EY [Cuba]

Caribbean Professional Services Ltd (EY CPSL)

The Legal, Regulatory & Fiscal Framework for Foreign Investment in Cuba

EY
Building a better working world

August 2015

EY
Building a better working world

Helping you Navigate Business in Cuba

WHY EY

EY has over 20 years experience helping clients understand the market environment in Cuba.

EY has a team of twelve experienced international staff dedicated full-time to assisting clients with their Cuba-related business interests. Cumulatively, our current team has over 92 years experience providing advice to clients doing business with Cuba.

EY is the leading international professional services company assisting clients in Cuba with an established infrastructure on the island. We have by far the largest client portfolio in audit, transaction advisory and advisory of any international firm.

EY has provided tax, regulatory and market strategy advice to many of the leading international companies, which have invested in Cuba over the past 20 years.

EY has a strong relationship with the leading Cuban audit & consulting company, Consultores Asociados S.A. (CONAS).

SERVICES PROVIDED

Audit & Assurance: Certification of financial statements (typically) under IFRS and in accordance with IAS.

Advisory: Performance improvement, supply chain analysis, strategic planning.

Transaction Advisory Services (TAS): Preparation of risk analysis, business plans, market studies and feasibility studies in accordance with international and Cuban norms.

IT Risk Advisory: IT transformation, technology assistance and client-side program advisory.

Tax & Regulatory: Assistance regarding the regulatory, legal and taxation rules in Cuba.

Market Entry Strategic Analysis: Strategic advice, risk analysis, sector and country level analysis. Investment facilitation on behalf of investors developing Cuban business interests.

CONTACT DETAILS FOR CUBAN-RELATED QUERIES

EY Caribbean Professional Services Ltd
Calle 12 #105, 4to piso, entre 1ra y 3ra
Miramar, Playa
La Habana, Cuba
Tel: (+53) 7-204-4658

Matthew Pickles
Country Managing Partner
Matthew.Pickles@eycps.com
Tel: (+53) 5-268-9547

EY Mexico is able to provide an integrated service for clients of EY from the US. These clients may contact:

Henry González
Partner, Tax
Henry.Gonzalez@mx.ey.com
EY Mérida, Tel: (+52) 9999-261-450
EY Cancún, Tel: (+52) 9988-849-875

Ernst & Young (EY) provides services to clients doing business with Cuba primarily through EY Caribbean Professional Services Ltd (EY CPSL). This entity works closely with other EY offices both regionally and globally to ensure that our global clients receive an integrated service in accordance with EY's Vision 2020.

For detailed presentations about both our practice in Cuba and the Legal, Regulatory & Fiscal Framework for Foreign Investment in Cuba please contact Matthew Pickles.

Table of contents

1 The Foreign Investment Act, Law 118/2014

1.1 Overview of legal framework

1.2 Main features of new law

1.3 Principal differences with prior legislation (Law 77/1995)

1.4 Types of Foreign Investment Vehicles

2 The Cuban taxation regime

3 Portfolio of Opportunities for Foreign Investment

4 Currency & monetary system

5 ZED Mariel Special Development Zone

6 Personnel / immigration issues

7 Trade, Investment Protection & other agreements

8 Notes to this presentation

1. The Foreign Investment Act, Law 118/2014

1.1 Overview of legal framework

The National Assembly of People's Power of Cuba (Parliament) adopted Law 118 of 2014 on Foreign Investment dated 29 March 2014 (the "Foreign Investment Act").

The Foreign Investment Act supersedes and repeals previous Law 77 on Foreign Investment as from 27 June 2014. The Foreign Investment Act provides basic investment protection and other general rules relevant to foreign investors and sets out the principal legal structures for the implementation of investment projects in Cuba. In general, the Foreign Investment Act classifies foreign investments as direct investments or investments in stocks and bonds ("Indirect Investments").

In the case of a direct investment, the foreign investor actively participates in the management of operations. Conversely, in the case of an Indirect Investment, the role of the foreign investor is generally limited to a passive participation in the equity of the entity or otherwise acquiring bonds, without any active contribution to the management of the project.

Foreign companies that meet certain conditions may open a representative office in Cuba (sucursal / oficinas de representación), although the activities of representative offices are generally restricted by law to sales intermediation and other limited activities carried out in the name and for the benefit of the foreign head office.

The Foreign Investment Act provides the following main vehicles for foreign investment in Cuba:

- Joint venture company (JV);
- International economic association contract (IEAC); and
- Full foreign ownership company.

Law 118 is oriented towards diversifying and expanding export markets, accessing state-of-the-art technology, substituting imports, prioritizing food, seeking external financing, creating new jobs, capturing management methods, and linking this to the development of production chains, as well as to the changes in the energy matrix of the country through the development of renewable energy sources. It has defined eleven (11) priority sectors:

- Agriculture and Forestry
- Food Industry
- Energy and Mining
- Sugar Industry
- Light, Chemical and Electrical Industries
- Pharmaceutical Industry
- Wholesale Trade
- Healthcare (in relation to the export of health services and tourism)
- Construction
- Tourism
- Transport

1.2 Main features of new law

- Foreign investment is allowed in all sectors. Excluded are health and education services to the people, and the armed forces, except their business sectors.

- Investments may adopt one of the following forms: joint venture companies (JVs), international economic association contracts (IEACs), in sectors such as oil and gas, mining, production agreements in agriculture, manufacturing, agreements for professional services, construction, and hotel administration contracts; or full foreign ownership companies.

- Foreign companies may partner with state companies and member-owned cooperatives, but not with privately-owned businesses.

- Foreigners may invest indirectly in JVs or full foreign ownership company by buying shares or bonds.

- Foreigners may invest in real estate developments for tourism and offices and may be able, in certain cases, to acquire up to 99 years lease or perpetual rights over the land and constructions, the term of the foreign investment is usually negotiated with Cuban authorities.

- The government must notify foreign investors within 60 days whether their application has been approved or denied.

- No property will be confiscated, except for reasons of public utility or public interest, and in accordance with international treaties entered into; in such cases, due compensation must be paid in freely convertible currency.

- Law 118 guarantees the free transfer abroad of profits and dividends, as well as of amounts from a sale of business, without taxes or other dues.

- Foreign investors may sell all or part of their shares to their Cuban partners or other investors. The value of the shares will be determined by the partners; in case of discrepancies, the value will be determined by an international valuation agency authorized by the Ministry of Finance and Prices (MFP) to operate in Cuba.

- Foreign investors must continue to hire workers through a state agency. However, salaries are “negotiated” between the investor and the agency, and the Ministry of Foreign Trade and Foreign Investment may allow foreign investment vehicles to set up an incentive fund to grant additional rewards, except under IEACs for hotel, production, and services management and the provision of professional services.

- All foreign investment vehicles may import supplies directly, without having to use a state import agency. However, priority is given to supplies produced locally under similar conditions.

- The corporate tax rate is 15% (previously 30%). This may be increased by up to 50% in case of investments in renewable and non-renewable natural resources, therefore the maximum tax rate is 22.5%.

- During the first eight years, all foreign JV companies and IEACs are exempt from corporate (profit) taxes, except for hotel, production and services management contracts and the provision of professional services, which pay taxes under regular rates. The MFP is empowered to grant total and partial tax exemptions. Beyond eight years, all profits a company reinvests in Cuba, in an authorized reinvestment project are tax exempt.

1.3 Principal differences with prior legislation (Law 77/1995)

Foreign Investment Vehicles:

Differences are given by new provisions related to IEACs ("IEAC") and full foreign ownership companies. Activities such as hotel, production and services management contracts and the provision of services such as accounting, asset valuation, corporate finance, organizational reengineering, marketing, business management and insurance brokerage, may adopt the form of International Economic Association Contracts IEAC¨ and be governed by the provisions of the Foreign Investment Act. As regards full foreign ownership companies, new Law 118 is more specific than previous Law 77 on types of full foreign ownership companies, providing a definition of the types of foreign companies that may be incorporated in Cuba: branches and subsidiaries.

Investment Protection:

Under Law 77 compensation was prior to expropriation whilst Law 118 refers to a "due compensation" in case of expropriation. Also, in the event of dispute over the amount payable to the foreign investor following the expropriation, if no agreement is reached on designation of the valuation firm, same shall be selected by drawing lots or otherwise the matter may be submitted to the courts—this form of selection of the valuation firm in case of disagreement between parties is new for Law 118.

Authorization:

Under Law 77 all authorizations were granted by the Executive Committee of the Council of Ministers or by special Commission designated by same, whilst under Law 118 the investment authorization may be granted either by the Council of State, the Council of Ministers or by each of the Ministries so empowered on a case-by-case basis.

Labor Regime:

Foreign investors must continue to hire workers through a state agency. However, salaries are "negotiated" between the investor and the agency.

Transfer of Shares:

Any transfer of shares constituting a change of control of the foreign holding company that holds the interest in the Cuban foreign investment vehicle must be informed to the Cuban shareholder and may constitute an event of termination. Law 77 was silent on these matters and consequently there was no obligation to inform in case of change of control.

Termination and Liquidation:

Unlike its predecessor Law 77, Law 118 lists events of termination and liquidation of foreign investment vehicles (attention must be paid to events of termination that did not have such connotation in the past, such as deadlock at the Board level, change of control of the foreign upstream company that holds interest in the Cuban foreign investment vehicle and inability to accomplish corporate purpose for a term greater than six months).

Dispute Resolution:

Various important matters must be submitted to the exclusive jurisdiction of Cuban courts, (e.g. inaction or deadlock at governing corporate body level, termination and liquidation of foreign investments vehicles, and disputes between partners in natural resources, public services and public infrastructure works related activities). Law 77 did not impose the obligation on foreign investment vehicles to submit disputes arising between partners to the exclusive jurisdiction of Cuban courts.

1.4 Types of Foreign Investment Vehicles

Joint Venture Company (JV)

The most important and frequently used vehicle for foreign investments in Cuba is the joint venture company. A joint venture company is a corporation (sociedad anónima) incorporated under Cuban law by at least one Cuban partner and one foreign partner. A joint venture company has limited liability and registered shares. The shareholders generally contribute sufficient capital/finance to the patrimony of the joint venture company to allow it to accomplish its corporate purpose in its own name. Priority is given to joint venture companies whereby Cuban shareholder owns 51 percent of the shares, but other shareholding proportions are possible (Foreign Investment Act provides no specifications or guidelines in this respect). The management of joint venture companies is usually supervised by a board of directors made up of members named by each of the shareholders in accordance with shareholdings, and it is usually possible to agree that certain upper management positions will be filled by foreign persons designated by the foreign partner.

International Economic Association Contract (IEAC)

The second main vehicle for foreign investments under the Foreign Investment Act is the international economic association contract, which is an unincorporated partnership established by contract between two or more Cuban and foreign partners.

An international economic association contract sets out the common goals and the respective rights and obligations of the contracting parties in connection with the joint activities to be undertaken, but does not have the effect of establishing a separate legal entity for the purpose of engaging in such joint activities and each party continues to act at all times in its own name. Each contracting party makes specific contributions to the joint activities as set out in the international economic association contract and remains owner of the assets contributed at all times. Such contributions generally determine the division of income/benefits resulting from the joint activities, although a somewhat different structure is used in certain risk-based extraction industries such as mining and petroleum exploration and production.

Full Foreign Ownership Company

The foreign investor manages the company alone and is responsible for compliance with all of the obligations imposed by the governmental approval authorizing its activities. The full foreign ownership company may adopt one of the following forms:

- Natural person acting in its own capacity;
- share company (sociedad anónima) incorporated under Cuban law that is wholly-owned by a foreign investor;
- Branch office of a foreign company incorporated in Cuba.

It should be noted that tax rates established in Law 118, are not applicable to these forms of investment, which are subject to taxation under regular (higher) tax rates.

2. The Cuban taxation regime

Law 118 sets out special tax rules for foreign investment vehicles. Under article 47 of Law 118 the MFP may grant exemptions in respect of all applicable taxes.

The general Cuban tax rules are set out in Law No.113 of 23 July 2012 on the Taxation System, as well as in various resolutions issued by the MFP and other complementary legislation. The rules applicable to corporate income tax are set out mainly in the Tax Act and Decree 308. The Law on the State Budget for each particular year may also contain provisions on taxation relevant for the year in question. Law 118 contains particular rules applicable to the taxation of Cuban income earned by foreign investors.

Under Law 118 (Article 34), the following taxes are payable by Cuban joint venture companies (JVs) and foreign investors that are parties to an international economic association contract (IEAC).

Corporate tax	Payable at a rate of 15% (exemption for first eight years of operations). In case of renewable and non-renewable natural resources corporate tax may be increased by up to 50%. Profits reinvested in approved projects are tax exempted.
Payroll tax	Previously applied at a rate of 11%. This has now been abolished.
Social security contribution	The rate is established on an annual basis by the Law on the State Budget – Law 117 on the State Budget for 2014 establishes a rate of 14%.
Customs duties	Not payable during development period, (following development period customs duties are payable in accordance with the established tariffs).
Services tax (10%)	JVs & IEACs entitled to permanent 50% reduction, and exemption is granted during first year of operations.
Wholesale goods tax (2%)	JVs & IEACs entitled to permanent 50% reduction, and exemption is granted during first year of operations.
Territorial contribution for local development	JVs & IEACs are exempted during investment recovery period.
Tax on the use and exploitation of forestry and wild fauna	JVs & IEACs have a 50% reduction during investment recovery period.
Land transportation tax	Rate is dependent upon type of vehicle – amounts are relatively low
Document tax	Rate is dependent upon type of document – amounts are relatively low
Withholding tax	None, the JV and IEAC that enter into agreements to purchase services or products abroad, must withhold a 4% of the purchase price
Personal income tax (Expatriates)	Payable on a monthly basis at a rate of 15% of income obtained or generated in Cuba. No annual declaration required.

Tax and customs rules – Inside & Outside of ZED Mariel

	Outside of ZED Mariel Law 118/2014	ZED Mariel Law 313/2013 / Decree 316
Corporate tax **(IEA / Joint Venture with Cuban state entity)**	Exempt for first 8 years then payable at 15%. May be increased by up to 50% when involving natural resources (oil/ minerals). Profits reinvested are tax exempted.	Exempt for first 10 years then taxable at 12%. Exemption may be extended depending on particular project. Profits reinvested are tax exempted.
Corporate tax **(100% foreign owned)**	35%	
Social security contribution	14% by employer	14% by employer 5% by employee
Customs duties	Not payable during development period. Following development period, customs duties are payable in accordance with the established tariffs. Scheme to exempt goods subsequently re-exported.	Not payable on capital equipment imported for investment. For other inputs (raw materials) customs duties are payable in accordance with the established tariffs. Scheme to exempt goods subsequently re-exported.
Services tax **(Gross receipts tax)** **10% of gross sales value**	Exemption during first year of operations. Payable at 50% of the rate (10%) established by law. Raw materials and products to be exported are exempted	Exemption during first year of operations. 1% flat rate established.
Wholesale goods tax **2% gross sales value**	Exemption during first year of operations. Payable at 50% of the rate (2%) established by law. Raw materials and products to be exported are exempted	Exemption during first year of operations. 1% flat rate established.
Territorial contribution **1% gross income**	Exempted during investment recovery period.	None
Personal Income Tax **(Non-Cuban residents)**	15% of all income obtained or generated as a result of economic activity in Cuba. Dividends are exempt	15% of all income obtained or generated as a result of economic activity in Cuba.
Personal Income Tax **(Cuban residents)**	0-50% sliding rate for 'trabajadores por cuenta propia' and on bonuses paid by foreign entities (where approved).	5% rate established for payments from state employment agencies. Withheld by the agency.
Zone's Development Fund	None	0.5% of the gross income earned in each quarter.

3. Portfolio of Opportunities for Foreign Investment

In early November 2014, the 168-page Portfolio of Opportunities for Foreign Investment was released. This government publication provides data-rich surveys, sector by sector, of current production capabilities and shortfalls. It signals clear development priorities: energy (conventional and renewables), agriculture and tourism. In total 246 projects, (totaling over US$ 8 billion), are described for which international investors are invited to participate.

These projects have been developed by the relevant Cuban companies and typically will already have a pre-feasibility study completed. It is important to note that these are not the only projects available— international companies are welcome to develop their own projects and ideas for presentation to the pertinent Cuban regulatory authorities—although they demonstrate the priorities of Cuba.

Useful contact details

MINISTERIO DEL COMERCIO EXTERIOR Y LA INVERSIÓN EXTRANJERA (MINCEX).
Infanta no. 16 esq. 23, Plaza de la Revolución, La Habana, Cuba
inversionextranjera@mincex.cu
http://www.mincex.cu

CENTRO PARA LA PROMOCIÓN DEL COMERCIO EXTERIOR Y LA INVERSIÓN EXTRANJERA (CEPEC)
Calle 10 no. 512 e/ 31 y 5ta. Ave., Playa, La Habana, Cuba
Tel.: (53) 7-214 4345 / 214 4340
sic@mincex.cu
http://www.cepec.cu

CÁMARA DE COMERCIO DE LA REPÚBLICA DE CUBA (CCRC)
Calle 21 no. 661 esq. a calle A, El Vedado, La Habana, Cuba
Tel.: (53) 7-838-1321 / 837 1322 / 838 1452
cch@camara.com.cu
http://www.camaracuba.cu

Projects within the Portfolio of Opportunities for Foreign Investment

Sector	Outside ZED Mariel	Inside ZED Mariel	Further details
Agro-food	32	5	Joint ventures in dairy ($55.2m), pork ($120m), and poultry ($35.5m) production, as well as in rice ($37m), other cereals, peanuts ($70m) and shrimp farming ($19.9m). Investments in soy processing ($149m), confectionary ($16.8m), pasta ($2m), dry yeast production and mineral water ($12.3m). IEAs to commercialize premium Cuban coffee internationally ($10.3m), harvest marabú ($4.3m) and develop citrus crops ($6.9m & $9m).
Sugar industry	4	-	Four mills will be open to foreign management contracts: Mario Muñoz, (Matanzas), 30 de Noviembre (Artemisa), Batalla de las Guásimas (Camagüey) and Majibacoa (Las Tunas). $40m each project.
Other	1	-	Joint venture to import car parts ($8.7m)
Construction	6	-	Cement plans in Gibara ($430m), and Nuevitas ($410m). Other construction materials including asphalt, flat sheet & gypsum.
Renewable energy	13	1	Opportunities in hydro, biomass, solar and wind farms. 100% participation foreseen in wind and solar projects. Opportunities in ZED Mariel for solar only. Target of 24% renewable energy by 2030.
Industry	10	6	Priorities include radial tires ($223m), recycling materials ($115m), paper ($107.2m), glass bottles ($70m), aluminum cans ($ 40m), footwear 20m), car batteries ($13.8m), air conditioners,, computers & tablets ($9.6m)
Biotech & pharmaceutical	-	13	BioCubaFarma has developed 13 projects in which it is looking for foreign participation. These include in vaccines ($65m), homeopathic remedies ($15m), monoclonal antibodies ($90m), antiretovirals ($25m), birth control ($25m), blood products ($160m) and others.
Mining	10	-	Cuba is geologically rich in mineral resources with extensive deposits of gold, copper, cobalt, nickel, zinc and other minerals GeoMinera S.A. and Commercial Caribbean Nickel S. A. (CCN) have multiple projects open to foreign investment.
Oil & gas	86	-	Unión Cuba Petróleo (CUPET) has onshore and offshore blocks open to foreign participation through the signing of IEAs.
Transportation	3	-	IEAs for the management of Havana's urban bus network and employee transport in other areas. Joint venture in ship repair ($34.8m).
Tourism	56	-	21 new hotels with foreign participation in Cienfuegos (525 rooms, 4 hotels), Playa Ancón, (2,400 rooms, 7 hotels) Guardalavaca (860 rooms, 3 hotels), Playa Santa Lucía (1,070 rooms. 4 hotels), and Covarrubias (1,080 rooms, 2 hotels). 33 new management contracts (19 for new hotels and 14 for existing hotels and facilities. Cuba Golf, will promote the island as a golf holiday destination with projects in Cienfuegos ($580m) and Holguín ($380m) amongst others.
TOTAL	221	25	

4. Currency & monetary system

Currency of operation

In general, all activities and operations of foreign investment vehicles must be denominated and carried out in freely convertible currency and only in exceptional cases will a foreign investment vehicle be authorized to make certain payments in local Non-Convertible Pesos. Under the Foreign Investment Act and Resolution 14/97 issued by the Cuban Central Bank (Banco Central de Cuba), a joint venture company may open and operate bank accounts denominated in freely convertible currency in Cuba and abroad in which payments resulting from its operations and activities may be deposited.

Limitations (if any) and ability to make payments in Cuba

All activities and operations of foreign investment vehicles and branch offices must be denominated and carried out in freely convertible currency (including Cuban Convertible Pesos) and only in exceptional cases specifically authorized by the Executive Committee of the Council of Ministers will these vehicles be authorized to make certain payments in local (non-convertible) currency.

As a rule, foreign branch offices only operate accounts denominated in hard currencies, most frequently in US Dollars. It should be noted that there are certain limitations for making cash withdrawals in an amount exceeding CUC 5,000 or its equivalent in other hard currencies.

Process of opening a bank account

In order to open a bank account locally in Cuba it is necessary to present the documentation listed below. While this is normally understood that companies, which open an account, are registered with the Cuban Chamber of Commerce this is not an absolute requirement, and alternatively it would be possible to present details of an operating work contract. The process involved is relatively time consuming and bureaucratic.

1. Certificate of registration in the National Register of Branches and Agents of Foreign Commercial Companies maintained by the Chamber of Commerce of the Republic of Cuba;
2. Certificate of the employment agency authorized to operate in Cuba where the signatory of the account on behalf of the foreign entity is a Cuban citizen, confirming the employment of this person and his powers;
3. Certificate of registration in the Register of Concession Holders and Operators of the Free Trade Zones of the Republic of Cuba; certificate of registration in the General Register of Banks and Non–Banking Financial Institutions;
4. Certificate of registration in the General Register of Banks and Non–Banking Financial Institutions;
5. Certificate issued by the relevant responsible body in the case of entities that are not accredited in any of the abovementioned registers.

All documents must be presented in the Spanish language and must be legalized at the Cuban Consulate in the country of origin, as well as at the Cuban Ministry of Foreign Affairs, and must be protocolized before a Cuban notary public. The certificates and references must be presented within a period of six months following their issuance.

A foreign company can only maintain an account with a Cuban bank inside Cuba in USD, what about CAD?

Currency unification process

It should be noted that Cuba is undergoing a monetary unification process, following which all payment obligations will be determined and paid in a single currency. Thereafter the Cuban Central Bank will determine the exchange rate with other international currencies.

At present, the official exchange rates between the two Cuban currencies are as follows:

Corporate exchange rate for Cuban companies

Cuban Peso (CUP) 1:	Cuban Convertible Peso (CUC) 1

Cadeca exchange rate for retail exchange

Cuban Peso (CUP) 24:	Cuban Convertible Peso (CUC) 1

Note that the CUC is fixed to the US Dollar at a rate of 1:1.

In ZED Mariel, workers will be paid at a rate of 10 times the CUC salary. This means that the worker will receive CUP 5,000 (less taxes) if the foreign companies is charged CUC 500 per month for an employee. In the case of Joint Ventures outside of ZED Mariel, the rate will be 2:1. In this case the worker will receive CUP 1,000 (less taxes).

Exactly how the currency unification will be done, when and at what rate is not clear although current speculation suggests that this is likely to happen within the next six months. How this is done internally will impact domestic purchasing trends and may have an impact on domestic inflation.

It appears likely that the linkage to the US Dollar will be maintained and that the external convertibility will be both assured, fixed and controlled so that foreign entities, which work on a US Dollar, cost-plus basis should not be impacted.

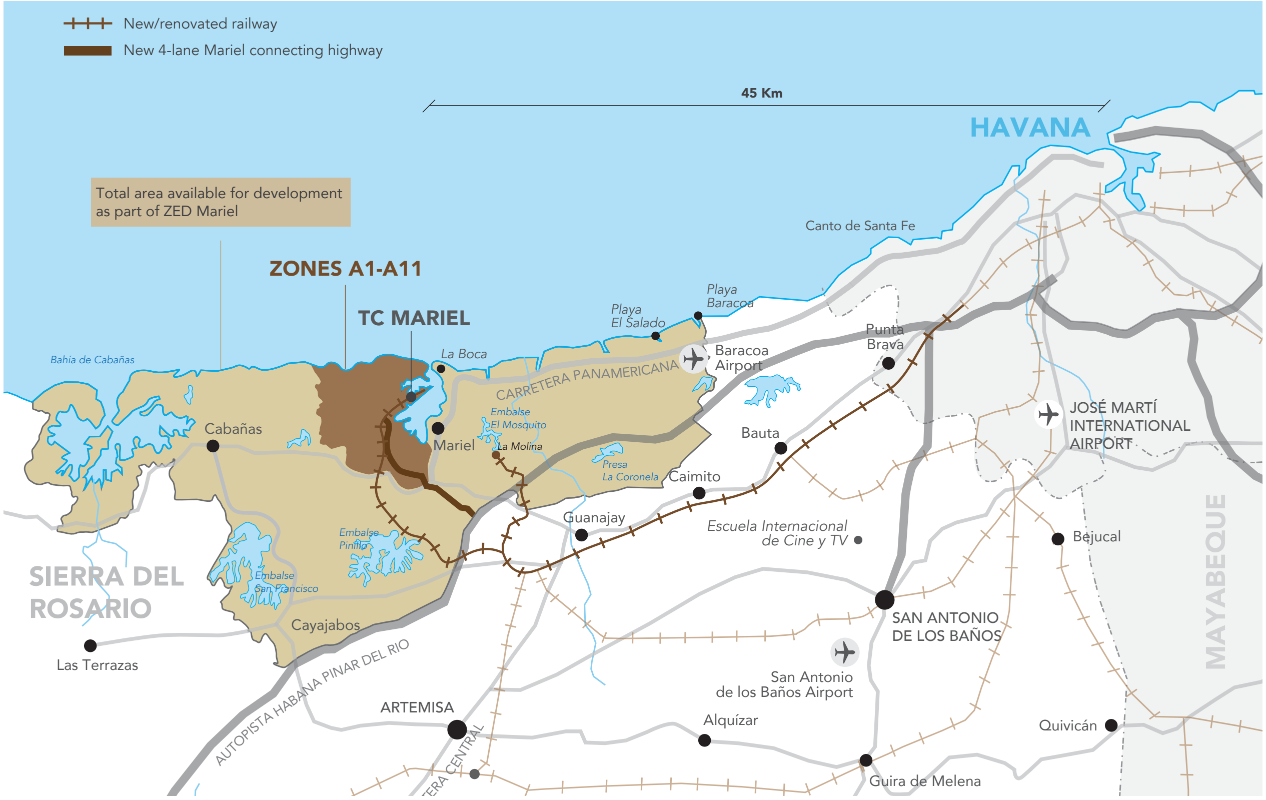
Limitations to inflows/outflows of money from Cuba

There are no restrictions within the foreign investment legislation regarding the repatriation of funds and no withholding taxes. However, from 2008, in the midst of liquidity credit crisis, Cuba did freeze the bank accounts of certain foreign companies preventing them from freely transferring funds abroad. This was a temporary measure that as the liquidity situation improved over subsequent years was largely resolved.

In 2009 a new approval process (Carta liquida or the c/l system) was under which Cuban companies apply to the Central Bank for approval for a certain amount of funds to be effectively segregated and thus approved for future transfer abroad. This system has worked relatively smoothly since this time.

In order to open and operate the bank accounts mentioned above, the foreign investment vehicle must obtain written authorization from the Cuban Central Bank.

5. ZED Mariel Special Development Zone



Special development of Mariel Decree Law 313/2013

Establishes a special regime for investment in the area of 465.4 km^2 within the province of Artemisa, which pertains to ZED Mariel. The Council of State adopted Law 313 of 2013, dated September 23, 2013 (the "Special Development of Mariel").

Legal status of users/concessionaires

- ZED Mariel is open to international companies and foreign individuals as well as Cuban state-owned entities and joint ventures.
- Companies and non-Cuban nationals may act either as a concessionaires or as users of the zone.
- Concessionaires will need to obtain approval from the Council of Ministers, which will grant an administrative concession for the temporary management of a public service, execution of public works or exploitation of government property, for up to 50 years, which may be extended.

Administration of ZED Mariel

The Mariel Special Development Zone Office is an entity attached to the Council of Ministers and commissioned to administer the Zone, control its activities, prepare and conduct the Development and Business Program, process all applications, licenses, permits and authorizations carried out or needed by concessionaires and users of the Zone or by those interested in becoming established within it, by means of a one-stop shop system, effectively and efficiently

Application & approval process

The Mariel Special Development Zone Office is able to provide all of the necessary approvals for a new project including all licensing, permits and authorizations from other Cuban State entities. From an investor perspective, there is only one point of contact and the process functions as a One-Stop-Shop.

Initial contact made by the investor with the Mariel Special Development Zone Office	A preliminary assessment is made of the project to clarify whether it fits within the overall eligibility criteria for ZED Mariel.	5 days
The Investor is required to prepare a feasibility study in accordance with appropriate Cuban norms for ZED Mariel.	Once the Mariel Special Development Zone Office has received the feasibility study, a response will be given on the project's approval within 60 days.	30-60 days

6. Personnel / immigration issues

Working visas and residency permits can only be applied for by an entity that is registered in Cuba. An entity that is registered in Cuba will be associated with a local (Cuban) entity which needs to manage the specific procedures associated with the application for working visas and residency permits. The working visa must be applied for first. Once this is received, it is possible to apply for the residency permit.

Foreign Representative:

Each branch office must have a foreign representative who will represent the branch office before the Cuban Chamber of Commerce and all other Cuban authorities.

Expatriate Employees:

Foreign persons may be hired directly by the foreign company operating the branch office for certain upper management, administrative and technical positions, and the terms of employment of such persons may be freely set between the parties and will not be subject to the general Cuban labour rules set out in the Labour Code.

Foreign employees will, however, be subject to applicable Cuban legislation dealing with personal income tax, immigration matters and the status of foreigners in Cuba. Foreign employees that intend to become temporarily residents in Cuba, should apply for a work permit (issued by the Ministry of Labour and Social Security) and temporary residence permit (issued by the Immigration Department of the Ministry of the Interior). Both have a term of one year and should be requested through the Chamber of Commerce following registration of the branch office. There are no limitations other than purely contractual on the number of specialists that may travel to Cuba.

Visas:

Foreign persons must apply for and obtain business visas (D-7 or D-1) from a Cuban Consulate each time they travel to Cuba for business purposes. Foreign Representatives may apply for and obtain a multiple entry visa, which is issued for a term of one year, renewable for same term. There are no restrictions to the number of trips or those related to country of origin for obtaining a Cuban visa.

The cost is approximately US$ 200 and it takes approximately 15 days.

Bonus Payments to Cuban Employees

In December 2007, the Cuban Ministry of Finance and Prices issued Resolution 277/2007 that has the effect of recognizing that the Cuban employees of foreign branch offices, diplomatic missions and other foreign representations (hired through labour supply agreements with a Cuban employment agency) may receive hard currency bonus payments (gratificaciones) directly from the foreign branch office in question, including payments made on a regular basis.

This has been also confirmed by the newly issued Law 113 on the Taxation System. Where such bonuses are paid, the branch office must account for and report same accordingly in case of inspections and the Cuban employees receiving them must declare this income and pay personal income tax thereon.

7. Trade, Investment Protection & other agreements

Agreements which the Republic of Cuba has entered into:

COUNTRY	Agreement for reciprocal Promotion & Protection of Investment (ARPPI)	Double Taxtaion Agreement (DTT)	Preferential Trade Agreement
USA	-	-	-
Canada	-	-	-
Argentina	1997	1978	-
Barbados	1998	1999	Yes
Belize	1999	-	-
Bolivia	1998	-	-
Brazil	1997	-	Yes
Chile	2000	-	-
Guatemala	2002	-	-
Guyana	1999	-	-
Honduras	2001	-	-
Jamaica	1997	-	-
Mexico	2002	-	Yes
Panama	1999	-	Yes
Paraguay	2002	-	-
Peru	2001	-	-
Trinidad and Tobago	2000	-	-
Venezuela	2004	-	Yes
China	2008	2001	-
India	None	-	-
Indonesia	1999	-	-
Malaysia	1999	-	-
Qatar	2001	-	-
Vietnam	1996	2002	-

COUNTRY	Agreement for reciprocal Promotion & Protection of Investment (ARPPI)	Double Taxtaion Agreement (DTT)	Preferential Trade Agreement
Austria	2001	2005	-
Belarus	2001	-	-
Belgium	2002	-	-
Bulgary	2000	-	-
Croatia	2001	-	-
Denmark	2001	-	-
Finland	2001	-	-
France	1999	-	-
Germany	1998	-	-
Greece	1999	-	-
Hungary	2003	-	-
Italy	1995	Not ratified	-
Luxembourg	2002	-	-
Netherlands	2001	-	-
Portugal	2001	2000	-
Romania	1997	-	-
Russian Federation	1996	-	-
San Marino	2002	-	-
Slovakia	1997	-	-
Spain	1995	1999	-
Switzerland	1997	-	-
Turkey	1999	-	-
Ukraine	1996	2005	-
United Kingdom	1995	-	-

8. Notes to this presentation

By nature, the information made available in this presentation can neither be exhaustive nor tailored to the specific needs of an individual case. It does not constitute advice, any other form of legally binding information or a legally binding proposal on our part.

This presentation is based on the law as of the date of the presentation and reflects our interpretation of the applicable laws and regulations and the corresponding court rulings.

In the course of time, laws, the interpretation of legal sources and court rulings may change. Such changes may necessitate a revision of this presentation.

Please note that we are not obliged to review and revise our statements in this presentation in the event of changes in the underlying facts, assumptions, laws or court rulings, unless we are engaged to do so.

We assume no warranty or guarantee for the accuracy or completeness of the contents of this presentation. To the extent legally possible, we do not assume any liability for any action or omission that you have based solely on this presentation. This also applies should the information prove to be imprecise or inaccurate.

CONTACT DETAILS FOR CUBAN-RELATED QUERIES

EY Caribbean Professional Services Ltd
Calle 12 #105, 4to piso, entre 1ra y 3ra
Miramar, Playa
La Habana, Cuba
Tel: (+53) 7-204-4658

Matthew Pickles
Country Managing Partner
Matthew.Pickles@eycps.com
Tel: (+53) 5-268-9547

EY Mexico is able to provide an integrated service for clients of EY from the US. These clients may contact:

Henry González
Partner, Tax
Henry.Gonzalez@mx.ey.com
EY Mérida, Tel: (+52) 9999-261-450
EY Cancún, Tel: (+52) 9988-849-875