

Chile

Legal Provisions

Compiled by:

TRADE POINT CHILE

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GENERAL REMARKS

Chile has a broad range of free trade agreements in force, whilst further treaties are signed and waiting to be ratified and others are under negotiation. Chile has currently 29 active trade agreements, amongst others with the USA, EU, China, **EFTA**, MERCOSUR (with Chile as an associate member), South Korea, Japan, Canada, India, Central America, Mexico, Colombia, Peru and Argentina.¹

For a fully detailed copy of the **free trade agreement between EFTA and Chile**, as well as all annexes and the **bilateral agriculture agreement between Chile and Switzerland**, please visit: <http://secretariat.efta.int/free-trade/free-trade-agreements/chile.aspx>.

An **investment protection** agreement between Switzerland and Chile entered into force in May 2002.

A **double taxation** agreement between Switzerland and Chile was signed in April 2008 and came into force in January 2011.

CUSTOMS

Overall

The process of clearance in Chile can be quite expeditious. Given complete documentation, it usually takes an average 48 hours for air shipments and 36 hours for sea shipments.

Chile generally applies a Most favoured nation (MFN) tariff of 6% on imports. However, based on the Free Trade Agreement in place between Chile and EFTA countries, no MFN is applied for Switzerland for most of the products.

For some agricultural products, it maintains a price band system. Importers must pay VAT of 19% based on the Cost, Insurance and Freight value (+ duties) at the point of entry.

¹ All trade agreements of Chile are available under <https://www.subrei.gob.cl/>
Switzerland Global Enterprise – Legal Provisions

All commercial imports must be accompanied by the following documents:

- Original Bill of Lading or AWB, consignment note or air waybill, certifying the product's ownership by the consignee.
- Original commercial invoice, proving the sale of the goods and its values (it's important that the invoice contains the Purchase Clause "Incoterms").
- Affidavit of the importer on the price of the goods; form provided by the customs agent.
- Mandate constituted by the only endorsement of the original bill of lading or AWB (airwaybill).

If the import refers to food products (for human consumption or animal products) or cosmetics, the supplier must send the sanitary certificates validated by the sanitary authorities of the country producing the goods (see "Prohibition of specific products").

The verification of the information provided in the declaration and physical inspection of the goods to be imported is based on the principle of reasonable doubt. The National Customs Service has overall responsibility for the administration of import procedures and the collection of all foreign-trade-related taxes (i.e. value-added tax). The website of the Chilean National Customs Service (www.aduana.cl) provides trade statistics, information on import procedures, international economic agreements, and information for travelers and immigrants.

Customs Agent

In order to reduce the processing times, the customs regulations in Chile require the contracting of a qualified and registered Customs Agent ("Agente de aduana") for all commercial imports over USD 3,000. The Customs Agent performs the procedures, processes and other operations to ensure an expedited entry of goods. A full list of registered customs agents including contact details is provided at the website of the Chilean National Customs Service (Aduana) www.aduana.cl (English and Spanish).

However, although with an import less than USD 3,000, the Customs Agent can carry out the process, at the request of the customer or courier. Especially when it comes to products that require sanitary visas complementary to the customs process.

The fees for the services of a Customs Agent are not fixed and subject to free market negotiations on a case by case basis. Common criteria such as the nature of the goods (e.g. with chemicals, food or medicines require to obtain a sanitary authorization), the volumes of operations, support requirements in house, etc. are considered. As a reference, a minimum operation fee of approximately USD 120 is normally applied.

Goods in transit

Goods in transit must be accompanied by a Declaration of Transit and by the International Freight Document-Transit Declaration; the latter is a LAIA4 document. Goods for exhibits (e.g. watches) or temporary stay (e.g. racing horses) may enter into Chile with an ATA Carnet. The ATA Carnet is issued by the Chamber of Commerce in Switzerland and is valid for one year.

Free Trade Zones

Specific procedures for import as well as for goods in transit apply to Chile's two free trade areas: the free trade area of Iquique (ZOFRI) in the northern tip (Region I) of Chile and the free trade area of Punta Arenas in the southern tip (Region XII).

Companies incorporated in Chile and operating in these zones are eligible for 100% exemption from corporate tax and custom duties and benefit from an excellent manufacturing infrastructure and export facilities.

Prohibition of specific products

For the protection of human health, animal and plant life as well as the environment, for imports of meat, seeds, plants, vegetables, soil and other plant and animal products (cheese, milk, yoghurt, etc.), special regulations need to be followed and in some cases permissions are necessary.

Animals and animal products can only be exported after validation of a sample health certificate between the Chilean authorities and the Swiss Federal Food Safety and Veterinary Office. Currently there is a certificate for dairy products and products containing milk ingredients validated between Switzerland and Chile. Companies wishing to export to Chile must be registered in the list of approved company for import. For dairy products, there are currently 10 Swiss companies registered. To get registered, please contact the FSVO or the cantonal enforcement authority (<https://www.blv.admin.ch/blv/en/home/import-und-export/export/lebensmittel.html>)

These regulations are strictly overseen and administrated by the government's Agriculture and Livestock Service (SAG): www.sag.cl (Spanish). This website contains information on phytosanitary requirements of different countries as well as on import requirements for agricultural goods.

Additional prohibition of import applies to:

- Used vehicles which are not of the same year
- Used and retreaded tires
- Asbestos in any of its forms
- Pornography
- Toxic industrial waste
- Goods that are dangerous for animals, for agriculture or human health
- Weapons

CURRENCY REGULATIONS

The exchange rate of the Chilean Peso CLP is determined daily by the market under a floating system. The Central Bank maintains very few foreign-exchange controls. Some operations, such as the remittance of profits under the Foreign Investment Law, must be made through authorized banks. For many other transactions, foreign-exchange houses can be used. Contracts, for example employment or hiring contracts, are often concluded in "*Unidad de Formento (UF)*" which is an inflation-adjusted currency. The UF can make a significant difference in a business plan.

Foreign-exchange houses attend the needs of small businesses, individuals, and tourists.

According to the Chilean Central Bank's regulations (www.bcentral.cl), all transactions, from and to foreign countries, exceeding USD 10.000 have to be reported to the Central Bank.

REGISTRATION PROCEDURE FOR PRODUCTS

Pharmaceutical products, food for medical use, and cosmetics must be authorized and registered by the Public Health Institute: www.ispch.cl (Spanish). This website has information on norms, registered products and provides registration forms.

Food products for medical use must obtain an authorization for sale ("*resolución sanitaria*") from a regional health service when a product is introduced in Chile. The authorization can take between 2-3 weeks to be issued and requires the payment of a small fee. Any regional authorization is valid for the entire country, but the same procedure must be followed for each new shipment. After 3 shipments and a special analysis by the health service, an authorization allowing the product to go on sale more quickly can be obtained. For further information: Health Service of the Metropolitan Region of Santiago:

www.asrm.cl (Spanish). This website has information on health, on procedures for registration, and provides the corresponding forms.

Industrial patents and trademarks are issued and registered by the National Institute of Industrial Property: www.inapi.cl (Spanish). This website provides information on the National Institute of Industrial Property, registered patents, registered trademarks, procedures, and statistics.

STANDARDS, TECHNICAL RULES, LABELLING REGULATIONS

Decree No. 977 outlines, amongst others, the applicable regulations for packaging, labelling and storage of food for human consumption. It states that food products must have labels in Spanish, indicating ingredients, weight, date of manufacturing, and country of origin.

Since June 2016 all food items which exceed defined levels of energy, sugar, salt and saturated fats require additional labelling. Responsible for the correct labelling are the producers, distributors and importers of the products. The regulation also restricts the sales and marketing of these products. For more information see: “*Reglamento Sanitario de los Alimentos*” <http://www.leychile.cl/Navegar?idNorma=71271> (Spanish).

There are also specific requirements for canned food, shoes, foods, electric machinery, liquid and compressed natural gas equipment (LNG and CNG), plastics, wines and alcoholic beverages, textiles and apparel, wheat flour, detergents and insecticides for agricultural use.

The “Instituto Nacional de Normalización” (National Institute of Normalization) sets standards and provides information on standards and regulations by product category: www.inn.cl (Spanish).

TAXES

Taxes are notoriously complex. Any Swiss company or individual wishing to do business in Chile should seek the advice of a tax expert (specialized lawyer or accountant). Being a centralized state, Chile has no regional tax authorities. The Agreement on Double Taxation between Chile and Switzerland was signed in 2008 and entered into force on January 1st, 2011.

Direct taxes

- Corporate (“First Class”) tax. The general tax reform with two tax regimes is fully in force since 2018. The two regimes are applied depending on each case. Sometimes the companies can choose or in other cases, they fall automatically under one regime.
- a) SMEs (sales up to USD 2,8 million approx.) full integration regime with a tax rate of 25% The underlying **25% corporate tax** paid at the entity level remains creditable against final shareholders level tax, thus the total maximum income tax burden remains at 35%.
- b) **“Partially-Integrated” Regime.** This optional method of taxation imposes a **27% corporate tax rate** (from 2018) and an additional 35% tax on cash distributions to shareholders. Under this regime, 65% of the corporate tax paid is creditable against the 35% additional tax (100% if shareholder is a resident of a Tax Treaty Country).

Subsidiaries of foreign entities fall under the “Partially-Integrated” regime.

Tax Rate for Foreign Companies

Resident companies are taxed on their worldwide income, whereas non-domiciled or non-resident companies are taxed only on their Chilean-sourced income. Final shareholders are subject to a 35% flat rate applied by way of withholding upon receipt of a taxable distribution

Main Allowable Deductions and Tax Credits

Expenses are deductible for depreciation and depletion, net operating losses, payments to foreign affiliates, taxes (not including income taxes). Subject to conditions, interest expenses can be deducted. Under certain circumstances, bad debts and charitable donations (up to 5% of the company's net taxable income) can be deductible. The deductibility of payments made abroad for the use of trademarks, patents, formulas, and consulting and other similar services is limited to a maximum of 4% of the income derived from sales and services in the corresponding year. Start-up expenses can be amortized over a six-year period. Fines, penalties and the respective legal costs incurred are deductible, subject to conditions. Losses can be carried forward indefinitely, while carrybacks are not allowed.

- Personal income tax is progressive. There are, at present, eight tax bands ranging from 0 (tax exempt income) to 35%.
- The tax year ends on 31 December each year (Calendar year). Year tax return is due 30th of April of following year. Companies pay taxes on a monthly basis via a “Monthly Provisional Payment” calculated as a percentage of monthly sales. The annual corporate tax due is calculated at the end of the tax year and adjusted by payments already made.

Indirect taxes

- VAT: 19%
- Additional taxes are imposed for example on
 - luxury goods, for examples as articles of gold, platinum, ivory, diamonds, watches or jewellery: 15%
 - liquids (alcoholic, non-alcohol and similar products) in the range of 10 to 31,5%,
 - tobacco: up to 60%,
 - and fuels. The tax is calculated according to the volume.More information and detailed lists for all products affected by additional taxes can be found under http://www.sii.cl/aprenda_sobre_impuestos/impuestos/impuestos_indirectos.htm.
- At municipal level some taxes are levied, e.g. the one to acquire a licence to operate a restaurant.
- Property and inheritance taxes.

The Internal Tax Service www.sii.cl (Spanish) contains relevant information on tax law, how to register for taxation purposes, and how to declare taxes.

COMMERCIAL LAW

In order to do any business in Chile, apart from exporting goods, it is necessary to establish a local legal presence.

SETTING UP COMPANIES

Companies can be set up in several ways, the most common being:

- Corporations (“*Sociedad Anónima*”- “S.A.”) either open (“*abierta*”) or closed (“*cerrada*”). Corporations are overseen by the Superintendence (regulator) for Securities and Insurance - the SVS- if they are “open”. Corporations must be “open” if they have more than 500 shareholders, or 10% of capital belongs to 100 or more shareholders.

- The “*Sociedad por Acciones*” (Company per shares or” SpA”) is a legal entity based on shareholders equity. It may exist with only one shareholder (Chilean or foreigner). The shareholders' liability is limited to the amount of their contribution to the capital. The company's structure is very simple and flexible. In the absence of specific provisions the rules governing the S.A. apply.
- Limited Partnerships (“*Sociedad de Responsabilidad limitada*”)
- Branch of a foreign corporation

All companies set up in Chile, regardless of foreign participation, are considered Chilean. The setting up of companies can be done by a lawyer or via internet “*Tu empresa en un día*” (www.empresasenundia.cl/) provided by the Chilean Ministry of Economy. The formal establishment of a company can be done fast and there is not minimum capital share for any of these company structures.

As with all forms of a company, the tax authority requires that at least one legal representative of the company has a Chilean registered address. Furthermore, in practice banks often ask for one of the shareholders to have a Chilean registered address.

When doing business, it is common for companies to use a private credit-history checking service called “DICOM” www.dicom.cl to see if business partners are sound.

Please note that contracts and important documents must often be legalized through a notary.

For further information please contact a local lawyer.

The Embassy’s lawyer of confidence is:

Mr. Felipe ERNST
 BETZ Legal Partners
 Rosario Norte 615, of. 2103
 Las Condes, Santiago
 E-Mail: fernst@betzlegal.cl
 Tel: +562 26048820

Please note that the Embassy cannot provide guarantees as to the correctness of information provided by third parties.

It may also be useful to visit the website of the “*Superintendencia Valores y Seguros*”: www.svs.cl (Spanish).

PROMOTION OF INVESTMENT

InvestChile is the official entity to promote Chile in the global market as a destination for foreign direct investment. Foreign investors may invest in any sector in Chile, except domestic shipping transport and national security related sectors.

The website www.investchile.gob.cl (Spanish, English) informs about opportunities to invest in Chile, the macroeconomic situation of the country, the regulations and procedures applied to foreign direct investment (FDI), bilateral investment treaties as well as statistics on FDI and trade.

The “*Corporación de Fomento de la Producción*” (CORFO), www.corfo.cl (Spanish, English), is the public Chilean economic development agency, which

- supplies companies with long-term credits for investments, supporting export activities and the development of micro-credits and investing in higher education,

- supports the modernization of companies, the certification process to international norms (ISO), the specialization for foreign markets, the networking between big companies and subcontractors and the development of clusters,
- finances technological innovations for companies and supports the creation of new companies.

ENTRY CONDITIONS, WORK PERMITS, RESIDENCE PERMITS, LABOUR LAW

Swiss nationals with a valid passport do not require an entry visa for tourism and are allowed to stay up to 3 months.

A visa is, however, required to undertake remunerated work; it is usually issued by a Chilean consulate abroad in cooperation with the Chilean Foreign Ministry in Santiago “subject to a contract” allowing the holder to work only for the employer who supports the visa application. Holders of university degrees can apply for the “visa temporaria para profesionales y técnicos de nivel superior” that allows them to stay in the country independent of their work status for a year (extendable by another year). This visa can be obtained in Chile, requires a work offer (not a contract) and the apostilled university diploma, and is not dependent on a specific employer.

As mentioned before each business activity requires establishing a local legal presence even just for importing. At the beginning many companies do this through a local partner. However, an own permanent presence in Chile is recommendable.

If individuals or companies have any doubts about immigration and visa issues, they should contact the Chilean Embassy in Bern before setting out on any business trip: <http://chileabroad.gov.cl/suiza/en> (English and Spanish). Further information can be found at <https://www.extranjeria.gob.cl/>.

In December 2010, an agreement on trainees came into force between Switzerland and Chile to improve access to the respective labour market for young professionals (dual system). This agreement allows a working exchange for a maximum of 18 months to young people under the age of 35.

The Chilean Law requires that at least 85% of a company’s employees are Chilean citizens.

Employees are allowed to set up a “*sindicato*” within the company which can vary from small work councils to large trade unions.

For further information:

- Federal Office for Migration
<https://www.eda.admin.ch/eda/de/home/vertretungen-und-reisehinweise/chile.html>
(German, Italian, and French)
- Department for Foreigners and Migration
The Chilean Interior Ministry, www.extranjeria.gob.cl (Spanish and English), provides information on visas, work permits, and other issues.
- Ministry of Labour
www.mintrab.gob.cl (Spanish). This website informs about labour rights, procedures for first employment, retirement, and unemployment.

SOURCES OF INFORMATION AND LINKS

Apart from the many links already mentioned, the following could also be helpful:

- Ministry of Justice: www.minjusticia.gob.cl/
- Library of Congress: www.bcn.cl/. The website contains detailed information on current laws (including legal texts), as well as information on legislation currently going through Congress.

Date: November 2020

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