

# FORMS OF FOREIGN INVESTMENT IN CUBA

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Foreign investment is a relatively new phenomenon in revolutionary Cuba. After nationalizing properties owned by foreign investors in the early 1960s and foreswearing foreign participation in the economy, in 1982 the Cuban government passed a law (DecreeLaw No. 50) that for the first time permitted foreign investment in the island, although only in the form of joint ventures between foreign and Cuban enterprises. Despite enactment of this law, Cuba's efforts to attract foreign investment in the 1980s were largely unsuccessful, with the situation beginning to change in the early 1990s when there were some breakthroughs in the tourism and nickel mining sector.

In September 1995, Cuba substantially revised and updated its legal framework for foreign investment. The Foreign Investment Law (Law No. 77 of September 1995) is currently the main legal instrument governing foreign investment in Cuba.<sup>2</sup> According to its Article 12, three types of foreign investment are permitted: (1) joint ventures; (2) international economic associations; and (3) wholly foreign-invested companies. Law No. 77 also has some sector-specific provisions that are relevant to our discussion.

## Joint Ventures

Joint ventures (*empresas mixtas*) formed between one or more Cuban entities and one or more foreign partners, have legal personality independent from that of the constituent parties (Article 13). The basic documents creating a joint venture are the agreement of economic association and the bylaws that govern the venture's operations. The proportion of capital to be provided by the foreign and the national investor or investors are agreed upon by the partners in advance and defined within the basic documents; profits earned by the joint venture are distributed to the investors according to ownership shares.

The Cuban party must be guaranteed participation in the administration or joint administration of the enterprise. Joint ventures must be approved on a case-by-cases basis by the Cuban government, either by the Council of Ministers or by a lower-level commission, depending on the amount of capital and the nature of the economic activity involved.

## International Economic Associations

International economic association contracts (*contratos de asociación económica internacional*) are subscribed between one or more Cuban entities and one or more foreign partners, typically for a specified purpose (Article 14). Unlike joint ventures, international economic associations do not have legal personality independent from that of the constituent parties. Further, although each party makes a contribution to the association (e.g., land, machinery, technology, raw materials), the contributions are kept separate. The parties agree on a formula for sharing the profits from the association.

In December 2000, the Executive Committee of the Council of Ministers authorized two specific forms of international economic associations:

- Cooperated production contracts (contratos de producción cooperada): These contracts may be either for the production of goods or services. The foreign partner typically provides raw materials, equipment, parts, technology, and technical assistance to support production in Cuba of goods or services that may be sold domestically or exported. The contracts must be approved by the head of the Central State Administration Agency to which the local contracting party is attached.
- Management contracts (contratos de administración productiva o de servicios): In these transactions, a domestic entity contracts with a foreign company to manage one or more production lines or an entire facility in Cuba for a specified period of time in return for a pre-determined remuneration; typically, the remuneration is a function of the related to the performance of the manager. The foreign partner usually contributes know-how, technology, and markets. Although management contracts in theory may be negotiated in any sector of the economy, they have proliferated in the tourism industry. Hotel management contracts must be approved by the Ministry of Tourism; management contracts in other economic sectors must be approved by the Ministry of Foreign Investment and Economic Cooperation.

### **Wholly Foreign-Owned Companies**

Wholly foreign-owned companies (empresas de capital totalmente extranjero) are also contemplated by Article 15 of the Foreign Investment Law. Under this form of investment, the foreign investor manages the company, reaps all the profits, and is responsible for all taxes and other payments.