

Cuba

Foreign Investment Act (2014)

Unofficial translation

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Law No. 118

[Preamble]

NATIONAL PEOPLE'S POWER ASSEMBLY

JUAN ESTEBAN LAZO HERNÁNDEZ, President of the National People's Power Assembly of the Republic of Cuba.

HEREBY STATES THAT: The National People's Power Assembly of the Republic of Cuba, during the First Special Session of the Eighth Legislature held on March 29, 2014, has approved the following:

WHEREAS: Our country, considering the challenges faced in achieving sustainable development can, through foreign investments, access external financing , technologies and new markets, and introduce Cuban products and services in international value chains while generating other positive effects for its domestic industry , thus contributing to the growth of the nation.

WHEREAS: The changes taking place in the national economy as a result of the updating of the Cuban economic model governed by the Guidelines for the Economic and Social Policy of the Party and the Revolution, make it advisable to review and adapt the legal framework for foreign investments established by Law No.77 "Foreign Investment Act", passed on September 5, 1995, to provide greater incentives for this and ensure that the attraction of foreign capital contributes effectively to the objectives of sustainable economic development and to the recovery of the national economy, based on the protection and rational use of human and natural resources and the respect for the national sovereignty and independence.

WHEREAS: The Constitution of the Republic establishes, among other forms of property, the joint ventures, partnerships and economic associations and, with respect to state ownership, establishes, on an exceptional basis, the total or partial transfer of property of the economic objectives destined to the country's development, should that be necessary and useful to the country.

THEREFORE: The National People's Power Assembly, in the exercise of the powers vested in it under Article 75(b) of the Constitution of the Republic agrees to adopt the following:

Foreign Investment Act

Chapter I. Purpose and content

Article 1

- 1) The purpose of this Act is to establish the legal framework for foreign investments in the national territory of the Republic of Cuba based on the respect for the law, the sovereignty and independence of the Cuban nation and mutual benefit, to contribute to the country's economic development in the interest of a prosperous and sustainable socialist society.
- 2) This Act and its supplementary legislation establish a system of facilities, guarantees and legal security to investors the purpose of which being to attract and utilize foreign capital.
- 3) Foreign investments in the Republic of Cuba are oriented towards the diversification and expansion of export markets, access to advanced technologies and substitution of imports, particularly food imports. Likewise, they are also oriented towards obtaining foreign financing, creating new sources of employment and harnessing new managerial methods while linking them to the development of productive chains, and changing the country's energy matrix through the use of renewable sources of energy.

4) The provisions contained in this Act comprise the guarantees offered to investors, the sectors targeted for foreign investments and the modalities these could adopt; the investments in real estate, the Act's contributions and their evaluation, as well as the system for its negotiation and approval. They also establish the banking, export, import, labor, taxation, stocks, insurance and financial information and registration systems; the rules concerning environmental protection, the rational use of natural resources, the protection of scientific and technological innovation as well as the control measures on foreign investments and the conflict resolution system.

Chapter II. Glossary

Article 2

This Act and its Regulations recognize the following terms and their definitions:

- a. International Economic Association: a partnership of national and foreign investors within the national territory for the production of goods, the rendering of services or both, for profit, either as a joint venture or an international economic association agreement.
- b. Authorization: enabling resolution issued by the Council of Ministers or by the head of the entity of the Central Administration of the State entrusted with this task, to implement any of the modalities of foreign investments authorized by this Act.
- c. Foreign Capital: capital originating abroad as well as part of the profits or dividends belonging to foreign investors which are reinvested in accordance with this Act.
- d. Top Management Posts: positions held by members of the management board and administration of joint ventures and of totally foreign capital companies, as well as the representatives of the parties to international economic association agreements.
- e. Administrative Concession: enabling resolution issued, on a temporary basis, by the Council of Ministers for the management of a public service, the construction of a public work or the exploitation of a public good under the terms and conditions to be determined in each case.
- f. International Economic Association Agreement: an agreement between one or more national investors and one or more foreign investors for the realization of activities fitting an international economic association even without this being a juridical person distinct from that of the parties.
- g. Totally Foreign Capital Company: commercial entity with foreign capital without the involvement of any national investor or natural person with foreign capital.
- h. Joint Venture: Cuban commercial company which adopts the form of a corporation with registered shares in which one or more national investors and one or more foreign investors participate as shareholders.
- i. Employing Entity: Cuban entity with legal status authorized to establish a contract with a joint venture or a totally foreign capital company, through which it would supply, at the request of the latter, the workers they need, who will sign their employment contracts with such entities.

j. Assets : wages, incomes and other remuneration, as well as increments, compensations or other additional payments received by Cuban and foreign workers, except for those stemming from the economic incentives fund, if any.

k. Foreign Investment: capital input by foreign investors in any of the modalities established in this Act which involves, during the authorized term, the undertaking of risks in business, the expectations to obtain profits and a contribution to the development of the country.

l. Foreign investor: a natural or juridical person with foreign domicile and capital which participates as a shareholder in a joint venture or a totally foreign capital company, or that is a party to an international economic association agreement.

m. National Investor: a Cuban juridical person domiciled in the national territory of Cuba which participates as a shareholder in a joint venture, or is a party to an international economic association agreement.

n. Special Development Zone: the area where a special regimen and policies are established, with the purpose of promoting sustainable economic development by attracting foreign investments, introducing technological innovation and fostering industrial concentration in order to increase exports, effectively substitute imports and generate new sources of employment, in a permanent Coordination with the domestic economy.

Chapter III. Guarantees for investors

Article 3

The Cuban State shall see to it that the benefits granted to foreign investors and their investments are maintained throughout the entire period for which they were granted.

Article 4

1) Foreign investments within the national territory of Cuba will enjoy all-out protection and legal security and could not be expropriated, unless such action is executed for reasons of public or social interest as previously stated by the Council of Ministers, in accordance with the provisions of the Constitution of the Republic, the international treaties signed by the Republic of Cuba on investments and the legislation in force, with appropriate compensation for their commercial value established by mutual agreement and payable in freely convertible currency.

2) If an agreement on the commercial value of investments fails to be reached, the pricing shall be done by an organization of international renown in business assessment, previously authorized by the Ministry of Finance and Prices and hired for this purpose by mutual agreement of the parties involved in the expropriation process. Should there be no agreement between them in respect of the selection of the aforementioned organization, they might choose to determine it by drawing lots or seeking a judicial action.

Article 5

Foreign investments in the country shall be protected against legal claims by third parties or the extraterritorial implementation of other States' laws, according to the Cuban laws and the rulings issued by Cuban courts.

Article 6

1) The term of the authorization granted for the development of operations of a joint venture of the parties to an international economic association agreement or to a totally foreign capital company, could be extended by the very authority that granted it, as long as such extension is requested by the parties concerned before the set deadline expires.

2) If the aforementioned deadline is not extended, the joint venture, the international economic association agreement or the totally foreign company will be liquidated as agreed in the constituent documents and the provisions of the legislation in force. The balance due to the foreign investor will be paid in freely convertible currency, unless otherwise expressly agreed.

Article 7

1) Provided a previous agreement is reached between the parties, the foreign investor who is a party to an international economic association will be entitled to sell or otherwise transfer to the State, a third party or the parties to the association, in whole or in part, its rights, and receive payment for an equivalent price in freely convertible currency, except otherwise expressly agreed.

2) The foreign investor in a totally foreign capital company can sell or otherwise transfer to the State or to a third party, provided this is previously authorized, its rights, in whole or in part, and receive payment for an equivalent price in freely convertible currency, except otherwise expressly agreed.

Article 8

The payment to be received by the foreign investor in the cases referred to in Articles 6 and 7 of this Act will be mutually agreed by the parties. Should it be necessary, at any time during the process, to resort to a third party to determine the amount of the aforementioned payment, an organization of international renown in business assessment will be chosen, as authorized by the Ministry of Finance and Prices.

Article 9

1) The State shall guarantee foreign investors the free transfer abroad, in freely convertible currency, free from taxes or any other fees associated to said transfer, of:

- a. Dividends or profits obtained as a result of the investment; and
- b. The amounts they should receive in the cases referred to in Articles 4, 6 and 7 of this Act.

2) Foreign natural persons rendering their services to a joint venture, to the parties of any other form of international economic association or to a totally foreign capital company, as long as they are not permanent residents in the Republic of Cuba, will have the right to transfer abroad their earnings in the amounts stipulated and according to all other regulations issued by Banco Central de Cuba.

Article 10

Joint ventures and national and foreign investors which are parties to international economic association agreements, shall be subject to the special tax regime established in this Act for until the term for which they were authorized expires.

Chapter IV. Sectors targeted for foreign investments and foreign investment opportunities portfolio

Article 11

- 1) Foreign investments may be authorized in all sectors except for health, education and the armed forces, excluding the latter's business systems.
- 2) The Council of Ministers shall approve the foreign investment opportunities that are to be promoted as well as the general and sectorial policies for foreign investments, which will be published in the Foreign Investment Opportunities Portfolio issued by the Ministry of Foreign Trade and Investment.
- 3) The bodies, entities of the State's Central Administration as well as the national entities sponsoring foreign investments shall be required, in accordance with the approved policies, to identify and submit to the Ministry of Foreign Trade and Investment the business proposals involving foreign investment.
- 4) The Minister of Foreign Trade and Investment shall report, on a yearly basis, to the Council of Ministers on the preparation and updating of the Opportunities Portfolio by the bodies, the entities of the State's Central Administration as well as the national entities sponsoring foreign investments.

Chapter V. Foreign investment

Section I. Modalities of foreign investment

Article 12

For the purpose of this Act, foreign investment could be defined as:

- a. Direct investment, in which the foreign investor participates as a shareholder in a joint venture or in a totally foreign capital company; or makes contributions to international economic association agreements, thus participating, in an effective manner, in the management of the business; and
- b. Investments in equities or other securities or bonds, either public or private, which do not fit the definition of direct investment.

Article 13

1) Foreign investments shall adopt one of the following modalities:

- a. Joint venture;
- b. International economic association agreement; or
- c. Totally foreign capital company.

2) International economic association agreements include, among others, the risk contracts for the exploration of non-renewable natural resources, construction, agricultural production; hotel, production and services management and the contracts for the provision of professional services.

Section II. Joint ventures

Article 14

- 1) Joint ventures imply the establishment of a juridical person different from that of any of the parties. They adopt the form of a corporation with registered shares upon which the relevant legislation in force is applicable.
- 2) The share capital contributions by national and foreign investors will be agreed upon by the partners and established in the authorization that is granted.
- 3) The association agreement is the agreement signed between the partners and contains the fundamental pacts governing the conduction of the business they intend to develop.
- 4) The establishment of a joint venture shall require the drafting of a public deed as an essential condition for its validity. The Articles of Incorporation as well as the Authorization and the association agreement will also be attached to it.
- 5) The Articles of Incorporation will include the provisions related to the organization and operation of the company.
- 6) The joint venture will acquire legal personality upon being registered in the Business Register.
- 7) Once a joint venture is set up, shareholders may be changed by their own consent, provided there is prior approval by the authority which granted the Authorization.
- 8) Joint ventures can establish offices, representations, branch offices and subsidiaries both within the national territory of Cuba and abroad, and participate in entities abroad.
- 9) The winding-up and dissolution of the joint venture shall be governed by its Articles of Incorporation and subject to the provisions of the legislation in force.

Section III. International economic association agreement

Article 15

- 1) The international economic association agreement has, among others, the following characteristics:
 - a. It does not involve the establishment of a juridical person different than that of its parties;
 - b. It may pursue any of the activities described in the Authorization;
 - c. The parties shall be free to establish all the pacts and clauses that they deem to be convenient to their interests, as long as they do not infringe on the authorized purpose, the conditions of the authorization or the legislation in force ; and

d. Each contracting party shall make separate contributions, thus creating and accrual of shares they will own at all times, and while these do not constitute a share capital, they shall be entitled to create a common fund, provided the ownership by each and every one of said parties is properly determined.

2) In the international economic association agreements whose purpose would be hotel, production or services management or the rendering of professional services, neither shares are accrued nor a common fund is created. They will have the characteristics described under paragraphs 3 and 4 of this Article.

3) The purpose of the international economic association agreements for hotel, production or service management shall be to improve the customers' services or the quality of productions; benefit from the use of an internationally recognized brand and its publicity, as well as from the international marketing and promotion designed by the foreign investor. They will have, among others, the following characteristics:

a. The foreign investor shall act on behalf and in representation of the national investor with regard to the signed management agreement;

b. Profits shall not be shared; and

c. Payments to foreign investors shall be conditioned to the results of their performance.

4) International economic association agreements for the rendering of professional services shall have, among others, the following characteristics:

a. They shall be signed with foreign consulting companies of international renown; and

b. Their main purpose shall be the joint provision of auditing, accounting advice, valuation and corporate finances services as well as organizational re-engineering, marketing, business management and insurance intermediation services.

5) The international economic association agreement shall be validated by a public deed and will enter into force upon its registration in the Business Register.

6) Once an international economic association agreement is awarded, the parties shall not be changed, except by their mutual consent and with the approval of the authority which granted the Authorization.

7) The termination of the international economic association agreement shall be governed by the provisions thereof and subject to the legislation in force.

Section IV. Totally foreign capital company.

Article 16

1) In the totally foreign capital company, foreign investor shall manage the company, enjoy all the rights thereof and be liable for all the obligations established in the Authorization.

2) Foreign investors in totally foreign capital companies, upon the company's registration in the Business Register, would be able to settle within the national territory of Cuba:

a. As natural persons, acting on their own behalf;

b. As juridical persons, by setting up a Cuban subsidiary office of the foreign entity they own, by means of a public deed, in the form of a corporation with registered shares; or

c. As juridical persons, by establishing a branch of a foreign entity.

3) A totally foreign capital company incorporated as a subsidiary shall be able to set up offices, representations, branches and subsidiaries both within the national territory of Cuba and abroad, and have interests in entities abroad.

4) The winding-up and dissolution of the totally foreign capital company in the form of a Cuban subsidiary shall be governed by its articles of incorporation and subject to the legislation in force.

5) The termination of the activities authorized for a natural person and the branch of a foreign company shall be governed by the provisions contained in the Authorization and the legislation in force.

Chapter VI. Investments in real estate

Article 17

1) In conformity with the modalities established in this Act, investments in real estate shall be authorized and the ownership of the real state or other property rights shall be obtained.

2) The investments in real estate referred to in the previous paragraph can be destined to:

- a. Housing and buildings, either for private or tourist related purposes;
- b. Housing or offices of foreign juridical persons; or
- c. Real estate development for tourist purposes.

Chapter VII Contributions and their valuation

Article 18

1) For the purposes of this Act, contributions are defined as follows:

- a. Financial contributions which, in the case of the foreign investor, shall be made in freely convertible currency;
- b. Machinery, equipment, or other tangible goods;
- c. Intellectual property rights and other rights over intangible goods;
- d. Property rights over movable and immovable goods and other property rights thereon, including usufruct and surface rights; and
- e. Other goods and rights.

Contributions other than those made in freely convertible currencies shall be assessed in that currency.

2) The transfer to national investors of property rights or other rights over State-owned goods so that they could be contributed by the first, shall be carried out under the principles established in the Constitution of the Republic and upon prior certification by the Ministry of Finance and Prices, on the advise of the corresponding body, agency or entity and with the approval of the Council of Ministers or its Executive Committee, as appropriate.

The payments of intellectual property rights and other rights over intangible goods shall be subject to the provisions of the relevant legislation.

3) Financial contributions in freely convertible currency shall be assessed according to their value in the international market and, for the purpose of their exchange in Cuban pesos, the exchange rates of Banco Central de Cuba shall apply. Foreign capital contributions made in freely convertible currency shall enter the country through a bank institution authorized to operate within the national territory of Cuba and shall be deposited in said institution in accordance with the regulations in force.

4) Foreign party contributions other than financial contributions, destined to the share capital of joint ventures or totally foreign capital companies, or the contributions made by virtue of international economic association agreements, shall be assessed according to the methods to be freely agreed by investors, as long as they are the ones generally accepted by the international valuation standards, and their value shall be accredited by the relevant expert's certificate issued by the entities authorized by the Ministry of Finance and Prices, which shall be transcribed in the public deed that might be issued.

Chapter VIII. Negotiation and authorization of a foreign investment

Article 19

1) To create an international economic association, the national investor shall be required to negotiate with the foreign investor every aspect of the investment, including its economic feasibility, the respective contributions, as appropriate; the association's form of management and administration, as well as the legal documents needed for its formalization.

2) In the case of a totally foreign capital company, the Ministry of Foreign Trade and Investment shall indicate to the investor which is the Cuban entity responsible in the sector, sub-sector or the economic activity in which it intends to invest. The foreign investor should analyze with it the proposal and obtain the corresponding written approval.

Article 20

The Cuban State shall authorize foreign investments as long as they do not affect the national defense and security, the national heritage or the environment of the country.

Article 21

1) Approval for foreign investments within the national territory of Cuba shall be granted according to the sector, the modality and the characteristics of foreign investments by the following State bodies:

- a. The Council of State;
- b. The Council of Ministers; and
- c. The head of the State Central Administration entity authorized to do this.

2) The Council of State shall approve foreign investments, whichever the modality, in the cases described below:

- a. Prospection and exploitation of non-renewable natural resources, unless this is done under international economic association risk agreements approved and authorized according to paragraph 3 (d) of this Article; and
- b. Management of public services such as transportation, communications, water supply, electricity; the construction of a public work or the exploitation of a public good.

Once the foreign investment is approved by the Council of State in the cases described above, the Council of Ministers will issue the corresponding Authorization.

3) The Council of Ministers shall approve and authorize foreign investments in the cases described below:

- a. Real estate developments;
- b. Totally foreign capital companies;
- c. The transfer of State ownership or other property rights over State goods;
- d. International economic association risk agreements for the exploitation and production of non-renewable natural resources;
- e. A foreign company working with public capital;
- f. The use of renewable sources of energy;
- g. The business system of the health and education sectors and of the armed forces; and
- h. Other foreign investments that do not require approval by the Council of State.

The Council of Ministers may delegate to the heads of the State Central Administration entities the faculty to approve and authorize foreign investments in those cases within their competence and according to their modality or targeted sectors.

Article 22

- 1) The establishment of a joint venture, a totally foreign capital company or an international economic association agreement requires the submission of an application to the Minister of Foreign Trade and Investment, in accordance with the Regulations of this Act.
- 2) If the purpose of the approved investment is the management of a public service, the construction of a public work or the exploitation of a public good, the Council of Ministers, with the previous consent by the Council of State, shall grant the relevant administrative concession under the terms and conditions it may establish in accordance with the legislation in force.
- 3) The decision to refuse or authorize a foreign investment by the competent authority shall be issued within a term of sixty calendar days as from the date of submission of the application and shall be notified to applicants.

In such cases where foreign investment modalities are subject to the approval of the heads of the State Central Administration entities, the decision shall be issued within a term of forty-five calendar days as from the date in which it was admitted.

Article 23

Any modification to the conditions established in the Authorization shall require approval of the relevant authority in accordance with Article 21 of this Act.

Article 24

The conditions established in the Authorization could be clarified through the Ministry of Foreign Trade and Investment, at the request of investors.

Chapter IX. The banking system

Article 25

1) Joint ventures, national investors and foreign investors, which are parties to international economic association agreements, and totally foreign capital companies, shall be entitled to open bank accounts in any bank of the National Banking System, through which they shall receive and make payments related to their operations, according to the monetary regime in force. Likewise they shall also be entitled to access the services offered by the financial institutions established in the country.

2) Joint ventures and national investors which are parties to international economic association agreements shall be entitled to open and operate accounts in freely convertible currency in banks established abroad, with the previous consent of Banco Central de Cuba and in conformity with the regulations in force. Likewise, they shall be entitled to engage in lending operations with foreign financial institutions in accordance with the relevant regulations in force.

Chapter X. Export and import system

Article 26

1) Joint ventures, national and foreign investors which are parties to international economic association agreements and totally foreign capital companies shall be entitled, in accordance with the Provisions set for such purposes, to directly export and import whatever is needed for their operation.

2) Joint ventures, the parties to international economic association agreements and totally foreign capital companies shall preferably acquire goods and services in the domestic market, which will be offered with the same quality, price and delivery terms as compared to those offered at the international market.

Chapter XI. Labour system

Article 27

Foreign investments must observe the labor and social security legislation in force in the Republic of Cuba, with the adjustments contained in this Act and its Regulations.

Article 28

1) The workers who offer their services in activities related to foreign investments shall be, as a rule, Cuban citizens or foreign citizens permanently residing in the Republic of Cuba.

2) Nevertheless, the management and administrative bodies of joint ventures or of totally foreign capital companies or the parties to international economic association agreements shall be entitled to determine that certain top administrative positions or some posts of a technical nature, should be filled by persons who are not permanent residents in the country and, in those cases, they shall be able to determine the labor conditions to be applied to and the rights and obligations of those workers.

3) The non-permanent residents in the country who are hired shall be subject to the immigration and alien citizens' laws in force in the country.

Article 29

1) Joint ventures, the parties to international economic association agreements and totally foreign capital companies could be authorized by the Ministry of Foreign Trade and Investment to create an economic incentives fund for Cuban workers and foreign workers who are permanent residents in the Republic of Cuba who render their services in activities related to foreign investments. Contributions to the economic incentives fund shall be made out of the profits earned.

2) Hotel, production or service management agreements as well as the agreements for the rendering of professional services shall be exempted from the creation of the economic incentives fund referred to in the previous paragraph.

Article 30

1) The Cuban staff or the foreign staff with permanent residence in the Republic of Cuba who render their services in joint ventures, with the exception of the members of their management board or administration, shall be hired by an employing entity proposed by the Ministry of Foreign Trade and Investment and authorized by the Ministry of Labor and Social Security.

The members of the management board or the administration of the joint venture shall be appointed by the general board of shareholders and employed by the joint venture as appropriate.

Only in exceptional cases, when the Authorization is granted, will a joint venture be entitled to directly hire all the persons who work in it, which will always be done in accordance with the legal provisions in force governing workers' recruitment.

2) Cuban workers or foreign workers residing permanently in the Republic of Cuba, who may be working for the parties to international economic association agreements, shall be hired by the Cuban side in accordance with the legal provisions in force that govern workers' recruitment.

3) In totally foreign capital companies, the services of the Cuban workers and foreign workers residing permanently in the Republic of Cuba, with the exception of the top managerial and administrative staff, shall be rendered by means of a contract to be signed between the company and an employing agency proposed by the Ministry of Foreign Trade and Investment and authorized by the Ministry of Labor and Social Security.

The members of the management board and the administration of the totally foreign capital company shall be appointed by the company and employed by it as appropriate.

4) Payments to Cuban workers and foreign workers residing permanently in the Republic of Cuba shall be effected in Cuban pesos.

Article 31

1) The employing entity referred to in the previous Article shall hire the Cuban workers and the foreign workers residing permanently in the Republic of Cuba on an individual basis, and these workers will continue to be employed by it in accordance with the relevant legislation in force.

2) Whenever a joint venture or a totally foreign capital company considers that a certain worker does not meet the requirements of the post, they shall be entitled to request the employing entity to replace that worker with another. Any labor claim shall be settled at the employing entity according to the procedure established in the relevant legislation.

Article 32

Notwithstanding the provisions of the Articles previous to this Chapter, the Authorization approving the foreign investment can establish, on an exceptional basis, special labor regulations.

Article 33

According to the legislation in force, the rights of Cuban workers involved in the achievement of technological or organizational results consisting in innovations that render economic, social or environmental benefits shall be recognized.

Chapter XII. Special tax system

Article 34

Joint ventures and foreign and national investors, which are parties to international economic association agreements, shall honor their tax obligations and their rights as taxpayers in conformity with the relevant legislation in force, including the adjustments contained in the following Articles.

Article 35

Foreign investors who are partners in joint ventures or parties to international economic association agreements shall be exempt from paying personal income taxes for the revenues received from the business' dividends or profits.

Article 36

1) The profit tax shall be paid by joint ventures, national and foreign investors and parties to international economic association agreements by applying a fifteen per cent tax rate on the net taxable profit.

2) Joint ventures and parties to international economic association agreements shall be exempt from paying profit taxes for a period of eight years as from the date of their incorporation. The Council of Ministers shall be entitled to extend the tax exemption period approved.

3) The competent authority may decide to apply a tax exemption in such cases where the reinvestment of profit taxes, net profit taxes and other benefits in the country is authorized.

4) When it comes to the exploitation of natural resources, whether renewable or not, the Council of Ministers may decide to increase the profit tax rate by up to fifty per cent.

Article 37

1) Joint ventures and national and foreign investors which are parties to international economic association agreements shall pay the sales tax with a fifty percent discount on the tax rate applicable to wholesales.

2) Joint ventures and foreign and national investors who are parties to international economic association agreements shall be exempt from paying this tax during the first year of operation of the investment.

Article 38

1) Joint ventures and national and foreign investors who are parties to international economic association agreements shall pay the tax on services with a fifty per cent discount on the applicable tax rate.

2) Joint ventures and foreign and national investors, which are parties to international economic association agreements, shall be exempt from paying this tax during the first year of operation of the investment.

Article 39

Joint ventures and foreign and local investors, which are parties to international economic association agreements, shall be exempt from paying taxes on the use of labor force.

Article 40

Joint ventures and national and foreign investors who are parties to international economic association agreements, shall pay taxes for the use or exploitation of beaches, the authorized dumping of wastes in water basins, the use and exploitation of bays, the use and exploitation of forest and wildlife resources and the right to use inland water resources with a fifty per cent discount during the investment's recovery period.

Article 41

Joint ventures and foreign and national investors who are parties to international economic association agreements, shall be exempt from paying customs taxes for the imports of equipment, machinery and other means during the investment process, according to the relevant regulations established by the Minister of Finance and Prices.

Article 42

Joint ventures and foreign and national investors, who are parties to international economic association agreements, and totally foreign capital companies, shall be required to pay a land tax to contribute to local development.

Joint ventures and foreign and national investors, who are parties to international economic association agreements, shall be exempt from paying the land tax to contribute to local development during the investment's recovery period.

Article 43

1) Foreign and national investors, who are parties to international economic association agreements, the purpose of which being hotel, production or services management and the rendering of professional services shall be exempted from complying with the provisions contained in the preceding Articles, considering that they are all liable to taxes, in accordance with the provisions of the Tax System Act and all other supplementary regulations.

2) Foreign investors who are parties to the agreements referred to in the preceding paragraph shall be exempt from paying taxes on sales and services.

Article 44

Totally foreign capital companies shall be required, for as long as they remain operational, to pay taxes under the law in force, without prejudice to the tax benefits that are to be established by the Ministry of Finance and Prices, provided that this be of interest to the country.

Article 45

For the purposes of this Act, the General Customs of the Republic of Cuba may grant to the natural or juridical persons referred to in this Chapter, special facilities with regard to the established formalities and customs procedures in accordance with the provisions contained in the legislation in force.

Article 46

The payment of taxes and other customs collectible fees shall be effected in accordance with the relevant legislation in force, except for those cases identified by the Council of Ministers when authorizing the modality of investment.

Article 47

The Ministry of Finance and Prices, on the advice of the Ministry of Foreign Trade and Investment, and taking into account the benefits and the size of the investment, the recovery of the capital and the indications issued by the Council of Ministers for prioritized economic sectors as well as the benefits they may offer to the national economy, may grant total or partial tax exemptions, either temporarily or permanently, or grant other tax benefits in accordance with the provisions of the tax legislation in force to any of the modalities of foreign investment recognized in this Act.

Chapter XIII. Reserves and insurance

Article 48

1) Joint ventures and foreign and national investors, who are parties to international economic association agreements, and totally foreign capital companies, are bound to be, given their profits, a reserve that might be used to cope with any contingencies that may arise during their operations.

2) The procedure for establishing, utilizing and liquidating the reserve referred to in the preceding paragraph, shall be regulated by the Ministry of Finance and Prices.

Article 49

Without prejudice to the reserve referred to in the preceding Article, joint ventures and foreign and national investors who are parties to international economic association agreements and totally foreign capital companies may establish reserves on a voluntary basis in accordance with the regulations of the Ministry of Finance and Prices.

Article 50

1) Joint ventures and foreign and national investors, who are parties to international economic association agreements and totally foreign capital companies, shall be required to obtain insurance policies for all kinds of goods and responsibilities. Cuban insurance companies shall be entitled to be a first option on the basis of international competitive conditions.

2) Industrial, tourist or other facilities or lands that are leased out by State companies or other national organizations, shall be insured by the lessee in favor of the lessor, according to the conditions Specified in the previous paragraph.

Chapter XIV. Registration and financial information system

Article 51

Before starting operations, joint ventures and foreign and national investors, who are parties to international economic association agreements, and totally foreign capital companies, shall be granted all the necessary public notarial deeds within a term of thirty calendar days as from the date of notification of the Authorization; and within the next thirty days following this act, the aforementioned deeds shall be entered in the Business Register.

Article 52

Joint ventures and foreign and national investors, who are parties to international economic association agreements, and totally foreign capital companies shall be bound to comply with the Cuban standards on Financial Information issued by the Ministry of Finance and Prices.

Article 53

1) The subjects referred to in the previous Article shall submit to the Ministry of Foreign Trade and Investment an annual report of their operations as well as any other information required, in accordance with the Regulations of this Act.

2) The submission of the annual report referred to in the previous paragraph shall be independent from the aforementioned subjects' obligation to provide information to the Ministry of Finance and Prices, the corresponding tax authority, the National Bureau of Statistics and Information, as well as the information required by the methodological and control standards of the National Economic Plan.

Chapter XV. Science, technology, environment and technical innovation

Article 54

Foreign investment shall be encouraged, authorized and will operate in the context of the country's sustainable development, which means that, throughout all its stages, special attention will be given to the introduction of technology, the protection of the environment and the rational use of natural resources.

Article 55

The Ministry of Foreign Trade and Investment shall submit all the investment proposals received to the consideration of the Ministry of Science, Technology and Environment which shall evaluate their suitability from the point of view of the environment and decide whether or not an environmental impact assessment is required. It will likewise decide on the advisability of granting the relevant environmental licenses and establishing a control and inspection procedure in accordance with the legislation in force.

Article 56

- 1) The Ministry of Science, Technology and the Environment shall dictate the measures required to give adequate solution to situations leading to environmental damage, danger or risk and to promote the rational use of natural resources.
- 2) The natural or juridical persons responsible for such damage or harm shall be required to re-establish the previous environmental situation, repair the damage or pay the corresponding indemnification, as appropriate.

Article 57

The Ministry of Foreign Trade and Investment shall submit the investment proposals it might receive to the consideration of the Ministry of Science, Technology and Environment, which shall evaluate their technological feasibility and the measures that need to be adopted for the protection and management of intellectual property that are necessary to ensure the technological sovereignty of the country.

Article 58

The rights on the results achieved in the context of any of the modalities of foreign investment, which are entitled to protection as intellectual property rights, shall be governed by the constituent documents and in accordance with the relevant legislation.

Chapter XVI. Control actions

Article 59

- 1) All foreign investment modalities shall be subject to the control measures set out in the legislation in force, which shall be implemented by the Ministry of Foreign Trade and Investment, as well as other bodies, State Central Administration entities or national entities governing such activities and with the competence to do so.
- 2) Control actions are intended to evaluate, inter alia, compliance with:
 - a. The legal provisions in force; and
 - b. The conditions approved for the establishment or implementation of every business.

Chapter XVII. Conflict resolution

Article 60

- 1) The conflicts which may arise in the relationship between the partners of a joint venture or between national and foreign investors, which are parties to international economic association agreements, or between the partners of a totally foreign capital company in the form of a corporation with registered shares, shall be resolved as agreed in the constituent documents, except in the cases referred to in this Chapter.

2) The same rule shall apply when a conflict arises between one or more partners and the joint venture or the totally foreign capital company to which they belong.

3) The conflicts arising in connection with the inactivity of the governing bodies of the modalities of foreign investment established in this Act as well as with the winding-up, dissolution and termination of these shall all be resolved by the Economic Division of the corresponding People's Provincial Court.

4) Conflicts arising in the relationship between the partners of a joint venture or a totally foreign capital company in the form of a corporation with registered shares or between national and foreign investors which are parties to international economic association agreements, who have been authorized to carry out activities related to natural resources, public services and public works shall be resolved by the Economic Division of the corresponding People's Provincial Court unless otherwise stated in the Authorization.

The aforementioned regulation shall apply when a conflict arises between one or more foreign partners and the joint venture or the totally foreign capital company to which they belong.

Article 61

Litigation over the execution of economic agreements arising between the various modalities of foreign investments established in this Act or between them and Cuban natural or juridical persons could be resolved by the Economic Division of the corresponding People's Provincial Court, which shall not preclude the possibility to submit it to some arbitration proceedings in accordance with the Cuban legislation.

Special provisions

FIRST: Joint ventures, national investors and foreign investors, which are parties to international economic association agreements, and totally foreign capital companies, shall be subject to the regulations established in the legislation in force on disaster reduction.

SECOND: The provisions of this Act, its Regulations and all other supplementary rules shall be applicable to the foreign investments that will be established in the special development zones with the adjustments provided by the special rules issued for them and as long as they are not contrary to their operation. Notwithstanding the foregoing, the special arrangements granted under this Act shall apply to these investments whenever they are deemed most beneficial.

Temporary provisions

FIRST: This Act shall be hereinafter applicable to already existing international economic association agreements and totally foreign capital companies as well as those which may be already operational on the date of its entering into force.

The benefits granted under Decree-Law No. 50 "Economic Association between Cuban and Foreign Entities" dated February 15, 1982, and Law No. 77 "Foreign Investment Act", dated 5 September, 1995, shall remain valid for as long as the international economic association or the totally foreign capital company remain operational.

SECOND: This Act shall apply to applications for approval of foreign investments that might be pending on the date of its entry into force.

THIRD: The supplementary provisions issued by the various State Central Administration entities for a better implementation and enforcement of the provisions of Law No. 77, of September 5, 1995, will continue to be valid as long as they do not oppose the content of this Act . No later than three months after the date of enforcement of this Act the agencies involved shall review the aforementioned regulations and, on the advice of the Ministry of Foreign Trade and Investment, shall harmonize them with the provisions of this Act.

FOURTH: Joint ventures, parties to international economic association agreements and totally foreign capital companies, may exceptionally be authorized by the Council of Ministers to make and receive certain payments in Cuban pesos.

FIFTH: In order to make a payment in Cuban pesos, as established in Article 30 (4) such amounts should be previously obtained in Cuban convertible pesos.

SIXTH: The payment of taxes and other collectable customs fees by investors shall be made in Cuban convertible pesos, even in those cases in which the amounts are expressed in Cuban pesos.

SEVENTH: The aforementioned Fourth, Fifth and Sixth provisions shall remain valid until the monetary unification is established in the country, after which the obligors under this Act shall be governed by the rules established for this purpose.

Final provisions

FIRST: The Council of Ministers shall issue the Regulations of this Act within a term of ninety days following its approval.

SECOND: Law No. 77 " Foreign Investment Act ", dated September 5, 1995; Decree-Law No. 165 "Free Zones and Industrial Parks", dated June 3, 1996; and Agreements No. 5279, dated October 18, 2004; No. 5290, dated November 11, 2004; No. 6365, dated June 9, 2008, adopted by the Executive Committee of the Council of Ministers as well as any other legal provisions contrary to the provisions of this Act are hereby repealed.

THIRD: This Act shall enter into force ninety days after its approval.

FOURTH: To be published, together with its Regulations and other supplementary provisions, in the Official Gazette of the Republic of Cuba for general knowledge.

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