

Corporate Immigration

Contributing editor
Julia Onslow-Cole



2018

GETTING THE
DEAL THROUGH 

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DEAL THROUGH 

Corporate Immigration 2018

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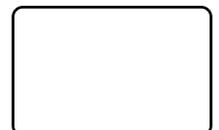


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Chile

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Overview

1 In broad terms what is your government's policy towards business immigration?

Chile defines itself as an open country for immigration, granting all foreign citizens, without discrimination, the rights and protections recognised by the Chilean constitution and international treaties to which Chile is party.

In particular, the current migration policy grants special recognition to the following:

- freedom of residence, movement, thought and religion;
- informed access to residence in Chile;
- access to education, health and employment rights (without any discrimination based on residence);
- non-discrimination;
- promotion of regular immigration; and
- priority of residence for foreign citizens with family ties to Chilean citizens.

Short-term transfers

2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

Transferees need a visa subject to employment agreement or a temporary residence visa for employment purposes to work in Chile, even for short-term assignments. Exceptionally, executives are allowed to enter Chile as tourists and may later request a special permit from the Chilean Immigration Authority to work as a tourist for a period no longer than 30 calendar days (with the option to apply for renewals for the same period, as long as the tourist authorisation remains valid).

3 What are the main restrictions on a business visitor?

Business visitors must enter Chile as tourists. The maximum length of time that a tourist permit is valid for is 90 calendar days. A single renewal is allowed for up to 90 calendar days.

A business visitor shall provide evidence to the immigration officers in the border that he or she has sufficient financial means to exist in Chile during the planned stay. This is usually complemented with a letter of invitation of a Chilean company, if the business visitor has a defined agenda in the country.

Tourists shall be in possession of a valid passport when entering Chile and do not require a consular visa. Citizens from countries with no diplomatic relations with Chile must previously register their passports before the Chilean consulate or whoever represents it, and also hold a return ticket to their home country or to any other country they are permitted to enter, and with that in hand, the consulate will issue a 'tourism visa'. Citizens of certain South American countries are exempt from the requirement of being in possession of a valid passport for entering Chile.

In some exceptional cases and for reciprocity matters, the citizens of certain countries must pay a fee when entering Chile, which varies in every case.

Further, business visitors shall only conduct business meetings, perform visits, negotiations and business arrangements, and may not render services for a Chilean or foreign company for a wage (even if the payment for the service is made abroad) unless a special permit to work as tourist is requested from the Chilean Immigration Authority.

4 Is work authorisation or immigration permission needed to give or receive short-term training?

Yes, individuals that give short-term training must have a special permit to work as tourists (for training that will take less than 90 days), a visa subject to employment agreement or a temporary residence visa for employment purposes. Individuals who will receive short-term training can enter Chile as tourists.

5 Are transit visas required to travel through your country? How are these obtained? Are they only required for certain nationals?

There is no need to obtain any special permit or transit visa to travel through Chile.

Long-term transfers

6 What are the main work and business permit categories used by companies to transfer skilled staff?

The main work permit used in Chile is the temporary residence visa for employment purposes.

An older but still used category is the visa subject to employment agreement. This type of visa allows the foreign worker to render personal services only for the company that has hired him or her under an employment agreement; therefore, the termination of the employment agreement is cause for the termination of the visa.

The temporary residence visa for employment purposes has several advantages over the visa subject to employment agreement, namely:

- it allows foreign workers to render services freely to any employer (not necessarily to the company that initially hired the employee), so the termination of the original employment agreement does not affect the visa;
- after one year with temporary residence visa for employment purposes, the employee can file for a permanent residence permit (in the case of the visa subject to employment agreement, the term to file for this permit is two years); and
- the employer does not have to pay a return fare to the employee and his or her family at the termination of the employment agreement.

Members of the family who arrive in the country with the foreign worker are also granted either of both types of visas as dependants of the holder, which prevents them from working in Chile.

7 What are the procedures for obtaining these permissions? At what stage can work begin?

In the case of the visa subject to employment agreement, there are two mechanisms for obtaining it.

The first mechanism is to request the visa at any Chilean consulate abroad. The process takes approximately 30 days to be completed and requires the submission of information and several of the worker's documents (such as health certificates, family ties, etc), plus an employment agreement duly signed by the employer's representatives, which shall be signed by the foreign executive before the Chilean consul.

Once the visa is granted, a certification is stamped in the alien's passport by the consul. The document is then delivered solely to the foreign citizen at the consulate.

The foreign employee is allowed to start rendering services once the visa has been granted, so this alternative allows entry into the country and work to commence from that moment.

The second mechanism is to apply directly to the Immigration Authority in Chile. The process takes between 90 and 150 calendar days, and requires the employee to submit personal information and an employment agreement signed by both parties before a Chilean notary.

In principle, the employee is allowed to start rendering services once the visa has been granted and it has been stamped in the passport; however, upon filing for the visa, a special permit to work can be requested for the time the visa is being processed (this takes approximately 45 to 60 calendar days to be approved and the cost is 50 per cent of the visa fee).

Currently, the only way to obtain a temporary residence visa for employment purposes is to apply for it before the Immigration Authority directly in Chile, so as yet there is no option to file a request at Chilean consulates for this migratory condition. The process takes between 90 and 150 calendar days, and also requires submitting information regarding the employee and an employment agreement signed by both parties before a Chilean notary.

In principle, the employee is allowed to start rendering services once the visa has been granted and it has been stamped in the passport; however, upon filing for the visa, a special permit to work can be requested for the time the visa is being processed (which takes the same amount of time and has the same cost as the special permit mentioned above).

8 What are the general maximum (and minimum) periods of stay granted under the main categories for company transfers?

There is no minimum period of stay under the visa subject to employment agreement or the temporary residence visa for employment purposes; however, if the work period will be less than 90 calendar days, an alternative is to request the visa subject to employment agreement from a Chilean consulate abroad or, alternatively, to enter into the country as a tourist and then file for a special permit to work as a tourist (this permit can only be requested directly in Chile).

Visas subject to employment agreements are granted for a maximum period of two years, and can be renewed for the same maximum period as many times as needed. However, on completion of the first two years (or any of the extension periods), the foreign worker can file for a permanent residence permit that will allow him or her to remain in the country indefinitely and work freely for any employer.

With the temporary residence visa for employment purposes, the permission is granted for one year and can be renewed once, also for one year. At the completion of one year with this status, the employee will be able to file for a permanent residence permit that will allow him or her to remain in the country indefinitely.

9 How long does it typically take to process the main categories?

If the visa subject to employment agreement is requested at a Chilean consulate, the visa process takes approximately 30 calendar days to complete.

If the visa subject to employment agreement and temporary residence visa for employment purposes are requested in Chile from the immigration authorities, the process will take from 90 to 150 calendar days.

10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?

In broad terms, it is not necessary to grant determined benefits or facilities to secure a work permit, notwithstanding that under the principle of non-discrimination, foreign citizens shall have all the rights and benefits recognised by the Chilean employment law for local employees.

Chilean law provides that, in the case of the visa subject to employment agreement, at the termination of the employment agreement, the employer shall pay the fare of the worker and of any member of his or her family as agreed in the employment contract, to return to his or her country of origin or any third country as agreed by the parties, unless the employee obtains a new visa or is allowed to reside indefinitely in Chile. The employment agreement must contain this obligation in writing, and this is specially supervised by the Chilean Immigration Authority to grant the visa.

Also, in cases of the visa subject to employment agreement and the temporary residence visa for employment purposes, the employment agreement must have a clause indicating that the foreign employee will be affiliated to the Chilean social security system and that the employer will deduct from the salary the social security quotas to finance old age pension fund and health insurance. The only exemption to this is for employees who have a university diploma of a professional career or a superior technician diploma, as long as the employee is also affiliated abroad to a social security system that provides coverage in cases of disease, death, disability and old age, in which case the employee can stipulate in the employment agreement his or her continuity in the foreign social security to which he or she is affiliated (in which case the employee will be exempted from contributing to a health and old age pension system, and if done, will be able to withdraw the money saved in an old age pension fund personal account). This exemption does not extend to unemployment insurance and to insurance for industrial accidents or illness.

11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?

Immigration authorities apply objective criteria in the vast majority of cases when approving or denying immigration permits and authorisations. However, a certain amount of flexibility can be applied in exceptional cases (eg, in the case of minor convictions).

12 Is there a special route for high net worth individuals or investors?

Yes, high net worth individuals or investors intending to settle in Chile (or who travel for more than 90 calendar days) can apply for a temporary resident visa, which is granted for up to one year and at its termination allows the individual to apply for a permanent residence permit.

In the case of high net worth individuals, such persons must provide evidence of the assets that will finance their living expenses in Chile. In the case of investors, the following should be evidenced:

- a description of the business project or evidence of the existence of a company;
- the capital owned by the foreign citizen to be invested or already invested in the company; and
- the means to finance living costs in Chile.

There is no fast track to process the visa request for these kinds of individuals.

13 Is there a special route for highly skilled individuals?

Yes, but only for professionals of the technology sector. From 2017, the investment promotion authority (InvestChile) has put in place a special immigration programme known as 'Visa Tech' under which a technology company can request a temporary work visa for a candidate, which is processed in no more than 15 business days, provided the completion of the following conditions:

- the foreigner has a professional degree or technician diploma in the areas of science and technology, or the employee is a highlighted individual with experience in innovation;
- both parties have signed an employment agreement; and
- the hiring company has a sponsorship of any of the following entities:
 - Start Up Chile (for companies that are part of that programme);
 - InvestChile for foreign companies; and
 - Sub secretary of Economy for Chilean companies.

The temporary work visa associated with the Visa Tech programme can only be requested once the employee has entered the country, through the investment promotion authority.

Regarding citizens of countries that must obtain a visa of tourism in Chilean consulates, in reciprocity of the treatment given to Chilean citizens in those countries (see question 3), the Visa Tech programme allows them to request a special tourism visa for business purposes instead of applying for a regular tourism visa, with the sole aim that the candidate for a work position in a sponsored company under this programme can have an expedited entry to Chile. This visa is granted in three business days by the Chilean consulates.

Update and trends

In 2017, InvestChile put in place the Visa Tech special immigration programme to facilitate the attraction of qualified employees of the technology sector to:

- work in the implementation of investment projects in the sector of exportable technological services;
- work in projects to expand companies in Chile, supported by InvestChile; and
- cover gaps of skills of Chilean employees, whether in quantity or quality, for international technology companies supported by InvestChile (see question 13).

14 Is there a special route (including fast track) for high net worth individuals for a residence permission route into your jurisdiction?

The case is the same as explained in question 12, so there is no special treatment for this kind of individual (except the possibility of applying for a permanent residence permit after one year of residence in Chile).

In any case, Chilean law neither outlines a minimum capital to invest in a company nor requires a minimum term to maintain the investment in Chile.

15 Is there a minimum salary requirement for the main categories for company transfers?

There is no minimum salary requirement for transferees; however, companies need to pay at least the legal minimum monthly salary, which is mandatory for any employee working in the country irrespective of nationality. Notwithstanding this, it is important to consider that immigration authorities take a close look at the level of wages in order to determine whether the foreign worker and his or her family would be able to pay their way in Chile.

16 Is there a quota system or resident labour market test?

Even though the law establishes that a condition to consider in order to grant a visa subject to employment agreement is that if the profession, activity or trade of the foreign citizen to be hired is necessary for the development of the country, the authorities do not reject visa applications for not meeting this condition.

There is no obligation to offer the position locally or to test the labour pool first.

Nevertheless, Chilean employment law states that the staff of companies with more than 25 workers must be composed of not less than 85 per cent Chilean employees. To determine the proportion, the law does not consider foreign specialist technical workers, among other cases.

17 Are there any other main eligibility requirements to qualify for work permission in your jurisdiction?

In principle, there are no eligibility requirements to qualify for work permission in Chile; however, in the case of doctors and teachers, medical university studies must be validated by the University of Chile and teaching studies by the Education Secretary, except in the case of those countries that have relevant international treaties with Chile.

In the case of those professions that require a university degree under Chilean law to render services of that profession (ie, physicians, engineers, optometrists, journalists, etc), the foreign workers must validate their university degrees at the University of Chile (this is not required when filing for work permission, but the process must be completed to render the services of such profession). Also in the case of engineers, there is an obligation to register the diploma in a public record of engineers managed by the Chilean Engineers Guild.

18 What is the process for third-party contractors to obtain work permission?

In Chile, work permissions must be requested directly by foreign workers and not by companies or other institutions.

On the other hand, there is no problem with an employee hired for a contracting company rendering services in a third company's premises, as long as the employment relationship between the foreign

worker and the contracting company is real, and does not become a de facto employment relationship with the third company.

If the contractor's employee works in Chile but is paid abroad, it will be necessary to file for a temporary residence visa specially designed for this purpose. Currently the only way to obtain this permission is to apply for it directly to the Immigration Authority in Chile; it is not yet possible to apply abroad through a Chilean consulate. The process takes between 90 and 150 calendar days, and requires the Chilean company to submit information regarding the foreign employee and the conditions of employment abroad with the contractor, and a description of the services that the person will render in Chile for the foreign company.

In principle, the employee is allowed to start working once the visa has been granted (see question 7).

19 Is an equivalency assessment or recognition of skills and qualifications required to obtain immigration permission?

See question 17.

Extensions and variations

20 Can a short-term visa be converted in-country into longer-term authorisations? If so, what is the process?

Chilean law allows the conversion of tourist permits into work permissions. In such a case, the foreigner must request a change of migratory status, with the documents that support the request, to one of the following visa types:

- a visa subject to employment agreement;
- a temporary residence visa for employment purposes;
- a temporary residence visa for professionals and superior level technicians; or
- a temporary residence visa for employees who work in Chile but will be paid abroad.

Also, changes in family status (marriage to a Chilean citizen or birth of a child in Chile) can form the basis for the request for an extension of a residence permit in Chile.

21 Can long-term immigration permission be extended?

In the case of a visa subject to employment agreement, the permission can be extended indefinitely for periods of up to two years in each case, with no limitations. After completion of two years of residence in Chile, the foreign worker is allowed to file for a permanent residence permit, if he or she wishes.

Temporary visas are granted for up to one year, and can be renewed once, also for a one-year term. At its termination, the foreign citizen must opt to file for a permanent residence permit or leave the country.

22 What are the rules on and implications of exit and re-entry for work permits?

Foreign nationals with working permits do not require an additional authorisation to leave the country at any moment.

Further, re-entry to the country does not affect the visa subject to employment agreement, as long as it remains in force when returning to Chile. The same applies for the temporary residence visa.

The permanent residence permit expires automatically if the foreign citizen remains outside Chile for one full year.

23 How can immigrants qualify for permanent residency or citizenship?

The main condition to qualify for permanent residency is the period of residence in the country. Foreign nationals who have been granted a visa subject to employment agreement can file for permanent residency after two years in Chile, and those who have been granted a temporary residence visa can file for permanent residency after one year in Chile.

Aliens of 21 years or older and holders of permanent residence permission qualify for citizenship after five years of continuous residence in Chile.

24 Must immigration permission be cancelled at the end of employment in your jurisdiction?

Only in the case of the visa subject to employment agreement does the termination of the employment agreement automatically cancel the

visa. In that circumstance, the alien is granted a 30-day term in which to request a new visa or leave the country. It is important to note that the employer must notify the Chilean Immigration Authority of the termination of the employment agreement that the visa was granted for within 15 days of its termination, and shall pay the fare of the foreign employee to return to his or her country of origin or any third country as agreed by the parties, unless the employee acquires a new visa or is allowed to reside indefinitely in Chile.

In the case of a temporary residence visa, the termination of the employment agreement does not have any effect on the visa, which remains in force for the rest of the term for which it was granted.

25 Are there any specific restrictions on a holder of employment permission?

Aliens with a visa subject to employment agreement cannot work for an employer other than the sponsor. The alien can change employer after submitting a request to modify the visa subject to employment agreement to the immigration authorities, and in order to work for an additional employer, must change the residence status to a temporary residence visa holder.

Aliens holding a temporary residence visa have no limitations to working in any legal activity and for multiple employers.

In both cases, aliens are entitled to study, be promoted and agree changes in salary and working conditions, as long as it does not impair their ability to finance living costs in Chile.

Dependants

26 Who qualifies as a dependant?

In Chile, dependants of holders of visas subject to employment agreement or temporary residence visas, are the spouse, the children of both or either who depend economically on the visa holder and the parents of the visa holder.

There is a migratory category for those foreign individuals whose marriage cannot be recorded before the Chilean Civil Record Authority (eg, same sex marriages) and to the partners of a civil union (whether executed in Chile or abroad), who can directly apply for a temporary residence visa.

27 Are dependants automatically allowed to work or attend school?

Dependants can neither work in Chile nor render any paid services. In order to do so, they must change their migratory status, by requesting any of the above-mentioned work permissions.

Dependants can attend school or university with no limitations.

28 What social benefits are dependants entitled to?

Dependants are entitled to access the same social security benefits as dependants of Chilean workers, of which the most important is to have access to health services for the spouse and minor children (or children of up to 24 years of age, if studying).

However, if the employee has opted to not be affiliated to the Chilean social security system and does not contribute to it (see question 10), then dependants will not be entitled to social security benefits. In such case it is recommended to take out private health insurance that provides cover for the whole family.

Other matters

29 Are prior criminal convictions a barrier to obtaining immigration permission?

Prior criminal convictions for crimes punished with at least five years and one day of imprisonment are an impediment to entering Chile (as are the crimes of drug, gun or people trafficking, and smuggling).

If the conviction for crimes or offences has been received in Chile, the Immigration Authority is allowed to decide whether or not to grant residence permission.

30 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?

Companies are punished with fines that vary depending on the level of non-compliance, and individuals may be punished with penalties that may include a verbal warning, written warning, fines and in the most serious cases, deportation.

31 Are there any minimum language requirements for migrants?

There are no minimum language requirements for migrants.

32 Is medical screening required to obtain immigration permission?

Chilean law does not require medical screening and Chilean immigration authorities do not require it to grant residence permits; however, Chilean consulates abroad demand it as a condition for granting visas.

33 Is there a specific procedure for employees on secondment to a client site in your jurisdiction?

There are no specific regulations for secondment in Chile; however, if the seconded employee works in Chile but is paid abroad, it will be necessary to file for a residence visa for this purpose. Currently the only way to obtain this permission is to apply for it before the Immigration Authority directly in Chile; it is not yet possible to apply abroad through a Chilean consulate. The process takes between 90 and 150 calendar days, and also requires submitting information regarding the employee and the conditions of employment abroad with the company that provides the secondment, and a letter from the Chilean company to which the foreign worker will render services.

In principle, the employee is allowed to start rendering his or her services once the visa has been granted (see question 7).



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