



GMS Flash Alert

Immigration Edition

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Chile - Reform of Chile's Immigration Laws

In Chile, a new immigration law and its associated regulations introduce numerous immigration changes concerning the entry, stay, and exit of foreign nationals in the country, the exercise of the rights and duties of immigrants, new immigration categories pertaining to residence, and a new institutional authority.

On February 12, Chile's government published Decree 296, which approves the Regulations of Law No. 21325, the new Immigration law of Chile.¹ With the publication of this Decree, all provisions of the associated regulations of the new law, as well as the new law itself, become effective and immediately applicable.

The new regulations replace Law 1094 of 1975 and Decree 597 of 1984 (former Migration Law of Chile and its regulation).

WHY THIS MATTERS

Significant changes have been introduced by the new immigration law and its regulations, that will impact directly current and future Chile-inbound foreign-national employees. There is a new entity responsible for immigration matters, there are new categories of immigration status, and new rights and protections for foreign nationals migrating to Chile. It is therefore important that immigration counsel, global-mobility advisers, employers sending employees into Chile, as well as the mobile employees themselves, understand the new policies and procedures that will impact their travel to, entry, and stay in Chile.

Details

Some key matters introduced under the new rules are **(i)** the establishment of fundamental principles for the protection of foreign nationals; **(ii)** the creation of a new immigration institution; and **(iii)** new immigration categories; among others.

1. Establishment of Fundamental Principles for the Protection of Foreign Nationals

The new rules set down fundamental principles concerning the promotion of respect and the guarantee of certain rights conferred on foreign nationals in Chile. These principles shall also be enshrined in the country's constitution and in other laws and international agreements ratified by Chile.

The key principles are as follows:

(i) the informed migratory procedure, which implies that the state must provide foreign nationals with complete, timely, and effective information regarding their rights and duties, requirements and procedures for their admission, stay and exit from the country;

(ii) *pro homine*, by which the rights recognized by the new law and its regulations will be interpreted according to the broadest or most extensive rule;

(iii) equality of rights and obligations, which requires the state to guarantee to all foreign nationals equality in the exercise of their rights, due protection against discrimination, etc.

2. New Migration Institutions

The National Immigration Service (hereinafter "SerMig" or "Immigration Service"), which replaces the Immigration Department, has been created. It reports to the Ministry of the Interior and Public Security, while keeping in place the responsibilities of the Ministry of Foreign Affairs, through its consular representations, such as the functions of receiving, resolving, and granting visas and/or authorizations outside Chile. Among the main functions of the Immigration Service are the following (Article 157, Law 2021):

- Carry out national immigration policy, as well as the actions, plans, and programs that are necessary for its execution.
- Authorize or deny the entry, stay, and exit of foreign nationals.
- Decide about the issuance, extension, rejection, and revocation of residence and permanence permits and determine their terms of validity.
- Resolve the changes of migratory categories and subcategories for foreign nationals who request it.
- Determine the expulsion of foreign nationals.
- Apply the relevant administrative sanctions.
- Execute "regularization" mechanisms for those who are in an "irregular" migratory situation.

3. New Immigration Categories

Under the new rules, the current structure of permits for entry and residence in the country is modified, categorizing them according to three alternative categories, depending on the intention of the foreign nationals, as we detail below.

a) Transitory Permanence: comparable to the tourism permit of previous Law 1094. This migratory status may be granted by the Immigration Control Police, except for foreign nationals whose nationalities require a previous authorization or visa obtained through the Chilean Consular Service worldwide for their entry to Chile.

As stipulated by the previous law, the holders of a Transitory Permanence permit may remain in the country for up to 90 calendar days, a term that may be extended only once for the same period, upon proof of the reasons that make the extension necessary and as long as the interested party has the lawful means of subsistence that allow him/her to remain in the country for this additional period. In exceptional cases and in the face of justified situations – e.g., in events of *force majeure* – the Transitory Permanence permit can be extended for a second time, for a period understood as strictly necessary to leave the country.

It is important to note that the holders of Transitory Permanence permits may not perform remunerated activities in the country, except for specific and sporadic activities, such as those performed by members and personnel of public shows, athletes, conference speakers, advisers and technical experts, upon receipt of a special work authorization issued by the Immigration Service. The procedure for the application and payment of this work authorization will be regulated by means of a Supreme Decree that will be issued in the future by the Ministry of the Interior and Public Security.

Furthermore, holders of Transitory Permanence permits who are in the country, regardless of the migratory subcategory in question, may not apply for a residence permit, except for certain exceptions established in the new immigration law or in the Supreme Decree to be issued in the future.

b) Temporary Residence: this new category was created for foreign nationals with the purpose of residing in Chile for a limited period of time. This migratory category is comparable to the resident visas (temporary or work contract visa) that Chile currently processes.

Temporary Residence will be classified in migratory subcategories that will be announced by the Supreme Decree to be issued shortly by the Ministry of the Interior and Public Security. Therefore, up to now, it is not known which types of Temporary Residency it will be possible to apply for, nor their requirements and conditions.

Applications for Temporary Residence, as a general rule, must be requested from abroad, through the Chilean Consulate where the foreign national is located or, in specific or qualified cases, from Chile, as long as the requirements (that will also be determined by such Decree) are met.

Among the purposes behind any individual's request for Temporary Residence, the most relevant are:

- The foreign national can prove that he/she has a family relationship with a Chilean national or with a definitive resident.
- Foreign nationals who enter the country to undertake lawful remunerated activities, on their own initiative or under a work relationship with a Chilean company.
- Foreign nationals who settle in the country with the purpose of studying in educational institutions recognized by the state.
- Foreign nationals who apply for employment opportunities with Chilean consulates abroad, as long as they are authorized in accordance with the aims of the National Immigration Policy.
- Foreign nationals protected by international agreements ratified by Chile, and which are in force, granting Temporary Residence; among others.

Validity for Temporary Residence will be granted for a period of up to two years, except for some cases for which the residence permit may be granted for a period of five years. The specific validity for each subcategory, as well as that of its extensions, will be established by Supreme Decree of the Ministry of the Interior.

Moreover, the dependents will be authorized to carry out remunerated activities; however, neither the new law nor its regulations make any mention of those foreign nationals who acquired such resident status prior to the promulgation of

the law, for which reason it is considered prudent to wait for future pronouncements by the immigration authorities with respect to the Supreme Decree.

Finally, in cases of extension of a Temporary Residence permit, it will be understood that the identity card shall remain valid as long as the foreign national proves that he/she has a proof of visa in progress or until the migratory authority approves the respective request.

c) Permanent Residence: a permit created for those seeking to settle indefinitely in Chile. This permit authorizes the development of any lawful activity, with no other limitations than those established by the legal and regulatory provisions.

Holders of a Permanent Residence permit do not require prior authorization or a visa to enter the country. Definitive residence may be granted to foreign nationals holding a Temporary Residence permit that admits their application and who have resided in the country with such status for at least 24 months.

It may also establish a term with a Temporary Residence during which one can apply for Permanent Residence of less than two years, but not less than one year in the following cases:

- Family relationship with nationals or permanent residents;
- Official missions carried out in Chile;
- Income or pension availability;
- Investments made and/or companies that prove effective operation in Chile;
- Contribution to the social, cultural, artistic, scientific, and/or sports fields;
- Other cases established in international agreements ratified by Chile and which are in force.

In order to apply for Permanent Residence, the foreigner must prove his/her means of subsistence in the country and that of his/her family group and his/her labor stability. If at the time of submitting the Permanent Residence application, the applicant's income does not exceed the minimum standard (according to indices estimated by the Ministry of Social Development and Family), the applicant must prove a minimum residence of at least 36 months.

Another requirement to be highlighted is the modification of the period of absence from the country to apply for Permanent Residence:

- For those who have at least 24 months of Temporary Residence, they cannot exceed two months of absence from the country, continuous or discontinuous.
- For those who have at least 30 months of Temporary Residence, they cannot exceed six months of absence from the country, continuous or discontinuous.
- For those with at least 36 months of temporary residence, they cannot exceed 12 months of absence from the country, continuous or discontinuous.
- For those with at least 48 months of temporary residence, they may not exceed 12 months of absence from the country, continuous or discontinuous; however, the regulation does not specify a limit on months of absence.

KPMG NOTE

Despite these important changes introduced by the new immigration law and its associated regulations, the main matter that will affect current and future assignments in Chile, such as immigration subcategories, place and form of processing, requirements, document terms, and validity of the residence permit, among others, will be defined by the Supreme Decree that will be published soon by the Ministry of the Interior and Public Security of Chile.

For the same reason, the immigration authorities are currently awaiting such regulation in order to update their digital processes platforms and some of the immigration benefits are no longer available to apply for, particularly those related to the immigration categories established by the previous law.

Although the immigration authorities have not defined a deadline for the publication of the aforementioned Supreme Decree, it is public knowledge that they are working on its drafting, which will later be submitted for review by the General Comptroller's Office of the Republic and, afterwards, for publication.

FOOTNOTE:

1 See the official government law (in Spanish) "Aprueba Reglamento de la Ley N° 21.325, de Migración y Extranjería," published in the *Diario Oficial*, Núm. 43.177, 12 Febrero 2022.

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The information contained in this newsletter was submitted by the KPMG International member firm in Chile.

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