



**NEW CONTAINERS** terminal at Mariel's Special Development Zone, the largest non-touristic investment in recent years.

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## *Some opening words*



Dear readers

**F**or the first time after more than five decades of antagonism and distancing from one another, the U.S. and Cuba have crossed the threshold of change.

Some basic steps have been taken since the thaw of Cuba-U.S. relations that began on December 17, 2014, in the difficult road to build confidence between the two geographic and historical neighbors: reestablishing formal diplomatic relations, establishing communications links, connecting individuals in the two nations, expanding academic collaboration, and lifting some restrictions to trade.

The short distance traveled to date is merely the beginning of a long, tortuous and unknown road that eventually should lead to a positive relationship, in which suspicion and rancor might exist for some time but not to the extent that they would derail mutually beneficial relations.

The thaw in diplomatic relations has generated an intense interest among businessmen in the U.S., Europe, Asia and Latin America in entering the Cuban market. They assess the Cuban market as potentially providing the greatest commercial opportunities in the Caribbean region in the next few years, principally because of Cuba's privileged geographic position, its natural resources and the high level of education of its human resources.

Still ahead are the challenges of opening trade and investment relations to a scale that will reach persons of all social strata in both sides of the Florida Straits. Convinced that changes in that direction are forthcoming, The Havana Consulting Group has prepared the THCG Business Report to keep you informed about the course of the improvement in relations, the doors that are opening, and particularly about the characteristics of a market that is so near and so unknown.

Published bimonthly, THCG Business Report is required reading for any company or investor interested in knowing about the opportunities of doing business in the island, how to manage risk and ways to compete in the Cuban market.

THCG Business Report relies on a multidisciplinary team of experts with different backgrounds specializing in marketing, legal issues, and business development. These experts have studied all aspects and sectors of the Cuban market from inside and outside the island for more than 30 years.

Each issue of THCG Business Report will contain information not available anywhere else originating from our own research and analysis of the Cuban market. The approach of our experts is objective, based on serious analysis of real and transparent business situations. The information and analysis will assist you in assessing the Cuban market and making your own decisions.

Without further ado, we put in your hands the first issue of THCG Business Report.

Emilio Morales  
Presidente y CEO  
The Havana Consulting Group & Tech LLC

A handwritten signature in black ink, appearing to read 'Emilio Morales', written over a white rectangular background.

# Broad Legal Brushstrokes for Potential Investors

By THCG Legal Insider

On December 17, 2014, merely a few hours after the announcement by the U.S. and Cuban president of the start of discussions leading to the eventual reestablishment of diplomatic relations between the two countries, a barrage of telephone calls and email messages began to arrive in La Habana, Miami, Washington, and New York City from U.S. businessmen and consultants interested in the Cuban market.

U.S. businessmen considering entering the Cuban market require not only an understanding of the regulations issued by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) but also of Cuban commercial laws and of the Cuban legal system in general. The fact that the U.S. and Cuba have legal systems based on different doctrines (common law and Roman law, respectively), the relative lack of contact between the two countries over the last 50 years, and the disparate socio-economic models the two countries have pursued, highlight the potential for misunderstandings and disputes between commercial entities in the two countries.

Foreign investment, as defined in Cuban legislation, is intended to contribute to the diversification and expansion of export markets, provide access to new technologies, promote import substitution, develop productive supply chains, and have a positive influence on the nation's energy mix. These high expectations for foreign investment mean that approval of foreign investments is a selective, lengthy, slow and complex process. However, it is a process that can be successfully navigated provided the foreign investor is aware and follows through on the different steps and permissions that are needed to prepare the documentation for final approval by Cuban authorities.

This article is intended to aid businessmen interested in investing in Cuba, informing them about the lengthy approval

process, and urging them to persevere and not to be discouraged by the bureaucratic red tape. At present, there is no other way to invest in Cuba than to follow the approval process set out by the Cuban government.

## Hiring of Personnel

One of the principal concerns of foreign investors is the requirement that Cuban workers be hired through a state employment agency. What are the rights of investors vis-a-vis the labor force if the workers are not directly employed by the enterprise? Can managers of a foreign-invested company play a role in the selection or dismissal of the workers (via their "return" to the employment agency)?

The 2014 foreign investment law makes important changes to previous legislation with respect to hiring of human resources, for example by no longer fixing the salary for each occupation and allowing for investors (whether joint ventures or wholly-foreign invested companies) to negotiate salaries with their work forces. Nevertheless, the indirect hiring provisions are still a straightjacket that prevents freeing up of the economy's productive forces.

Hiring of personnel will be carried out through a labor supply contract between the user of the labor force and the corresponding employment agency. All employment agencies are state entities; there are no private employment agencies. Pursuant to the 1995 Foreign Investment Law there was only one employment agency. Under the 2014 law, there are now 12 employment agencies, each related to the sector of the economy in which the investment would be made. In limited circumstances, a foreign-invested company may be able to designate one or more employees it wishes to hire and bring them to the attention of the employment agency, but the foreign investment company will not be able to engage them directly and must go through the employment agency.

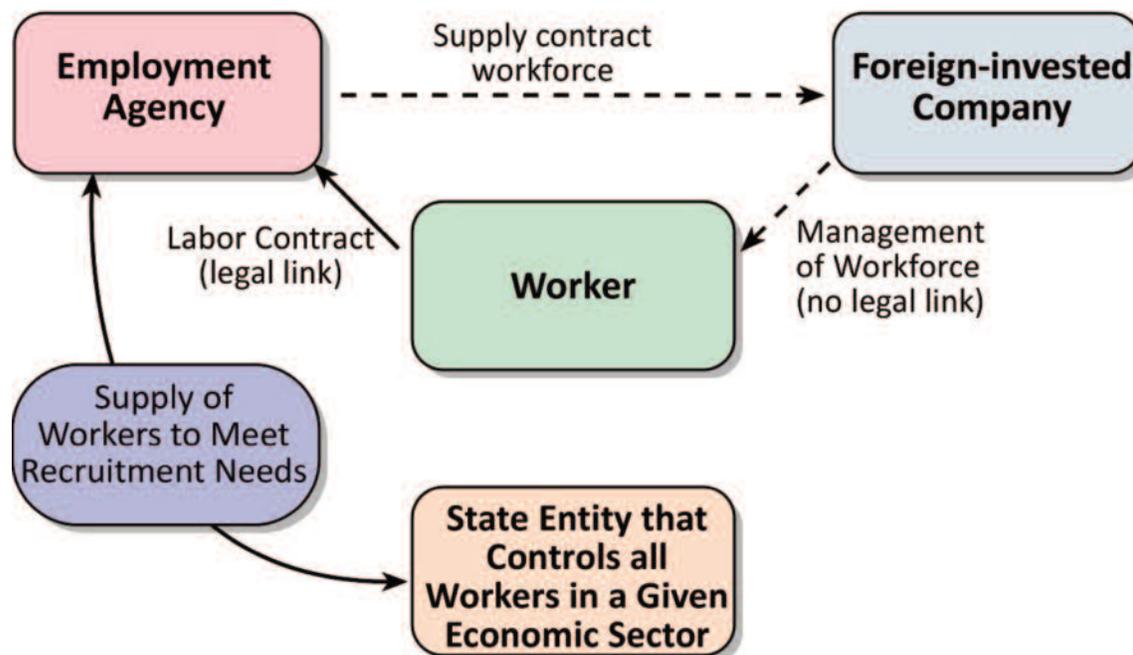
Cuba's high level of human resource development is likely to be a positive factor in attracting foreign investment. With a free universal education system at all levels for several decades, Cuba's population has a high level of educational achievement. Therefore, the labor force is easily trainable for different occupations and adaptable to workplace changes and new technologies.

In addition to specifying the number and skill levels of workers it is seeking, foreign-invested companies can also establish training programs for their staff, including training in Cuba or abroad. Courses, seminars and attendance at congresses are frequent forms of training for Cuban professionals.

The changes to the scheme for employing workers maintains a great deal of state control over workers. Pursuant to the 1995 Foreign Investment Law and its regulations, the government retained (confiscated) an average of 97.60% of salaries paid by the foreign-investment company to the employment agency, while workers received a mere 2.40%. Since 2001, foreign-invested companies have paid the employment agency the salary of workers in Convertible Cuban Pesos (CUC), while the latter paid the workers in ordinary Cuban Pesos (CUP). This form of payment is still in place today, although the shares of salaries retained by the state and accruing to workers has changed.

In the recently-established Mariel Special Development Zone (ZEDM) and pursuant to the 2014 Foreign Investment Law, workers in the ZEDM would receive 80% of the salary paid by the foreign-invested company to the employment agency, with the employment agency gaining 20%. However, salaries paid to Cuban workers in the ZEDM continue to be made in ordinary Cuban Pesos (CUP), converted at the rate of 10 CUP = 1 CUC, rather than at the official rate used by CADECAS of 25 CUP = 1 CUC.

## Scheme for Employment of Cuban Personnel in the ZEDM



Source: THCG based on information from the new Foreign Investment Law and in the labor regulations applicable to the ZEDM.

### Opening of Offices

Another element that might be of interest to potential investors is the possibility of opening offices in the island. Investors locating abroad typically want to be able to rent an in-country office with all services already included. This is not possible immediately for new entrants into the Cuban market, as Cuban legislation does not permit the establishment of subsidiaries until after three years of commercial operations in the country, among other requirements. However, there are other ways to operate in the country during this time period, particularly if the interests of the foreign businessmen are related to international trade through association with a state foreign trade corporation.

Based on a business or business exploration visa, a foreign entrepreneur may select Cuban personnel to hire through an employment agency. The entrepreneur may also purchase a dwelling from a Cuban real estate company and turn it into office space, either partially or fully.

### Land Ownership

Potential investors often have questions with respect to ownership and transfer of land and/of structures. As part of a foreign investment transaction, the contribution of the Cuban partner to a joint venture might take the form of state-owned land, structures, usufruct rights or land use rights. At the expiry of the term of the joint venture, these assets are valued by the liquidators of the joint venture and transferred to the Cuban stakeholder, with the foreign stakeholder receiving an equivalent amount in freely convertible currency. It should be clear from the inception of a joint venture that under no circumstances would land, structures, usufruct rights or land rights be transferred to the foreign partner upon the dissolution of a joint venture.

### Corporations and Association Agreements

An important point that potential investors need to know is that Cuba does not have a law on corporations and the

Commercial Code currently in force is over a hundred years old and therefore has very few articles applicable to corporations. For this reason, there are no generic provisions of corporate law that could be imported into International Economic Association Contracts, Statutes of Joint Ventures, or Economic Association Agreements, and it is up to the drafters of these documents to ensure that all key aspects of the relationship are captured. It is fair to say that unlike what happens in most countries, in Cuba the Statutes of a joint venture and particularly its Association Agreement is tailor-made to the business being created.

For the reasons given above, it is sound practice for investors seriously exploring the Cuban market to make part of their business plan early contact with experts on the Cuban market, not only on legal aspects but also on marketing and market information, so that these experts can lend their advice from the very initial set of contacts. By proceeding in this fashion, the potential investor will be managing risks adequately and optimizing potential benefits. Otherwise, startup costs might be very high and their recovery questionable.

## ABOUT THCG BUSINESS REPORT

The team of expert consultants who prepare this Business Report is composed of experienced analysts and researchers with vast knowledge of the internal dynamics of the Cuban economy, the social and political situation, and the legal framework as well as the island's international and commercial relations.

The team is composed of some of the most prolific and cited authors in the academic literature, experienced journalists who have taken Cuba's pulse for an extended period of time, businessmen who are familiar with the world of business in the U.S. as well as in Cuba, and

lawyers who are able to navigate the peculiar Cuban legal environment.

It is important to listen to experts particularly at a time when Cuba is attempting to reform its economic system to improve efficiency and create sustainable economic growth that improves the standard of living of the population.

Frank, clear, and independent analysis and opinions are needed, based on the most recent information available. The experience and authority that The Havana Consulting Group offers fills this gap.



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