

## Retrieval of the retirement funds of Brazilians in Chile

**Foreigners who work in Chile will be subject to the regulations and laws that affect Chileans on any matter. Therefore, they will submit to the Chilean pension system, contributing at one of the established Pension Fund Administrators.**

However, Law Number 18.156 grants the option for foreign employees not to make social security contributions in Chile, or, if they contributed in the Chilean pension system, to withdraw the quoted funds, at the end of the employment relationship in Chile.

An analysis of the Social Security System of Brazil, and of the Law Number 18.156, which establishes the aforementioned option, as well as the Social Security Agreement between Chile and Brazil, below

### 1. BRAZILIAN PENSION SYSTEM

At the end of October 2019, a pension system reform occurred in Brazil, which was considered one of the most inefficient in the world. Before the reform, it was not required a minimum age to retire or a minimum contribution to access the benefits. With the reform, the minimum retirement age is 62 for women and 65 for men and the minimum social security contribution is 15 years for women and 20 for men. The intention is to achieve fiscal savings of around R\$800 billion in this decade.

Although initially the reform intended to establish a system of individual capitalization, in which the retirement of each worker depended on the individual capacity to save, the initiative did not succeed.

The Brazilian pension model is composed of the *Regime Geral de Previdência Social*, (RGPS) which is the pension system for workers in the private sector, and the *Regime Próprio de Previdência Social* (RPPS) which is the pension system for workers in the public sector, both are the regimes prior to the reform and which were preserved after it.

However, the reform established a new organization for these regimes, based on a capitalization system, in the modality of a obligatory and defined contribution, which will have the guarantee of the minimum wage, establishing a solidarity fund.

The deductions or contributions realized by employees - in the public and private sectors - will be progressive, according to the salary they receive. Those with higher incomes will have to contribute more to the system, while those with lower incomes will have a lower withholding, the percentages varying from 7.5% for those earning minimum wage to 16.79% for those receiving more than R\$39,000 per month.

### 2. LAW NUMBER 18.156

#### i. Exemption from the obligation to list in the Chilean Pension System



Law Number 18.156 establishes the exemption from the obligation to contribute in Chile for foreign technicians hired to work in Chile, provided when the required conditions are met.

Since they are not contributing in any of the Chilean Pension Fund Administrator, they cannot access to the benefits of the Chilean pension system, with the exception of coverage for work accidents and occupational diseases and unemployment insurance, which are compulsory for employers.

In accordance with article 1 of this law, employers, whose workers are foreign technicians, will be exempt from compliance with the impositions in Chilean pension organizations required by law, provided that workers are affiliated to a social security regime outside of Chile and who expresses the will to maintain the aforementioned affiliation.

The exemption from the obligation to make social security contributions in a Pension Fund Administrator extends to the foreign workers who meet the following requirements:

**a. They must be qualified as technicians.**

For this purpose, a technician shall be understood as the person who possess knowledge of a science or art, accredited by supporting documents of specialized studies duly legalized and, where appropriate, officially translated by the Ministry of Foreign Affairs.

**b. They must be affiliated to a social security regime abroad Chile, whatever their legal nature, which grants them benefits, at least, in cases of illness, disability, old age and death.**

Compliance with this requirement must be accredited by certification from the corresponding social security institution, duly legalized, stating its obligation to provide benefits in cases of illness, disability, old age or death.

**c. They must express their will to maintain the aforementioned affiliation in the respective employment contract.**

However, the exemption does not extend to the obligation to ensure the risks of work accidents and diseases that these workers may suffer in Chile

Those who use this exemption without meeting the requirements provided by law, will be fined, without prejudice to other sanctions that correspond to employers under Chilean law.

When an employer contract foreign workers who meet the conditions as set forth in the law, in order to exempt from the obligation to contribute, they must inform the corresponding Pension Fund Administrator by written communication that will be filed in the individual folder of the member and only from that date will the exemption govern.

Employers must accredit at any time to the corresponding administrative organ or Pension Fund Administrator, the exceptional situation that affects the employee hired.

**i. Contributing in the Chilean Social Security System and subsequent withdrawal of funds.**



Foreign employees qualified as technicians who list in a Pension Fund Administrator may request the return of their pension funds.

By virtue of the provisions of the article 7 of the Law Number 18.156 related to the article 1, foreign workers will may express the will to maintain the affiliation to the foreign social security regime, which grants benefits, at least, in the event of illness, disability, old age and death.

Affiliates, who wants to exercise the right conferred by law, must subscribe to the corresponding Pension Fund Administrator a form "Request for return of Social Security funds of the Law Number 18.156".

This request may be submitted by a third party representing the affiliate, who must prove the capacity as agent with the special power granted by the affiliate before a Chilean Notary Public, stating the authorization to retrieve the pension funds.

Pension Fund Administrators will require the documentation proving that the affiliate meets the requirements of the law to access the benefit. The Prosecutor Office of the Administrators will approval within 5 business days from the date of the request.

If the request is approved, within 3 days, Administrators must have available to the affiliate the existing funds by deposit in the affiliate personal account and will inform by registered letter.

In case the request is rejected, this fact will be communicated to the affiliate by registered letter within the same period indicated of 3 days.

The documentation that prove when affiliates meet the requirements required to access the return of their pension funds and the refund supporting documents, will be kept in the respective individual folder for the purposes of the audit that might carry out on these matters by the Superintendency.

If the application is accepted by the Pension Fund Administrator, the withdrawals of the funds will be subject to the taxation of the article 42 number 1 of the Income Tax Act. For this purpose, the amount returned will be considered as a remuneration received by the foreign employee on the date of its return. Pursuant to article 74 No. 1 of the same law, the Pension Fund Administrators as income paying entities will be obliged to withhold the Second Category Single Tax that affects such withdrawals.

### **3. AGREEMENT ON SOCIAL SECURITY BETWEEN CHILE AND BRAZIL**

The Social Security Agreement between Chile and Brazil, signed by both countries on April 26th, 2007, which entry into force occurs on August 17th, 2009, allows people, who are residing in a Contracting State and have worked in the other Contracting State, listing in the respective social security system, can apply for old-age or invalidity pensions in this other Contracting State. In event of death, their relatives can request survival pensions. In addition, it establishes that the residents of Chile who go to work temporarily in Brazil can choose not to pay the contributions in that country and, instead, continue to do so in Chile.

The Convention provides that disability, old age and survivor pensions paid in accordance with the laws of a Contracting State may not be subject to reduction,



modification, suspension or withholding by reason of the fact that beneficiaries reside in the other Contracting State.

The Convention provides that people who have been subjected to the laws of one Contracting State, and who currently reside within the territory of the other Contracting State, will receive the same treatment as nationals in terms of recognition, rights and payment of social security benefits, without prejudice of worker's domicile or residence or the employer's place of business.

On the other hand, a worker hired in a Contracting State by an employer of that State, temporarily provides services in the other Contracting State, will continue to be subject to the laws of the first State, when this period of employment in the other territory does not exceed 2 years.

Thus, workers subject to the Brazilian laws will be exempt in Chile from the obligation of contributions for pension plans.

The Convention establishes that affiliates to the Chilean pension system, residing in Brazil and who are subject to its laws, may also make pension contributions in Chile on a voluntary basis as if they were self-employed workers.

The Convention provides where the laws of a Contracting State are applicable, upon the request of the person concerned, the corresponding administration organ shall issue a certificate stating that the employee is subject to the laws of that State. This document will certify that the worker is exempt from the application of the laws related to the compulsory coverage of the other Contracting State.