1996), p. 177.
10. E. Bitrán and P. Serra, "Regulatory issues in the privatisation of public utilities: the Chilean experience", in *Privatisation in Asia, Europe and Latin America*, OECD, Paris 1996, p. 141.
11. Law No. 353, Ley Orgánica de la Dirección de Aprovisionamiento del Estado (1960).
12. Article 3, Law no. 353, Ley Orgánica de la Dirección de Aprovisionamiento del Estado (1960).

13. The legal framework for mining concessions is provided by the Constitutional Organic Law of Mining Concessions No. 18097 of 1982. The Law can only be modified with the approval of a four-sevenths majority in the Congress. In addition, the 1983 Mining Code contains systematic norms governing the prospecting, development and operation of mines, as well as the rights to those mines.
14. Foreign Capital Investment Funds (FICE) were authorised in 1987 to permit foreign individual and corporate investors to acquire listed shares in domestic exchanges. Like investment funds, they are closed end and do not permit the sale of the underlying assets. Such investment funds are usually formed through the DL600 mechanism. The funds are managed by independent Chilean or authorised foreign investment managers.
15. National Treatment Study 1994, US Treasury, p. 188.
16. Some foreign banks had claimed that the tax was unconstitutional; their challenge to attempts to collect the tax in previous years is still in court.
17. All capital requirements have to be paid in pesos, but foreign banks are guaranteed access to foreign exchange at the official rate at the moment they decide to leave.
18. National Treatment Study 1994, US Treasury, p. 191.
19. Oral information from the Superintendency.
20. In the case of all sectoral restrictions, domicile implies a permanent intent on residing in the country.
21. Special vessels are all vessels except those used for transport purposes.



*Annex I*

**Chile's exceptions notified in pursuance of the National Treatment Instrument**

**A. Exceptions at the national level**

**I. Investment by established foreign controlled enterprises**

*Trans-sectoral*

Foreign investment capital cannot be re-exported until one year after the date of entry.

*Authority:* Chapter XIV of the Compendium of Foreign Exchange Regulations and Decree Law 600.

*Road transport*

International road transport is reserved to companies controlled by citizens of the Latin-American Integration Association (ALADI).

*Authority:* Accord on International Land Transport signed by ALADI Members – Argentina, Bolivia, Brazil, Chile, Paraguay, Peru and Uruguay.

*Shipping*

Ownership of Chilean flag vessels is limited to Chilean individuals or Chilean majority-owned corporations with principal domicile and real effective seat in Chile. Cabotage and tugging activities performed in Chilean ports are reserved to Chilean flag vessels.

*Authority:* Decree Law 3059, *Official Gazette* 22 December 1979; Supreme Decree 24, *Official Gazette* 10 March 1966; Decree Law 2.222, *Official Gazette* 31 May 1978.

*Fishing*

Ownership of Chilean fishing vessels is limited to Chilean individuals or Chilean majority-owned corporations with principal domicile and real effective seat in Chile. An owner of a fishing vessel registered in Chile prior to 30 June 1990 is not subject

to the nationality requirement, however. Fishing vessels specifically authorised by the maritime authorities, pursuant to powers conferred by law in cases of reciprocity granted to Chilean vessels by other States, may be exempted from the above mentioned requirements on equivalent terms provided to Chilean vessels by that State.

Resident enterprises constituted by foreign non-residents are not permitted to engage in small-scale fishing.

*Authority:* Law 18892, *Official Gazette* 22 December 1992, Decree Law 2222, *Official Gazette* 31 May 1978.

#### *Air transport*

Only Chilean individuals or Chilean majority-owned corporations with principal domicile and real effective seat in Chile may register an aircraft in Chile.

*Authority:* Law 18916, *Official Gazette* 8 February 1990; Decree Law 2564, *Official Gazette* 22 June 1979.

#### *Mining*

Exploration and exploitation of hydrocarbons, lithium and offshore minerals and those located in strategically important areas can only be undertaken by private investors through administrative concessions or operating contracts under the conditions established for each case by Presidential decree.

*Authority:* Political Constitution of the Republic of Chile; Constitutional Organic Law 19.097, of Mining Concessions; Law 18.248, *Official Gazette* 14 October 1983, Mining Code; Law 16.319, *Official Gazette* 23 October 1965, creating the Chilean Commission of Nuclear Energy.

#### *Publishing*

The owner of a magazine, a daily or weekly domestic newspaper or a national news agency must be Chilean with domicile and residency in Chile. If the owner is a corporation or a joint ownership, it is considered Chilean if 85 per cent of the equity capital or joint ownership rights are held by Chilean individuals or Chilean juridical persons (based on 85 per cent Chilean capital ownership). In addition, the director and the acting director must be Chilean with domicile and residency in Chile. The exceptions to these rules are technical and scientific publications, any publishing in a foreign language and magazines of an international character printed in Chile and distributed in Chile and abroad.

*Authority:* Law 16643, *Official Gazette* 4 September 1967, "Law on abuse of publicity".

#### *Radio broadcasting*

The owner and director or acting director of a concession for radio stations must be Chilean with domicile and residency in Chile. If the holder of the concession is a corporation or a joint ownership (*comunidad*), it is considered Chilean if 85 per cent

of the equity capital or joint ownership rights are held by Chilean individuals or juridical persons (defined again as 85 per cent Chilean capital ownership). The president, directors, managers, administrators and legal representatives of the corporation owning a commercial television station must be Chileans. In addition, the director or acting director must have domicile and residency in Chile.

*Authority: Law 16643, Official Gazette 4 September 1967.*



*Annex 2*

**Chile's list of measures reported  
for transparency purposes**

**A. Transparency measures at the level of National Government**

***I. Measures based on public order and essential security considerations***

***a. Investment by established foreign-controlled enterprises***

**Defence and nuclear energy**

Restrictions on foreign participation exist in the defence and nuclear energy industries. The Ministry of Defence is responsible for authorising foreign participation in the defence industry.

*Authority:* Law 17.798, *Official Gazette* 13 April 1978, Law 16.319, *Official Gazette*, 23 October 1965.

**Maritime transport**

For reasons of national security restrictions can be imposed on the operation of foreign-owned vessels flying the Chilean flag.

*Authority:* Decree Law 2.222, *Official Gazette*, 31 May 1978, "Navigation Act".

**Real estate**

Public and private immovable property situated in borderland zones may not be acquired by enterprises of which 40 per cent or more of the share capital is held by nationals of neighbouring countries or which are effectively controlled by such nationals.

*Authority:* Decree Law 1939 and Decree with Force of Law 4, *Official Gazette* 10 November 1977.

***b. Corporate organisation***

None.

***c. Government purchasing***

None.

d. *Official aids and subsidies*

None.

II. *Other measures reported for transparency*

a. *Investment by established foreign controlled enterprises*

None.

b. *Corporate organisation*

Trans-sectoral

At least 85 per cent of the personnel of an enterprise with 25 or more employees personnel must have Chilean nationality or have been a resident of Chile for more than five years; persons with technical skills unavailable in Chile are excluded from this calculation.

*Authority:* Decree Law No. 1 of the Ministry of Labour and social security, *Official Gazette* 24 January 1994, "Labour Code".

Maritime transport

Chilean nationality is required for:

- the president, manager and majority of the directors or administrators of an enterprise operating a vessel flying the Chilean flag;
- the captain, officers and crew of such vessels (but temporary exceptions can be granted for any of those functions, except that of the captain).

*Authority:* Decree Law 1939 and Decree with Force of Law 4, *Official Gazette* 10 November 1977.

Air transport

The president, managers and a majority of the directors of an enterprise operating an aircraft flying the Chilean flag must have Chilean nationality.

*Authority:* Decree Law 2.564, *Official Gazette*, 22 June 1979, "Commercial aviation standards".

Television broadcasting

The president, directors, managers, administrators and legal representatives of an enterprise owning a commercial television station must have Chilean nationality; the director and acting director must also be residents of Chile.

*Authority:* Law 18.838, *Official Gazette* 30 September 1989.

Radio broadcasting

The director or acting director of a concession for radio stations must be Chilean with domicile and residency in Chile.

*Authority:* Law 16.643, *Official Gazette* 4 September 1967, "Law on abuse of publicity".

**Publishing**

The director and the acting director of a publishing company must have Chilean nationality and be resident of Chile.

*Authority:* Law 16.643, *Official Gazette* 4 September 1967, "Law on abuse of publicity".

*c. Government purchasing*

None.

*d. Official aids and subsidies*

None.

**B. Measures reported for transparency at the level of territorial subdivisions**

None.





*Annex 3*

## **Publicly-owned Chilean enterprises**

### **A. Publicly-owned companies**

1. Empresa de Abastecimiento de Zonas Aisladas (M. Economía)
2. Banco del Estado de Chile (M. Hacienda)
3. Fábrica y Maestranzas del Ejército (M. Defensa)
4. Astilleros y Maestranzas de la Armada (M. Defensa)
5. Empresa Nacional de Aeronáutica de Chile (M. Defensa)
6. Empresa Nacional de Minería (M. Minería)
7. Empresa Nacional de Petróleo (M. Minería)
8. Corporación Nacional del Cobre (M. Minería)
9. Empresa de los Ferrocarriles del Estado (M. Trans. y Telec.)
10. Empresa Portuaria de Chile (M. Trans. y Telec.)
11. Empresa de Correos de Chile (M. Trans. y Telec.)
12. Empresa de Televisión Nacional de Chile (Secretaría General de Gobierno)

### **B. Companies with majority state ownership**

#### ***I. Filiales Corporación de Fomento a la Producción:***

1. Comercializadora de Trigo S.A., COTRISA
2. Empresa Eléctrica de Aysén S.A., EDELAYEN S.A.
3. Empresa Eléctrica Colbún Machicura S.A., COLBUN S.A.
4. Empresa Minera de Aysén Limitada, EMA LTDA.
5. Empresa Nacional del Carbón S.A., ENACAR S.A.
6. Empresa Metropolitana de Obras Sanitarias S.A., EMOS S.A.
7. Empresa de Transporte de Pasajeros S.A., METRO S.A.
8. Empresa de Transporte Ferroviarios S.A., FERRONOR S.A.
9. Sociedad Agrícola Servicios Isla de Pascua Limitada, SASIPA LTDA.
10. Sociedad Agrícola Socor Limitada, SACOR LTDA.
11. Sociedad de Transporte Marítimo Chiloé-Aysén Limitada, TRANSMARCHI-LAY LTDA.
12. Polla Chilena de Beneficencia S.A., POLLA S.A.

13. Zona Franca de Iquique S.A., ZOFRI
14. Carbonífera Victoria de Lebu S.A., CARVILE S.A.
15. Isapre del Carbón S.A., ISCAR S.A.
16. Transporte por Containers S.A., TRANSCONTAINER S.A.
17. Empresa de Servicios Sanitarios de Tarapacá S.A. ESSAT S.A.
18. Empresa de Servicios Sanitarios de Antofagasta S.A., ESSAN S.A.
19. Empresa de Servicios Sanitarios de Atacama S.A., EMSSAT S.A.
20. Empresa de Servicios Sanitarios de Coquimbo S.A., ESSCO S.A.
21. Empresa de Servicios Sanitarios de Valparaíso S.A., ESVAL S.A.
22. Empresa de Servicios Sanitarios del Libertador S.A., ESSEL S.A.
23. Empresa de Servicios Sanitarios del Maule S.A., ESSAM S.A.
24. Empresa de Servicios Sanitarios del Bio Bio S.A., ESSBIO S.A.
25. Empresa de Servicios Sanitarios de la Araucanía S.A., ESSAR S.A.
26. Empresa de Servicios Sanitarios de los Lagos S.A., ESSAL S.A.
27. Empresa de Servicios Sanitarios de Aysén S.A., EMSSA S.A.
28. Empresa de Servicios Sanitarios de Magallanes S.A., ESMAG S.A.

## ***II. Filiales Empresa Nacional de Minería***

1. Compañía Minera Panulcillo S.A.
2. Sociedad Minera Cobre Atacama S.A.
3. Compañía Minera Carmen de Andacollo S.A.

## ***III. Filiales Empresa Nacional de Petróleo***

1. Refinería de Petróleo de Concón S.A., R.P.C. S.A.
2. Refinería de Petróleo S.A., PETROX S.A.
3. Empresa Almacenadora de Combustible S.A., EMALCO S.A.
4. Sociedad Internacional de Petróleo S.A., SIPETROL S.A.
5. Petro-Servicios Corp. S.A.

## ***IV. Filial Fabrica y Maestranzas del Ejército***

1. Arcomet S.A.
2. Famit S.A.

*Annex 4*

## **The OECD Declaration and Decisions on International Investment and Multinational Enterprises**

### **Summary of main provisions**

#### **A. Nature of the commitments**

Adherence to the 1976 Declaration on International Investment and Enterprises implies acceptance of all its components as well as the related Decisions and Recommendations.

The OECD Declaration on International Investment and Multinational Enterprises is a political agreement among Member countries for co-operation on a wide range of investment issues. The Declaration contains four related elements: the National Treatment instrument, the Guidelines for Multinational Enterprises, an instrument on incentives and disincentives to international investment, and an instrument on conflicting requirements. It is supplemented by legally binding Council Decisions on implementation procedures, and by Recommendations to Member countries to encourage pursuit of its objectives, notably with regard to National Treatment.

#### *i) National Treatment*

The National Treatment Instrument provides that Member countries should, consistent with their needs to maintain public order, to protect their essential security interests and to fulfil commitments relating to international peace and security, accord to enterprises operating in their territories and owned or controlled by nationals of another Member country treatment under their laws, regulations and administrative practices consistent with international law and no less favourable than that accorded in like situations to domestic enterprises.

Under the Third Revised Decision of the Council on National Treatment, adherents to the Declaration must notify the Organisation of all measures constituting exceptions to the National Treatment principle within 60 days of their adoption and of any other measures which have a bearing on this principle (the so-called 'transparency measures'). These measures are periodically reviewed by the CIME, the goal being the gradual removal of measures that do not conform to this principle.

The 1991 Review confirmed the understanding reached in 1988 by the Committee on International Investment and Multinational Enterprises on a standstill on National Treatment measures. This understanding provides that Member countries should avoid the introduction of new measures and practices which constitute exceptions to the present National Treatment instrument. Particular attention is to be given to this question in the Committee's work.

A number of Recommendations have also been addressed to Member countries in the context of earlier horizontal examinations. Most of these recommendations were made to individual countries, but a number of them were of a general character. Concerning investment by established foreign-controlled enterprises, Member countries should give priority in removing exceptions where most Member countries do not find it necessary to maintain restrictions.

In introducing new regulations in the services sectors, Member countries should ensure that these measures do not result in the introduction of new exceptions to National Treatment. Member countries should also give particular attention to ensuring that moves towards privatisation result in increasing the investment opportunities of both domestic and foreign-controlled enterprises so as to extend the application of the National Treatment instrument.

In the area of official aids and subsidies, Member countries should give priority attention to limiting the scope and application of measures which may have important distorting effects or which may significantly jeopardise the ability of foreign-controlled enterprises to compete on an equal footing with their domestic counterparts. Finally, with regard to measures motivated by based on public order and essential security interests, Member countries are encouraged to practice restraint and to circumscribe them to the areas where public order and essential considerations are predominant. Where motivations are mixed (*e.g.* partly commercial, partly national security), the measures concerned should be covered by exceptions rather than merely recorded for transparency purposes.

## *ii) Guidelines for Multinational Enterprises*

The Guidelines for Multinational Enterprises are recommendations jointly addressed by OECD governments to multinational enterprises operating in their territories. While their observance is voluntary and not legally enforceable, they represent the collective expectations of these governments concerning the behaviour and activities of multinational enterprises.

They also provide standards by which multinational enterprises can ensure that their operations are in harmony with the national policies of their host countries. The areas covered include disclosure of information, competition, financing, taxation, employment and industrial relations, environmental protection, and science and technology.

Member governments must establish within their administration national contact points (NCPs) to deal with the implementation of the Guidelines. The purpose of NCPs is to engage in promotional activities, gather information on experience with the Guidelines, handle enquiries, discuss all matters related to the Guidelines, and assist in solving

problems which may arise between business and labour in matters covered by the Guidelines.

One of the NCPs most important functions is to act as a forum for discussion on matters relating to the Guidelines. Business and trade unions should be able to discuss problems which may arise from the Guidelines application, and should use the NCPs as a first step to try and resolve issues at the national level. Effective and timely communication and co-operation with the NCPs of other countries is an important element of this work.

The Committee on Investment and Multinational Enterprises is responsible for activities promoting application of the Guidelines among Member countries. These include providing clarifications of provisions in the Guidelines; proposing changes or amendments of the Guidelines and recommending to the Council procedural decisions; regularly reviewing the Guidelines; exchanging views periodically on the role and functioning of the Guidelines; responding to requests from Members on specific or general aspects of the Guidelines; responding to requests from the social partners on various aspects of the Guidelines; and organising promotional activities such as symposiums, seminars and other activities.

### *iii) Incentives and disincentives*

The instrument on Investment Incentives and Disincentives recognises that Member countries may be affected by this type of measure and stresses the need to strengthen international co-operation in this area. It first encourages them to make such measures as transparent as possible so that their scale and purpose can be easily determined. The instrument also provides for consultations and review procedures to make co-operation between Member countries more effective. A considerable part of the work undertaken in this area is analytical, two studies being undertaken in the 1980s. Member countries may therefore be called upon to participate in studies on trends in and effects of incentives and disincentives on FDI and to provide information on their policies.

### *iv) Conflicting requirements*

The instrument on Conflicting Requirements provides that Member countries should co-operate with a view to avoiding or minimising the imposition of conflicting requirements on multinational enterprises. In doing so, they shall take into account the general considerations and practical approaches recently annexed to the Declaration. This co-operative approach includes consultations on potential problems and giving due consideration to other country's interests in regulating their own economic affairs.

## **B. Listing of exceptions and transparency measures**

In accordance with the third Revised Decision of the Council on National Treatment, any new signatory to the Declaration and Related Decisions is entitled to list its

exceptions to National Treatment to reflect the state of its laws and regulations upon adherence to the Declaration. This list of exceptions is submitted to the Council for approval. In addition, it needs to notify, for transparency purposes, all other measures having a bearing on National Treatment.

Exceptions to National Treatment fall into five categories: investments by established foreign-controlled companies, official aids and subsidies, tax obligations, access to local bank credit and the capital market, and government procurement.

Transparency measures include measures based on public order and national security interests, restrictions on activities in areas covered by monopolies, public aids and subsidies granted to government-owned enterprises by the state as a shareholder in the enterprises concerned, and corporate organisation requirements concerning the nationality of management or director positions in the host countries.

The National Treatment instrument is solely concerned with discriminatory measures that apply to established foreign-controlled enterprises. This includes established branches, except for the category of 'investment by established foreign-controlled enterprises'.

Areas of existing public, private or mixed monopolies are to be recorded for the purpose of transparency since foreign-controlled and domestic private enterprises are subject to the same restrictions. The undertaking to apply National Treatment comes into force as and when areas previously under monopoly are opened up. In such cases, access to these areas should be provided on a non-discriminatory basis. If restrictions prohibit or impede in any way the participation of foreign-controlled enterprises vis-à-vis their domestic counterparts, then these restrictions are to be reported as exceptions to National Treatment. The objective is to ensure access to formerly closed sectors on an equal basis.

*Annex 5*

**Statistics on direct investment flows in OECD countries  
and in Chile**

Table 1. Foreign direct investment in OECD countries and in Chile: inflows 1971-1995  
US\$ million

	Avg. annual inflows		Flows of foreign direct investment												
	1971-1980	1981-1990	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	
Australia	1 130	4 037	428	2 099	3 457	3 873	7 936	7 887	7 060	4 904	4 912	3 381	4 389	6 045	
Austria	146	327	116	169	181	402	437	578	647	359	940	982	1 314	636	
Belgium-Luxembourg <sup>1</sup>	922	2 754	360	957	631	2 338	4 990	6 731	7 516	8 919	10 959	10 458	8 345	10 638	
Canada <sup>1</sup>	553	3 370	4 754	1 298	2 781	8 038	6 456	5 018	7 852	2 747	4 461	4 980	7 280	10 739	
Chile <sup>3</sup>	..	520	78	144	316	891	968	1 289	590	523	629	809	1 773	1 695	
Czech Republic	..	..	..	..	..	..	..	..	..	..	..	654	869	2 562	
Denmark	156	339	9	109	161	88	504	1 084	1 133	1 530	1 015	1 684	4 891	4 179	
Finland	38	284	138	110	340	265	530	489	787	-247	406	865	1 574	1 063	
France	1 691	4 319	2 198	2 210	2 749	4 621	7 204	9 552	9 040	11 073	15 928	12 142	10 975	13 345	
Germany	1 397	1 765	534	553	1 139	1 818	1 115	7 068	2 492	4 089	2 662	1 915	1 548	12 050	
Greece	..	615	485	447	471	683	907	752	1 005	1 135	1 144	977	981	1 053	
Hungary	..	..	..	..	..	..	..	..	..	1 462	1 479	2 350	1 144	4 453	
Iceland <sup>1</sup>	..	7	14	23	8	2	-14	19	22	18	-11	-	-	14	
Ireland	166	121	119	159	-43	89	91	85	760	1 062	1 438	1 113	934	2 317	
Italy <sup>1</sup>	570	2 489	1 329	1 071	-21	4 144	6 882	2 181	6 344	2 481	3 210	3 751	2 163	4 708	
Japan <sup>1</sup>	142	328	-10	642	226	1 165	-485	-1 054	1 753	1 368	2 728	86	888	37	
Korea	..	..	110	234	460	616	1 014	1 118	788	1 180	727	588	758	1 240	
Mexico	0	2 418	1 542	1 984	2 401	2 635	2 880	3 176	2 633	4 762	4 393	4 389	7 978	4 500	
Netherlands	1 082	3 785	1 701	1 412	3 085	3 031	4 830	8 460	12 154	6 521	7 685	6 599	7 345	10 766	
New Zealand	260	395	119	227	390	238	156	434	1 686	1 695	1 089	2 380	2 792	2 796	
Norway <sup>1</sup>	307	483	-210	-412	1 023	184	285	1 511	1 807	655	-426	415	1 246	1 658	
Poland	..	..	..	..	..	..	..	..	..	291	678	1 715	1 875	3 659	
Portugal <sup>2</sup>	89	692	194	273	241	465	925	1 740	2 608	2 451	1 914	1 550	1 255	695	
Spain <sup>2</sup>	706	4 600	1 773	1 945	3 442	4 548	7 016	8 433	13 681	10 423	8 238	8 073	9 171	6 243	
Sweden	90	862	290	396	1 079	646	1 661	1 810	1 970	6 327	-125	3 690	6 321	14 375	
Switzerland	..	1 243	520	1 050	1 778	2 044	42	2 254	4 458	2 613	411	-83	3 366	2 187	
Turkey	23	234	113	99	125	106	354	663	684	1 041	912	797	637	935	
United Kingdom	4 050	13 047	-241	5 780	8 557	15 450	21 356	30 369	32 889	15 974	14 944	14 536	10 497	22 810	
United States	5 628	36 508	24 748	20 490	36 145	59 581	58 571	69 010	48 422	22 799	18 885	43 534	49 903	60 236	
<b>Total OECD</b>	<b>19 144</b>	<b>85 021</b>	<b>41 133</b>	<b>43 325</b>	<b>70 806</b>	<b>117 070</b>	<b>135 643</b>	<b>169 379</b>	<b>170 280</b>	<b>117 632</b>	<b>110 596</b>	<b>133 521</b>	<b>150 439</b>	<b>205 939</b>	

1. Reinvested earnings are not included in national statistics, except for Iceland from 1989.

2. Figures for Portugal are only available from 1975 onward.

3. Chilean data are based on figures reported by the IMF.

Source: OECD International Direct Investment Statistics Yearbook; IMF.



Table 2. Foreign direct investment in OECD countries and in Chile: inflows 1985-1995<sup>1</sup>

As a percentage of GDP

	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995
Australia	1.31	2.07	1.96	3.19	2.80	2.40	1.66	1.69	1.19	1.35	1.73
Austria	0.26	0.19	0.34	0.34	0.46	0.41	0.22	0.50	0.54	0.66	0.27
Belgium-Luxembourg <sup>2</sup>	1.14	0.53	1.58	3.11	4.14	3.68	4.26	4.67	4.66	3.42	3.71
Canada <sup>2</sup>	0.37	0.77	1.95	1.32	0.92	1.38	0.47	0.79	0.91	1.34	1.92
<b>Chile<sup>3</sup></b>	<b>0.87</b>	<b>1.78</b>	<b>4.32</b>	<b>4.01</b>	<b>4.57</b>	<b>1.94</b>	<b>1.52</b>	<b>1.47</b>	<b>1.77</b>	<b>3.40</b>	<b>2.52</b>
Czech Republic	..	..	..	..	..	..	..	..	2.09	2.41	5.61
Denmark	0.19	0.20	0.09	0.46	1.03	0.88	1.18	0.72	1.25	3.35	2.41
Finland	0.21	0.49	0.30	0.51	0.43	0.58	-0.20	0.38	1.02	1.61	0.85
France <sup>2</sup>	0.42	0.38	0.52	0.75	0.99	0.76	0.92	1.20	0.97	0.82	0.87
Germany	0.08	0.11	0.15	0.08	0.54	0.15	0.24	0.14	0.10	0.08	0.50
Greece	1.10	0.99	1.22	1.40	1.12	1.21	1.27	1.17	1.06	1.00	0.92
Hungary	..	..	..	..	..	..	4.43	4.22	6.67	2.90	11.30
Iceland <sup>2</sup>	0.79	0.20	0.04	-0.23	0.35	0.35	0.27	-0.16	..	..	0.20
Ireland	0.81	-0.16	0.28	0.26	0.23	1.67	2.29	2.75	2.27	1.73	3.60
Italy <sup>2</sup>	0.25	0.00	0.55	0.82	0.25	0.58	0.22	0.26	0.38	0.21	0.43
Japan <sup>2</sup>	0.05	0.01	0.05	-0.02	-0.04	0.06	0.04	0.07	0.00	0.02	0.00
Korea	0.25	0.42	0.45	0.56	0.50	0.31	0.40	0.24	0.18	0.20	0.27
Mexico	1.01	1.74	1.76	1.57	1.42	1.00	1.51	1.21	1.09	1.90	1.61
Netherlands	1.10	1.73	1.39	2.09	3.70	4.28	2.25	2.39	2.11	2.18	2.72
New Zealand	1.02	1.36	0.65	0.36	1.03	3.92	4.07	2.72	5.48	5.48	4.68
Norway	-0.65	1.34	0.20	0.29	1.53	1.57	0.56	-0.34	0.36	1.01	1.13
Portugal	1.15	0.71	1.11	1.91	3.35	3.86	3.21	2.08	1.89	1.48	0.70
Spain <sup>2</sup>	1.17	1.49	1.55	2.04	2.22	2.78	1.97	1.43	1.69	1.90	1.12
Sweden	0.39	0.81	0.40	0.91	0.95	0.86	2.64	-0.05	1.99	3.19	6.23
Switzerland	1.13	1.31	1.20	0.02	1.27	1.97	1.13	0.17	-0.04	1.30	0.71
Turkey	0.15	0.17	0.12	0.39	0.62	0.45	0.69	0.57	0.44	0.49	0.55
United Kingdom	1.26	1.52	2.24	2.56	3.61	3.37	1.58	1.43	1.54	1.03	2.07
United States	0.51	0.85	1.33	1.21	1.33	0.88	0.40	0.32	0.70	0.75	0.87

1. Data updated in April 1997. Data for Poland not included.

2. Reinvested earnings are not included in national statistics.

3. Chilean data are based on figures reported by the IMF.

Source: OECD *International Direct Investment Statistics Yearbook*; IMF.

Table 3. Direct investment abroad from OECD countries and from Chile: outflows 1971-1995<sup>1</sup>  
US\$ million

	Flows of direct investment														
	Avg. annual outflows	1971-1980	1981-1990	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995
Australia	251	2 226	1 402	1 887	3 419	5 096	4 985	3 267	260	3 105	113	1 087	5 908	3 488	
Austria	58	413	68	74	313	312	309	855	1 663	1 288	1 871	1 467	1 201	1 043	
Belgium-Luxembourg <sup>2</sup>	321	2 086	282	231	1 627	2 680	3 609	6 114	6 008	6 179	11 134	3 843	747	11 503	
Canada <sup>2</sup>	1 134	4 185	3 685	3 862	3 501	8 538	3 848	4 583	4 732	5 652	3 689	5 805	7 436	5 735	
Chile <sup>3</sup>	..	..	11	2	3	6	16	10	8	123	378	434	925	687	
Czech Republic	..	..	..	..	..	..	..	..	..	..	..	..	90	37	
Denmark	196	629	93	303	646	618	719	2 027	1 509	1 851	2 225	1 379	4 040	3 018	
Finland	61	1 213	493	352	810	1 141	2 608	3 108	3 263	1 049	-752	1 407	4 298	1 681	
France <sup>2</sup>	1 394	8 562	2 126	2 226	5 230	8 704	12 756	18 137	26 920	20 501	19 097	12 167	10 895	10 694	
Germany	2 485	9 036	4 736	5 140	10 076	9 681	12 087	15 181	23 945	23 677	19 527	15 332	17 134	38 573	
Hungary	..	..	..	..	..	..	..	..	..	..	..	..	..	..	
Iceland <sup>2</sup>	..	3	..	..	2	7	1	6	10	27	..	11	23	18	
Italy <sup>2</sup>	360	2 871	2 012	1 820	2 652	2 339	5 554	2 135	7 612	7 326	5 948	7 231	5 108	5 732	
Japan <sup>2</sup>	1 805	18 583	5 965	6 452	14 480	19 519	34 210	44 130	48 024	30 726	17 222	13 714	17 938	22 628	
Korea	..	..	..	..	..	..	..	..	..	..	..	..	..	..	
Netherlands	2 783	6 576	4 877	2 680	4 036	8 576	7 164	14 808	15 272	13 589	14 279	10 714	17 088	12 412	
New Zealand	38	456	31	174	87	562	615	135	2 365	1 472	391	-1 455	2 039	1 483	
Norway <sup>2</sup>	108	900	612	1 228	1 605	890	968	1 352	1 478	1 840	434	734	1 677	2 115	
Poland	..	..	..	..	..	..	..	..	..	..	..	..	..	..	
Portugal	..	38	..	8	15	-2	77	85	165	474	13	18	29	42	
Spain <sup>2</sup>	127	820	249	252	377	754	1 227	1 470	2 845	3 574	687	141	283	689	
Sweden	460	4 798	1 506	1 783	3 947	4 789	7 468	10 288	14 645	7 019	395	2 648	3 897	3 529	
Switzerland	..	..	1 139	4 572	1 461	1 274	8 696	7 852	6 372	6 543	5 673	8 765	10 798	12 716	
Turkey	..	-1	..	..	..	9	..	..	-16	27	133	175	78	163	
United Kingdom	5 511	18 558	8 039	10 818	17 077	31 308	37 110	35 172	18 636	15 972	19 037	25 729	28 251	42 676	
United States	13 435	17 599	10 948	12 720	17 701	28 977	17 865	37 604	30 982	32 696	42 647	78 164	54 465	95 509	
<b>Total OECD</b>	<b>30 437</b>	<b>102 737</b>	<b>48 271</b>	<b>56 589</b>	<b>89 045</b>	<b>135 758</b>	<b>161 876</b>	<b>208 940</b>	<b>217 746</b>	<b>186 080</b>	<b>166 218</b>	<b>191 591</b>	<b>202 259</b>	<b>289 862</b>	

1. Greece, Ireland and Mexico do not report figures for outflows.

2. Reinvested earnings are not included in national statistics, except for Iceland from 1989.

3. Chile data are based on figures reported by IMF.

Source: OECD *International Direct Investment Statistics Yearbook*; IMF.

Table 4. Direct investment abroad from OECD countries and from Chile: outflows 1985-1995<sup>1</sup>  
As a percentage of GDP

	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995
Australia	1.17	2.04	2.58	2.00	1.16	0.09	1.05	0.04	0.38	1.82	1.00
Austria	0.11	0.34	0.27	0.24	0.68	1.05	0.78	1.00	0.80	0.61	0.45
Belgium-Luxembourg <sup>2</sup>	0.28	1.37	1.81	2.25	3.77	2.94	2.95	4.74	1.71	0.31	4.01
Canada <sup>2</sup>	1.11	0.97	2.07	0.79	0.84	0.83	0.97	0.65	1.06	1.37	1.02
<b>Chile<sup>3</sup></b>	<b>0.01</b>	<b>0.02</b>	<b>0.03</b>	<b>0.07</b>	<b>0.04</b>	<b>0.03</b>	<b>0.36</b>	<b>0.89</b>	<b>0.95</b>	<b>1.77</b>	<b>1.02</b>
Czech Republic	..	..	..	..	..	..	..	..	0.29	0.32	0.08
Denmark	0.52	0.78	0.60	0.66	1.93	1.17	1.43	1.57	1.02	2.77	1.74
Finland	0.66	1.16	1.30	2.51	2.74	2.42	0.86	-0.71	1.67	4.40	1.35
France <sup>2</sup>	0.43	0.71	0.98	1.32	1.88	2.25	1.71	1.44	0.97	0.82	0.70
Germany	0.74	1.01	0.78	0.90	1.15	1.46	1.38	0.99	0.80	0.84	1.60
Hungary	..	..	..	..	..	..	..	..	0.03	0.12	0.11
Iceland <sup>2</sup>	..	0.05	0.13	0.02	0.11	0.16	0.40	0.04	0.18	0.37	0.26
Italy <sup>2</sup>	0.43	0.44	0.31	0.66	0.25	0.70	0.64	0.49	0.73	0.50	0.53
Japan <sup>2</sup>	0.48	0.73	0.81	1.17	1.52	1.62	0.90	0.46	0.32	0.38	0.44
Korea	..	..	..	..	0.28	0.42	0.51	0.39	0.32	0.54	0.68
Netherlands	2.09	2.26	3.94	3.09	6.48	5.38	4.68	4.44	3.42	5.07	3.14
New Zealand	0.78	0.30	1.55	1.41	0.32	5.50	3.54	0.98	-3.35	4.01	2.48
Norway	1.92	2.11	0.97	0.99	1.37	1.28	1.56	0.34	0.63	1.36	1.45
Portugal	0.06	-0.01	-0.04	0.16	0.16	0.24	0.62	0.75	0.17	0.33	0.69
Spain <sup>2</sup>	0.15	0.16	0.26	0.36	0.39	0.58	0.68	0.22	0.55	0.81	0.63
Sweden	1.77	2.97	2.97	4.11	5.38	6.37	2.93	0.16	0.73	3.37	4.86
Switzerland	4.93	1.08	0.75	4.74	4.42	2.82	2.83	2.35	3.78	4.18	4.15
Turkey	..	..	0.01	..	..	-0.01	0.02	0.08	0.10	0.06	0.10
United Kingdom	2.37	3.04	4.54	4.44	4.18	1.91	1.58	1.82	2.73	2.77	3.87
United States	0.32	0.42	0.64	0.37	0.72	0.56	0.58	0.72	1.25	0.82	1.37

1. Data updated in April 1997. Greece, Ireland and Mexico do no report data on outflows. Poland is also not shown.

2. Reinvested earnings are not included in national statistics.

3. Chile data are based on figures reported by IMF.

Source: OECD *International Direct Investment Statistics Yearbook*; IMF.

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## OECD REVIEWS OF FOREIGN DIRECT INVESTMENT

Chile is a significant host for foreign direct investment (FDI) in South America, especially given the relatively small size of its economy. The attraction of Chile to foreign investors lies not only in its resource abundance but also in its tradition of openness to foreign investment. Chilean policies towards inward investment generally conform to OECD standards, and the country has been a trailblazer within Latin America in terms of its early attempts to attract inward investment through an outward-looking strategy. Chilean firms, in particular privatised ones, are also becoming important regional investors.

The study reviews the policies adopted by the Government of Chile towards inward investment and commends the generally open environment in which foreign firms are allowed to operate in Chile. There remain, however, certain areas where foreign investors are placed at a disadvantage, notably concerning capital controls, which are highlighted in the report.

