

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

---

EXXON MOBIL CORPORATION, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 CORPORACIÓN CIMEX, S.A., )  
 Edificio Sierra Maestra )  
 Calle Primera Esquina 0 )  
 Miramar, Playa, La Habana, Cuba, )  
 )  
 AND )  
 )  
 UNIÓN CUBA-PETRÓLEO )  
 Avenida Salvador Allende No. 666 )  
 Entre Soledad y Oquendo )  
 Municipio Centro Habana, La Habana )  
 Cuba, )  
 Defendants. )

---

Civil Action No.: 19-1277 (APM)

**ORAL HEARING REQUESTED**

**DEFENDANTS CORPORACIÓN CIMEX, S.A. AND UNIÓN CUBA-PETRÓLEO'S  
MOTION TO DISMISS WITH PREJUDICE AND FOR A PARTIAL STAY**

For the reasons presented in their supporting Memorandum of Points and Authorities, Defendants Corporación CIMEX, S.A. and Unión Cuba-Petróleo, by their undersigned counsel, hereby respectfully move the Court for an Order to dismiss this action with prejudice, pursuant to Fed. R. Civ. P. 12(b)(1) and (2), for lack of subject-matter jurisdiction and for lack of personal jurisdiction.

In addition, Defendants move the Court to stay further proceedings on the issue of personal jurisdiction until final determination of subject-matter jurisdiction, including appellate decision on an interlocutory appeal taken of right by Defendants from any adverse ruling on their

contention that the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1330(a), 1602 *et seq.*, requires dismissal of the action.

In addition to the accompanying Memorandum of Points and Authorities, Defendants rely upon the accompanying Declarations of Dr. Marta Milagro Moreno Cruz and Roberto Suárez Sotolongo in support of their Motion.

Two (2) Proposed Orders are attached: one concerning Defendants' motion to dismiss this action with prejudice; and the other concerning Defendants' motion to stay further proceedings on personal jurisdiction.

Dated: October 8, 2019

Respectfully submitted,

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*Attorneys for Defendants*

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

_____	)	
EXXON MOBIL CORPORATION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.: 19-1277 (APM)
	)	
CORPORACIÓN CIMEX, S.A., AND	)	
UNIÓN CUBA-PETRÓLEO,	)	
	)	
Defendants.	)	
_____	)	

**ORDER**

Upon consideration of Defendants Corporación CIMEX, S.A. and Unión Cuba-Petróleo’s Motion to Dismiss with Prejudice and for Partial Stay, and upon all the papers and proceedings had herein, it is hereby,

**ORDERED**, that the branch of Defendants’ motion to dismiss this action with prejudice pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject-matter jurisdiction, and the branch of Defendants’ motion to dismiss this action with prejudice pursuant to Fed. R. Civ. P. 12(b)(2) for lack of personal jurisdiction, are **GRANTED**, and

This action is hereby **DISMISSED WITH PREJUDICE** for lack of subject-matter jurisdiction and lack of personal jurisdiction.

**SO ORDERED**, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Honorable Amit P. Mehta  
United States District Judge

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

_____	)	
EXXON MOBIL CORPORATION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.: 19-1277 (APM)
	)	
CORPORACIÓN CIMEX, S.A., AND	)	
UNIÓN CUBA-PETRÓLEO,	)	
	)	
Defendants.	)	
_____	)	

**ORDER**

Upon consideration of Defendants Corporación CIMEX, S.A. and Unión Cuba-Petróleo’s Motion to Dismiss With Prejudice and for Partial Stay, and upon all the papers and proceedings had herein, it is hereby,

**ORDERED**, that the branch of Defendants’ Motion for a stay of further proceedings on the issue of personal jurisdiction until final determination of subject-matter jurisdiction, including appellate decision on an interlocutory appeal taken of right by Defendants from any adverse ruling on Defendants’ contention that the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1330(a), 1602 *et seq.*, requires dismissal of the action, is **GRANTED**.

**SO ORDERED**, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Honorable Amit P. Mehta  
United States District Judge

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

_____	)	
EXXON MOBIL CORPORATION,	)	
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Plaintiff,	)	
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v.	)	Civil Action No.: 19-1277 (APM)
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CORPORACIÓN CIMEX, S.A.,	)	
Edificio Sierra Maestra	)	
Calle Primera Esquina 0	)	
Miramar, Playa, La Habana, Cuba,	)	
	)	
AND	)	
	)	
UNIÓN CUBA-PETRÓLEO	)	
Avenida Salvador Allende No. 666	)	
Entre Soledad y Oquendo	)	
Municipio Centro Habana, La Habana	)	
Cuba,	)	
Defendants.	)	
_____	)	

**DEFENDANTS CORPORACIÓN CIMEX, S.A. AND UNIÓN CUBA-PETRÓLEO’S  
MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF MOTION TO DISMISS THE ACTION AND FOR A PARTIAL STAY**

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Dated: October 8, 2019

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Defendants Corporación Cimex, S.A. (“CIMEX”) and Unión Cuba-Petróleo (“CUPET”) respectfully submit this Memorandum of Points and Authorities in support of their motion, made pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(2), to dismiss this action with prejudice:

(a) for lack of subject-matter jurisdiction, because neither (i) the provision of the Foreign Sovereign Immunities Act (“FSIA”) relied upon by Plaintiff, the third prong of the FSIA’s “commercial activity” exception to immunity, 28 U.S.C. § 1605(a)(2); nor (ii) Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, Pub. L. No. 104-114, §§ 301–06 (1996), 22 U.S.C. §§ 6081–6085 (“Title III”) or 28 U.S.C. § 1331, also invoked by Plaintiff, provides subject-matter jurisdiction over this action; and

(b) for lack of personal jurisdiction, because the Due Process Clause of the Fifth Amendment precludes the exercise of jurisdiction over Defendants.

In addition, Defendants move the Court to stay further proceedings on personal jurisdiction until final determination of subject-matter jurisdiction, including appellate decision on an interlocutory appeal taken of right by Defendants from any adverse ruling on their contention that the FSIA, 28 U.S.C. §§ 1330(a), 1602 *et seq.*, requires dismissal of the action.<sup>1</sup>

### **STATEMENT OF THE CASE**

Plaintiff sues Defendants, Cuban companies located in Cuba, for their alleged use in Cuba, in connection with their commercial activities outside of the United States, of property located in Cuba. The property—an oil refinery and related facilities, and gas service stations—had been owned by a Panamanian company, Esso Standard Oil, S.A. (“Essosa”), Plaintiff’s

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<sup>1</sup> Defendants also move to dismiss for lack of statutory personal jurisdiction, which necessarily fails with lack of subject-matter jurisdiction under the FSIA. *See* 28 U.S.C. § 1330(b). No challenge is made to service of process.



wholly-owned subsidiary, until the property was nationalized by the Republic of Cuba in 1960. Complaint ¶¶ 19, 25–26.

Defendants show below that, under the clear and settled law of this Circuit, this action fails to satisfy the requirements for subject-matter and personal jurisdiction.

1. Plaintiff claims Defendants are liable under Title III of the LIBERTAD Act, which provides that “any person that . . . traffics in property which was confiscated by the Cuban Government on or after January 1, 1959, shall be liable to any United States national who owns the claim to such property for money damages [.]” Title III, § 302(a)(1)(A); 22 U.S.C. § 6082(a)(1)(A).

“Traffics” is defined to include “knowingly and intentionally” “manag[ing],” “possess[ing],” or “us[ing]” “confiscated property,” and “engag[ing] in a commercial activity using or otherwise benefitting from confiscated property,” “without the authorization” of the U.S. national “who holds a claim to the property.” LIBERTAD Act, §4(13)(A)(i)-(ii); 22 U.S.C. § 6023(13)(A)(i)–(ii).

“Confiscated” refers to the “nationalization, expropriation, or other seizure by the Cuban Government of ownership or control of property, on or after January 1, 1959 without— . . . the property having been returned or adequate and effective compensation provided.” LIBERTAD Act, §4(4); 22 U.S.C. § 6023(4)(A)(i).

Plaintiff claims statutory damages in a sum treble that of the claimed value of the property at the time of the confiscation (treble \$71,611,002.90), plus pre-judgment interest. Complaint, Demand for Relief. No demand for trial by jury is made.

Although Title III was enacted in March 1996 as part of broader legislation concerning Cuba, President Clinton, and each President thereafter, invoked the President’s authority under

Title III, § 306(c); 22 U.S.C. § 6085(c), to suspend the right to bring an action under its provisions at six-month intervals, until President Trump did not renew the suspension, effective May 2, 2019.

2. Plaintiff alleges that CUPET, “an agenc[y] or instrumentalit[y] of a foreign state, as that term is defined in” the FSIA, Complaint ¶ 6, is “the Cuban state-owned oil company,” with its principal place of business in Cuba. Complaint ¶ 16. Plaintiff alleges that CUPET is trafficking by its possession, management and use of fixed, immobile property located in Cuba that had been owned by Essosa: the Belot Refinery (Havana), including related terminals, plants and tanks; bulk products terminals; and gas service stations. Complaint ¶¶ 25, 26.

The Complaint also appears to allege trafficking because of CUPET’s sale, outside of the United States, of petroleum products produced at the nationalized Essosa facilities. Complaint ¶ 65.

Finally, Plaintiff alleges CUPET is trafficking because of its operation, with CIMEX, of gas service stations in Cuba that had been owned by Essosa. Complaint ¶ 59.

All of the claimed acts of CUPET’s trafficking are acknowledged to be acts ““outside of the territory of the United States in connection with a commercial activity of the [Defendant] elsewhere.”” Complaint ¶ 6 (*quoting* 28 U.S.C. § 1605(a)(2)).

3. Plaintiff alleges that CIMEX, also an “agenc[y] or instrumentalit[y] of a foreign state, as that term is defined in” the FSIA, is a “commercial corporation” “owned by the government of Cuba,” with its principal place of business in Cuba. Complaint ¶¶ 6, 13–14, 56. Plaintiff alleges that CIMEX is trafficking because it operates gas service stations that had been owned by Essosa. Complaint ¶ 59. In addition, Plaintiff alleges that CIMEX is trafficking because it makes available at those service stations gasoline and other petroleum products

produced through CUPET's use of the nationalized Essosa oil production facilities. Complaint ¶ 60. The claimed acts of CIMEX's trafficking are acknowledged to be acts "outside of the territory of the United States in connection with a commercial activity of the [Defendant] elsewhere." Complaint ¶ 6 (*quoting* 28 U.S.C. § 1605(a)(2)).

4. Plaintiff invokes subject-matter jurisdiction under the FSIA. The FSIA provides agencies or instrumentalities with immunity from the jurisdiction of U.S. courts, *see* 28 U.S.C. § 1604, and subject-matter jurisdiction for actions against them that fall within the statute's limited, enumerated exceptions to that immunity. *See* 28 U.S.C. § 1330(a).

Plaintiff relies upon the third prong of the commercial activity exception to immunity, 28 U.S.C. § 1605(a)(2), Complaint ¶ 6, but its action does not satisfy the "direct effect" requirement of that exception: that the action be "based . . . upon an act outside of the territory of the United States in connection with a commercial activity of the foreign state elsewhere"—here, Defendants' alleged use in Cuba of nationalized Essosa property in Cuba in connection with commercial activities outside of the United States—"and that act causes a direct effect in the United States." 28 U.S.C. § 1605(a)(2).

In its Complaint, Plaintiff does not identify the factual predicates for its conclusory assertion that the third prong of the FSIA's commercial activity exception to immunity, with its "direct effect" requirement, applies here, and the Complaint is devoid of the necessary allegations.

Plaintiff alleges that it is a U.S. corporation with its principal place of business in the United States, Complaint ¶ 12, but, under settled Circuit law, that is insufficient to satisfy the "direct effect" requirement. Plaintiff does not allege financial harm from Defendants' use of the allegedly confiscated property, but, in any event, the argument that any financial harm suffered

by Plaintiff in some sense is suffered at its domicile in the United States has been repeatedly rejected by this Circuit as insufficient, including in cases that, as here, are based upon allegedly wrongful use of the plaintiff's property in the foreign country. There are no allegations that the Defendants use the allegedly confiscated property to export goods or services to the United States. For these reasons, the action fails to satisfy the "direct effect" requirement, requiring its dismissal.

Plaintiff cannot satisfy the "direct effect" requirement for another, independent reason. Plaintiff's is the derivative claim of a parent company, but a parent's derivative claims do not satisfy the "direct effect" requirement.

5. Plaintiff alleges that Title III not only establishes Defendants' liability for trafficking but also overrides the FSIA's grant of immunity, 28 U.S.C. § 1604, and establishes a new head of subject-matter jurisdiction for Title III actions. Complaint ¶ 6.

Title III does not provide the subject-matter jurisdiction that is denied by FSIA immunity. It contains no express amendment of the FSIA or express grant of subject-matter jurisdiction. Further, provisions to override the FSIA and establish a separate head of jurisdiction for Title III actions were struck from the bill reported out of subcommittee, and Title III was enacted without them. Settled rules of statutory construction preclude Plaintiff's contention that Congress altered the FSIA immunity regime and provided subject-matter jurisdiction for Title III actions *sub silentio* and *by implication*.

6. Finally, Plaintiff's assertion that 28 U.S.C. § 1331 confers subject-matter jurisdiction founders on the Supreme Court's ruling that actions against a foreign state or its agencies or instrumentalities do not fall under the general statutory grant of subject-matter

jurisdiction in § 1331 but exclusively under the FSIA, and requires no further discussion. *See Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480 (1983).

7. Plaintiff's Complaint is devoid of the allegations required by the Due Process Clause for general personal jurisdiction, that the Defendants are "at home" in the United States, or those required for specific jurisdiction, that the Plaintiff's claims arise out of the Defendants' contacts with the United States. To the contrary, the Complaint affirmatively alleges the opposite—that the Defendants are located in Cuba, and their use of the allegedly confiscated property is their use in Cuba of property in Cuba in connection with commercial activities outside of the United States.

This Circuit has held that agencies or instrumentalities of a foreign state are protected by the Due Process Clause's limitations on personal jurisdiction, unless the plaintiff can overcome the *Bancec* presumption (*First Nat'l City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611 (1983)) that an agency or instrumentality endowed with juridical personality is to be treated as separate from the foreign state (which, under Circuit law, is not a "person" within the Due Process Clause). The Complaint alleges that the Defendants are endowed with juridical personality, giving rise to the *Bancec* presumption. It nonetheless fails to make the allegations needed to overcome the presumption (and, indeed, does not address the *Bancec* presumption at all, whether in conclusory terms or otherwise), requiring dismissal of this action. The *Bancec* presumption is also raised by the accompanying expert declaration on Cuban law, which Plaintiff has the burden to overcome with evidence, in the event that the Complaint is not dismissed as facially defective.

8. While Defendants have moved for dismissal for lack of personal jurisdiction at the same time that they have moved for dismissal for lack of subject-matter jurisdiction in order

to avoid waiver of the objection under Fed. R. Civ. P. 12(h), they request that the Court stay further proceedings on the personal jurisdiction issue until final determination of subject-matter jurisdiction, including appellate decision on an interlocutory appeal taken of right by Defendants from any adverse ruling on the FSIA immunity issue. The Circuit has held that FSIA immunity is immunity from the entanglements, burdens and intrusions of litigation, not just immunity from judgment, and, for that reason, has held that an interlocutory appeal lies of right from denial of FSIA immunity. It would be incongruous to require the Defendants to litigate personal jurisdiction, including the *Bancec* presumption, before final resolution of FSIA immunity.

## **ARGUMENT**

### **I. THIS ACTION FAILS TO SATISFY THE FOREIGN SOVEREIGN IMMUNITY ACT'S "DIRECT EFFECT" REQUIREMENT FOR SUBJECT-MATTER JURISDICTION**

The FSIA provides “the sole basis for obtaining jurisdiction over a foreign state” in U.S. courts. *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 434 (1989). Under the FSIA, a “foreign state,” which is defined to include its “agency or instrumentality,” 28 U.S.C. § 1603(a), “is presumptively immune from the jurisdiction of United States courts.” *Saudi Arabia v. Nelson*, 507 U.S. 349, 355 (1993). “If no exception [to immunity] applies . . . [t]he district court lacks subject matter jurisdiction over the plaintiff's case” and the case must be dismissed. *Phoenix Consulting, Inc. v. Republic of Angola*, 216 F.3d 36, 39 (D.C. Cir. 2000); *see also* 28 U.S.C. § 1330(a).

#### **A. The Facts Alleged in the Complaint Fail to Satisfy the “Direct Effect” Requirement**

Plaintiff, alleging that Defendants are agencies or instrumentalities of the Cuban State, Complaint ¶ 6, invokes jurisdiction under the third prong of the commercial activity exception to immunity, 28 U.S.C. § 1605(a)(2). The third prong provides as follows:

(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—

...

(2) in which the action is based . . . upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States[.]

Plaintiff does not identify the factual allegations it contends support the Complaint’s conclusory assertion that the third prong of the FSIA’s commercial activity exception to immunity, with its “direct effect” requirement, applies here. The Complaint’s allegations, such as they are, fail to establish jurisdiction.

As explained in the Statement of the Case, Plaintiff’s claim is based upon alleged use of property (“trafficking”) located exclusively in Cuba; the alleged acts of trafficking are exclusively in Cuba; and there are no allegations that the Defendants use the allegedly confiscated property to export goods or services to the United States. By invoking the third prong of the commercial activity exception, Plaintiff alleges that Defendants’ use of the confiscated property is not only an “act . . . outside of the territory of the United States” but that Defendants’ use of the property is “in connection with a commercial activity [of the Defendants] elsewhere.” Complaint ¶ 6 (*quoting* 28 U.S.C. § 1605(a)(2)).<sup>2</sup> These allegations do not, as a matter of settled law, satisfy the “direct effect” requirement.

Plaintiff alleges that it is a U.S. national with its principal place of business in the United States, but that does not, under settled Circuit law, rescue Plaintiff’s action. Plaintiff does not allege financial harm from the trafficking, but, even it had, reliance on the theory that a U.S. company in some sense experiences financial harm from a foreign tort at its domicile also would not save Plaintiff’s action: it would be a contention that is foreclosed by the settled law of this

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<sup>2</sup> In contrast, the first prong concerns actions “based upon a commercial activity carried on in the United States,” and the second prong concerns actions based “upon an act performed in the United States in connection with a commercial activity . . . elsewhere.” 28 U.S.C. § 1605(a)(2).

Circuit, under which such an allegation is facially insufficient to satisfy the “direct effect” requirement.

The Court of Appeals’ decision in *Bell Helicopter Textron, Inc. v. Islamic Republic of Iran*, 734 F.3d 1175 (D.C. Cir. 2013) establishes that the FSIA’s “direct effect” requirement is not satisfied here. The Circuit held that the “direct effect in the United States” requirement is not satisfied “simply by virtue of [the plaintiff’s] U.S. citizenship,” or, relatedly, by virtue of a company domiciled in the United States having suffered “financial loss from a foreign tort.” *Id.* at 1184–86. The plaintiff in *Bell Helicopter* argued that the defendant’s alleged violation of its “property right[s]” abroad “directly harms the owner where it lives,” in the United States, but the D.C. Circuit explicitly rejected that such harm constituted a “direct effect in the United States.” *Id.* at 1184, 1186 (internal quotations omitted). *See also Odhiambo v. Republic of Kenya*, 764 F.3d 31, 40 (D.C. Cir. 2014) (“[Plaintiff] does not argue that his U.S. presence or U.S. citizenship alone suffices to create a direct effect in the United States. . . . [T]he relevant precedents would foreclose any such contention.”).

In *Bell Helicopter*, the manufacturer of helicopters, a U.S. company with its principal place of business in the United States, sued an Iranian defendant under the Lanham Act for using, without authorization, its distinctive trade dress for helicopters. The Iranian defendant’s manufacture of helicopters using that trade dress was in Iran, at a plant once owned by the plaintiff, and the defendant sold helicopters with the trade dress exclusively outside of the United States. Bell Helicopter argued that the Iranian defendant’s unauthorized use of its trade dress deprived it of its “exclusive right to reap” the “financial . . . rewards” of its “intellectual property.” *Bell Helicopter*, 734 F.3d at 1184, 1186.



The D.C. Circuit in *Bell Helicopter* relied extensively on the Second Circuit’s decision in *Antares Aircraft, L.P. v. Federal Republic of Nigeria*, 999 F.2d 33 (2d Cir. 1993). There, a U.S. plaintiff brought an action for damages for the purported wrongful detention in Nigeria by the Nigerian Airport Authority of plaintiff’s sole asset, an aircraft registered in Nigeria, causing the aircraft physical damage. *See id.* at 34. The Second Circuit found no “direct effect in the United States” where (i) the aircraft was registered in Nigeria; (ii) there was “no evidence that the use of the aircraft was related to substantial commerce with the United States;” and (iii) the “detention of, and physical damage to, the plane happened in Nigeria.” *Id.* at 36. In a passage in *Antares* quoted extensively and favorably by the D.C. Circuit in *Bell Helicopter*, the court squarely rejected plaintiff’s theory that “the fact that an American individual or firm suffers some financial loss from a foreign tort . . . suffice[s] to trigger the exception [to FSIA immunity].” *Id.* (internal quotations omitted); *see also Bell Helicopter*, 734 F.3d at 1184–85 (same).

Plaintiff’s allegations here mirror those of the plaintiffs in *Bell Helicopter* and *Antares*. In this case, as in those cases, the act upon which the action is based is allegedly wrongful use of property abroad, and here, as in those cases, there is no allegation that the property is used in connection with sales to, or other commercial activities in, the United States. The same result, dismissal for lack of subject-matter jurisdiction, is thus required.

The construction of the “direct effect” requirement set forth in *Bell Helicopter* and *Antares* has been applied in a wide variety of circumstances, including, as in those cases and particularly relevant here, where the claim is based on defendant’s allegedly wrongful use of the plaintiff’s property abroad.

For example, in *Allen v. Russian Federation*, the court held that there was no “direct effect” from a Russian agency or instrumentality’s actions in Russia, in coordination with the

Russian Federation, “effectively expropriat[ing]” a Russian oil company, making U.S. plaintiffs’ stock in the oil company “effectively worthless.” 522 F. Supp. 2d 167, 174, 177, 189 (D.D.C. 2007). The district court held that “where the Russian Federation is accused of engaging in conduct . . . within its own territory that resulted in reduced funds flowing to the investors in a Russian company . . . [t]his type of financial injury cannot be characterized as a ‘direct effect’ under the commercial activities exception because a mere financial loss to United States residents, without more, is not a direct effect in the United States.” *Id.* at 189–90 (internal quotations omitted).

In *TJGEM LLC v. Republic of Ghana*, the D.C. Circuit affirmed the district court’s holding that there was no “direct effect” from plaintiff’s alleged loss of an infrastructure project in Ghana where “plaintiff [] offered no rationale as to why the alleged misappropriation [of plaintiff’s business plans it provided to Ghanaian defendant] or any other tortious activity by the Ghana Defendants has had any ‘direct effect’ in the United States beyond an alleged loss to ‘an American individual and firm.’” 26 F. Supp. 3d 1, 11 (D.D.C. 2013), *aff’d*, No. 14-7036, 2015 WL 3653187, at \*1 (D.C. Cir. June 5, 2015).

Similarly, in *BPA Int’l, Inc. v. Kingdom of Sweden*, 281 F. Supp. 2d 73 (D.D.C. 2003), plaintiff alleged, *inter alia*, that defendants used plaintiff’s copyrighted materials, client lists, and confidential information from plaintiff’s Swedish branch without compensation, contending that “the alleged seizure of Plaintiffs’ assets ‘has a direct effect in the United States by diminishing the value of assets owned by [plaintiff] and harming its ability to earn a profit.’” *Id.* at 81. The district court rejected the argument, holding that a “financial loss in the United States, when all the acts giving rise to the claim occurred outside this country, is insufficient to show the ‘direct effect’ in the United States that FSIA requires.” *Id.*

In *Gulf Res. America v. Republic of Congo*, 276 F. Supp. 2d 20, 22–24 (D.D.C. 2003), *rev'd and remanded on other grounds*, 370 F.3d 65 (D.C. Cir. 2004), the court likewise found there was no “direct effect” where the Republic of the Congo had seized oil to which plaintiff held the title that had been extracted from Congolese oil fields. “[R]eneging on the delivery of [plaintiff’s] portion of [the] oil,” whether characterized as “expropriation or conversion[,] . . . occurred at dockside in Congo, nowhere else.” *Id.* at 27. The court rejected plaintiffs’ argument that the alleged confiscation or conversion in the Congo had a “direct effect” in the United States because the proceeds from the sale of the seized oil were previously committed for use in a U.S. transaction: “Adverse impact alone on economic interests in the United States from an act or omission of a foreign state abroad in a commercial context is insufficient as a matter of law . . . to deprive the foreign state of its immunity under section 1605(a)(2) of the FSIA.” *Id.* The court noted that it has been consistently held that “‘mere financial loss by a person—individual or corporate—in the U.S. is not, in itself, sufficient to constitute a ‘direct effect.’”” *Id.* (*quoting Adler v. Fed. Republic of Nigeria*, 107 F.3d 720, 726–27 (9th Cir. 1997)).

Numerous other cases are to the same effect. *See, e.g., Soudavar v. Islamic Republic of Iran*, 67 F. App’x. 618, at \*1 (D.C. Cir. 2003) (holding that forced transfer of title to property in Iran did not have a direct effect in the United States “[a]lthough appellant was a legal resident of the United States at the time of this transaction,” because “a mere financial loss by a resident of the United States does not constitute a ‘direct effect’ in the United States”).<sup>3</sup>

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<sup>3</sup> *See also Lempert v. Republic of Kazakstan*, 223 F. Supp. 2d 200, 204 (D.D.C. 2002), *aff’d*, 62 F. App’x. 355 (D.C. Cir. 2003) (finding no direct effect where “plaintiff’s theory is that [defendant’s] refusal to pay caused a direct effect in the United States, namely, his financial loss”); *Firebird Global Master Fund II Ltd. v. Republic of Nauru*, 915 F. Supp. 2d 124 (D.D.C. 2013) (same); *Millicom Int’l Cellular, S.A. v. Republic of Costa Rica*, 995 F. Supp. 14, 22 (D.D.C. 1998) (citing *Antares* for holding that “mere financial loss due to commercial activity

The cases in which the D.C. Circuit and D.C. district courts have found “direct effect” stand in sharp contrast to the above, controlling line of authority and to the action here. For example, in *Cruise Connections Charter Mgmt. 1, LP v. Attorney Gen. of Canada*, cited by *Bell Helicopter*, 734 F.3d at 1185, a Canadian agency or instrumentality—the Royal Canadian Mounted Police (RCMP)—contracted with a U.S. company for three cruise ships to travel to Vancouver during the 2010 Olympic Winter Games. The D.C. Circuit upheld the settled rule that “harm to a U.S. citizen, in and of itself, cannot satisfy the direct effect requirement.” 600 F.3d 661, 665 (D.C. Cir. 2010). It found a “direct effect” not because of nationality or financial harm from a foreign tort; instead, it relied on the fact that the contracts terminated by RCMP required performance to take place in part in the United States and by U.S. companies. *See id.* at 663–66. In so holding, the D.C. Circuit reaffirmed that the “direct effect” requirement is not satisfied where, as here, the nexus stems entirely from the U.S. nationality and location of the plaintiff.

In addition to contractual obligations to perform in the United States, D.C. Circuit and district courts have found a direct effect where the defendant causes plaintiff to part with its money in the United States or uses the property abroad at issue to carry out exports to the United States, neither of which is the case here. In *Transamerican S.S. Corp. v. Somali Democratic Republic*, 767 F.2d 998 (D.C. Cir. 1985), an action based on defendants’ wrongful detention of plaintiff’s ship in Somalia, the D.C. Circuit held there to be a “direct effect” based on defendants’ demand that the plaintiff effectuate ransom payments from the United States. The court relied on the fact that, at the Somali defendant’s “insistence, a significant transaction was

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abroad is not, in itself, sufficient to form a ‘direct effect’”); *TIFA, Ltd. v. Republic of Ghana*, No. 88-CV-1513, 1991 WL 179098, at \*6–7 (D.D.C. Aug. 27, 1991) (same).

effectuated in the United States, [] an American corporation [plaintiff] transfer[ed] \$28,000 from a New York bank to the Somali government’s D.C. bank” in order to release plaintiff’s ship. *Id.* at 1004. In *Oceanic Exploration Co. v. ConocoPhillips, Inc.*, No. 05-CV-332, 2006 WL 2711527 (D.D.C. Sept. 21, 2006), in which the plaintiffs sought damages for the loss of an oil and gas concession for the area between East Timor and Australia (“Timor Gap”), the district court found a “direct effect” because plaintiffs had asserted that defendants “shipp[ed] and s[old] petroleum from Timor Gap *in the United States* for [the agency or instrumentality’s] commercial profit” and that “the proceeds of these sales” were “deposit[ed] ... to the [agency or instrumentality’s] bank accounts *in the United States.*” *Id.* at \*5 (emphasis added).

Similar is *EIG Energy Fund XIV, L.P. v. Petroleo Brasileiro, S.A.*, where the D.C. Circuit re-affirmed *Bell Helicopter* (and the Second Circuit’s holding in *Antares*) that ““financial loss from a foreign tort cannot, standing alone, suffice to trigger the [direct effect] exception.”” 894 F.3d 339, 348 (D.C. Cir. 2018), *cert. denied*, 139 S.Ct. 1324 (2019) (*quoting Antares*).

In *EIG Energy*, the Circuit found a direct effect because Petrobras, a Brazilian agency or instrumentality, had engaged in a “years-long scheme” “specifically targeted [at] U.S. investors” “to part [them] from [their] money under false pretenses,” including by sending its agents into the United States where they successfully engaged in the conduct that constituted fraudulent inducement. *Id.* at 342, 348. As this Court found, *EIG Energy Fund XIV, L.P. v. Petróleo Brasileiro S.A.*, 246 F. Supp. 3d 52, 71–72 (D.D.C. 2017), “the injury to the [plaintiff] Funds occurred at the time [defendant state entity Petrobras] successfully induced them to invest...” Thus, where a defendant reaches into the United States and induces the plaintiff to “part [it] from its money under false pretenses,” such a scheme of fraudulent inducement in the United States,

combined with the making of an investment from the United States as a direct result of that fraud, satisfies the direct effect requirement.

In accord are *Strata Heights Int'l Corp. v. Petroleo Brasileiro, S.A.*, 67 F. App'x 247, at \*4 (5th Cir. 2003) (“direct effect” where Petrobras “actively solicited [American corporations] participation” as joint venture partners); and *Atlantica Holdings, Inc. v. Sovereign Wealth Fund Samruk-Kazyna JSC*, 813 F.3d 98, 103–04, 110–11 (2d Cir. 2016), cited in *EIG Energy* (“direct effect” in securities fraud case where defendant “marketed the Subordinated Notes [at issue in that case] ‘extensively in the United States,’ . . . [and] sent representatives to the United States . . . to meet with investors and to assure them . . . .”) (internal quotations omitted).

*EIG Energy* fits squarely in line with *Transamerican*, in which the D.C. Circuit emphasized that payments “effectuated in the United States” at defendant’s insistence constitute a direct effect of the wrongful conduct. *Transamerican*, 767 F.2d at 1004. The critical elements in *Transamerican*, *EIG Energy*, *Strata Heights*, and *Atlantica* are absent here.

Where, as here, a defendant “has asserted the jurisdictional defense of immunity under the FSIA, the court’s focus shifts to the exceptions to immunity.” *Phoenix Consulting, Inc. v. Republic of Angola*, 216 F.3d 36, 40 (D.C. Cir. 2000); *see also Bell Helicopter*, 734 F.3d at 1183 (“[T]he plaintiff bears the initial burden to overcome” the FSIA’s presumption of immunity). To survive a Rule 12(b)(1) motion to dismiss in an FSIA action, the Plaintiff must come forward with “factual allegations . . . [that] make out a legally valid claim” that an exception applies. *Bolivarian Republic of Venezuela v. Helmerich & Payne Int'l Drilling Co.*, 137 S.Ct. 1312, 1316 (2017).<sup>4</sup>

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<sup>4</sup> Even when a plaintiff comes forward with sufficient factual allegations, the defendant has the opportunity to “persuad[e] the Court of the absence of a factual basis for jurisdiction by a preponderance of the evidence.” *Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela*, 244

Here, Plaintiff fails to meet even its threshold burden because, although invoking FSIA jurisdiction, it does not allege facts that would satisfy the “direct effect” requirement of the FSIA exception to immunity upon which it relies. Instead, Plaintiff has pled a bare legal conclusion, which is insufficient, *see Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and such allegations as appear in the Complaint are inadequate. In FSIA actions, courts are required to be particularly vigilant at the gateway to ensure that only cases satisfying the FSIA’s requirements move forward. *See Helmerich*, 137 S.Ct. at 1316; *Owens v. Republic of Sudan*, 864 F.3d 751, 779 (D.C. Cir. 2017), *cert. granted in part on unrelated question sub nom. Opati v. Republic of Sudan*, 139 S.Ct. 2771 (U.S. June 28, 2019) (No. 17-1268). The action should be dismissed for lack of subject-matter jurisdiction.

**B. The Action Cannot Satisfy the “Direct Effect” Requirement for the Additional Reason that Plaintiff’s Claim is that of a U.S. Parent Whose Third-Country Subsidiary Suffered A Property Loss**

Plaintiff also cannot satisfy the FSIA’s “direct effect” requirement because its claim is that of a U.S. parent company whose third-country subsidiary suffered a property loss. Both the Tenth and Second Circuits have held that the FSIA’s requirement of a “direct effect in the United States” is not satisfied in those circumstances.

Plaintiff’s claim here is the claim certified in 1969 by the Justice Department’s Foreign Claims Settlement Commission (“FCSC”). For its “Count [ ] – Trafficking in Confiscated Property,” the Complaint alleges that Plaintiff is a U.S. national and “owns the claim to property that was confiscated by the Cuban Government after January 1, 1959 (*i.e.*, the Confiscated

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F. Supp. 3d 100, 109 n.12 (D.D.C. 2017), *aff’d*, 760 F. App’x 1 (D.C. Cir. 2019); *see also Tatneft v. Ukraine*, 301 F. Supp. 3d 175, 186 (D.D.C. 2018), *aff’d*, 771 F. App’x 9 (2019) (“The burden of persuasion ... shifts to ... the foreign sovereign that is claiming immunity[] to establish the absence of the factual basis [for an exception to immunity] by a preponderance of the evidence.”) (internal quotations omitted).

Property). The Claim is certified and is attached as Exhibit 1.” Complaint ¶ 67. Because it is the FCSC-certified claim that is presented, Plaintiff demands the special Title III benefits for certified claims.<sup>5</sup> Title III, § 302(a)(5)(A), 22 U.S.C. § 6082(a)(5)(A), would bar Plaintiff from bringing a Title III action other than the claim filed with and certified by the FCSC.<sup>6</sup>

The FCSC claim was brought by Standard Oil Company, now Exxon Mobil, for the loss of property in Cuba in 1960 that had been owned by Esso Standard Oil, S.A. (“Essosa”), Standard Oil Company’s Panamanian subsidiary, not Standard Oil. As the FCSC stated:

STANDARD OIL COMPANY, hereafter referred to as claimant, has asserted this claim for loss of the Cuban assets of Esso Standard Oil, S.A., hereinafter referred to as Essosa, a Panamanian corporation and a wholly-owned subsidiary of claimant.

FCSC Decision 2, ECF 1.1. The FCSC certified an amount according to “[t]he Cuban assets and liabilities of Essosa.” *Id.* at 4.<sup>7</sup>

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<sup>5</sup> Plaintiff claims that the FCSC certification must “be treated as conclusive proof” of “ownership of the Confiscated Property,” Complaint ¶ 55; that Plaintiff is entitled to a presumption as to the value of the property, and hence the extent of Defendants’ liability, in the amount certified by the FCSC, Complaint ¶¶ 51–52; that it is entitled to “damages in the amount of the certified claim, plus pre-judgment interest at the rate of 6 per cent awarded by the FCSC,” Complaint ¶ 75, and that it is entitled to treble damages. Complaint ¶¶ 52–53, 55, 75.

<sup>6</sup> Section 302(a)(5)(A), 22 U.S.C. § 6082(a)(5)(A) provides as follows:

In the case of a United States national who was eligible to file a claim with the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 [22 U.S.C. 1643 et seq.] but did not so file the claim, that United States national may not bring an action on that claim under this section.

<sup>7</sup> Plaintiff acknowledges that the “certified claim involves the property formerly owned by Essosa ...,” Complaint ¶ 20; *see also* Complaint ¶ 23 (it is “Essosa’s property rights [that] were expropriated”); Complaint ¶ 26 (“The Cuban Government expropriated the following assets from Essosa...”). Elsewhere, Plaintiff uses imprecise and misleading language, describing the confiscated property as “Plaintiff’s Confiscated Property.” *See* Complaint ¶¶ 1, 64, 65 and heading on top of page 13. However, as is clear from both the FCSC decision and the Complaint, the allegedly confiscated property was Essosa’s.



Enacted in 1964, Title V of the International Claims Settlement Act of 1949, Pub. L. 88-666, 78 Stat. 1365 (1964) (“Title V”), charged the FCSC with hearing and determining the category of claims against the Government of Cuba prescribed by the statute. The FCSC’s function under its Title V program, concluded in 1972, as under its numerous other claims programs, was to certify the validity and amount of claims within the prescribed categories for the Secretary of State’s possible use in the negotiation of a state-to-state settlement of claims with Cuba, and for the Executive’s possible use in the distribution of any funds obtained through a lump sum settlement or Executive blocking of Cuban assets.<sup>8</sup> The proceedings are entirely *ex parte*. See *Banco Nacional de Cuba v. Chase Manhattan Bank*, 505 F. Supp. 412, 449–51 (S.D.N.Y. 1980), *aff’d*, 658 F.2d 875 (2d Cir. 1981).

Under Title V, the FCSC’s mandate included claims by U.S. corporations arising from the nationalization of property in which they held “rights or interests,” “directly or *indirectly*.” Title V, § 503(a); 22 U.S.C. § 1643b(a) (emphasis added). The FCSC was required to hear claims under this provision by U.S. parent corporations for property losses suffered by companies in which they held an interest, provided those companies were not themselves U.S. nationals. See Title V, § 505(b); 22 U.S.C. § 1643d(b).

The FCSC certified many such “indirect[.]” claims, expressly terming them as such. See, e.g., *In the Matter of the Claim of Revlon, Inc.*, Claim Nos. CU-2698, Decision No. CU-5940, FCSC, at 2–5 (Nov. 4, 1970) (U.S. corporation Revlon, Inc. only able to make a claim “indirectly” based on fact that it “owned all of the outstanding capital stock of Revlon Overseas

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<sup>8</sup> See, e.g., *Dames & Moore v. Regan*, 453 U.S. 654, 679–81 (1981); *Banco Nacional de Cuba v. Chase Manhattan Bank*, 505 F. Supp. 412, 449–50 (S.D.N.Y. 1980), *aff’d* 658 F.2d 875 (2d Cir. 1981); 22 U.S.C. § 1643f (Commission to certify its determinations to the Secretary of State); FCSC Decision 10 (certifying decision to “the Secretary of State for possible use in future negotiations with the Government of Cuba.”).

Corporation, C.A., organized under the laws of Venezuela (Venezuelan subsidiary), . . . [that] in turn, owned a branch in Cuba” that had real and personal property in Cuba that was nationalized); *In the Matter of the Claim of Pepsico, Inc.*, Claim No. CU-3596, Decision No. CU-5841, FCSC, at 2–3, 6 (Sept. 16, 1970) (U.S. corporation Pepsico, Inc. had claim based on “indirect ownership” for loss based on nationalization of land and a bottling plant in Cuba that was owned by its wholly-owned Canadian subsidiary); *In the Matter of the Claim of International Group, the Electric Storage Battery Company*, Claim No. CU-0846, Decision No. CU-19, FCSC, at 2–4 (Aug. 23, 1967) (U.S. corporation’s claim for loss based on nationalization of equipment and other assets of its wholly-owned Panamanian subsidiary). (The decisions are available on the FCSC’s website, <https://www.justice.gov/fcsc>.)

Although Plaintiff’s “indirect” claim fell within the FCSC’s statutory mandate, it does not fall within the FSIA’s commercial activity exception relied upon by Plaintiff because of the “direct effect” requirement, as shown below.<sup>9</sup>

Both the Court of Appeals for the Tenth Circuit and the Court of Appeals for the Second Circuit have held that the FSIA “direct effect” requirement is not satisfied when the U.S. parent’s claim is derivative of an injury to its foreign subsidiary. *See Big Sky Network Canada, Ltd. v.*

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<sup>9</sup> While adherence to the FSIA’s jurisdictional limitations would be required anyway, it may be noted that any ruling that a certified claim does not come within the FSIA’s immunity exceptions would not undermine the Executive’s ability to use the FCSC’s certifications as intended, in diplomatic claims settlement negotiations and the distribution of funds. Indeed, when it was established in 1949 and continuing until today, claims brought before the FCSC under its Cuba and other programs typically could not be brought in the courts by reason, *inter alia*, of sovereign immunity, other jurisdictional limitations or the act of state doctrine. *See Victory Transport, Inc. v. Comisaria General de Abastecimientos y Transportes*, 336 F.2d 354, 357 (2d Cir. 1964) (absolute sovereign immunity recognized by U.S. courts until “restrictive theory” of immunity adopted; restrictive theory continued to bar claims based on nationalizations); *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 430–31 (1964) (act of state doctrine barred claims in U.S. courts based on Cuban nationalizations); *cf. Dames & Moore v. Regan*, 453 U.S. at 679–86 (explaining authority and history of Executive in negotiating claims settlements).

*Sichuan Provincial Gov't*, 533 F.3d 1183 (10th Cir. 2008) (then Gorsuch, J.); *Carey v. Nat'l Oil Corp.*, 592 F.2d 673 (2d Cir. 1979) (per curiam). The result in those cases is compelled by the Supreme Court's holding in *Republic of Argentina v. Weltover, Inc.* that the "direct effect" requirement under the FSIA requires that the effect "follows as an immediate consequence of the defendant's . . . activity." 504 U.S. 607, 618 (1992) (alteration in original) (internal quotation marks omitted).

In *Big Sky Network Canada*, a British Virgin Islands subsidiary ("Big Sky Networks") of a U.S. parent company ("China Broadband") sued a sub-division of the Chinese government for unjust enrichment and intentional interference with contractual relations. 533 F.3d at 1184–85, 1190. The claim arose from China's prohibition on foreign joint ventures operating cable television networks. Big Sky Network, which previously operated a joint venture, lost its investment. *Id.* at 1184–85.

The Tenth Circuit held that the injuries of the U.S. parent for its British Virgin Islands subsidiary's lost investment in China did not satisfy the FSIA "direct effect" requirement. *See id.* at 1191. The U.S. parent corporation's "financial injuries—while ultimately felt in the United States—are derivative of a financial injury [the foreign subsidiary] suffered in China, and thus are not sufficiently direct under our case law to invoke the commercial activity exception." *Id.* The court acknowledged that the financial effect on the U.S. parent corporation was substantial, resulting in the U.S. parent's being "forced to restructure its operations," but this did not change the result. *Id.* at 1192.

In *Carey*, the U.S. parent ("NEPCO") of a wholly-owned Bahamian subsidiary ("PETCO") claimed an FSIA "direct effect" on the basis of breach by the National Oil Company

(“NOC”), wholly owned by the Libyan government, of its contracts with PETCO for NOC to supply oil to PETCO outside the United States. *See* 592 F.2d at 675.

The Second Circuit held that, although cancellation of the contracts had “an admitted effect on NEPCO, an American company, that effect can only be deemed indirect, through NEPCO’s relations with PETCO and [another subsidiary][.]” *Id.* at 676. The Second Circuit reasoned that PETCO, “[t]hough a subsidiary of NEPCO, [] was a separate corporate entity,” so it declined to “pierce the corporate veil in favor of those who created that veil.” *Id.* (internal quotations omitted). Notwithstanding the fact that “the Libyan oil embargo”—pursuant to which NOC canceled its contracts with PETCO—“was expressly aimed at affecting the United States” and that “the Libyan government and NOC were aware that the refineries in the Bahamas [where PETCO operated] were being used primarily to channel oil into the United States,” *id.*, there was no direct effect within the meaning of the FSIA because, *inter alia*, any effect on the parent was derivative of the injury to the foreign subsidiary. *Id.*

This Circuit, no less than the Tenth and Second Circuits in *Big Sky Network* and *Carey*, has recognized *Weltover*’s controlling construction: that a “direct effect” is only “one which has no intervening element, but, rather, flows in a straight line without deviation or interruption.” *Princz v. Fed. Republic of Germany*, 26 F.3d 1166, 1172 (D.C. Cir. 1994) (internal quotations omitted). As it did in *Big Sky Network* and *Carey* the “intervening element” of the plaintiff’s third-country subsidiary—here, Essosa, which owned and operated the allegedly confiscated property—precludes Plaintiff from satisfying the “direct effect” requirement.

**II. TITLE III OF THE CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY (LIBERTAD) ACT OF 1996 DOES NOT OVERRIDE THE FSIA AND PROVIDE A NEW GRANT OF SUBJECT-MATTER JURISDICTION**

Plaintiff asserts that Title III both overrides the FSIA, which the Supreme Court has repeatedly held “provides the sole basis for obtaining jurisdiction over a foreign state,” *OBB Personenverkehr AG v. Sachs*, 136 S.Ct. 390, 393 (2015), in decisions that both pre-date and post-date Title III’s enactment,<sup>10</sup> and provides a new grant of subject-matter jurisdiction for claims brought under Title III, *see* Complaint ¶ 6—all without any express provision in Title III amending the FSIA or granting subject-matter jurisdiction. Plaintiff’s position is untenable.

Given the glaring absence in Title III of any explicit amendment to the FSIA or explicit grant of subject-matter jurisdiction, the strong presumption against amendment of a statute by implication fully applies here. *See, e.g., Epic Sys. Corp. v. Lewis*, 138 S.Ct. 1612, 1624 (2018) (applying the “strong presumption that repeals by implication are disfavored and that Congress will specifically address preexisting law when it wishes to suspend its normal operations in a later statute.”) (internal quotations and alterations omitted); *Nat’l Ass’n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 662 (2007); *Hagen v. Utah*, 510 U.S. 399, 416 (1994); *United States v. Fausto*, 484 U.S. 439, 452–53 (1988). “[I]t is well settled that amendments by implication (like repeals by implication) are disfavored.” *Natural Res. Def. Council, Inc. v. Hodel*, 865 F.2d 288, 318 (D.C. Cir. 1988). The presumption applies with particular force to jurisdictional statutes, such as the FSIA. *Palmore v. Superior Court*, 515 F.2d 1294, 1307 (D.C. Cir. 1975), *vacated on other grounds*, 429 U.S. 915 (1976).

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<sup>10</sup> In addition to *OBB Personenverkehr AG v. Sachs*, *see, e.g., Bank Markazi v. Peterson*, 136 S.Ct. 1310, 1317 n.1 (2016); *Samantar v. Yousuf*, 560 U.S. 305, 314 (2010); *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 439 (1989).

Plaintiff fails to overcome this presumption, or, indeed, to sustain its position even apart from the presumption.

In its jurisdictional allegations, Plaintiff asserts that Title III “mandates that the provisions of Title III . . . control over the provisions of Title 28 of the U.S. Code,” Complaint ¶ 6, citing in support section 4(11) of the LIBERTAD Act and section 302 of Title III. Section 4(11) defines “person” to “mean any person or entity, including any agency or instrumentality of a foreign state.” LIBERTAD Act, § 4(11); 22 U.S.C. § 6023(11). Section 302 establishes the “[l]iability” of “any person,” which includes agencies or instrumentalities, for trafficking. Title III, § 302(a); 22 U.S.C. § 6082(a).

The cited provisions subject agencies or instrumentalities to *liability* under Title III, but that does not support Plaintiff’s position one iota. To the contrary, as the Court of Appeals has reaffirmed, “[t]here is a clearly settled distinction in federal law between statutory provisions that waive sovereign immunity and those that create a cause of action.” *Cicippio-Puleo v. Islamic Republic of Iran*, 353 F.3d 1024, 1033 (D.C. Cir. 2004). Plaintiff makes the fatal error of “conflat[ing] two ‘analytically distinct’ inquiries”: (1) whether jurisdiction exists because an exception to immunity applies; and (2) if so, “whether the source of substantive law upon which the claimant relies provides an avenue for relief.” *F.D.I.C. v. Meyer*, 510 U.S. 471, 484 (1994) (citation omitted). Section 302 addresses only the second inquiry (the substantive cause of action) and does not address the first (whether an exception to FSIA immunity applies).

The legislative history of Title III also forecloses Plaintiff’s contention, as it affirmatively shows that Congress deliberately chose to leave the FSIA immunity regime and Title 28 jurisdictional grants unchanged.

As introduced in the House, the bill ultimately enacted as the LIBERTAD Act, in a subsection headed “Waiver of Sovereign Immunity,” would have amended the FSIA to add a new exception to immunity from suit to the limited exceptions enumerated in 28 U.S.C. § 1605(a): for “any case . . . (7) in which the action is brought with respect to confiscated property under section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995.” H.R. 927, 104th Cong. § 302(c) (as introduced in the House, Feb. 14, 1995).

In the following sub-section, headed “Jurisdiction,” the bill would have added the following to Chapter 85 of Title 28 (the chapter of Title 28 headed “District Courts; Jurisdiction”):

1331a. Civil actions involving confiscated property  
The district courts shall have exclusive jurisdiction, without regard to the amount in controversy, of any action brought under section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995.

*Id.* at § 302(b). Identical provisions appeared in the companion bill introduced in the Senate. *See* S. 381, 104th Cong. § 302(c), (b) (as introduced in the Senate, Feb. 9, 1995).

Dispositive of Plaintiff’s contention, both provisions were struck, and Title III was enacted without them.

The two provisions were in the House bill as reported out by the Subcommittee on the Western Hemisphere to the full House Committee on International Relations. *See Markup Before the Subcomm. on the Western Hemisphere of the Comm. on Int’l Relations on H.R. 927*, 104th Cong. 57-58 (March 22, 1995) (Appendix: An Amendment in the Nature of a Substitute to H.R. 927 Offered by Rep. Burton). The provision amending the FSIA was deleted when the full House Committee on International Relations took up the bill. *See Markup Before the Comm. on Int’l Relations on H.R. 927*, 104th Cong. 172, 232–33 (June 30 and July 13, 1995) (Appendix:

Amendment in the Nature of a Substitute to H.R. 927 Offered by Rep. Burton).<sup>11</sup> The provision adding section 1331a to chapter 85 of Title 28 was later stricken during the House-Senate Conference. *See* H.R. REP. NO. 104-468, at 35 (1996) (Conf. Rep.), *reprinted in* 1996 U.S.C.C.A.N. 558.<sup>12</sup>

As this legislative history makes clear, Plaintiff seeks to obtain by means of judicial construction that which Congress explicitly considered, and deliberately rejected, in enacting Title III. Yet, “[f]ew principles of statutory construction are more compelling than the proposition that Congress does not intend *sub silentio* to enact statutory language that it has earlier discarded in favor of other language.” *Immigration & Naturalization Serv. v. Cardoza-Fonseca*, 480 U.S. 421, 442–43 (1987); *see also, e.g., J. Truett Payne Co., Inc. v. Chrysler Motors Corp.*, 451 U.S. 557, 563 (1981) (elimination of provision in Conference Committee shows that Congress “rejected the very concept which petitioner seeks to have the Court judicially legislate”); *Gulf Oil Corp. v. Copp Paving Co., Inc.*, 419 U.S. 186, 200 (1974) (a Conference Committee’s deletion of provision passed by the House “strongly militates against a judgment that Congress intended a result that it expressly declined to enact”). This “compelling” principle is fully applicable here. Congress “discarded” provisions that would have provided Plaintiff what it now asks for, and instead chose to enact Title III without those provisions.

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<sup>11</sup> “As a result of consultations between the International Relations Committee and the Judiciary Committee, a number of changes were made in the text of H.R. 927,” and, “[c]onsequently, the Judiciary Committee [did] not ... mark up H.R. 927.” 141 CONG. REC. H9394-95 (daily ed. Sept. 21, 1995).

<sup>12</sup> In the Senate, Title III had been withdrawn in its entirety before the Senate sent the LIBERTAD Act to Conference for the stated reason that a motion for cloture had failed with Title III in the bill and the bill’s sponsors could not obtain cloture on the broader legislation without deleting it. 141 CONG. REC. S15217 (daily ed. Oct. 17, 1995); 141 CONG. REC. S15277-78, 82 (daily ed. Oct. 18, 1995).



Moreover, Congress clearly knows how to amend the FSIA and the jurisdictional sections of Title 28, and, when it wants to, it has always done so expressly. Indeed, in the very section of Title III relied upon by Plaintiff, section 302, Congress expressly amended a provision of the FSIA related to execution, while leaving the FSIA provisions related to jurisdictional immunity from suit untouched. *See* Title III, § 302(e); 22 U.S.C. § 6082(e).

The fact that Congress expressly amended one provision of the FSIA in enacting Title III undercuts Plaintiff's contention that, in the same enactment, Congress amended another provision of the FSIA—but *sub silentio* and by implication. Moreover, less than two months after enacting Title III, the same Congress expressly amended the FSIA to add an exception to immunity for suit for a different cause of action than Title III, actions for terrorist acts against designated state sponsors of terrorism. *See* Anti-Terrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 221, 110 Stat. 1214, 1241 (1996) (codified at 28 U.S.C. § 1605(a)(7), *repealed and replaced by* 28 U.S.C. § 1605A). Since its passage in 1976, Congress has amended the FSIA multiple additional times, each time expressly, both before and after Title III's enactment.<sup>13</sup>

Congress' practice of express amendments of the FSIA is still one more barrier to Plaintiff's already untenable position that, in Title III, Congress sought to amend the FSIA *sub silentio* and after discarding text that would have explicitly amended the FSIA. When, as here, Congress demonstrates that it knows how to implement its intentions with clear and express

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<sup>13</sup> *See, e.g.*, 28 U.S.C. § 1605(a)(6); Pub. L. 100-669, § 2, 102 Stat. 3969 (1988) (suits to enforce arbitration agreement or award); 28 U.S.C. § 1605A; Pub. L. 110-181, Div. A, Title X, § 1083(a)(1), 122 Stat. 338 (2008) (terrorism exception); 28 U.S.C. § 1605B; Pub. L. 114-222, 130 Stat. 853 (2016) (international terrorism against United States); 28 U.S.C. § 1605(h); Pub. L. 114-319, 130 Stat. 1618 (2016) (excluding from commercial activities exception activities in connection with loans of certain art works by foreign states for temporary exhibit in the United States and excepting Nazi-era claims).

provisions, the absence of such a provision weighs heavily against any suggestion that Congress intended an unspoken result nonetheless. *See, e.g., Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 106 (1987) (“Congress knows how to authorize nationwide service of process when it wants to provide for it. That Congress failed to do so here argues forcefully that such authorization was not its intention.”); *see also I.A.M. Nat’l Pension Fund Ben. Plan C. v. Stockton TRI Indus.*, 727 F.2d 1204, 1208 (D.C. Cir. 1984) (“Congress knows how to withdraw jurisdiction expressly when that is its purpose.”).

In citing section 302 to support its assertion that “the provisions of Title III control over the provisions of Title 28,” Complaint ¶ 6, Plaintiff presumably refers only to section 302(a), the provision establishing liability, and not also to section 302(c), headed “Procedural Requirements.” The latter provision would contradict Plaintiff’s assertion that Title III “controls over Title 28” because it provides that “Title 28, United States Code” “appl[ies].” Title III, § 302(c)(1); 22 U.S.C. § 6082(c)(1).

In any event, any reliance on the “Procedural Requirements” provision would be unsustainable, for the reasons already shown and for still additional reasons.

No less than with respect to section 302’s liability provision, the strong presumption against implied amendments and implied grants of jurisdiction fully applies to the “Procedural Requirements” provision, which also lacks any express amendment of the FSIA or express grant of jurisdiction. So too does the dispositive import of the legislative history of Title III, and of the Congressional practice of amending the FSIA by express provision.

Further, the provision’s text makes clear that it does not speak to FSIA immunity or jurisdictional grants: “Procedural Requirements - Except as provided in this title, the provisions of title 28, United States Code, and the rules of the courts of the United States shall apply to

actions under this section to the same extent as such provisions and rules apply to any other action under section 1331 of title 28, United States Code.” Title III, § 302(c)(1); 22 U.S.C. § 6082(c)(1).

Rather than amend the FSIA or grant subject-matter jurisdiction—neither of which is mentioned—the subsection establishes a consistent procedural framework for any action brought under Title III, even when such an action is filed in state court. Section 302(c) is similar to other provisions designed to ensure that, despite concurrent state and federal jurisdiction over a cause of action that may have been vested exclusively in federal courts, uniform procedures govern any suit involving that cause of action. *See, e.g.*, 39 U.S.C. § 409 (providing, in light of concurrent state and federal court jurisdiction, for the application of the “provisions of Title 28” to tort claims involving the U.S. Postal Service regardless of where filed); *F.E.R.C. v. Mississippi*, 456 U.S. 742, 771–72 (1982) (discussing “procedural requirements” Congress prescribed for use in actions before state utility commissions brought under federal law). The provision in the House bill granting jurisdiction for Title III actions was a grant of “exclusive” federal jurisdiction; when the provision was deleted at Conference, opening the way to state court Title III actions, the “Procedural Requirements” provision was added, mandating that the provisions of Title 28 would be applied in state court. *See* H.R. REP. NO. 104-468, at 35 (1996) (Conf. Rep.), *reprinted in* 1996 U.S.C.C.A.N. 558.

Section 302(c)’s heading provides one more conclusive reason why reliance on that provision would be futile. The Supreme Court has recognized that, where statutory text is ambiguous—which is not the case here, for the reasons already discussed—a statutory heading is “a useful aid in resolving an ambiguity.” *F.T.C. v. Mandel Bros., Inc.*, 359 U.S. 385, 389 (1959);

*Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998). Accordingly, courts in this Circuit routinely consider headings in determining the meaning of ambiguous text.<sup>14</sup>

The heading, “Procedural Requirements,” literally speaks to something different than jurisdiction, and, although the heading phrase “procedural requirements”—or a close variation thereof—appears dozens of times in Title 28 and elsewhere in the U.S. Code, it is never used to refer to a court’s jurisdiction.<sup>15</sup> This is important because of the “obligation to maintain the consistent meaning of words in statutory text,” *United States v. Santos*, 553 U.S. 507, 523 (2008); courts should “normally attribute consistent meanings to statutory terms,” unless context dictates otherwise. *US W. Commc’ns, Inc. v. F.C.C.*, 177 F.3d 1057, 1060 (D.C. Cir. 1999). Reliance on section 302(c) would thus, on top of everything else, impermissibly require ascribing an unprecedented meaning to a common statutory term.

Plaintiff has failed to overcome the strong presumption against implied repeals or amendments, and, further, there is no support for Plaintiff’s remarkable position that Congress in Title III, *sub silentio and by implication*, amended the FSIA to alter its immunity regime and provided a new grant of subject-matter jurisdiction.

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<sup>14</sup> See, e.g., *Texas Children's Hosp. v. Azar*, 315 F. Supp. 3d 322, 331 (D.D.C. 2018) (“The heading of a statutory section is a tool available for the resolution of a doubt about the meaning of a statute.”); *Coal. for Common Sense in Gov’t Procurement v. United States*, 821 F. Supp. 2d 275, 281 (D.D.C. 2011) (looking to statutory heading in 38 U.S.C. § 8126 to inform reading of ambiguous text), *aff’d*, 707 F.3d 311 (D.C. Cir. 2013).

<sup>15</sup> See, e.g., 15 U.S.C. § 56(a)(4) (using “procedural requirement” to refer to time for entering pleading or notice of appeal); 48 U.S.C. § 1822 (defining, for a territorial court, “procedural requirements” for indictment as expressly distinct from “jurisdiction” of the court); 28 U.S.C. § 1446(b)–(c) (setting forth “[p]rocedur[al] . . . [r]equirements” for removal of actions); 15 U.S.C. § 1477 (referring to “procedural requirements” for State Attorneys General to institute actions in federal district courts, including notice and filing rules); 42 U.S.C. § 6992(a) (discussing “procedural requirements” that agencies must observe with respect to waste managed in facilities under their “jurisdiction”); 20 U.S.C. § 1415 (referring, in subsection (f)(3)(E)(iii), to “procedural requirements” for hearings in state educational entities); see also 28 U.S.C. § 2072 (“rules of procedure”); 5 U.S.C. § 706(2)(D) (“procedure required by law”); 26 U.S.C. § 6751 (using “procedural requirement” to refer to procedure for notifying taxpayer of tax penalty).

### **III. THE ACTION AGAINST CUPET FAILS FOR LACK OF PERSONAL JURISDICTION**

If the Court reaches the issue of personal jurisdiction, it should grant CUPET's motion to dismiss the action on that basis. The Plaintiff's own Complaint establishes that the due process requirements for personal jurisdiction over a foreign defendant are lacking here. The Circuit has held that an agency or instrumentality of a foreign state is entitled to those due process limitations on personal jurisdiction, unless the plaintiff can overcome the *Bancec* presumption that an agency or instrumentality endowed with juridical personality is to be treated as separate from the foreign state and establish that, instead, it should be equated with the foreign state (which, under Circuit law, is not a "person" within the Due Process Clause).

The Complaint itself raises the *Bancec* presumption but fails to allege facts to overcome that presumption, requiring dismissal of this action for lack of personal jurisdiction. The accompanying expert declaration on Cuban law and declaration of CUPET's Deputy Director further establish that the *Bancec* presumption applies here; in the event the Complaint is not dismissed for failure to adequately allege personal jurisdiction, both the Complaint and the declarations place upon Plaintiff the burden of coming forward with evidence to overcome the *Bancec* presumption and establish that CUPET is to be equated with the Cuban State.

#### **A. The Due Process Requirements for Personal Jurisdiction Are Not Met**

It does not require elaborate discussion to show that the due process requirements for personal jurisdiction are lacking here. General jurisdiction over CUPET requires that it is "at home" in the United States. *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014) (identifying as the "paradigm forum for the exercise of general jurisdiction" the place where a "corporation is fairly regarded as at home"). Generally, a corporation is at home "where it is incorporated or has its principal place of business[.]" *Id.*; see also *Goodyear Dunlop Tires Operations, S.A. v.*

*Brown*, 564 U.S. 915, 924 (2011) (identifying place of incorporation and principal place of business as paradigm bases for the exercise of general jurisdiction). As Plaintiff alleges, CUPET is organized under Cuban law, and its principal place of business is in Cuba. Complaint ¶¶ 16–17.

Although “in an exceptional case, . . . a corporation’s operations in a forum other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation at home” in that forum, Plaintiff does not allege, nor could it, that there is any room for this exception here. It does not allege that CUPET maintains any offices in the United States, or, indeed, that it has any operations in the United States at all. (The U.S. embargo laws, in effect for six decades, prohibit CUPET from having any offices or operations in the United States, or even engaging in commerce with the United States, directly or indirectly, without a specific license granted by the Treasury Department’s Office of Foreign Assets Control. *See* Cuban Assets Control Regulations, 31 C.F.R. §§ 515.201(b), 515.204.)

Plaintiff likewise cannot establish specific jurisdiction, which requires that “the suit must *arise out of or relate to the* defendant’s contacts with the forum.” *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S.Ct. 1773, 1780 (2017) (emphasis added). As the Complaint itself makes clear, that is plainly not the case here.

**B. Plaintiff Has Not Overcome the *Bancec* Presumption that the Due Process Limitations on Personal Jurisdiction Apply**

1. The Circuit has held that an agency or instrumentality of a foreign state is entitled to due process limitations on personal jurisdiction, unless the plaintiff can overcome the presumption that an agency or instrumentality endowed with juridical personality is to be treated as separate from the foreign state, and establish that, instead, it should be equated with the foreign state. *See GSS Grp. Ltd v. Nat’l Port Auth.*, 680 F.3d 805, 813, 817 (D.C. Cir. 2012) (holding that plaintiff must overcome “the *Bancec* presumption, which . . . guarantees the [state-

owned entity’s] treatment as a separate ‘person’ entitled to due process protection;” courts “must” apply *Bancec* to “the question whether a foreign instrumentality has due process rights under the Fifth Amendment”); *TMR Energy Ltd. v. State Prop. Fund of Ukraine*, 411 F.3d 296, 301 (D.C. Cir. 2005) (“we must determine whether the [agency or instrumentality] has a constitutional status different from that of the State . . . , a question with respect to which the Supreme Court’s decision in [*Bancec*] guides our way.”)

In the *Bancec* case, *First Nat’l City Bank v. Banco Para El Comercio Exterior de Cuba*, the Supreme Court held that “government instrumentalities established as juridical entities distinct and independent from their sovereign should normally be treated as such,” and that such “duly created instrumentalities of a foreign state are to be accorded a presumption of independent status.” 462 U.S. 611, 626–27 (1983).<sup>16</sup>

To overcome the *Bancec* presumption and equate an agency or instrumentality with the state for due process purposes, a plaintiff must establish that the agency or instrumentality is so “extensively controlled” by the state that the state’s control amounts to “complete domination” and the two are not “meaningfully distinct entities,” or, alternatively, that the state exercises its control so as to make the agency or instrumentality its “agent” “under normal agency principles” with respect to the substance of the matter in suit. *Transamerica Leasing, Inc. v. La Republica de Venezuela*, 200 F.3d 843, 848 (D.C. Cir. 2000); see also *GSS Grp. Ltd. v. Nat’l Port Auth.*, 822 F.3d 598, 605 (D.C. Cir. 2016).

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<sup>16</sup> The Supreme Court explained in *Bancec*, a case involving Cuba, that respecting the “separate status of government instrumentalities” is compelled by “principles of comity between nations” and “[d]ue respect for the actions taken by foreign sovereigns,” *Bancec*, 462 U.S. at 626, including their “determination that its instrumentality is to be accorded separate legal status,” *id.* at 626, and is buttressed both by the FSIA, *id.* at 621, and principles common both to international law and federal common law. *Id.* at 623.

As to “complete domination,” the foreign state’s ownership, control of the board of directors (or equivalent), appointment of key executives, capitalization and appropriations for capital, appropriations to cover losses, financial assistance, requiring authorization for major decisions, involvement in major decisions, and exercising its power as a “regulator” are not enough, separately or in combination. *See GSS Grp.*, 822 F.3d at 606–08; *Transamerica Leasing*, 200 F.3d at 848–49, 851–54; *Bancec*, 462 U.S. at 624. The courts have consistently rejected efforts to equate Cuban entities with the Cuban State on grounds of domination.<sup>17</sup>

As to “normal agency principles,” the Circuit has held that an agency is not established simply by the state’s control over the agent or instrumentality. It is also necessary, although it may not be sufficient, for the state to manifest its desire for the entity to “act upon the parent’s behalf” with respect to a matter, for the subsidiary to consent to so act, for the parent to have the right to exercise control over the subsidiary with respect to the matter, and for the parent in fact to exercise that control in a more direct manner than by voting its stock in the company or appointing directors. *See Transamerica Leasing*, 200 F.3d at 849–50; *GSS Grp.*, 822 F.3d at 606. This basis for overcoming *Bancec* typically has been invoked, although usually without success, when it is claimed that the agency or instrumentality was acting as the agent of the state with respect to a particular transaction, as was claimed in *Transamerica Leasing* and *GSS Group*.

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<sup>17</sup> *See Alejandro v. Telefonica Larga Distancia de Puerto Rico, Inc.*, 183 F.3d 1277 (11th Cir. 1999) (national telephone company); *Banco Nacional de Cuba v. Chem. Bank New York Tr. Co.*, 658 F.2d 903 (2d Cir. 1981) (national bank); *Banco Nacional de Cuba v. Chem. Bank New York Tr. Co.*, 782 F.2d 377 (2d Cir. 1986) (same); *Banco Para el Comercio Exterior de Cuba v. First Nat. City Bank*, 658 F.2d 913 (2d Cir. 1981), *rev'd on other grounds*, 462 U.S. 611 (1983) (export bank); *Empresa Cubana Exportadora de Alimentos y Productos Varios v. U.S. Dep't of Treasury*, 606 F. Supp. 2d 59 (D.D.C. 2009), *aff'd*, 638 F.3d 794 (D.C. Cir. 2011) (export enterprise); *Cosmos Trading Corp. of Panama v. Banco Nacional de Cuba*, No. 07-20008-MC, 2007 WL 9706399, at \*5 (S.D. Fla. Feb. 16, 2007), *report and recommendation adopted*, No. 07-20008-MC, 2007 WL 9706400 (S.D. Fla. Mar. 28, 2007) (food import enterprise).



It is possible that, in “exceptional cases,” “fraud” or “misuse of the corporate form” to promote injustice in the transaction sued upon, or misuse of the corporate form to defeat statutory goals in certain circumstances—grounds drawn from and circumscribed by traditional corporate “veil piercing” law—may provide the basis for overcoming *Bancec*. See *GSS Grp.*, 822 F.3d at 608; *Transamerica Leasing*, 200 F.3d at 854.

This is not to be confused with judicially-promulgating exceptions to *Bancec* in order to advance what may be considered to be Congress’ goals; it is for the Congress to evaluate and balance the competing considerations, and decide whether to override *Bancec* in order to advance its goals, and to do so clearly and expressly. In *Alejandre*, 183 F.3d at 1286–88, a case arising from the death of U.S. persons resulting from the Republic of Cuba’s shoot-down of aircraft flown by the Miami-based Brothers to the Rescue, the Court of Appeals for the Eleventh Circuit refused to disregard the separate status of the Cuban national telephone company on the argument that it would advance the legislative goal of the anti-terrorism statutes to facilitate recoveries on judgments against designated state sponsors of terrorism by broadening the pool of assets subject to execution. Before doing so, the Eleventh Circuit held, it would have been necessary for Congress to have taken the “further step of overriding the *Bancec* presumption by making instrumentalities responsible for the debts of their related terrorist-sponsoring governments” with a “clear expression” in the legislation. *Id.* at 1287.

As with the anti-terrorism statutes before the Eleventh Circuit in *Alejandre*, Congress did not override *Bancec* in Title III.<sup>18</sup> In contrast, Congress did override the “act of state” doctrine

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<sup>18</sup> Even as Title III was first introduced, it did not include a *Bancec* provision. Prior to its introduction, efforts in Congress to overturn *Bancec* had failed. In 1988, the House had adopted an amendment to the FSIA that the property of an agency or instrumentality of a foreign state engaged in a commercial activity in the United States would not be immune from execution on a judgment against the foreign state for which the foreign state was not immune under the FSIA.

for Title III actions, a different limitation on suits against Cuban agencies or instrumentalities, famously applied in *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964), to bar claims based on the Cuban nationalizations. See Title III, § 302(a)(6); 22 U.S.C. § 6082 (a)(6) (act of state doctrine not to be applied to Title III lawsuits). Additionally, unlike for suits under Title III, Congress (subsequent to *Alejandro*) did override *Bancec* for suits under anti-terrorism legislation.<sup>19</sup> And Title III itself distinguishes agencies or instrumentalities from the foreign state, including the Cuban State, by making only a “person,” a term that is not normally used to connote a foreign state in U.S. law, see *Price v. Socialist People's Libyan Arab Jamahiriya*, 294

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See H.R. 3763, 100th Cong. § 3(1)(D) (1988); 134 CONG. REC. H6484 (1988). In the Senate, however, the House proposal encountered substantial opposition, see *Foreign Sovereign Immunities Act Amendments: Hearings on H.R. 3763 Before the S. Comm. on the Judiciary*, 100th Cong., S. Hrg. 100-1061 (Oct. 5, 1988), including strong opposition by both the Justice and State Departments, H. Hrg. 100-1061, at, e.g., 17–19, 29–30, 37, 46–47, 50–52, 55–56, and the Senate Judiciary Committee did not report H.R. 3763 out.

Legislative efforts soon after Title III’s passage to override *Bancec* also failed. See H.R. 3026, 105th Cong., §§ 2-3 (as introduced in House, Nov. 12, 1997; referred to House Committee on Judiciary without further action) (eliminating agency and instrumentality’s immunity from execution on judgments against Libyan State for PanAm Flight 103 attack); H.R. 271, 106th Cong., §§ 2–3 (as introduced in House, Jan. 6, 1999; referred to House Committee on Judiciary without further action) (same with respect to judgments against Federal Republic of Germany for acts of genocide by predecessor government during World War II).

<sup>19</sup> In Pub. L. 110-181, Div. A, Title X, § 1083(b)(3), 122 Stat. 341 (2008), codified at 28 U.S.C. § 1610(g), Congress provided that terrorism judgments against designated state sponsors of terrorism may be enforced against the property of the foreign state’s agency or instrumentality, notwithstanding that the agency is a “separate juridical entity” and “regardless of - (A) the level of economic control over the property by the government of the foreign state; (B) whether the profits go directly to that government; (C) the degree to which officials of that government manage the property or otherwise control its daily affairs; (D) whether that government is the sole beneficiary in interest of the property; or (E) whether establishing the property as a separate entity would entitle the foreign state to benefits in United States courts while avoiding its obligations.” Earlier, in the Terrorism Risk Insurance Act, Pub. L. 107-297, Title II, § 201(a), (b), (d), 116 Stat. 2337, Note (2002), 28 U.S.C. §1610, Congress provided for execution against the blocked property of agencies and instrumentalities in satisfaction of terrorism judgments against designated state sponsors of terrorism.

F.3d 82, 96 (D.C. Cir. 2002), liable for trafficking, Title III, § 302(a), 22 U.S.C. § 6082(a), and by defining “person” to include an “agency or instrumentality of a foreign state” but not the foreign state. *See* LIBERTAD Act, § 4(11); 22 U.S.C. § 6023(11).<sup>20</sup>

2. The Complaint does not make any factual allegations to overcome the *Bancec* presumption, even though the presumption is triggered on the face of the Complaint itself. (Nor does the Complaint even make a conclusory allegation of law that CUPET is not entitled to the *Bancec* presumption and is to be equated with the Cuban State.)

By alleging that CUPET is an agency or instrumentality as that “term is defined in 28 U.S.C. §1603(b),” Complaint ¶ 6, Plaintiff necessarily alleges that, as defined in that provision, CUPET is a “separate legal person, corporate or otherwise,” 28 U.S.C. § 1603(b)(1) (defining “agency or instrumentality”). The Complaint does not allege that CUPET is part of the Cuban State, but, rather, that it is a “separate legal person,” 28 U.S.C. § 1603(b)(1), *owned* by the State. Complaint ¶ 2.

Nothing more is needed to raise the *Bancec* presumption, which arises from the defendant’s “separate legal status” under foreign law. *Bancec*, 462 U.S. at 626–27; *see also, e.g., DRI, Inc. v. Republic of Honduras*, 71 F. Supp. 3d 201, 212 (D.D.C. 2014) (relying on the “unequivocal statement in [the foreign law] establishing [the agency’s] independent juridical

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<sup>20</sup> Indeed, to disregard the separate status of agencies or instrumentalities on the rationale of advancing Congressional goals would not only invade Congress’ province but contradict the statute: if agencies or instrumentalities are equated with the Cuban State, and the Cuban State by Title III’s own terms is not subject to Title III actions, then they too would not be subject to Title III actions, contrary to Title III’s express inclusion of them as among the “persons” liable for trafficking under Title III.

Were Plaintiff to succeed here in overcoming the *Bancec* presumption on a different rationale – contrary to the arguments and showing made on this motion – it would bring to the fore at a later stage of this litigation, after resolution of subject-matter jurisdiction, the question whether the Defendants fall within Title III’s exclusion of the state from the scope of Title III’s liability.

identity”); *Wye Oak Tech., Inc. v. Republic of Iraq*, No. 1:10-CV-01182-RCL, 2018 WL 5983385, at \*17 (D.D.C. Nov. 14, 2018). Consequently, the Court need go no further: the Complaint is fatally defective for failure to allege any facts to overcome the *Bancec* presumption that the Complaint itself raises.

In any event, the accompanying expert declaration of Dr. Marta Milagro Moreno Cruz, Dean of the University of Havana School of Law, on Cuban law (“Moreno Decl.”) and the declaration of CUPET’s Deputy Director Roberto Suárez Sotolongo (“Suárez Decl.”) further establish that the *Bancec* presumption applies here (and, indeed, provide a formidable showing of CUPET’s entitlement to due process limitations on personal jurisdiction).

CUPET was established by ministerial resolution as a “Union,” one of the categories of “legal persons” recognized by Cuban law; the state is separately recognized in Cuban law as a different “legal person.” Moreno Decl. at ¶¶ 4a–4b. As a legal person, CUPET, under Cuban law, owns its own assets, has the legal capacity to sue and be sued, and otherwise to be the subject of rights and obligations. *Id.* at ¶ 4c. Its assets and liabilities are distinct from those of the state. *Id.* at ¶ 4d. It answers with its own assets for its obligations. *Id.* at ¶¶ 4d–e. The state is not responsible for its obligations, and it is not responsible for the state’s obligations. *Id.* at ¶¶ 4a–4e. It enters into contracts in its own name; it cannot bind the state to a contract, nor can the state bind it to a contract. *Id.* at ¶¶ 4a, 4h. It does not require the state’s approval to enter into a contract, except, like all entities in Cuba, for transactions subject to the country’s Foreign Investment Law. *Id.* at ¶ 4l.

CUPET’s “corporate purpose,” defined by law, is “to commercialize hydrocarbons and their derivative products, as oils, fats, and lubricants.” *Id.* at ¶ 4f. Only those legal persons “having a business mission, that is to say, those identified by primary activities related to

production, trade and services that are commercial in nature,” are endowed with a “corporate purpose.” *Id.* CUPET has no governmental or regulatory authority. *Id.* at ¶¶ 4e–4g.

The Cuban Constitution specifies the institutions that constitute the Cuban State. CUPET is not among them. Rather, they are the National Assembly (parliament), the Council of State, President, Vice President, the Council of Ministers, the Courts, the Attorney General’s office, and Comptroller General’s office, ministries and certain named National Institutes and National Offices. *Id.* at ¶ 4i.

Under Cuban law, CUPET is to be run, together with the enterprises integrated to it (all of which also have their own juridical personality and assets), as a distinct, integrated commercial organization. *Id.* at ¶ 4j; Suárez Decl. at ¶4. It covers its expenses with its revenues and earns a profit. Moreno Decl. at ¶ 4j. It hires its own employees. *Id.* at ¶ 4u.

By law, CUPET is required to pay taxes to the State Treasury on its net profits, establish reserves from its post-tax profit for losses and contingencies, and pay a minimum of 50% of the remainder of the profit to the state (which the Complaint, ¶ 2, alleges to be CUPET’s “owner”). *Id.* at ¶¶ 4n–4p. What remains from the net profit must be used by CUPET for working capital, capital investments, additional compensation for its employees, research and development, reduction of debt and/or reserves for other matters. *Id.* at ¶ 4q.

CUPET is governed and managed by a *Consejo de Direccion*, which has all the legal authority needed to operate the company. *Id.* at ¶ 4k. A governmental authority appoints CUPET’s General Director and Deputy General Director, Suárez Decl. at ¶ 1; the General Director appoints the other members of the *Consejo de Direccion*. Moreno Decl. ¶ 4k. CUPET formulates an annual plan, which a governmental body approves. *Id.* at ¶¶ 4v–4w; Suárez Decl. at ¶¶ 2–3.

Even if the Complaint did not itself raise the *Bancec* presumption, requiring dismissal for its failure to make allegations sufficient to overcome that presumption, the submitted declarations would be sufficient to do so (and more) and place the burden on Plaintiff to come forward with evidence that overcomes the *Bancec* presumption and establish that CUPET should be treated the same as the state for personal jurisdiction due process purposes. *See GSS Grp.*, 680 F.3d at 817 (“[T]he [state-owned entity] claimed to be an independent juridical entity in its motion to dismiss, and [plaintiff] failed to contest that characterization. [Plaintiff]’s omission left intact the *Bancec* presumption, which . . . guarantees the [state-owned entity] treatment as a separate ‘person’ entitled to due process protection.”).

#### **IV. THE ACTION AGAINST CIMEX FAILS FOR LACK OF PERSONAL JURISDICTION**

As with CUPET, this action does not satisfy the due process requirements for personal jurisdiction over CIMEX. The Complaint does not allege that CIMEX is “at home” in the United States, as required for general jurisdiction, but to the contrary, alleges it is a Cuban corporation located in Cuba. Complaint ¶¶ 13, 56. The Complaint does not allege that Plaintiff’s claim, which is for the use of gas service stations in Cuba, arises out of CIMEX’s contacts with the United States. (The Complaint only makes the unrelated assertions that CUPET maintains a financial division that manages remittance wire transfers from the United States and owns a tourism company that is the exclusive provider of travel from the United States. Complaint ¶ 56.)

As with CUPET, the Complaint’s own allegations give rise to the *Bancec* presumption with respect to CIMEX: that it is an “agency or instrumentality” as that term is defined in the FSIA, *i.e.*, a “separate legal person;”; that this separate legal person is “owned” by the Cuban State, and that it is a “commercial corporation.” Complaint ¶¶ 13–14, 56. The

Complaint's failure to make allegations to overcome the *Bancec* presumption it itself raises is fatal.

In addition, the Complaint alleges that CIMEX (unlike CUPET) is a “*sociedad anónima* incorporated in Cuba.” As explained in the Moreno Decl. at ¶¶ 4b, 4r, 4u, a “*sociedad anónima*” (abbreviated “S.A.,”) is a type of “legal person” recognized by Cuban law. It thus, as a legal person, has the rights, capacities, obligations and status that are different from those of the state, a different legal person, giving rise, as discussed above in connection with CUPET, to the *Bancec* presumption.

*Sociedades anónimas* are a category of Mercantile Companies (*Compañías Mercantiles*). Moreno Decl. at ¶ 4r. They are formed by two or more persons agreeing to place assets in common to achieve profits. They form a common fund, owned by them in proportion to their shares, and they entrust the management of the company, which, upon formation, obtains a legal personality, to removable delegates or administrators, who represent the company. *Id.*

*Sociedades anónimas* are subject, like all Cuban commercial entities, to tax on their profits at the rate of 35%. *Id.* at ¶ 4o. They are required by law to maintain reserves for losses and contingencies, *id.* at ¶ 4n, and to utilize the amount of profits that remain after taxes, the mandatory reserves and dividends for working capital, capital investments, increased compensation for its employees, research and development, reduction of debt and/or reserves for other matters. *Id.* at ¶ 4q. If the S.A. is integrated with an OSDE, a Superior Organization of Business Development (discussed in the Moreno Decl. at ¶¶ 4c, 4k, 4m, 4t, 4v), its use of the remainder after taxes, mandatory reserves and dividends is approved by a *Junta de Gobierno* pertaining to the OSDE, and its annual plan is consolidated into the OSDE's annual plan for approval by the Ministry of Economy and Planning. *Id.* at ¶ 4t.

As the Complaint itself (with or without the Moreno Declaration explaining “*sociedad anónima*”) raises the *Bancec* presumption but fails to allege facts to overcome it, CIMEX is entitled to due process protections, and the action should be dismissed for lack of personal jurisdiction. Even if the Complaint did not itself raise the presumption, the Moreno Declaration’s explication of “*sociedad anónima*” would be sufficient to do so and place the burden on Plaintiff to come forward with evidence that overcomes the *Bancec* presumption and establishes that CIMEX should be treated the same as the state.

**V. THE COURT SHOULD STAY LITIGATION OF PERSONAL JURISDICTION UNTIL SUBJECT-MATTER JURISDICTION IS RESOLVED**

Defendants have moved to dismiss for lack of personal jurisdiction at the same time that they have moved for dismissal for lack of subject-matter jurisdiction in order not to waive that objection under Fed. R. Civ. P. 12(h). Defendants, however, request a stay of further proceedings on the personal jurisdiction issue until final determination of subject-matter jurisdiction, including appellate decision on an interlocutory appeal of right from any adverse ruling on their contention that the FSIA requires dismissal of the action.

Under the FSIA, a court must find subject-matter jurisdiction *before* addressing personal jurisdiction because one of the requirements for the exercise of personal jurisdiction is that an exception to FSIA immunity applies (thereby conferring subject-matter jurisdiction on the court). *See* 28 U.S.C. § 1330(a)–(b). “At the *threshold* of every action in a District Court against a foreign state . . . the court must satisfy itself that one of the exceptions [to immunity] applies[.]” *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 493–94 (1983) (emphasis added).

Further, the Court of Appeals for this Circuit has held that FSIA immunity is immunity from the entanglements, burdens and intrusions of litigation in a foreign court, not just immunity



from judgment. Expressly for that reason, the Circuit has held that an interlocutory appeal lies of right from denial of FSIA immunity. *See Kilburn v. Socialist People's Libyan Arab Jamahiriya*, 376 F.3d 1123, 1126 (D.C. Cir. 2004) (so holding, and citing cases). The Supreme Court has recently reaffirmed that a “basic objective” of the FSIA is to avoid “embroil[ing] the foreign sovereign in an American lawsuit” before the issue of immunity has been resolved. *Bolivarian Republic of Venezuela v. Helmerich & Payne Int'l Drilling Co.*, 137 S.Ct. 1312, 1321 (2017).

It would be incongruous, and contrary to the rationale for affording interlocutory appeals on FSIA immunity as of right, to require the Defendants to litigate personal jurisdiction before final resolution of FSIA immunity.

Reason enough for the requested stay, this common-sense conclusion has additional pertinence and force here.

First, the question of personal jurisdiction in this case, unlike in most FSIA actions, does not turn on mundane questions about service of process (there is no challenge to service), or on whether the due process rules normally applicable to foreign businesses are satisfied.

Rather, personal jurisdiction turns on *Bancec*. The Supreme Court explained that it was “le[d] . . . to conclude” that U.S. courts must observe a presumption respecting the status of foreign agencies or instrumentalities in large part because of “principles of comity between nations,” and “[d]ue respect for the actions taken by foreign governments,” and, specifically, “due respect” for the foreign sovereign’s “determination that its instrumentality is to be accorded separate legal status.” *Bancec*, 462 U.S. at 626. The Court found as well that the long-term national interest in international trade supports respect for the separate juridical status of agencies or instrumentalities. *See id.* at 624–28. Without the requested stay, the Court would risk making a decision on personal jurisdiction with these fraught implications needlessly.

Second, the course here of litigation over subject-matter jurisdiction as compared to personal jurisdiction is such that the requested stay best serves the settled principle that FSIA immunity is immunity from litigation, not just immunity from judgment.

The issue of subject-matter jurisdiction requires only legal interpretation of the FSIA's "direct effects" requirement and consideration of the legal validity of Plaintiff's implied subject-matter jurisdiction argument. Defendants maintain that the Complaint on its face is inadequate to satisfy the "direct effect" requirement. (Even aside from this, it is difficult to conceive of any disputed issues of fact emerging on the FSIA "direct effect" issue.) Plaintiff's assertion of implied subject-matter jurisdiction presents only a question of law.

In contrast to the subject-matter jurisdiction issue, the personal jurisdiction issue presents questions of foreign as well as U.S. law, and also, potentially, questions of disputed fact and discovery. Defendants have presented an expert declaration on Cuban law with respect to the *Bancec* issue; Plaintiff may very well not leave it unanswered, in which event Defendants would respond with further submissions on Cuban law. Plaintiff may seek to establish one of the (narrow) exceptions to the *Bancec* rule by fact affidavits, to which Defendants may well respond with their own fact affidavits (as well as legal arguments on the sufficiency of Plaintiff's affidavits). Plaintiff may seek fact discovery on the *Bancec* exceptions, occasioning, presumably, litigation over the right to and scope of fact discovery, and, depending on its outcome, imposition of the intrusions and burdens of discovery on Defendants.

Consequently, whatever may be the case in other FSIA actions, litigation here of personal jurisdiction before final resolution of FSIA immunity would be at odds with FSIA immunity being immunity from litigation.

This is so regardless of discovery. The possibility of discovery demands adds still another reason to move forward to final resolution of subject-matter jurisdiction first. *See Rubin v. Islamic Republic of Iran*, 637 F.3d 783, 795 (7th Cir. 2011) (“[I]t is widely recognized that the FSIA’s immunity provisions aim to protect foreign sovereigns from the burdens of litigation, including the cost and aggravation of discovery”).<sup>21</sup>

There would be nothing untoward in staying litigation of personal jurisdiction. To the contrary, that the courts must determine FSIA immunity “at the threshold,” *Verlinden*, 461 U.S. at 493–94, and that an interlocutory appeal lies of right from an adverse decision on that threshold issue, *Kilburn*, 376 F.3d at 1126, fully support the requested stay, and here there are additional, weighty factors particular to this case that support the request.

### CONCLUSION

For the foregoing reasons, the branch of Defendants’ motion to dismiss this action for lack of subject-matter jurisdiction with prejudice should be granted, and the branch of Defendants’ motion to dismiss the action for lack of personal jurisdiction should be stayed

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<sup>21</sup> *See also, e.g., Phoenix Consulting Inc. v. Republic of Angola*, 216 F.3d 36 (D.C. Cir. 2000) (“In order to avoid burdening a sovereign that proves to be immune from suit . . . jurisdictional discovery . . . should not be authorized at all if the defendant raises . . . a different jurisdictional . . . ground[] . . . the resolution of which would impose a lesser burden upon the defendant”); *Peterson v. Islamic Republic of Iran*, 563 F. Supp. 2d 268, 274 (D.D.C. 2008) (quoting *Crist v. Republic of Turkey*, 995 F. Supp. 5, 12 (D.D.C. 1998), quoting *El-Fadl v. Cent. Bank of Jordan*, 75 F.3d 668, 671 (D.C. Cir. 1996) (“[J]urisdictional discovery should not be ordered when to do so ‘would frustrate the significance and benefit of entitlement to immunity from suit’”); *In re Papandreou*, 139 F.3d 247, 253 (D.C. Cir. 1998) (noting that a district court “authorizing discovery to determine whether immunity bars jurisdiction must proceed with circumspection, lest the evaluation of the immunity itself encroach unduly on the benefits the immunity was to ensure”); *Republic of Argentina v. NML Capital, Ltd.*, 134 S.Ct. 2250, 2258 n.6 (2014) (suggesting that a district court, in exercising its discretionary authority over discovery, “may appropriately consider comity interests and the burden that the discovery might cause to the foreign state”).

pending final determination of subject-matter jurisdiction or, in the alternative, granted with prejudice.

Dated: October 8, 2019

Respectfully submitted,

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

_____	)	
EXXON MOBIL CORPORATION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.: 19-1277 (APM)
	)	
CORPORACIÓN CIMEX, S.A., AND	)	
UNIÓN CUBA-PETRÓLEO,	)	
	)	
Defendants.	)	
_____	)	

**ENGLISH TRANSLATION**

**DECLARATION OF DR. MARTA MILAGRO MORENO CRUZ**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

EXXON MOBIL CORPORATION,	)	
	)	Civil Action No.: 19-1277 (APM)
Plaintiff,	)	
	)	
v.	)	
	)	
CORPORACIÓN CIMEX, S.A., AND	)	
UNIÓN CUBA-PETRÓLEO,	)	
	)	
Defendants.	)	
	)	

**DECLARATION OF DR. MARTA MILAGRO MORENO CRUZ**

Dr. Marta Milagro Moreno Cruz declares under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I am the Dean of the School of Law of the University of Havana, Cuba, and have held that position since April 2016. I graduated from the School of Law, University of Havana in 1982 with a Degree in Law (*Licenciada en Derecho*), and was awarded a Doctorate in Legal Sciences from the University of Havana in 1989. I was appointed a professor on the School of Law in 1982 and I currently have the highest teaching category of Full Professor. I have taught courses on Cuban economic law, among other subjects concerning Cuban law, and have published extensively on that subject, as well as on other legal matters. I attach my *curriculum vitae* as Annex A.

2. I have been requested by counsel for UNIÓN CUBA-PETRÓLEO (hereinafter sometimes “CUPET”) in the above-captioned litigation to provide an expert declaration on whether CUPET is distinct and independent, and separate and apart, from the Cuban State under Cuban law, and whether there is a basis in Cuban law for considering it to be an agent of the Cuban State or otherwise equating it with the Cuban State. I make this Declaration on the basis of my knowledge of Cuban law, including my study of laws, resolutions and other legal instruments particularly applicable to CUPET. As is the tradition for academics in Cuba, I make this Declaration without fee.

3. It is my opinion that CUPET is a legal entity distinct and independent, and separate and apart, from the Cuban State under Cuban law, and that there is not any basis in Cuban law for considering it to be an agent of the Cuban State or otherwise equating it with the Cuban State.

4. I base this opinion on the following, without limitation:

a. CUPET was established on March 25, 1992 by Resolution No. 23/1992, issued by the Cuban *Ministerio de la Industria Básica* (Ministry of Basic Industry) (a true and correct copy of which is attached hereto as Annex B). As provided for in that Resolution, *Unión del Petróleo* and *Unión del Combustible* were merged to form CUPET, which “for all legal purposes, is a continuation of *Unión del Petróleo* and *Unión del Combustible* and is subrogated to their place and status.” Article Fifth, Resolution No. 23/1992.

b. CUPET is a “Union,” which is one of the different categories of legal persons recognized by Cuban law. The Cuban Civil Code, Law No. 59/1987 (July 16, 1987), in its Article 39.2(a) and (ch), recognizes “*empresas* and Unions of state *empresas*,” as well as “*sociedades*,” as “legal persons.” The same Article 39.2 of the Civil Code expressly recognizes the Cuban State as a different legal person. Attached hereto as Annex C is a true and correct copy of the provisions of the Cuban Civil Code cited in this Declaration.

c. Under Article 39.1 of the Civil Code, “legal persons,” and hence CUPET, own their own assets and have the legal capacity to sue and be sued, and otherwise have the capacity to be the subjects of rights and obligations. (“Legal persons are entities that, owning their own assets, have the capacity to be the subjects of rights and obligations”). Likewise, according to Article 41 of the Civil Code, legal persons to carry out their activities have the capacity determined by law and their statutes or regulations.

Decree No. 335, issued by the *Consejo de Ministros* (Council of Ministers) (September 5, 2017), is applicable to Unions as a type of *Organización Superior de Dirección Empresarial* (“Superior Organization of Business Management,” abbreviated as “OSDE”). Articles 1, 2 and 8.1. Unions are “integrated by *empresas* which by their organizational, technological, productive and commercial characteristics are highly interrelated and dependent upon each other,” Article 8.3. Article 6.1 provides that an OSDE (and hence CUPET as a type of OSDE) has “legal personality and its own assets.” A true and correct copy of Decree No. 335 is attached hereto as Annex D.

d. CUPET’s assets and liabilities are distinct from those of the Cuban State. This is inherent in Article 39.1 of the Civil Code. Further, Articles 44.3 and 44.1 of the Civil Code expressly provide that “[t]he State does not answer for the obligations incurred by other legal persons, nor do other legal persons answer for the obligation incurred by the State,” and that “legal persons answer for their obligations with the property making up their assets.” Decree No. 335, Article 6.1, likewise provides that OSDEs have their “own assets,” and, in Article 6.2, that they answer for their obligations “by means of their own financial resources.”

e. The separation of CUPET from the State established and made manifest by the above provisions of law has constitutional status.

The Cuban Constitution, Article 26, provides that:

The State creates and organizes State business entities with the goal of carrying out economic activities related to production and provision of services.

These entities respond with their own assets for the obligations they incur, in accordance with the limits provided by the law.

The State is not liable for the obligations incurred by State business entities, and these entities are not liable for the obligations incurred by the State.

In addition, Article 27 provides that state *empresas* “have autonomy as regards their administration and management.”

Prior to adoption of the current Cuban Constitution in 2019, the Cuban Constitution, as reformed in 1992, provided in Article 17 that the State *either* is the “direct administrator of the goods that make up the socialist property of the entire people, or ... may create and organize *empresas* and entities charged with the administration of those goods...” Article 17 further provided that “[t]hese *empresas* and entities respond for the obligations they incur only with their own financial resources, within the limits provided by the law. The State is not liable for the obligations incurred by the *empresas*, entities or other legal persons, and they are not liable for the obligations incurred by the State.”

A true and correct copy of Articles 26 and 27 of the Cuban Constitution (2019) and Article 17 of the Cuban Constitution as reformed in 1992 is attached hereto as Annex E.

f. CUPET’s corporate purpose, which defines its authorized scope of activities, was established by resolution of the *Ministerio de Economía y Planificación* (Ministry of Economy and Planning). Resolution No. 127/2016, issued by the Ministry of Economy and Planning (October 17, 2016), provides that CUPET’S corporate purpose is:

To commercialize hydrocarbons and their derivative products, as well as oils, fats and lubricants.

A true and correct copy of Resolution No. 127/2016 is attached hereto as Annex F.

Under Cuban law, “[o]nly ... those legal persons having a business mission, that is to say, those identified by primary activities related to production, trade and services that are commercial in nature,” are endowed with a corporate purpose. Article 3, Resolution No. 134/2013 issued by the Ministry of Economy and Planning (April 30, 2013), a true and correct copy of which is attached hereto as Annex G. As stated in Article 2 of that Resolution, “corporate purpose is defined as the sum of the primary activities related to production, trade and services that make up the



commercial transactions through which an entity engaged in business activity performs the mission for which it has been created.”

g. CUPET has no governmental or regulatory authority.

h. CUPET has no legal authority to bind the State to any contract, and the State has no legal authority to bind CUPET to any contract. This principle is inherent in the provisions of Cuban law that Unions and the State are separate legal persons. Additionally, there is no provision in Cuban law that authorizes the State to bind CUPET to a contract or that authorizes CUPET to bind the State to a contract. This principle is also codified in Article 6 of Decree-Law No. 304 “Concerning Economic Contracting” (November 1, 2012), which regulates the principle on relativity of economic contracts. It provides that a “contract shall not incur obligations to third parties, nor do third parties have the right to invoke it in order to lay obligations upon the parties which they have not themselves established, except as otherwise agreed or as stipulated by law.” A true and correct copy of Article 6 of Decree-Law No. 304 is attached hereto as Annex H.

i. The Cuban Constitution defines what institutions constitute the Cuban State but CUPET is not one of those institutions. Title VI, “The Structure of the State,” specifies that the Cuban State consists of: the *Asamblea Nacional del Poder Popular* (National Assembly of Popular Power), the *Consejo de Estado* (Council of State), the President and Vice-President of the Republic, and the Government of the Republic, the Courts, the *Fiscalía General de la República* (Office of the Attorney General of the Republic) and the *Contraloría General de la República* (Office of the Comptroller General of the Republic).

In accordance with Article 133 of the Constitution, “the Council of Ministers is the highest administrative executive body and constitutes the Government of the Republic.” Article 137 subpart (j) of the Constitution establishes that the Council of Ministers is responsible for directing the administration of the State. Likewise, Article 146 of the Constitution, concerning the *Administración Central del Estado* (Central Administration of the State), provides that “the number, denomination, mission, and functions of the ministries and other *organismos* that form part of the Central Administration of the State are determined by law.” As established by Law No. 67 (April 19, 1983) and as subsequently modified, the Central Administration of the State is composed of the Council of Ministers and its Executive Committee, as well as the following Ministries and other *Organismos* of the Central Administration of the State:

1. Ministry of Industry
2. Ministry of Energy and Mining
3. Ministry of Food Industry
4. Ministry of Construction
5. Ministry of Agriculture
6. Ministry of Transportation
7. Ministry of Communication
8. Ministry of Interior Commerce
9. Ministry of Foreign Commerce and Foreign Investment
10. Ministry of Science, Technology and the Environment
11. Ministry of Education

12. Ministry of Higher Education
13. Ministry of Culture
14. Ministry of Public Health
15. Ministry of Finance and Prices
16. Ministry of Tourism
17. Ministry of Economy and Planning
18. Ministry of Labor and Social Security
19. Ministry of Justice
20. Ministry of Foreign Relations
21. Ministry of Revolutionary Armed Forces
22. Ministry of Interior
23. National Institute of Hydraulic Resources
24. National Institute of States Reserves
25. Cuban Institute of Radio and Television
26. National Institute of Sports, Physical Education and Recreation
27. National Office of Statistics and Information
28. National Office of Tax Administration
29. National Office of Norms
30. National Office of Mineral Resources
31. National Office of State Inspection of Transportation
32. National Office of Design
33. National Office for the Control of the Rational Use of Energy
34. National Office of Labor Inspection
35. Office for the Mariel Special Zone of Development

The Offices that are part of the Central Administration of the State are ascribed to an *Organismo* of the Central Administration of the State identified above, or subordinated to the Council of Ministers, as appropriate.

j. The above and other provisions of law discussed in this Declaration prescribe that CUPET and the *empresas* integrated to it are to be run as a distinct, integrated commercial organization. Article 9 of Decree No. 335 provides that a Union which (such as CUPET) “constitutes an integrated system with its *empresas*, covers its expenses with its revenue and as a result earns profits from its own economic activity ... [T]he Union and its *empresas* establish monetary-business relationships among them.”

k. Decree No. 335 provides that an OSDE, and hence CUPET, is governed, managed and operated by its *Consejo de Dirección*, which is its “primary governing body,” and by its General Director, who is a member of the *Consejo de Dirección*. Decree No. 335, Chapters IV, Article 19, and VI, Second Section. They are provided by law with all the authority required to govern, manage and operate CUPET, and with the corresponding responsibility. Decree No. 335, in particular Chapters IV and VI. The General Director appoints the other members of the *Consejo de Dirección*. Article 25, number 11, Decree No. 335.

l. As a legal person, CUPET enters into contracts in its own name. There is no requirement of governmental approval for it to enter into a contract, with the exception of

CUPET's forming relations with foreign parties that are subject to the Law on Foreign Investment, Law No. 118/2014 (March 29, 2014), Articles 2(b), 7, 21.1, 21.2, 21.3 and 21.4, a law of general application that regulates foreign investments in Cuba.

m. Under Decree No. 335, CUPET, as an OSDE and Union, performs comprehensive "management and monitoring" with respect to the entities, whether state *empresas* or "*sociedades mercantiles*," integrated to it (Article 10.1), with the focus on the "overall results" of the whole organization (Article 10.3). Under Cuban law, the term "entity" encompasses both state *empresas* and *sociedades mercantiles* and the term *sociedad mercantil* encompasses *sociedades anónimas* as a type of *sociedad mercantil*.

n. As required by law, each of the state *empresas* integrated to CUPET makes an annual financial payment to a reserve for losses and contingencies which is maintained by CUPET. Articles Two and Three, Resolution 467/2015, issued by the *Ministerio de Finanzas y Precios* (Ministry of Finances and Prices) (August 6, 2015), a true and correct copy of which is attached hereto as Annex I. As a form of *sociedad mercantil*, a *sociedad anónima* is required under Cuban law to maintain its own reserve for losses and contingencies. Article 10, Resolution No. 138/2017

o. CUPET is subject to the generally applicable tax law that requires all commercial entities in Cuba to pay a tax on their annual net profits to the State Treasury at the rate of 35 %, as well as certain other general taxes under laws also applicable to all commercial entities in Cuba (for example, the law that requires payment of a social security contribution based on wages paid to employees). *See* Law No. 113/2012 (July 23, 2012). The same is true of the state *empresas* and the *sociedades anónimas* integrated to CUPET.

p. Of the net profit left after taxes and the legally-required reserves for losses and contingencies, CUPET is required by law to pay at a minimum one-half to the State Treasury and to retain the remainder. The same is true of the state *empresas* integrated to it. Article 12.1, Resolution No. 138/2017, issued by the Ministry of Finances and Prices (April 5, 2017), a true and correct copy of which is attached hereto as Annex J. Of the net profit left after taxes and legally-required reserves for losses and contingencies, each of the *sociedades anónimas* integrated to CUPET is required by law to pay at a minimum one-half as dividends to their shareholders in accordance with each shareholder's percentage interest in the *sociedad anónima*. Articles 20 and 22, Resolution No. 138/2017.

q. In accordance with Articles 3, 27 and 28 of Resolution No. 138/2017, at the end of each fiscal year CUPET, and the State *empresas* and *sociedades mercantiles* integrated to it, propose and justify before the corresponding empowered authorities the creation of voluntary reserves from their profits to be allocated to increase of working capital, amortization of credits, profit distribution to workers, training, research and development, and contribution to a compensation fund, among other reserves.

r. I have previously explained the legal characteristics of state *empresas*. As to *sociedad anónima*, I have already noted that a *sociedad*, of which a *sociedad anónima* is one type, is one of the categories of legal persons recognized by Cuban law. Article 39.2 (ch) of the Cuban Civil Code. Consequently, a *sociedad anónima*, as a legal person, has all the rights, capacities, obligations and status that are different from those of the State, which is a different legal person, in accordance with the aforementioned Cuban law. A *compañía mercantil* (mercantile company) is established under Articles 116 - 123 of the Cuban Code of Commerce, which provide that *Compañías Mercantiles* are formed by two or more persons who agree to place assets in common to obtain profits. Article 116, Cuban Code of Commerce. The terms “*compañía mercantil*” and “*sociedad mercantil*” are synonyms according to Cuban law. Once it has been formed, the “*Compañía Mercantil* shall have legal personality in all its of its acts and contracts.” *Id.* Article 122 provides that “[a]s a general rule, *Compañías Mercantiles* shall be formed by adopting one of the following modalities: (...) the *anónima* (corporation), in which in creating the common fund in accordance with certain parts or portions, as represented by stock or by means of another indubitable method, the partners entrust its management to removable *mandatarios* (delegates) or *administradores* (administrators) who shall represent the Company under a name that is appropriate to the object or business for which its funds are to be used.” A true and correct copy of the cited provisions of the Code of Commerce are attached as Exhibit K.

s. In accordance with the previous paragraphs, CUPET’s General Director has the power to propose for approval by its *Junta de Gobierno* the proposal for reserves to be created in CUPET and the *empresas* integrated to it, on the basis of after-tax profits, as well as the amount of those reserves. Article 25, number 59, of Decree No. 335; Article 3, Resolution No. 138/2017. The *Junta de Gobierno* consists of one person from the *Ministerio de Energía y Minas* (Ministry of Energy and Mining), one from the Ministry of Finances and Prices, one from the *Ministerio del Comercio Exterior* (Ministry of Foreign Commerce), one from the Ministry of Economy and Planning and the Director General of CUPET. Article Second (I)(1), Agreement 7591, issued by the Executive Committee of the Council of Ministers (July 17, 2014), a true and correct copy of this provision is attached hereto as Annex L.

t. Although the literal words of Decree No. 335 only establish that it is the *Junta de Gobierno* that reviews and approves the use of their reserves by an *empresa* integrated to an OSDE, if a *sociedad anónima* is integrated to an OSDE the decision about its use of their reserves has to be approved by a *Junta de Gobierno* as well. Decree No. 335, Fifth Special Provision.

u. CUPET and the state *empresas* and *sociedades anónimas* integrated to it directly hire their employees. Article 21, Law No. 116/2013 (December 20, 2013) (Cuban Labor Code), a true and correct copy of this provision is attached hereto as Annex M. The Labor Code establishes binding rules concerning salary, work and rest regimen, safety and health in the workplace and other labor rights enshrined in the Constitution for all persons employed in Cuba. Articles 2(c) and 109, Law 116/2013; Articles 127-131, Decree 326/2014, Regulations of the Labor Code, issued by the Council of Ministers (June 12, 2014). The rules concerning wages applicable to CUPET’s employees are different than those applicable to the employees of ministries and other *Órganos* of the Central Administration of the State. Unlike government employees, the system of wages applicable to CUPET is dependent in part on CUPET’s profitability and other stated

indicators of performance. Resolution No. 6, issued by the *Ministerio de Trabajo y Seguridad Social* (Ministry of Labor and Social Security) (March 21, 2016).

v. Under law generally applicable to OSDEs, CUPET formulates and submits a consolidated annual business plan (that is, consolidating its own plan and the plans of each of the *empresas* and *sociedades anónimas* integrated to it, which CUPET approves) to the Ministry of Economy and Planning for its approval. Article 25, number 43, Decree No. 335.

w. The *Indicaciones Metodológicas para la Elaboración del Plan 2020* (Methodological Indications for the Elaboration of the 2020 Plan), issued by the Ministry of Economy and Planning, available at <https://www.mep.gob.cu/es/planificacion>, concerns elaboration of the national plan for the economy. It provides that the Ministries will issue “*Directivas de Gobierno* and not issue specific *directivas* to the Entities nor prior framework.” *Methodological Indications for the Elaboration of the 2020 Plan*, at page 6. Unlike “specific *directivas*,” “*Directivas de Gobierno*” are applicable to all Cuban entities, including OSDEs. The *Methodological Indications* give as examples: “[i]ncrease the value of exports and their income ... [and p]rioritize the allocation of financial and material resources to the national industry in order to: [e]nsure production and services aimed at meeting the demands of the internal economy, mainly in: i. Food production, ii. Transport, iii. Computerization of the society, iv. Living place, v. Medicines.” *Id.*, at pages 6-7.

Executed: October 7, 2019

Signature:     /s/      
Name:     Dr. Marta Milagro Moreno Cruz

## **Annex A**

## **CURRICULUM VITAE MARTA MILAGRO MORENO CRUZ**

- **DEAN OF THE UNIVERSITY OF HAVANA SCHOOL OF LAW SINCE APRIL 2016.**
- **LICENCIATURA DEGREE IN LAW. UNIVERSITY OF HAVANA SCHOOL OF LAW, 1982.**
- **PRESIDENT OF THE CÁTEDRA PROPIEDAD INTELECTUAL [INTELLECTUAL PROPERTY LAW CHAIR] AT UNIVERSITY OF HAVANA, WHICH IS PART OF THE UNITWIN/UNESCO CHAIRS PROGRAMME.**
- **PHD IN LEGAL SCIENCES, UNIVERSITY OF HAVANA, 1989.**
- **TENURED PROFESSOR.**
- **VICE-PRESIDENT OF THE TRIBUNAL DE GRADOS CIENTÍFICOS EN CIENCIAS JURÍDICAS [DEGREE TRIBUNAL FOR LEGAL SCIENCES].**
- **ARBITRATOR FOR THE CORTE CUBANA DE ARBITRAJE COMERCIAL INTERNACIONAL [CUBAN COURT OF INTERNATIONAL COMMERCIAL ARBITRATION], 2011-PRESENT.**
- **PRESIDENT OF THE SOCIEDAD DE DERECHO ECONÓMICO Y FINANCIERO DE LA UNIÓN NACIONAL DE JURISTAS DE CUBA [ECONOMIC AND FINANCIAL LAW SOCIETY OF THE NATIONAL UNION OF JURISTS OF CUBA].**

### **Teaching Activity**

Dean of the University of Havana School of Law since April 2016.

Academic Vice-Dean at the School of Law from 1991 to 1993 and from 1996 to 2003.

Head of the Department of Legal and International Counseling at the University of Havana School of Law from 2011 to April 2016.

Professor of Economic Law courses in the School of Law and of Economic Legislation in the Economic Sciences area since 1982.

Creation and development of the course on Industrial Property Law, taught for the first time in the Law Schools of the country since the 1993-1994 academic year.

Creation and development of the course on Copyright Law since 1988.

Professor at post-graduate courses in the Master's Degree and Doctoral Degree programs, as well as at professional development courses on the topics of Economic Law, Mercantile Law and Intellectual Property.

Lead professor of the Intellectual Property Law Chair at University of Havana, which since 1999 has been part of the UNITWIN/UNESCO Chairs Programme network.

Professor at the Intellectual Property Management Master's Degree program in Cuba and Venezuela under the authority of the Oficina Cubana de la Propiedad Industrial [Cuban Office of Industrial Property], 2006-2007.

Guest professor on the topic of Social Research Methodology and Intellectual Property at Bolivian universities in 2000, 2001 and 2002.

Member of the Asociación Internacional de Profesores de Propiedad Intelectual (ATRIP) [International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP)] since September 2000.

Member of Master's Degree juries on the topic of Theoretical, Pedagogical and Epistemological Foundations of the Teaching of Law, in 2011.

Academic activity as a professor of Social Research Methodology in a Master's Degree program on Criminal Law in Guatemala in 2013.

Guest professor at the Institute of Political and Legal Sciences in Grenoble, France, in 2017.

Academic activities at the School of Law of the University of Valencia and at the Schools of Law of Guayaquil and Chimborazo in Ecuador.

Advisor to the Oficina de Transferencia de Resultados de la Investigación Científica (OTRI) [Office for the Transfer of Scientific Research Results] of the University of Havana.

Consultant at the Centro Internacional de La Habana (CIH) [Havana International Center], under the Ministerio de Educación Superior [Ministry of Higher Education].

Arbitrator for the Corte Cubana de Arbitraje Comercial Internacional [Cuban Court of International Commercial Arbitration] since September 2011.

Member of the Comité Académico del Diplomado de Administración Pública [Academic Committee of the Diplomate Program in Public Administration] for the Escuela de Cuadros de Primer Nivel del Estado Cubano [School for Cuban State Senior Managers], as well as Coordinator of the Law Module.

Academic activity in various diploma programs and courses on the topics of Cuban business organization, economic contracts and intellectual property, as requested by various entities within the Administración Central del Estado [Central Administration of the State], *empresas*, the Organización Nacional de Bufetes Colectivos [National Organization of Law Firms], the Tribunal Supremo Popular [the People's Supreme Court] and the Office of the Attorney General of the Republic, since 2011.

Professor at the Master's Degree Program in Constitutional and Administrative Law, at the Master's Degree Program in Intellectual Property Management of the Oficina Cubana de la Propiedad Industrial (OCPI) [Cuban Office for Intellectual Property], and at the Master's Degree Program in Economics Law of the University of Havana School of Law.

Expert advisor and consultant for different plans on Cuban public and legislative policy:

- Expert advisor to the Asamblea Nacional del Poder Popular (ANPP) [National Assembly of the People's Power] for the development of the regulatory framework for foreign investment in Cuba, 2014.
- Development of the policy on Industrial Property and of the underlying legal norms, 2013-2015.
- Development of the Decree-Law on Economic Contracts, 2012.
- Instructor at seminars for business organization senior managers on new regulations for organizaciones superiores de dirección empresarial, empresas and unidades empresariales de base [superior organizations of business management, enterprises and enterprise units], 2017.
- Advisor to the *Asamblea Nacional del Poder Popular* (ANPP) [National Assembly of the People's Power] Commission charged with the development of the New Constitution of the Republic of Cuba and its proclamation, 2018-2019.
- Member of the Executive Committee charged with leading the development of legal norms supplementing the New Constitution of the Republic of Cuba, 2018-present.

#### **Significant Publications:**

1. "La regulación jurídica de las principales actividades científico-técnicas en Cuba" ["Legal Regulation of Primary Scientific-Technical Activities in Cuba"]. Final project for the *Licenciatura* Degree in Law, 1983.
2. "La innovación y la racionalización. Su importancia para el desarrollo de la ciencia y la técnica en nuestro país" ["Innovation and Rationalization: Their Importance for the Development of Science and Technology in our Country"], 1985.
3. "El Sistema de Arbitraje Estatal y su influencia en la disciplina económica: la contratación económica como expresión de esa disciplina" ["The State Arbitration System and its Influence on Economic Discipline: Economic Contracts as an Expression of this Discipline"]. *Sistema de Arbitraje Estatal* [State Arbitration System], 1990.



4. "Algunas consideraciones acerca de la responsabilidad personal en la esfera contractual y arbitral" ["Thoughts on Personal Responsibility in the Field of Contracts and Arbitration"]. *Revista Cubana de Derecho [Cuban Law Review], Revista de Derecho Económico [Journal of Economic Law], Sistema de Arbitraje [Arbitration System]*, 1991.
5. "El plan y el contrato económico en los marcos de la economía socialista planificada" ["Planning and the Economic Contract in the Context of a Planned Socialist Economy"]. *Revista de Derecho Económico [Journal of Economic Law], Sistema de Arbitraje [Arbitration System]*, 1990.
6. "Consideraciones teóricas acerca de los órganos de Arbitraje Estatal y el derecho procesal arbitral" ["Theoretical Considerations on the State Arbitration Bodies and Arbitration Procedural Law"]. *Revista Cubana de Derecho [Cuban Law Review]*, 1989.
7. "Particularidades de la personalidad jurídica en los sujetos del Derecho económico" ["Particularities of Legal Personality in the Subjects of Economic Law"]. *Revista de Derecho Económico [Journal of Economic Law], Sistema de Arbitraje [Arbitration System]*, 1990.
8. "Derecho económico como rama del Derecho" ["Economic Law as a Branch of Law"]. *Revista de Derecho Económico [Journal of Economic Law], Sistema de Arbitraje [Arbitration System]*, 1992.
9. "La enseñanza del derecho económico en Cuba y en diferentes países socialistas" ["Teaching Economic Law in Cuba and in Different Socialist Countries"]. *Revista de Derecho Económico [Journal of Economic Law], Sistema de Arbitraje [Arbitration System]*, 1991.
10. "Influencia de la actividad del Arbitraje Estatal en el perfeccionamiento de la disciplina económica y la dirección de la economía nacional" ["Influence of the State Arbitration Activity on the Improvement of Economic Discipline and the Management of the National Economy"]. Thesis paper for PhD in Legal Sciences. *Revista de Derecho Económico [Journal of Economic Law], Sistema de Arbitraje Estatal [State Arbitration System]*, Year 2, Number 8, 1989.
11. "Consideraciones acerca de la Propiedad Industrial en Cuba" ["Thoughts on Industrial Property in Cuba"]. *Revista Derecho de los Negocios de la Universidad Carlos III de Madrid [Business Law Review of the Carlos III University of Madrid]*, Spain, 1995.
12. "El Acuerdo ADPIC de la OMC. Su influencia en la legislación cubana" ["The WTO TRIPS Agreement: Its Influence on Cuban Legislation"]. Ignacio Agramonte Award, 1996. *Revista Cubana de Derecho [Cuban Law Review]*, number 12, 1997.
13. "Principales transformaciones económicas en Cuba a partir de 1990" ["Primary Economic Transformations in Cuba since 1990"]. *Revista de Ciencias Sociales [Social Science Review]*, III, Agora, Valencia, Spain, 1997.
14. "La cooperativización en la economía cubana. Su reglamentación jurídica" ["Cooperatives in the Cuban Economy: Legal Regulations"]. *Revista CIRIEC [CIRIEC Journal (International Center of Research and Information on the Public, Social and Cooperative Economy)]*, No. 9, Spain, October 1998.
15. "Protección jurídica de las creaciones intelectuales en las Universidades. Especial referencia a Cuba" ["Legal Protection of Intellectual Creation in Universities: Special Reference to Cuba"]. *Memorias del VIII Seminario Latino Iberoamericano de Gestión Tecnológica [Records of the 8th Latin and Ibero-American Seminar on Technology Management]*, 1999.
16. "El proceso de adopción del Acuerdo de los Derechos de Propiedad Intelectual relacionados con el comercio, incluido el comercio de mercancías falsificadas y su repercusión en materia de Derecho de Autor" ["The Process of Adoption of the Agreement on Intellectual Property Rights Related to Trade, Including Trade in Counterfeit Merchandise, and its Repercussions on Copyright Issues"]. *Revista Breviario del Derecho de Autor [Compendium on Copyright Issues]*, LIVROSCA, Caracas, 2000.
17. "La formación de trabajadores sociales: una experiencia cubana" ["The Professional Training of Social Workers: a Cuban Experience"]. Published in the summary of the "Pedagogy 2003" event.
18. "Breves Comentarios sobre la nueva regulación de las Invenciones en Cuba" ["Brief Comments on the New Regulations Regarding Inventions in Cuba"]. *Revista Cubana de Derecho [Cuban Law Review]*, No. 41, January-June. ISSN 0864-165X in all electronic publications of the Unión Nacional de Juristas de Cuba (UNJC) [National Union of Jurists of Cuba], October 2013. [http://vlex.com/source/revista-cubana-derecho-2615/issue\\_nbr/%2341](http://vlex.com/source/revista-cubana-derecho-2615/issue_nbr/%2341)
19. "La gestión y comercialización de los resultados científico-técnicos de las universidades cubanas y su vínculo con la industria" ["Management and Commercialization of the Technical and Scientific Results of Cuban Universities and Their Relationship to Industry"]. *Revista Cubana de la Propiedad Industrial (RENDIJA) [Cuban Review on Industrial Property]*, November 2013, No. 14. ISSN: 1563-1672.
20. "Derecho, Economía y Sociedad en el siglo XXI en Cuba" ["Law, Economics and Society in the 21st Century in Cuba"]. In Huck, Winfried and Pérez Martínez, Yuri, Hrsg/editors, *Derecho, Economía y Sociedad en el siglo XXI [Law, Economics and Society in the 21st Century]*, II Simposio Germano-Cubano de Derecho [Second German-Cuban Symposium on Law], Havana, Cuba, 2013, Verlag Dr. Kovač GmbH, Hamburg, 2013. ISBN: 978-3-8300-7339-0.
21. "Protección de la Propiedad Industrial en Cuba y Brasil" ["Protection of Industrial Property in Cuba and Brazil"]. In Blucher, London, 2015. ISSN 2318-695. ISBN 978-85-8039-091-9. DOI 10.5151/icupro-cbs 21-012. In collaboration with various Brazilian authors.
22. "La insolvencia del deudor como causal de incumplimiento en los contratos. ¿Una patente de corso en tiempos de crisis?" ["Debtor Insolvency as a Cause of Contractual Non-Compliance: a Letter of Marque in Times of Crisis?"]. Co-author: Dr. Michelle Abdo Cuza. In *El Cumplimiento de las obligaciones [Compliance with Obligations]*, Rubinzal-Culzoni Editores, Buenos Aires, Argentina, 2015. ISBN 978-30-0549-7.

23. *La propiedad industrial en Brasil y en Cuba [Industrial Property in Brazil and Cuba]*. Coordinator: Silvia Beatriz Beger Uchoa, Federal University of Alagoas, Maceió, Brasil. EDUFAL, 2015. ISBN 978-85-7177-913-6.
24. *Panorama general de algunas instituciones jurídico-económicas en Cuba [General Overview on Some Legal-Economic Institutions in Cuba]*, Lit Edizioni Srl, Castelvecchi, February 2016. ISBN 13:978-88-6944-628-3.
25. "Propiedad Intelectual e Inversión Extranjera" ["Intellectual Property and Foreign Investment"]. *La inversión extranjera en Cuba. Una visión desde el Derecho [Foreign Investment in Cuba: A Legal Perspective]*, Colectivo de Autores [various authors], Editorial de Ciencias Sociales, Havana, 2015. ISBN 978-959-06-1667-9.
26. "Barreras administrativas a la gestión de las empresas públicas en Cuba" ["Administrative Barriers to the Management of Public Enterprises in Cuba"]. *Memorias del I Taller Internacional de Administración Pública en el marco del perfeccionamiento del modelo económico [Records of the First International Workshop on Public Administration in the Context of the Improvement of the Economic Model]*, Centro de Estudios de Administración Pública (CEAP) [Center for Public Administration Studies], Havana, 2015. ISBN 978-959-16-2842-8.
27. "Políticas Públicas para el desarrollo de la ciencia, la tecnología y la innovación. Una mirada desde el contexto cubano actual" ["Public Policies for the Development of Science, Technology and Innovation: A View from the Current Cuban Perspective"]. *El Derecho Público en Perspectiva. I Simposio Brasil-Cuba de Derecho Público. [Public Law in Perspective. First Brazil-Cuba Symposium on Public Law]*. Coordinators: Andry Matilla Correa, Walber de Moura Agra and Bruno Novaes Bezerra Cavalcanti. Editorial UNIJURIS, 2016. ISBN 978-959-7219-40-8.
28. "El Derecho Económico como disciplina científica en el proceso de actualización del modelo económico-social cubano. Principales desafíos" ["Economic Law as a Scientific Discipline in the Process of Updating of the Cuban Economic and Social Model"]. Co-author: Dr. Orestes Díaz Legón. *Estudios Jurídicos: Homenaje al profesor doctor Eurípides Valdés Lobán [Legal Studies: A Tribute to Professor Dr. Eurípides Valdés Lobán]*. Coordinators: Andry Matilla Correa and Alie Pérez Véliz. Ediciones Loynaz 2016. ISBN 978-959-219-486-1.
29. "Formas alternativas de solución de conflictos en la Propiedad Intelectual" ["Alternative Ways for Conflict Resolution in Intellectual Property Matters"]. Co-author: Dr. Dánice Vázquez D'Alvaré. *Estudios sobre Arbitraje en Cuba [Studies on Arbitration in Cuba]*. Coordinators: Rodolfo Dávalos Fernández and Marta Moreno Cruz. ISBN: 978-959-7234-50-0.
30. "Propiedad Intelectual para la gestión de la ciencia, tecnología e innovación en empresas estatales" ["Intellectual Property for the Management of Science, Technology and Innovation in State Enterprises"]. Co-authors: Dulce María Contreras M.S., Dr. Evelio Suárez, and Dr. Pascual Correa Álvarez. *Revista Propiedad Inmaterial [Journal of Non-Material Property]*, Externado University of Colombia, January-June 2017, No. 23. ISSN print version 1657-1959. ISSN digital version 2346-2116.
31. "Contratación y Propiedad Industrial en la sociedad del conocimiento: Desafíos actuales para Cuba" ["Contracts and Industrial Property in the Knowledge Society: Cuba's Current Challenges"]. Co-author: Dr. Liudmila Morán Martínez. *Revista Cubana de Derecho [Cuban Law Review]*, No. 49, January-June 2017. Editorial UNIJURIS, Unión Nacional de Juristas de Cuba [National Union of Jurists of Cuba]. ISSN 08664-165X.
32. "Transformaciones del Modelo Económico y Social Cubano" ["Transformations of the Cuban Social and Economic Model"]. *El Cooperativismo en Cuba. Situación actual y propuestas para su regulación y fomento. [Cooperativism in Cuba: Current Situation and Proposals for its Regulation and Promotion]*. Coordinators: Dr. Gemma Fajardo García (University of Valencia) and Marta Moreno Cruz (University of Havana). Editorial CIRIEC [International Center of Research and Information on the Public, Social and Cooperative Economy], Spain, 2018. ISBN 978-84-944774-8-5.
33. "Safeguards in the Cuban Legal System for the Promotion and Protection of Foreign Investment". *Florida Journal of International Law*, Vol. 29, Issue 1, Article 7, Universidad de la Florida. GRUPO 2- Scholarly Publishers Indicators in Humanities and Social Sciences (SPI), 2017. ISSN 1556-2670. Available at <https://scholarship.law.ufl.edu/fjil/vol29/iss1/>.
34. "Los instrumentos preconcursales. Hacia una nueva tendencia del Derecho Concursal" ["Pre-Insolvency Tools: Toward New Legal Tendencies in Insolvency Law"]. Co-author: Michelle Abdo Cuza, M.S. Foro de Derecho Mercantil [Mercantile Law Forum]. *Revista Internacional LEGIS [International LEGIS Journal]*, No. 59, April-June 2018. ISSN 1794-0427.

35. "Una aproximación a la libertad de empresa desde las constituciones económicas. Especial referencia a Ecuador" ["An Approach to Business Freedom from the Perspective of Economic Constitutions: Special Reference to Ecuador"]. Co-author: María Andrea Moreno Navarrete. *El Derecho Público ante los retos de la sociedad global. Miradas desde Ecuador y Cuba [Public Law Facing the Challenges of a Globalized Society: Views from Ecuador and Cuba]*, Colectivo de Autores [Various Authors], Catholic University of Santiago de Guayaquil, Guayaquil, 2018, pp. 104-122. GRUPO 4.
36. "Vigencia del Código Civil cubano en la contratación económica" ["Applicability of the Cuban Civil Code in Economic Contracts"]. *El Código Civil Cubano... , 30 años después [The Cuban Civil Code . . . 30 Years Later]*. Coordinator: Leonardo Pérez Gallardo. Ediciones ONBC, Havana. ISBN 978-959-7234-87-6.
37. "La originalidad y la novedad como requisitos: modelos de utilidad y obras derivadas" ["Originality and Novelty as Requirements: Utility Models and Derivative Works"]. *Propiedad Intelectual e Industrial, Conexiones y Puntos de Encuentro [Intellectual and Industrial Property: Connections and Meeting Points]*. Coordinator: Caridad Valdés. Editorial Reus, 2018. ISBN:978-84-290-2094-6.
38. "Normas internas que regulan la protección y gestión de la creación industrial universitaria" ["Internal Norms Regulating the Protection and Management of University Industrial Creation"]. Co-author: Vinicio Mejía Chávez. *Gestión del Conocimiento. Perspectiva Multidisciplinaria [Knowledge Management: a Multidisciplinary Approach]*, Colección Unión Global [Global Union Collection], Volume 12, online and in print, Fondo Editorial Universitario de la Universidad Nacional Experimental "Jesús María Semprum" [University Publishing Fund of the Jesús María Semprum National Experimental University], May 2019. ISBN: 978-980-7494-82-3.
39. "Estructuras organizativas y gestión del conocimiento en las Universidades" ["Organizational Structures and Knowledge Management in Universities"]. Co-author: Vinicio Mejía Chávez. *Gestión del Conocimiento. Perspectiva Multidisciplinaria [Knowledge Management: a Multidisciplinary Approach]*, Colección Unión Global [Global Union Collection], Volume 12, online and in print, Fondo Editorial Universitario de la Universidad Nacional Experimental "Jesús María Semprum" [University Publishing Fund of the Jesús María Semprum National Experimental University], May 2019. ISBN: 978-980-7494-82-3.
40. "Propiedad Intelectual en Cuba. Una mirada crítica a su reconocimiento constitucional" ["Intellectual Property in Cuba: a Critical Look at its Constitutional Recognition"]. Co-author: Mabel Candano Pérez, M.S. *Revista Chilena de Derecho y Tecnología [Chilean Law and Technology Review]*, Volume 8, Number 1, first semester of 2019, pages 133-165. ISSN 0719-2584.

#### Textbooks and Manuals Published

1. *Apuntes de Derecho Económico [Notes on Economic Law]*, Colectivo de Autores [Various authors], Editorial Félix Varela, 1984.
2. *Temas complementarios de Derecho Económico I [Additional Topics in Economic Law I]*, Colectivo de Autores [Various authors], Editorial Félix Varela, 1990.
3. *Temas complementarios de Derecho Económico II [Additional Topics in Economic Law II]*, Colectivo de Autores [Various authors], Editorial Félix Varela, 1993.
4. *Cuaderno de Orientaciones para el estudio y casos prácticos de Derecho Económico [Review Guides and Case Studies for Economic Law]*, Colectivo de Autores [Various authors], Editorial Félix Varela, 1993.
5. *Selección de Documentos de Derecho Económico [Selected Documents on Economic Law]*, Colectivo de Autores [Various authors], Editorial Félix Varela, 1995.
6. *Selección de Lecturas de Derecho de Autor [Selected Readings on Copyright Law]*, Colectivo de Autores [Various authors], Editorial Félix Varela, 2000.
7. *Selección de Lecturas de Propiedad Industrial [Selected Readings on Industrial Property]*, Editorial Félix Varela, 2003.
8. *Temas de Derecho Venezolano [Topics in Venezuelan Law]*, Editorial Félix Varela, 2004.
9. *Protección de la Propiedad Industrial en Cuba y Brasil [Protection of Industrial Property in Cuba and Brazil]*. In collaboration with several Brazilian authors. Blucher, London, 2015. ISSN 2318-695. ISBN 978-85-8039-091-9. DOI 10.5151/icupro-cbs 21-012.
10. *La propiedad industrial en Brasil y en Cuba [Industrial Property in Brazil and Cuba]*. Coordinators: Silvia Beatriz Beger Uchoa, Federal University of Alagoas, Maceió, Brazil, and Marta Moreno Cruz, School of Law of the University of Havana, EDUFAL, 2015. ISBN 978-85-7177-913-6.

11. *El Cooperativismo en Cuba. Situación actual y propuestas para su regulación y fomento. [Cooperativism in Cuba: Current Situation and Proposals for its Regulation and Promotion]*. Coordinators: Dr. Gemma Fajardo García (University of Valencia) and Marta Moreno Cruz (University of Havana). Editorial CIRIEC [International Center of Research and Information on the Public, Social and Cooperative Economy], Spain, 2018. ISBN 978-84-944774-8-5.
12. Article in *Estudios sobre Arbitraje en Cuba [Research on Arbitration in Cuba]*. Coordinators: Rodolfo Dávalos Fernández and Marta Moreno Cruz. Ediciones ONBC, 2017. ISBN: 978-959-7234-50-0.

#### **Research Projects**

1. El perfeccionamiento del Sistema de Dirección y Planificación de la economía cubana y la nueva legislación económica [Improvement of the Administrative and Planning System of the Cuban Economy and New Economic Legislation], 1990.
2. La organización empresarial cubana [Cuban Business Organization], 1992.
3. La Propiedad Industrial en Cuba [Industrial Property in Cuba]. Winner of the Award for Greatest Social Impact from the School of Law of the University of Havana in 1993.
4. Participation in two research projects carried out by the Asamblea Nacional del Poder Popular [National Assembly of the People's Power]: Principales dificultades en el desarrollo de la contratación económica [Main Challenges in the Development of Economic Contracts] and Principales problemas en el proceso inversionista [Main Challenges in the Investment Process], 1994.
5. Influencia del Acuerdo sobre los Aspectos de los Derechos de Propiedad Intelectual relacionados con el Comercio, de la OMC, en la legislación cubana y en la estrategia de comercialización de los resultados de algunos centros de investigación [Influence of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights on the Cuban Legislation and on the Commercialization Strategy of the Results of Some Research Centers]. Alma Mater Award, University of Havana, 1995.
6. Protección de las creaciones intelectuales en las universidades y centros públicos de investigación [Protection of Intellectual Creation in Universities and Public Research Centers]. Premio del Ministerio de Educación Superior [Ministry of Higher Education Award], 1998.
7. Las prácticas restrictivas al derecho de la competencia. Su reflejo en la Cuba de hoy [Practices Restricting the Competition Law, and the way they get Reflected in Contemporary Cuba]. Alma Mater Prize, 1999.
8. La formación del trabajador social en Cuba [Professional Training of Social Workers in Cuba]. Presented for the Alma Mater Prize, 2002.
9. Políticas institucionales y normativas para la protección, gestión y comercialización de las creaciones intelectuales en las universidades cubanas [Institutional Policies and Regulations for the Protection, Management and Commercialization of the Intellectual Creations in Cuban Universities], 2013.
10. La contratación económica en la economía cubana [Economic Contracts in the Cuban Economy]. At the request of the Communist Party of Cuba. Havana, 2013.
11. Formas jurídicas organizativas de los sujetos de gestión estatal y no estatales en la economía cubana actual [Organizational Legal Modalities for State and non-State Management Subjects in the Current Cuban Economy]. Programa Nacional de Economía [National Economic Program], 2017-present.

#### **Main Events, Conferences and Seminars**

1. Mayor Ignacio Agramonte. Unión Nacional de Juristas de Cuba (UNJC) [National Union of Jurists of Cuba], 1989.
2. Primer Evento Científico del Sector Industria del Sistema de Arbitraje Estatal [First Scientific Event of the industrial Sector of the State Arbitration System], 1988.
3. Primer evento Científico de Derecho Económico [First Scientific Event on Economic Law], Pinar del Río, 1990.
4. IV Seminario Provincial sobre Derecho económico y Arbitraje Estatal [Fourth Provincial Seminar on Economic Law and State Arbitration], Pinar del Río, 1990.
5. Participation in many conference series offered by foreign specialists, primarily on the topics of Economic Law, Intellectual Property and Mercantile Law.
6. Taller III Conferencia de Ciencias Sociales de la UH [Workshop, Third Conference on Social Sciences, University of Havana], 1983.
7. I Conferencia Científica de la facultad de Derecho, Universidad de Oriente [First Scientific Conference of the School of Law, Oriente University], 1986.
8. Primera Jornada Científica del Arbitraje Estatal [First Scientific Conference on State Arbitration], 1986.

9. Concurso del Sistema de Arbitraje estatal por el V Aniversario de la actividad jurisdiccional de estos órganos [State Arbitration System Competition on the Fifth Anniversary of the Jurisdictional Activity of These Bodies]. Obtained First Prize and publication, 1985.
10. V Conferencia Científica de Ciencias Sociales [Fifth Scientific Conference on Social Sciences], 1987.
11. Primer Evento Científico sobre el Derecho Económico en Cuba [First Scientific Event on Economic Law in Cuba], Sociedad de Derecho Económico, Financiero y Mercantil de la Unión Nacional de Juristas (UNJC) [Society on Economic, Financial and Mercantile Law of the National Union of Jurists], 1986.
12. Coloquio Científico Inter Universidades de Derecho Económico [Inter-University Scientific Colloquium on Economic Law], Central University of Las Villas, 1987.
13. V Exposición Nacional Forjadores del Futuro de las Brigadas Técnicas Juveniles [Fifth National Exhibition Forgers of the Future of the Youth Technical Brigades], municipal and provincial level, 1988.
14. Concurso Internacional sobre Derecho económico en América Latina [International Competition on Economic Law in Latin America], Oriente University, 1991.
15. Taller Protección de la Propiedad intelectual [Workshop on the Protection of Intellectual Property], taught by consultants from the United Nations Development Programme, 1992.
16. Taller de Formación acerca de Propiedad Intelectual y licencias en la Industria Biofarmacéutica [Training Workshop on Intellectual Property and Licensing in the Biopharmaceutical Industry], sponsored by the United Nations Development Programme, 1995.
17. Taller sobre Agentes de la Propiedad Industrial [Workshop on Industrial Property Agents], held at the Oficina Nacional de Inventiones, Información Técnica y Marcas (ONIITEM) [National Office of Inventions, Technical Information and Trademarks], 1995.
18. Seminario Nacional de Cooperación Universidad Empresa [National Seminar on Cooperation between University and Business], 1995.
19. Series of Conferences on Industrial Property taught by Professor Alberto Bercovitz, University of Havana, 1995.
20. Congreso Iberoamericano sobre Derecho de Autor y Derechos Conexos [Ibero-American Conference on Copyright and Related Rights], Uruguay, 1997.
21. VIII Seminario Latino Iberoamericano de Gestión Tecnológica, ALTEC 99 [Eighth Latin and Ibero-American Seminar on Technology Management, ALTEC 99], Valencia, España.
22. I Seminario Internacional relativo a sistemas de registro de Marcas y Franquicias [First International Seminar on Trademark and Franchise Registration Systems], Chamber of Commerce and LEX-S.A. [Cuban law firm specializing in trademarks and patents], April 1999.
23. Jornada sobre Derecho de Contratos [Conference on Contract Law], presenter, 2001.
24. Evento Marcas 2000 [Brands 2000 Event], organized by the Oficina Cubana de la Propiedad Industrial [Cuban Office of Industrial Property].
25. Seminar: La transferencia de resultados de investigación universitaria [The Transfer of University Research Results], University of Havana, 2000.
26. Seminar on Derecho Internacional del Comercio y las Inversiones en una economía global [International Trade and Investment Law in a Global Economy], coordinator and presenter, University of Havana, 2000.
27. Mesa Redonda sobre la Enseñanza de la Propiedad Intelectual [Round Table on Teaching Intellectual Property] in celebration of World Intellectual Property Day, 2001.
28. Taller Internacional sobre la Enseñanza del derecho de Autor [International Workshop on Teaching Copyright Law], 2002.
29. World Intellectual Property Organization (WIPO) academic course on Intellectual Property, 2000.
30. Primer Congreso de Propiedad Industrial [First Conference on Industrial Property], 2002.
31. II Taller Internacional sobre Trabajo Social [Second International Workshop on Social Work], 2002.
32. II Encuentro de Abogados Cuba-EU Mesa Redonda sobre Propiedad Intelectual [Second Meeting of Cuban-U.S. Lawyers – Round table on Intellectual Property], 2002.
33. II Encuentro Internacional de Derecho de Contratos [Second International Meeting on Contract Law], presenter, 2003.
34. "La formación de los trabajadores sociales: una experiencia cubana" ["The Professional Training of Social Workers: A Cuban Experience"], presenter, at Pedagogy 2003 event.
35. "La protección de la propiedad intelectual en las universidades" ["Protection of Intellectual Property in Universities"], panelist. Congreso Internacional de Propiedad Industrial [International Conference on Industrial Property], April 2011.
36. "Perspectivas de la enseñanza de la propiedad intelectual en las universidades cubanas" ["Perspectives on Teaching Intellectual Property in Cuban Universities"]. International Event on Industrial Property, April 2012.
37. "Derecho del Comercio y la Integración. La evolución del Arbitraje en Latinoamérica" "Commercial Law and Integration: The Evolution of Arbitration in Latin America". VI Seminario Permanente Cubano-Hispano [Sixth Cuban-Hispanic Permanent Seminar], 2012.

38. "Las nuevas normativas cubanas en materia de propiedad industrial" ["New Cuban Regulations on Industrial Property"]. I Encuentro Nacional de Asesoría Jurídica y Administración de Empresa [First National Meeting on Legal Consulting and Business Administration], Santiago de Cuba, 2012.
39. "Perspectivas del Derecho Público en el Siglo XXI" ["Perspectives on Public Law in the 21st Century"]. I Simposio Internacional Cuba-Alemania [First Cuban-German International Symposium], 2012.
40. "Retos en materia de solución de conflictos en materia de propiedad intelectual en Cuba" ["Challenges Relating to the Resolution of Intellectual Property Disputes in Cuba"]. V Seminario Internacional sobre Solución de Conflictos en la Propiedad Intelectual [Fifth International Seminar on Conflict Resolution Relating to Intellectual Property], October 2012.
41. "Retos del derecho de Autor" ["Challenges Relating to Copyright"]. Feria Internacional del Libro [International Book Fair]. Editorial Félix Varela, February 2013.
42. Simposio Cuba-Alemania: Economía, Derecho y Sociedad en el Siglo XXI [Cuban-German Symposium: Economics, Law and Society in the 21st Century], presenter and lecturer at the closing event, March 2013.
43. "Experiencias de la protección de la propiedad intelectual en las universidades cubanas" ["Experiences in the Protection of Intellectual Property in Cuban Universities"]. VII Fórum Nacional de Gestores de Innovación y Transferencia de Tecnología FORTEC [Seventh National Forum of Innovation and Technology Transfer Managers, FORTEC], Brazil, April 2013.
44. "Políticas institucionales y normativas para la gestión y comercialización de las creaciones intelectuales de las universidades cubanas" ["Institutional and Regulatory Policies for the Management and Commercialization of Intellectual Creations in Cuban Universities"], conference participant. International Event Marcas 2013 [Trademarks 2013]: Industrial Property Challenges, April 2013.
45. "Políticas institucionales y normativas para la gestión y comercialización de las creaciones intelectuales en las universidades cubanas" ["Institutional and Regulatory Policies for the Management and Commercialization of Intellectual Creations in Cuban Universities"], presenter. International Workshop on Institutional Policies Regarding Industrial Property, Innovation and Technology Transfer in Universities, organized by the University of Havana, the Oficina Cubana de Propiedad Industrial [Cuban Office of Industrial Property] and the World Intellectual Property Organization (WIPO), July 2013.
46. "Mecanismos de cooperación bilateral Cuba/Brasil para la promoción, protección y comercialización recíproca de las creaciones tecnológicas de la academia en función de las necesidades económicas y sociales de ambos países" ["Mechanisms for Bilateral Cooperation Between Cuba and Brazil for the Promotion, Protection and Reciprocal Commercialization of Academic Technological Creations in accordance with the Economic and Social Needs of Both Countries"]. Workshop Cuba-Brasil en el Siglo XXI [Cuba-Brazil in the 21st Century]. Research project presented under Thematic Axis III: Rol de la Innovación en el desarrollo socio económico sostenible [The role of innovation in sustainable economic development]. Cuba, September 2012.
47. "Marcos legales y realidad cubana de la Propiedad Intelectual y la Transferencia de Tecnología" ["Legal Frameworks and Cuban Reality regarding Intellectual Property and Technology Transfer"], presenter. Workshop Cuba y Brasil en el Siglo XXI. [Cuba and Brazil in the 21st Century], Recife and Maceio, Brazil, July 2013.
48. "El Arbitraje de Inversiones. Experiencia cubana" ["Investment Arbitration: the Cuban Experience"], panel coordinator. Evento Comercio Exterior e Inversión Extranjera [Event on Foreign Trade and Foreign Investment], School of Law of the University of Havana and National Union of Jurists of Cuba, October 2013.
49. "La insolvencia patrimonial del deudor como causa de incumplimiento contractual. ¿Una patente de corso en caso de crisis?" ["Patrimonial Insolvency of the Debtor as a Cause of Contractual Non-Compliance: a Letter of Marque in Case of Crisis?"]. Jornada Internacional de Contratos [International Conference on Contracts], January 2014.
50. "Papel del Derecho en el proceso de transformaciones de la economía cubana actual" ["The Role of the Law in the Process of Transformation of Contemporary Cuban Economics"], presenter. Jornada Científica Justicia y Derecho [Scientific Conference on Justice and Law], Tribunal Supremo Popular [The People's Supreme Court], Havana, 23-24 January 2014.
51. "La comercialización de los resultados de investigación científica en las universidades cubanas. Casos de estudio" ["The Commercialization of Scientific Research Results in Cuban Universities: Case Studies"], presenter. V Congreso Internacional de Propiedad Industrial [Fifth International Conference on Industrial Property], Havana, 28-30 April 2014.
52. "La propiedad industrial y la nueva ley de inversión extranjera" ["Industrial Property and the New Foreign Investment Law"]. Seminario sobre la inversión extranjera [Seminar on Foreign Investment], School of Law, University of Havana, June 2014.
53. Conferencia sobre el Vínculo Economía y Derecho en el proceso actual de transformaciones económicas en Cuba [Conference on the Link Between Economics and Law in the Current Process of Economic Transformation in Cuba]. Tercer Foro Internacional Economía/Empresa [Third International Forum on Economics and Business], National University of Chimborazo (UNACH), Riobamba, Ecuador, July 2014.
54. Conference on Intellectual Property for law students, National University of Chimborazo (UNACH), Riobamba, Ecuador, July 2014.

55. "El papel del Derecho en el proceso de transformaciones del modelo económico social cubano" ["The Role of Law in the Process of Transformation of the Cuban Economic and Social Model"], presenter. Foro Nacional Internacional Académico: I Seminario Internacional Multidisciplinario de Derecho y Economía [National-International Forum: First International Multidisciplinary Seminar on Law and Economics], Riobamba, Ecuador, July 2014.
56. "La protección de las creaciones intelectuales en las universidades cubanas. Especial referencia a la Universidad de La Habana" ["The Protection of Intellectual Creation in Cuban Universities, with Special Reference to the University of Havana"], panelist. VI Seminario Internacional sobre Propiedad Intelectual [Sixth International Seminar on Intellectual Property], October 2014.
57. "Perfeccionamiento de la enseñanza del Derecho en Ecuador" ["Improvement of the Teaching of Law in Ecuador"], International workshop at the University of Otavalo, Ecuador, December 2014.
58. "Reformas contractuales en Cuba. Las nuevas normativas en materia de contratación económica en Cuba" ["Contract Reform in Cuba. New Regulations for Economic Contracts in Cuba"], panelist. XIV Jornada Internacional de Contratos [14th International Conference on Contracts], January 2015.
59. "Novedades en materia de Propiedad Industrial en Cuba" ["Developments Regarding Industrial Property in Cuba"]. Convención Científica Internacional [International Scientific Convention], University of Matanzas, 2015.
60. "Gestión de la transferencia tecnológica en el marco de las universidades. Especial referencia a la Universidad de La Habana" ["Technology Transfer Management within the University Context: Special Reference to the University of Havana"], presenter. International Event: La Propiedad Industrial y la Transferencia de Tecnología ["Industrial Property and Technology Transfer"], April 2015.
61. "Experiencias cubanas en el vínculo Universidad-Empresa en la transferencia de tecnología" ["Cuban Experiences with the University-Business Connection in Technology Transfer"]. IX Encuentro Nacional FORTEC [Ninth National FORTEC Meeting], Brazil, May 19-22, 2015.
62. "Experiencia de la Universidad de La Habana en la negociación y transferencia de sus resultados innovadores" ["The Experience of the University of Havana in Negotiation and Transfer of its Innovative Results"], presenter. II Seminario Internacional de Sanidad Agropecuaria (SISA) [Second International Seminar on Agriculture and Livestock Health], Taller de Internacionalización y Negociación del Conocimiento: Retos y Perspectivas [Workshop on Knowledge Globalization and Negotiation: Challenges and Perspectives], SISA Event, May 2015.
63. "La nueva ley cubana sobre inversiones" ["The New Cuban investment Law"]. Congreso Institucional sobre Instituciones Económicas, Comercio e Inversiones en América Latina [Institutional Conference on Economic Institutions, Trade and Investment in Latin America], School of Law, University of Havana, July 1-3, 2015.
64. "La inversión extranjera en Cuba" ["Foreign Investment in Cuba"], presenter. Scientific Event organized by the School of Law of the University of Havana and the School of Jurisprudence of the Catholic University of Santiago de Guayaquil, July 21-23, 2015.
65. "Las políticas públicas en materia de innovación y tecnología en Cuba" ["Public Policy Relating to Innovation and Technology in Cuba"], presenter. I Simposio Brasil-Cuba de Derecho Público [First Brazil-Cuba Symposium on Public Law], organized by the School of Law of the University of Havana, the Sociedad Cubana de Derecho Constitucional y Administrativo de la Unión Nacional de Juristas de Cuba (UNJC) [UNJC Cuban Society of Constitutional and Administrative Law] and the Federal University of Pernambuco, Brazil, September 9-11, 2015.
66. "La inversión extranjera y la propiedad industrial" ["Foreign Investment and Industrial Property"], presenter. X Encuentro Internacional: Comercio Exterior e Inversión Extranjera [Tenth International Meeting: Foreign Trade and Foreign Investment], Havana, October 14-16, 2015.
67. "Retos del Derecho Administrativo en Cuba en materia de Propiedad Industrial" ["Challenges Faced by Administrative Law in Cuba regarding Industrial Property"]. VII Encuentro Nacional y I Internacional de Derecho Administrativo [Seventh National and First International Meeting on Administrative Law], Havana, November 2015.
68. "Las barreras administrativas en el funcionamiento de las empresas públicas en Cuba" ["Administrative Barriers Affecting the Functioning of Public Enterprises in Cuba"]. I Taller Internacional de Administración Pública [First International Workshop on Public Administration], Havana, November 2015.
69. Closing Speech at the Primer Encuentro Internacional El Derecho Mercantil y sus retos en el Siglo XXI [First International Meeting on Mercantile Law and its Challenges in the 21st Century], December 2015.
70. "Contratación y Propiedad Industrial en la sociedad del conocimiento" ["Contracting and Industrial Property in the Knowledge Society"], presenter, and "Novedades en materia de contratación en propiedad industrial en Cuba" [Developments related to Industrial Property Contracts in Cuba], panelist. Jornada Derecho de Contratos [Conference on Contract Law], January 2016.
71. "La inversión extranjera en Cuba. Garantías del sistema jurídico cubano" ["Foreign Investment in Cuba: Guarantees Offered by the Cuban Legal System"], presenter. International event: El contrato internacional y las relaciones económicas internacionales [International Contracts and International Economic Relations], Rome, Italy, February 2016.
72. "Reflexiones actuales" ["Reflecting on the Current Situation"], meeting coordinator. Encuentro Internacional Cuba/Ecuador: Economía y Derecho [Cuba-Ecuador International Meeting: Economics and Law], March 2016.

73. "Los instrumentos preconcursales: Complemento necesario del Derecho Concursal actual. Su tratamiento jurídico en el marco del concurso en Cuba" ["Pre-Insolvency Tools: a Necessary Supplement to Current Insolvency Law: Its Legal Treatment in the Cuban Context"], presenter. I Congreso Internacional de Derecho de la Insolvencia (I-e-CIDI) [First International e-Conference on Insolvency Law], March 7-16, 2016.
74. "Sistema de propiedad industrial en la Universidad de La Habana" ["The industrial property system at the University of Havana"], presenter. International Event: Propiedad Industrial y Transferencia de Tecnología en las Universidades [Industrial Property and Technology Transfer at Universities], Havana, May 2016.
75. "La transferencia de tecnología en Cuba" ["Technology Transfer in Cuba"], presenter. III Simposio Internacional Cubano-Germano de Derecho: Estado, Derecho y Economía, Retos ante la sociedad Global [Third International Cuban-German Law Symposium: The State, Law and Economics, Challenges under Globalization], Havana, May 9-10, 2016.
76. "Formas alternativas de solución de controversias y Propiedad Industrial" ["Alternative Methods of Dispute Resolution and Industrial Property"], presenter. International Event: Propiedad Industrial y Transferencia de Tecnología [Industrial Property and Technology Transfer], Havana, May 10-12, 2016.
77. "Garantías del sistema jurídico cubano en materia de inversión extranjera" ["Guarantees Offered by the Cuban Legal System in Relation to Foreign Investment"], presenter. I Encuentro Internacional entre la Universidad de Florida, Gainesville, y la Facultad de Derecho de la Universidad de La Habana [First International Meeting of the University of Florida, Gainesville, and the School of Law of the University of Havana], Havana, May 9-10, 2016.
78. "La enseñanza postgraduada en las Facultades de Derecho" ["Post-Graduate Education at Law Schools"], panelist. XII Encuentro Internacional Escuela de Verano La Habana 2016 sobre Temas Penales y Contemporáneos [12th Summer School International Meeting, Havana, 2016: Criminal and Contemporary Topics], VII Fórum Iberoamericano sobre Derecho Penal Económico [Seventh Ibero-American Forum on Economic Criminal Law], II Encuentro de La Habana de Decanos y Directores de Facultades y Escuelas de Derecho [Second Havana Meeting of Deans and Directors of University Schools and Law Schools], Havana, July 8, 2016.
79. "Papel del Derecho en el proceso de transformaciones del modelo económico y social cubano" ["The Role of the Law in the Process of Transformation of the Cuban Economic and Social Model"], presenter. Scientific event organized by the School of Law of the University of Havana and the School of Jurisprudence of the Catholic University of Santiago de Guayaquil, July 26-28, 2016.
80. "Arbitrabilidad en materia de Propiedad Industrial" ["The Possibility to Arbitrate in the Area of Industrial Property"], presenter. X Conferencia Internacional sobre Arbitraje y Mediación [Tenth International Conference on Arbitration and Mediation], Havana, October 17-19, 2016.
81. "Actualización de la Propiedad Industrial en las Universidades" ["Developments relating to Industrial Property in Universities"], discussion panel presentation. VII Seminario Internacional: Retos de la Propiedad Intelectual en el Mundo Actual [Seventh International Seminar: Challenges Faced by Intellectual Property in Today's World], Havana, October 19-21, 2016.
82. "Retos en la organización y funcionamiento de las empresas públicas en Cuba" ["Challenges in the Organization and Functioning of Public Enterprises in Cuba"], presenter. Cuban-Italian Workshop: La intervención del Estado en la Economía [State Intervention in the Economy], December 2016.
83. "Desafíos de los tribunales cubanos ante la reforma contractual del 2012" ["Challenges Faced by Cuban Courts regarding the 2012 Contract Law Reform"]. Jornada Internacional de Derecho de Contratos [International Conference on Contract Law], January 2017.
84. "Vigencia del Código Civil en la contratación económica" ["Applicability of the Civil Code in Economic Contracts"]. Jornada Internacional 30 Años del Código Civil Cubano [International Conference: The Civil Code at 30], June 21-23, 2017.
85. "Algunas reflexiones del régimen jurídico administrativo de la propiedad industrial en Cuba" ["Some Thoughts on the Legal-Administrative Regime of Industrial Property in Cuba"], presenter. VI Congreso Internacional de Propiedad Industrial [Sixth International Conference on Industrial Property], April 25-27, 2017.
86. IV Seminario de Actualización para Asesores Jurídicos [Fourth Professional Development Seminar for Legal Advisors], Havana, September 18-20, 2017.
87. "La contratación económica en Cuba. Cuestiones al debate" ["Economic Contracts in Cuba. Matters for Debate"]. Curso precongreso [Pre-conference Course]. Congreso Internacional Abogacía 2017 [International Conference for Lawyers 2017], September 26, 2017.
88. "Importancia del contrato en la gestión económica" ["The Importance of Contracts in Business Management"], panelist, with Dr. Johana Odriozola Guitart and Narciso Cobo Roura, M.S. Segundo Encuentro Internacional de Gestión y Dirección Empresarial [Second International Meeting on Business Management and Administration], October 12, 2017.
89. "Algunas reflexiones del régimen jurídico administrativo de la propiedad Industrial en Cuba" ["Some Thoughts on the Legal-Administrative Regime of Industrial Property in Cuba"]. II Simposio Brasil-Cuba de Derecho Público [Second Brazil-Cuba Symposium on Public Law], organized by the School of Law of the University of Havana; Federal University of Pernambuco (UFPE), Brazil; Catholic University of Pernambuco (UNICAP), Brazil; and the Sociedad Cubana de Derecho Constitucional y Administrativo de la UNJC, [National Union of Jurists of Cuba (UNJC) Cuban Society for Constitutional and Administrative Law], November 20-21, 2017.



90. "La empresa pública y el desarrollo local. Interacción de actores" ["Public Enterprises and Local Development: Participant Interaction"], panel coordinator, and "La empresa pública: barreras en su funcionamiento en la economía cubana actual" ["Public Enterprises: Barriers Affecting their Functioning in the Current Cuban Economy"], presenter. III Taller Internacional de Administración Pública [Third International Workshop on Public Administration], University of Havana, Centro de Estudios de Administración Pública [Center for Public Administration Studies] and the Cuban Office of the Friedrich Ebert Foundation], November 29, 2017.
91. "El control en el proceso de contratación económica" ["Control in the Economic Contract Process"]. XVII Jornada Internacional de Derecho de Contratos [17th International Conference on Contract Law], Unión Nacional de Juristas de Cuba (UNJC) [National Union of Jurists of Cuba], January 24-26, 2018.
92. "Transformaciones económicas en la economía cubana actual. Marco regulatorio" ["Economic Transformations in Today's Cuban Economy"], panel coordinator, and "Nuevas Normas del Sistema Empresarial Estatal Cubano: Algunas reflexiones" ["New Regulations in the Cuban State Business System: Some Thoughts"], presenter. Pre-event for the XIV Encuentro Internacional Ciencias Penales 2018 [14th International Meeting on Criminal Sciences] and the Segundo Evento: Legalidad, Derecho y Sociedad [Second Event: Legality, Law and Society], March 13, 2018.
93. "Originalidad y Novedad: obras derivadas y modelos de utilidad" ["Originality and Novelty: Derivative Work and Utility Models"]. International event Propiedad Intelectual e Industrial: conexiones y puntos de encuentro [Intellectual Property and Industrial Property: Connections and Meeting Points], AISGE, CENDA and the School of Law of the University of Havana, March 20, 2018.
94. "Transformaciones económicas en Cuba y Marco Regulatorio" ["Economic Transformation in Cuba and its Regulatory Framework"], panelist, and "La empresa pública en el marco de las transformaciones de la economía cubana actual" [Public Enterprises in the Context of the Current Transformations in Cuban Economy], presenter. III Seminario Internacional "Derecho, Finanzas y Desarrollo" [Third International Seminar on Law, Finance and Development], April 4-6, 2018.
95. "La propiedad industrial en la sociedad del conocimiento. Panorama actual" ["Industrial Property in the Knowledge Society: Current Outlook"]. Jornada de Propiedad Intelectual [Intellectual Property Conference], National University of Chimborazo, Ecuador, April 17-19, 2018.
96. "Las Políticas de Ciencia, Tecnología e Innovación. Especial referencia a las políticas de propiedad industrial y su reflejo en las universidades" ["Policies on Science, Technology and Innovation, with Special Reference to Industrial Property Policies, and the way they get Reflected in Universities"]. At Congreso Internacional de Propiedad Industrial [International Conference on Industrial Property], April 24-26, 2018.
97. "El control en el proceso de contratación económica nacional" ["Control in the National Economic Contract Process"]. National event for legal advisors organized by the Contraloría General de la República de Cuba [Office of the General Comptroller of the Republic of Cuba], May 9, 2018.
98. "Retos que afronta el Derecho Económico ante la actualización del modelo económico y social cubano" ["Challenges Faced by Economic Law Due to the Updating to the Cuban Economic and Social Model"]. Encuentro Internacional Justicia y Derecho [International Meeting on Justice and Law], May 23-25, 2018.
99. "La relación público-privado en los marcos de la actuación económica en Cuba en la actualidad" ["The Public-Private Relationship in the Context of Today's Economy in Cuba"]. Seminar-Workshop: Relación Público-Privado [Public-Private Relationship], organized by the Red de Administración Pública [Public Administration Network] and the Centro de Estudio de la Administración Pública de la Universidad de La Habana [Center for Study of Public Administration of the University of Havana], June 13, 2018.
100. "Una mirada jurídico-económica del fenómeno de la corrupción" ["A Legal and Economic Perspective on Corruption"], presenter. Primer Congreso Internacional de Derecho Penal 2018 [First International Conference on Criminal Law, 2018], School of Law of the National Autonomous University of Mexico (UNAM), October 8-10, 2018.
101. "El Arbitraje de la Organización Mundial de la Propiedad Intelectual (OMPI)" ["Arbitration in the World Intellectual Property Organization (WIPO)"], presenter. XI Conferencia Internacional sobre Arbitraje y Mediación [11th International Conference on Arbitration and Mediation], November 12-13, 2018.
102. "Las políticas de ciencia, tecnología e innovación y su reflejo en la propiedad industrial, en especial en las universidades cubanas" ["Science, Technology and Innovation Policies and the way they Get Reflected in Industrial Property, Particularly in Cuban Universities"]. Seminario Internacional de Propiedad Intelectual [International Seminar on Intellectual Property], November 13-15, 2018.
103. "Los cambios constitucionales y su influencia en la empresa pública cubana" ["Constitutional Changes and their Influence on Cuban Public Enterprises"]. IV Taller Internacional de Administración Pública [Fourth International Workshop on Public Administration], November 2018.
104. "Importancia de la propiedad industrial y principales retos ante la actualización del modelo económico y social cubano" ["The Importance of Industrial Property, and Primary Challenges Resulting from the Updating of the Cuban Economic and Social Model"], presenter. Seminario Internacional de la Propiedad Industrial [International Seminar on Industrial Property], School of Law of the University of Havana, December 13-14, 2018.

105. "La gestión del Conocimiento y la exportación en las redes de las Universidades Cubanas" ["Knowledge Management and Export in the Cuban University Networks"], seminar, "El uso de la PI en las empresas cubanas" ["IP Use in Cuban Companies"], Havana, January 23, 2019.
106. "El uso del Arbitraje de la OMPI en materia de Propiedad Industrial" ["The Use of the World Intellectual Property Organization (WIPO) Arbitration in the Area of Industrial Property"]. Congreso Internacional de Propiedad Industrial [International Conference on Industrial Property], April 24-26, 2019.
107. "La Nueva Constitución económica cubana de 2019: Trascendencia de los cambios" ["The New Cuban Economic Constitution of 2019: Significance of the Changes"]. Evento Internacional Economía, Finanzas y Desarrollo [International Event on Economics, Finance and Development], April 11, 2019.
108. "Retos ante los nuevos cambios legislativos en materia empresarial en Cuba" ["Challenges in Light of New Legislative Changes in the Area of Business in Cuba"]. At Encuentro Cuba/España de Derecho de Trabajo y Seguridad Social [Cuban-Spanish Meeting on Labor and Social Security Law], May 30, 2019.

#### **Selected Post-Graduate Courses Attended**

1. El Sistema de Dirección y Planificación de la Economía [System for the Management and Planning of the Economy], University of Havana, 1982.
2. El Arbitraje Estatal en Cuba [State Arbitration in Cuba], School of Law, University of Havana, Cuba, 1983.
3. Course in Russian Language, University Preparatory Course, 1983-1984.
4. Course in Pedagogy, University of Havana, 1985.
5. Course in Marxist-Leninist Philosophy, University of Havana, 1985.
6. Derecho Económico y Arbitraje Estatal [Economic Law and State Arbitration], University of Havana, 1986.
7. Actualización para árbitros y especialistas en temas de Legislación Económica [Professional development for arbitrators and specialists in Economic Legislation matters], National State Arbitration, 1987.
8. Informática aplicada a las ciencias jurídicas [Computer science applied to legal sciences], University of Havana, 1986.
9. Estudio Comparativo del Sistema Jurídico Civil en los países socialistas [Comparative study of the civil legal systems of socialist countries], University of Havana, 1988.
10. Taller de Evaluación Curricular [Workshop on curriculum evaluation], Center for Research and Educational Services, Autonomous University of Mexico, 1991.
11. Temas de derecho comercial Internacional [Topics in International Commercial Law], Foreign Trade Institute, 1990.
12. Las empresas mixtas. Su regulación jurídica [Joint enterprises: legal regulation], University of Havana, 1992.
13. Series of conferences offered by specialists from the Autonomous University of Madrid, School of Law, University of Havana, 1994.
14. Derecho Civil y Derecho Notarial [Civil Law and Notarial Law], by Dr. Sebastián Palmer Cabrera, Spanish Notary, at the University of Havana, 1994.
15. Derecho a la competencia [The Right to Competition], Carlos III University, Madrid, 1996.
16. Estados Unidos, La Revolución Bolivariana y el contexto actual de América Latina [The United States, the Bolivarian Revolution and the current context in Latin America], 2009.
17. Imperialismo, Revolución y Relaciones Internacionales [Imperialism, Revolution and International Relations], 2009.
18. Actualización sobre la Revolución Bolivariana [Updates on the Bolivarian Revolution], 2010.
19. Introducción a la Ley de Patentes de EU y Aspectos Afines a la Ley de Propiedad Intelectual y la Ley de Secreto Empresarial [Introduction to U.S. Patent Law and Issues Related to Intellectual Property Law and Business Secrecy Law], December 2011.
20. Taller Nacional sobre Cuestiones de Política Pública relacionadas con el Acuerdo sobre los ADPIC [National Workshop on Public Policy Questions Related to the TRIPS Agreement], World Trade Organization, April 2016.

#### **Post-Graduate Courses Taught**

1. Doctoral program of the University of Valencia in Cuba.
2. Master's Degree program in Business Law of the University of Barcelona in Cuba.
3. Master's Degree program in Science, Technology and Society, University of Havana.
4. Master's Degree program in Business Administration, School of Economics.
5. Diploma program in Industrial Property, Ministry of Basic Industries.
6. Diploma program for senior leaders of the People's Power.
7. Master's Degree program in Public Administration, University of Havana.

8. Specialization in Legal Consulting. Industrial Property Module.
9. Master's Degree program on Intellectual Property Management in Cuba and Venezuela, organized by the Cuban Office of Intellectual Property.
10. Master's Degree program in Civil Law. Research Methodology and Industrial Property Module, Bolivia.
11. European Diploma in Business Administration and Management.
12. Diploma in Business Improvement for Business Leaders.
13. Diploma in Public Administration. National School for Senior Managers, 2011-2014.
14. Diploma, World Trade Organization, October 2012.
15. Diploma, Economic Contracts training, June 2012-June 2013.
16. Course in Economic Contracts, March 2013.
17. Master's Degree program in Constitutional and Administrative Law. Module on Public Enterprises and Competence Law, 2012.
18. Course on Joint Businesses with Foreign Capital, November 2012.
19. Diploma, U.S. Business Law, 2012.
20. Master's Degree program in Criminal Law. Module on Social Research Methodology. Guatemala, June 2013.
21. Coordinator of the Master's Degree program in Economic Law started in January 2014.
22. Member of the Academic Committee for the Master's Degree program in Intellectual Property Management, 2000-present.
23. Master's Degree program in Constitutional and Administrative Law, 2013-present.
24. Training coordinator on the topic of economic contracts and dispute resolution, June 2014-June 2018.
25. Diploma in Public Administration, National School for State and Government Senior Managers, 2011-present.
26. Specialization in Public Administration. Law Module. National School for State and Government Senior Managers, 2012-2014.
27. Specialization in Business Administration and Management. Law Module. National School for State and Government Senior Managers, 2012-2014.
28. Master's Degree program in Intellectual Property. Modules on International Treaties. Catholic University of Guayaquil, July 2015.
29. Professor and PhD Advisor at the School of Law of the University of Havana, in conjunction with the Catholic University of Guayaquil.
30. Coordinator of the Diploma program "Advising Legal Entities", taught at the Organización Nacional de Bufetes Colectivos [National Organization of Law Firms]
31. Lecturer on the topic of economic contracts, intellectual property and foreign investment for student delegations and faculty from universities in the United States and other countries.
32. Post-Graduate program "New Issues in the Field of Intellectual Property", 2013-2018.
33. Guest Professor at the Institute of Political and Legal Sciences, Grenoble, France, December 2017.

**Other significant information**

1. Training course in Economic Law, Bruno Leuschner Economic Institute, Berlin, Germany, 1989.
2. Taught economic law and economic legislation in the Republic of Cabo Verde, 1986 and 1991.
3. Advisor, in her areas of specialization, of various course and diploma projects by students at the School of Law.

4. Twice winner of the Sello Forjadores del Futuro [Forging the Future] Award for her outstanding research achievements.
5. President of the Committee for the Improvement of the Curriculum of the University of Havana School of Law, 1990-1993.
6. President of the Commission for the School of Law Degree Program, 1995-2001.
7. Member of the ALFA Program for Economic and Legal Integration. Residence in France in 1999 as a RED member and researcher.
8. Attended the World Intellectual Property Organization (WIPO) teaching event in Havana, April 2000.
9. Professional practice in various centers and entities of the Sistema de Arbitraje Estatal [State Arbitration System], Notary from 1994 to 2001.
10. Research residency in the School of Law, Department of Mercantile Law, University of Valencia, 1996 and 2016.
11. Attended a course on Legal Systems and Economic Law for developing countries, Stockholm, 1998.
12. Course on Copyright by the World Intellectual Property Organization (WIPO), University of the Andes, Mérida, Venezuela, 1999.
13. Member of the Social Science Section of the National Commission for Scientific Degrees, 1998-2002.
14. Vice-President of the Permanent Jury for Scientific Degrees in Legal Sciences.
15. Presented a series of lectures at the School of Law of the University of Valencia, 1996.
16. Received the Industrial Property Medal awarded by the Cuban Office for Industrial Property, 1999.
17. Academic exchange visit with the University of Gainesville, Florida in 2015 and 2017 and with the University of Texas in 2017.
18. Participation in the development of various legislative projects on Economic Law and Intellectual Property and in rulings thereof.

**Candidate advisorships for doctoral, master's and specialization degree candidacies; participation in Doctoral juries and Pre-Defense scientific groups**

- Advisor of three successful PhD candidates in legal sciences.
- Currently advisor to six candidates.
- Advisor of various Master's Degree and specialization thesis projects.
- Member of several juries.
- Member of various scientific groups for Pre-Defense of Master's Degrees and PhD degrees.

**Current participation in research groups**

- Grupo Universitario de Investigación Jurídica "Julio Fernández Bulté" ["Julio Fernández Bulté" University Group for Legal Research, School of Law, University of Havana. Founding Member, April 2012-present.
- Institutional and regulatory policy for the protection, management and commercialization of intellectual creations in Cuban universities. Coordinator, 2013-present.
- State and non-state economic agents in the current Cuban economy. Coordinator, 2013-present.
- National Economic Program. Research: Organizational legal modalities for State and non-State management subjects in the current Cuban economy, 2017.
- Commission of Legal Sciences of the Commission for Implementation and Development. President, March 2019-present.

## **Annex B**

MINISTERIO DE LA INDUSTRIA BÁSICA (MINISTRY OF BASIC INDUSTRY)

RESOLUTION No. 023/92

WHEREAS: Decree- Law No. 67 dated April 19, 1983 of the *Organización de la Administración Central de Estado* (Organization of the Central Administration of the State), by means of Article 53, subsections q) and r), authorizes the Heads of the *Organismos* to issue mandatory provisions for the entities in their own system and within their competences for other *Organismos* and their *dependencias*.

WHEREAS: Resolution 659 dated March 19, 1992 of the *Comisión Nacional del Sistema de Dirección de la Economía* (National Commission of the System for the Management of the Economy) authorizes the merger between *Unión del Petróleo* and *Unión del Combustible*, as well as the change of name and the transfer of some entities.

WHEREAS: By Agreement of the *Consejo de Estado* (State Council) dated May 14, 1983, the undersigned was appointed *Ministro de la Industria Básica* (Minister of Basic Industry.)

THEREFORE: By means of the powers conferred upon me,

I RESOLVE:

FIRST: To merge *Unión del Petróleo* with *Unión del Combustible*. The resulting entity will take the name *Unión Cuba-Petróleo* and also the abbreviated name "CUPET;" it will be subordinated to this Ministry and will be integrated by the *empresas* and *unidades* which formed part of both Unions.

SECOND: To change the names of the following entities:

- *Empresa Nacional de Geofísica* shall become *Empresa de Geofísica*.
- *Empresa de Gas Manufacturado de La Habana* shall become *Empresa de Gas Manufacturado*.
- The *Empresas Productoras de Derivados del Petróleo de La Habana, de Santiago de Cuba y de Cabaiguán* shall become, respectively, *Empresa Refinería de Petróleo "Ñico López"*, *Empresa Refinería de Petróleo "Hermanos Díaz"* and *Empresa Refinería de Petróleo "Sergio Soto"*.
- The *Unidades* called *Unidad de Distribución de Derivados del Petróleo de Isla de la Juventud y de Cienfuegos*, *Unidad de Transporte* and *Unidad Central de Almacenes* shall become, respectively, *Unidad Distribuidora de Combustibles de Isla de la Juventud*, *Unidad Distribuidora de Combustibles de Cienfuegos*, *Unidad de Mecanización* and *Unidad de Abastecimiento*.

The other name changes approved by the *Comisión Nacional del Sistema de Dirección de la Economía* shall be implemented at a later date by means of a resolution for that purpose to be issued by the undersigned.

[Emblem of the Republic of Cuba]  
**República de Cuba**  
Ministerio de Energía [...]  
DIRECCIÓN JURÍDICA

[Signature]

[Partially obscured stamp appearing on the left margin:]

[...] CUBA  
[...] BÁSICA

THIRD: Transfer *Unidad de Fracturación, Cementación y Pruebas de Pozo* to *Empresa de Geofísica*.

FOURTH: Transfer *Centro Politécnico del Petróleo* to *Empresa de Perforación y Extracción de Petróleo del Centro*.

FIFTH: For all legal purposes, the Union resulting from the merger provided for by means of this document is a continuation of *Unión del Petróleo* and *Unión del Combustible* and is subrogated to their place and status.

SIXTH: The Directorate of *Unión Cuba-Petróleo* "CUPET" does not reside in any of its *empresas*, and its senior management, organization and operations, as well as the entities that form part of it, shall be regulated by the relevant legal provisions, and their structure and staffing table shall be approved in accordance with the provisions issued by the *Comité Estatal de Trabajo y Seguridad Social* (State Committee on Work and Social Security.)

SEVENTH: This Resolution shall be effective as of April 1, 1992.

EIGHTH: Notify the Vice-Ministers, the Director of *Unión Cuba-Petróleo*; the directors of the *empresas* and other entities; the *Junta Central de Planificación* (Central Planning Board); the *Comités Estatales de Finanzas, Estadísticas, [y] Trabajo y Seguridad Social* (State Committees on Finance, Statistics, [and] Work and Social Security); the *Banco Nacional de Cuba* (National Bank of Cuba); *Comisión Nacional y Comisiones Provinciales y de Isla de la Juventud del Sistema de Dirección de la Economía* (the National Commission and Provincial Commissions and [the Commission of] Isla de la Juventud of the System for the Management of the Economy); and to any other legal persons as appropriate.

ISSUED in Ciudad de La Habana on the 25th day of the month of March of 1992.

"YEAR 34 OF THE REVOLUTION"

*[Signature]*

Marcos Portal León  
MINISTER

[Emblem of the Republic of Cuba]  
**República de Cuba**  
Ministerio de Energía y Minas  
DIRECCIÓN JURÍDICA

[Emblem of the Republic of Cuba]  
**República de Cuba**  
Ministerio de Energía y Minas  
Yamilé C. González [illegible]  
Especialista at the *Dirección Jurídica*  
**I CERTIFY**  
That this document is a true copy of its original,  
which is filed at this *Dirección*.  
La Habana, Nov. 29, 2018

*[Signature]*

[Illegible stamp]

EXEMPT  
Tax on Documents  
Law 113, Section VI, Article 220  
*Ministerio Finanzas y Precios*

*MINREX*

[Emblem of the Republic of Cuba]

***República de Cuba***

**E949600**

*Ministerio de Relaciones Exteriores  
DACCRE*

I CERTIFY: That the authorizing officer's signature above is apparently authentic due to its similarity to the one kept on record and to the one he normally uses in official acts.

In view of the above, I confer my authorization with my signature and the seal of this Ministry, as an Officer authorized to certify signatures on documents in order for them to have legal effects abroad.

Issued in La Habana on Sept 19, 2019

*[Signature]*

**Daisy Morejón Díaz**

[Emblem of the Republic of Cuba]

**MINREX**



## **Annex C**

[Emblem of the Republic of Cuba]  
**GACETA OFICIAL**  
DE LA REPÚBLICA DE CUBA

**Law No. 59**

**Civil Code**

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[...]

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## CHAPTER II

### LEGAL PERSONS

ARTICLE 39.1. Legal persons are entities that, owning their own assets, have the capacity to be the subjects of rights and obligations.

2. In addition to the State, the following are legal persons:

- (a) *empresas* and unions of State *empresas*;
- (b) cooperatives;
- (c) political, mass and social organizations, as well as their *empresas*;

(ch) *sociedades* and associations constituted in accordance with the requirements established by the law;

(d) foundations, which are to be understood as sets of assets that are created as separate assets through an act of liberality by their previous owner in order to be devoted to the fulfillment of a certain not-for-profit goal allowed by the law and have to be constituted in accordance with the requirements established by the law;

(e) non-State enterprises authorized to perform their activities; and

(f) all other entities to which legal personality is conferred by the law.

[...]

ARTICLE 41. For the performance of their activities, legal persons have the capacity established by the law and by their bylaws and regulations.

[...]

ARTICLE 44.1. Legal persons answer for their obligations with the property making up their assets.

2. The assets of State *empresas* are made up of the basic, rotation and financial means assigned to them by the State. These *empresas* answer for their obligations only with their own financial resources, within the limits established in the economic legislation.

3. The State does not answer for the obligations incurred by other legal persons, nor do other legal persons answer for the obligations incurred by the State.

## **Annex D**

ISSN 1682-7511

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# **GACETA OFICIAL**

## **DE LA REPÚBLICA DE CUBA**

### **MINISTERIO DE JUSTICIA**

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**Number 58**

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[...]

GOC [*Gaceta Oficial de Cuba (Official Gazette of Cuba)*]-2017-841-EX58

## DECREE No. 335

WHEREAS: As a result of the changes introduced in the business system as part of the process of updating the Cuban economic model and the decision to extend to the entire state business system the functions, powers, concepts and principles pertaining to the area of business improvement, it is necessary to issue provisions that put them into effect and that at the same time update and compile current regulations for these purposes.

THEREFORE: The *Consejo de Ministros* (Council of Ministers), in exercise of the authority conferred upon it by Section k) of Article 98 of the Constitution of the Republic of Cuba, decrees the following:

**ON THE CUBAN STATE BUSINESS SYSTEM**

## CHAPTER I

**SCOPE OF APPLICATION AND GENERAL PRINCIPLES**

ARTICLE 1.1. This Decree is applicable to all Cuban state business entities.

2. The entities implementing the Business Management and Administration System are also governed by the provisions specific to the Cuban state business system and by its internal regulations.

ARTICLE 2. The Cuban state business system is integrated fundamentally by *organizaciones superiores de dirección empresarial* (superior organizations of business management), *empresas* (enterprises) [and] *unidades empresariales de base* (basic business units).

ARTICLE 3. The creation of *organizaciones superiores de dirección empresarial*, *empresas* and *unidades empresariales de base* is predicated on improving economic rationality, simplifying management processes and achieving better results in the areas of production and services, without the size of operations, number of workers or any other indicator having a direct influence on this matter.

## CHAPTER II

**ORGANIZACIONES SUPERIORES DE DIRECCIÓN EMPRESARIAL**

ARTICLE 4. *Organizaciones superiores de dirección empresarial* arise due to the requirements of the Government administration in its various instances or in order to support the separation of state functions from business functions, which allows to organize *empresas* in accordance with state interests and with their technological and production similarities, to make administrative processes more flexible, to achieve prompt resolution of problems and to strengthen monitoring, as well as to ensure an effective link between research and production and a better utilization and preservation of scientific potential.

ARTICLE 5.1. *Organizaciones superiores de dirección empresarial* are created at the request of the *Consejo de Ministros* or the heads of the *organismos* of the *Administración Central del Estado* (Central Administration of the State) or by the presidents of the *consejos de la Administración Provincial del Poder Popular y Municipal Isla de la Juventud* (councils of the Provincial Administration of the People's Power and the Special Municipality of Isla de la Juventud), as appropriate, in accordance with current legislation and following established procedures.

2. The *órgano* or *organismo* of the *Administración Central del Estado* which creates an *organización superior de dirección empresarial* has the authority to adopt decisions over any other organizational change, in accordance with current legislation and following established procedures.

ARTICLE 6.1. An *organización superior de dirección empresarial* is integrated by *empresas*; it has legal personality and its own assets; it finances its expenses by means of the contributions of the entities that are grouped with it; and its management activities provide benefits to those entities.

2. In addition, *organizaciones superiores de dirección empresarial* respond for the obligations which are inherent to them by means of their own financial resources, and they do not assume the obligations incurred by the entities that are integrated to them.

ARTICLE 7.1. *Organizaciones superiores de dirección empresarial* may be integrated by self-financed entities in the areas of science, technology or innovation, for the purpose of achieving a comprehensive and economically sustainable management of science, technology and innovation.

2. In addition, they may sponsor *sociedades mercantiles* (mercantile companies) whose capital is wholly Cuban.

ARTICLE 8.1. *Organizaciones superiores de dirección empresarial* are organized into Groups or Unions, in accordance with the organizational and technological characteristics of the entities that are integrated to them.



2. A *Grupo Empresarial* (Business Group) is an *organización superior de dirección empresarial* integrated by *empresas* with different structures as regards production, technology, services, research and commercialization; they may not necessarily be directly interrelated among them.

3. A *Unión* (Union) is an *organización superior de dirección empresarial* integrated by *empresas* which by their organizational, technological, productive and commercial characteristics are highly interrelated and dependent upon each other, and they may or may not make up an integrated system. It corresponds to the President or General Director of the Union to define which *empresas* within said organization are part of this system, as well as to establish the economic and financial consequences to be derived therefrom.

ARTICLE 9. A Union that constitutes an integrated system with its *empresas* covers its expenses with its revenue and as a result earns profits from its own economic activity. In these cases, the Union and its *empresas* establish monetary-business relationships among them.

ARTICLE 10.1. *Organizaciones superiores de dirección empresarial* perform management and monitoring functions with respect to the entities which are integrated to them, without interfering in their administration and with strict respect for their autonomy; for compliance therewith, they have a reduced management structure.

2. The function of management focuses on strategic questions associated with the definition of and compliance with goals, the evaluation and approval of plans, work systems with *cuadros* (senior managers), compliance with corporate purpose, and the creation of reserves from retained profits, as well as on development, research and development of new products and services.

3. Monitoring is exercised, as a priority, on the overall results of the entire organization, as well as on the use of the resources assigned centrally by the Government.

4. In the specific case of the Unions, the aforementioned functions are also exercised regarding production and services.

ARTICLE 11. *Organizaciones superiores de dirección empresarial* acquire the category conferred by the *Ministerio de Trabajo y Seguridad Social* (Ministry of Labor and Social Security), in accordance with the category held by the *empresas* which are integrated to them.

### CHAPTER III THE EMPRESA

ARTICLE 12.1. A State *empresa* is an entity that has legal personality and its own assets, created for the production of goods and the provision of services, for the purpose of efficiently complying with its business management, in accordance with the approved annual plan.

2. It covers its expenses with its revenue; it fulfills its contributions to the State and reserves resources for its own development and benefit.

3. It is owned by the State and it is integrated to *organizaciones superiores de dirección empresarial*.

4. It cannot be subordinated to another *empresa* nor have losses.

5. It responds for the obligations inherent to it by means of its financial resources and it does not assume the obligations incurred by the *organización superior de dirección empresarial* to which it is integrated.

ARTICLE 13. The *empresa* is created, transferred, merged, transformed, or closed as decided by the President or General Director of the *organización superior de dirección empresarial*, the head of the *organismo* of the *Administración Central del Estado*, or the President of the *Consejo de la Administración Provincial del Poder Popular y del Municipio Especial Isla de la Juventud*, after prior authorization by the *Ministro de Economía y Planificación* (Minister of Economy and Planning), in accordance with the procedure established for that purpose.

ARTICLE 14. The *empresa* is organized on the basis of processes; some ensure the execution of regulatory and monitoring functions, others belong to the areas of production of goods, provision of services, commercialization, maintenance, or logistics, as appropriate.

ARTICLE 15. The *empresa* is materially liable for the damages it may cause to other *empresas*, *órganos*, *organismos* of the *Administración Central del Estado*, State institutions or other entities, citizens, natural resources or the environment. Consequently, it has the obligation to provide restitution, remediation or indemnification, as appropriate.

ARTICLE 16. *Empresas* are categorized according to the stipulations issued to that effect by the *Ministerio de Trabajo y Seguridad Social*.

### CHAPTER IV PROVISIONS APPLICABLE TO EMPRESAS AND ORGANIZACIONES SUPERIORES DE DIRECCIÓN EMPRESARIAL

Article 17.1. Any provision which creates, transfers, merges, transforms, closes or causes any other organizational change in an *organización superior de dirección empresarial* or an *empresa* [continued]

shall be notified to the corresponding entity by the issuing authority.

2. The organizational changes referred to in the Section above, as well as the business address, must be registered or updated in the *Registro Estatal de Empresas y Unidades Presupuestadas* (State Registry of Enterprises and Budgeted Units) by the President or General Director of the *organización superior de dirección empresarial* or the *empresa*, as appropriate.

3. In the case of creation, registration grants legal personality to the entity thus created, which becomes an accounting and reporting center.

4. The *organización superior de dirección empresarial* or *empresa* must also be recorded in the corresponding public registries, in accordance with the provisions set forth in current legislation.

ARTICLE 18. The *organizaciones superiores de dirección empresarial*, as appropriate, shall insert themselves into the activity planning process established by the country and the enterprises, [sic] shall do so on the basis of determinations made by the *organización superior de dirección empresarial* to which they are integrated or by the *órgano* or *organismo* to which they are subordinated.

ARTICLE 19. The *consejo de dirección* (governing council) is the primary governing body of the *organización superior de dirección empresarial* and of the *empresa*.

#### CHAPTER V

#### **UNIDADES EMPRESARIALES DE BASE**

Article 20.1. *Unidades empresariales de base* are internal divisions created by an *organización superior de dirección empresarial* or an *empresa* in order to organize the processes of production of goods and provision of services; they act with relative independence, are subordinated to the head of the entity which creates them, and do not have legal personality or assets of their own.

2. *Unidades empresariales de base* are the only structure at the basis of all of the processes for production or provision of services; they may be created on a temporary or a permanent basis, in accordance with the characteristics of the process they perform.

3. In the case of an *unidad empresarial de base* created by an *organización superior de dirección empresarial* for the purpose of providing services to third parties, consideration is given to whether it is better, from an organizational and economic standpoint, to integrate it to an *empresa* which provides similar or related functions, convert it into an independent *empresa* or keep it as an *unidad empresarial de base*.

ARTICLE 21. When designing *unidades empresariales de base*, the Director of the entity which creates them shall ensure that there are no contradictions in the naming of the structures and the positions used, nor in the organizational criteria used in their creation, and shall verify that each of them corresponds to one or several of the processes defined within the organization.

ARTICLE 22.1. *Unidades empresariales de base* are characterized by a controlled autonomy, based on the limits established for the exercise of their normal financial management; all of their revenue belongs to the entity which created them, and their output adds primarily to the results of that entity.

2. They may operate under the principle of covering their expenses with their revenue, and provide a profit margin to the *empresa* or the *organización superior de dirección empresarial*, as appropriate; or not generate any revenue, in which case their expenses are financed by using the revenue of the entity that created them.

3. The functions of the *unidad empresarial de base* and the powers of its directors are expressly defined and delegated by the head of the *organización superior de dirección empresarial* or the *empresa*, as appropriate.

4. *Unidades empresariales de base* may constitute reporting centers in the province in which they are located, without this involving duplication in national statistics.

ARTICLE 23.1. The provision by which an *unidad empresarial de base* is created shall include the following:

1. name of the *unidad empresarial de base* and functions assigned to it;
2. powers assigned to the head of the *unidad*;
3. organizational structure and denomination down to the level of brigades;
4. staffing table;
5. applicable payment systems;
6. revenue and expense budgeting, in accordance with operations performed by the *unidad*;
7. whether or not a bank account is used and the details regarding it;
8. accounting records handled by the *unidad*; and
9. other items which may be deemed necessary.

2. The specific denomination of an *unidad empresarial de base* shall be consistent with the characteristics of the activity it performs; it shall take the one that is most appropriate to identify its goal, which may be: unit, factory, establishment, agency, complex, division, branch, agriculture and livestock farming, comprehensive project management, independent brigade, or any other which may be deemed appropriate.

## CHAPTER VI

**FUNCTIONS OF ORGANIZACIONES SUPERIORES DE DIRECCIÓN EMPRESARIAL  
AND POWERS OF THEIR PRESIDENTS OR GENERAL DIRECTORS**

## FIRST SECTION

**Functions of *organizaciones superiores de dirección empresarial***

ARTICLE 24. *Organizaciones superiores de dirección empresarial* have the following functions:

1. Remain up-to-date and comply with current legislation, especially that which is applicable to their area of competence;
2. develop and establish the regulatory basis to be implemented in the *organización superior de dirección empresarial*;
3. periodically perform diagnostic evaluations of the status of the *organización superior de dirección empresarial* and develop action plans in order to resolve existing problems;
4. systematically monitor the implementation of the various systems of business management in the *empresas* that are integrated to it;
5. develop and update the comprehensive strategy of the *organización superior de dirección empresarial*; evaluate its compliance in the *consejo de dirección*; take the necessary measures to rectify anomalies; as well as guide and monitor compliance with this aspect in the *empresas* that are integrated to it;
6. determine, together with the workers, the distinctive values that must be prioritized within the *organización superior de dirección empresarial*;
7. every year, develop the goals to be achieved by the *organización superior de dirección empresarial*, in accordance with the approved business strategy, and periodically monitor compliance;
8. manage personnel and guide the actions of the *organización superior de dirección empresarial* in order for it to efficiently comply with the assigned mission;
9. design the operations of the *organización superior de dirección empresarial* on the basis of horizontal, process-oriented structures that are appropriate to its technology and mission;
10. evaluate transfers of *unidades empresariales de base* from one *empresa* to another within the same *organización superior de dirección empresarial* or between *empresas* which do not belong to the same *organización superior de dirección empresarial*;
11. ensure that the *empresas* that are integrated to it produce and provide services in accordance with their approved corporate purpose;
12. establish the functions and powers corresponding to each senior management level of the *organización superior de dirección empresarial*, in accordance with the established structure, and select suitable personnel to this end;
13. evaluate the functioning of the *organización superior de dirección empresarial* and of the *empresas* that are integrated to it, which includes analysis for the purpose of creation, closure, transfer or merger of the latter;
14. ensure close collaboration between political and labor union organizations and the *empresas*, *órganos* and *organismos* of the *Administración Central del Estado* and *consejos de la Administración Provincial del Poder Popular* with which relationships may exist;
15. develop and apply regulations for the functioning of the collective senior management *órganos* of the *organización superior de dirección empresarial*;
16. plan meetings and other primary activities to be developed within the *organización superior de dirección empresarial*;
17. periodically report to the appropriate instance regarding performance and management results of the entire organization; organize in the various parts of the *organización superior de dirección empresarial* and the *empresas* the reporting process to their relevant *consejo de dirección*;

18. design and implement the procedures which organize the work system with the *cuadros* of the *organización superior de dirección empresarial* and their reserves, in accordance with the guidelines and provisions issued by the Government for this purpose, as well as guide and monitor compliance with this aspect in the *empresas*;
19. together with the labor union organization, develop the regulations regarding moral motivation of personnel at the *organización superior de dirección empresarial*;
20. design, harmonize, implement, self-monitor and systematically update the internal control system in accordance with its characteristics, competencies and institutional attributions, and motivate the workers to participate in its overall management; identify risks and take measures to avoid damage to state property;
21. ensure development of audit procedures in the *empresas* and entities which are integrated to the *organización superior de dirección empresarial*, in accordance with the relevant regulations;
22. together with the labor union organization, develop and implement the system of care for the human being in the *organización superior de dirección empresarial*;
23. develop regulations regarding the maintenance of real estate, movable goods, resources and equipment in the *organización superior de dirección empresarial*, and systematically monitor compliance;
24. develop procedures for the organization of the supplying and purchasing of materials and products for the activity of the *organización superior de dirección empresarial*;
25. implement in the *organización superior de dirección empresarial* the quality control system, and have it certified or approved by the authorizing entities, according to the timetable prepared for these purposes;
26. develop the quality control manual of the *organización superior de dirección empresarial*;
27. organize and regulate, as appropriate, the functioning of the Quality Control Council of the *organización superior de dirección empresarial*;
28. develop the rules regarding material consumption at the *organización superior de dirección empresarial*, as well as the energy intensity indices;
29. in conjunction with the labor union organization, determine the positions in the categories of operators, technicians, administrative and service workers which are by their nature designated in the *organización superior de dirección empresarial*, as well as those positions that confer officer status;
30. ensure that the *organización superior de dirección empresarial* personnel perform and develop their activities in accordance with the requirements established for each position;
31. organize work at the *organización superior de dirección empresarial* in accordance with workload and on a broad-profile basis; develop job description diagrams based on the competencies required for the job positions when appropriate and prioritize key posts;
32. design the necessary measures to be implemented so as to strengthen discipline within the *organización superior de dirección empresarial*;
33. determine the different levels of the salary scale applicable to *cuadros*, in accordance with the approved category for the *organización superior de dirección empresarial*; ensure that there are no salary inconsistencies;
34. evaluate and determine the wage regime applicable to the primary specialists of the *organización superior de dirección empresarial*, when appropriate;
35. develop and monitor compliance with the convertible peso (CUC) stimulus regulations of the *organización superior de dirección empresarial*, when appropriate;
36. organize and monitor the safety and security system of the *organización superior de dirección empresarial*; plan measures to preserve equipment, resources, materials and information;
37. develop and update as necessary the plan regarding requirements in times of peace for defense, state reserve and civil defense *órganos*;

38. develop and coordinate with defense *órganos* the plans regarding requirements in exceptional situations;
39. develop and coordinate with civil defense *órganos* the emergency plans against disasters;
40. develop and apply a business intelligence system which allows the *organización superior de dirección empresarial* personnel to update their knowledge;
41. ensure, when appropriate, compliance with provisions regarding industrial and intellectual property rights in the *organización superior de dirección empresarial*;
42. support the activities of those involved in innovation and streamlining, and promote the overall implementation of improvements achieved in the *empresas*;
43. direct, coordinate and monitor the development of the annual plan with the participation of the workers from the beginning, and introduce proposed measures that are achievable;
44. create the expense budget of the *organización superior de dirección empresarial* and identify the financing needs to be assumed by the *empresas*; periodically monitor execution and adopt measures to ensure savings;
45. analyze the annual draft plans of the *empresas* and demand an increase in efficiency, contributions to the State, state assignment and expense reduction;
46. present and defend the annual plan of the *empresas* before the *Junta de Gobierno*, and later present and defend the consolidated plan before the relevant *órgano* or *organismo*; if the *Junta de Gobierno* has not been created, the latter shall be presented to the corresponding *órgano* or *organismo*;
47. apportion the plan among the *empresas* that are integrated to it, in the interest of compliance and monitoring;
48. with the workers, periodically analyze the results obtained in managing the *organización superior de dirección empresarial*, evaluate compliance with the approved expense budget, the financial indicators achieved and the guiding and tangential indicators at the *empresas*. Adopt measures to eliminate anomalies;
49. organize the workings of the commercial contracting system of the *organización superior de dirección empresarial* and define its procedures, as well as the creation of a consulting body if appropriate;
50. develop the accounting manual of the *organización superior de dirección empresarial* and adopt the organizational measures which are deemed necessary for its correct functioning;
51. issue periodical financial statements and monitor this aspect in the *empresas*;
52. ensure that the information technology-supported accounting and financial systems utilized by the *empresas* are compatible and have been certified by the competent authority;
53. have the financial statements of the *organización superior de dirección empresarial* certified by authorized entities and demand compliance in this matter from the *empresas* that are integrated to it;
54. rationally organize comprehensive monitoring in the *empresas*;
55. develop and systematically monitor compliance with the Risk Prevention Plan of the *organización superior de dirección empresarial*;
56. with each *empresa*, evaluate deficient results regarding management, as identified during audits and controls; analyze the causes of the deficiencies detected and the appropriate disciplinary, labor-related, technical, financial, organizational and salary-related measures;
57. organize the treasury-related activity, taking into account the characteristics and conditions and the actual need for it to be assumed by the *organización superior de dirección empresarial*;
58. in accordance with the provisions applicable in each case, ensure that the relevant taxes are paid in a timely and appropriate manner;
59. document the full amount of accounts payable and receivable; establish agreements on receivables and payables with clients and suppliers, when appropriate;
60. analyze the proposals presented by the *empresas* for the creation of reserves from after-tax profits, as well as the amount of those reserves, as set out for these purposes by the corresponding *organismo*;

61. determine the amounts and items for the use of depreciation as an internal revenue source for the purpose of financing new investments;
62. properly use and manage the financial and material resources of the *organización superior de dirección empresarial*;
63. comply fully with the guidelines established for the use of the currencies in which it operates;
64. create and apply prices and rates as appropriate; guide and monitor their correct formation in the *empresas*;
65. organize the reporting system so that it includes the reporting requirements of the *empresas* that are integrated to it, in accordance with established principles; develop regulations for internal and external reporting, as well as the reporting chain for each head of the *organización superior de dirección empresarial*;
66. develop the management information and automation system in accordance with the relevant general rules;
67. apportion among the *empresas* that are integrated to it an amount for non-nominal investments, as appropriate;
68. analyze any case of idle or slow-moving inventory throughout the *organización* for the development of the annual plans;
69. analyze the proposals presented by the integrated *empresas* regarding the use to be assigned to the tangible fixed assets which they manage;
70. evaluate investment feasibility studies when appropriate;
71. develop, together with the *empresas* that are integrated to it, the product and service export policy of the entire *organización superior de dirección empresarial*;
72. design the business communication system to be implemented in the *organización superior de dirección empresarial*, in accordance with the specifications contained in the communication management manual and the corporate identity manual; and
73. any other function which may be required by law.

#### SECOND SECTION

#### **Powers of the presidents or general directors of *organizaciones superiores de dirección empresarial***

ARTICLE 25. The presidents or general directors of *organizaciones superiores de dirección empresarial* are their legal representatives and have the following powers:

1. decide on the actions to be taken by the *organización superior de dirección empresarial* in order to ensure understanding of and compliance with the country's legislation;
2. issue the regulatory basis and other provisions which ensure compliance with laws and legal norms;
3. approve the diagnostic evaluations of the *organización superior de dirección empresarial* and the action plans which will allow resolution of the deficiencies detected;
4. propose to the *Junta de Gobierno* a comprehensive strategy for the *organización superior de dirección empresarial*, which shall include, among other items, strategic goals and the value system to be implemented, and demand that the *empresas* comply with it. Approve the strategy in cases where a *Junta de Gobierno* does not exist;
5. approve annual goals and define actions to be taken in order to ensure efficient compliance with the tasks assigned to the *organización superior de dirección empresarial*;
6. approve the structure and staffing table for the central office of the *organización superior de dirección empresarial*;
7. approve the transfer of *unidades empresariales de base* from one *empresa* to another one which is integrated to the same *organización superior de dirección empresarial*;
8. propose for approval by the *Ministro de Economía y Planificación*, by the relevant *organismo* in the *Administración Central del Estado* or by the *Consejo de la Administración Provincial del Poder Popular*, as appropriate, the transfer of subordinated *unidades empresariales de base* to *empresas* integrated to other *organizaciones superiores de dirección empresarial*;
9. Present to the *Ministro de Economía y Planificación* or to the relevant *organismo* in the *Administración Central del Estado* or to the *Consejo de la Administración Provincial del Poder Popular*, as appropriate, a proposal for the creation, closure, transfer or merger of *empresas* in accordance with established rules;
10. Approve the functions of the regulatory and monitoring areas of the *organización superior de dirección empresarial*; delegate powers to each manager;

11. select his/her governing team and designate the *cuadros* for the various positions, or present proposals in that regard as appropriate, after having heard the opinion of the *Comisión de Cuadros* (Senior Management Committee) and in accordance with the current provisions, and, when appropriate, designate the *cuadros* of the *empresas*;
12. approve actions aimed at strengthening relations between the *organización superior de dirección empresarial* senior management team, political and labor union organizations and other Government and State institutions;
13. create the *organización superior de dirección empresarial* governing entities and issue regulations for their functioning;
14. approve the annual and monthly work plans of the *organización superior de dirección empresarial* and the plans presented by the directors of the *empresas* that are integrated to it;
15. approve the reporting plan to be presented to the *consejo de dirección* regarding management of the areas within the *organización superior de dirección empresarial* and within the *empresas* which are integrated to it, as well as the action plans deriving from the reporting;
16. approve the procedures for organizing the work system with the *cuadros* and their reserves of the *organización superior de dirección empresarial*;
17. approve appropriate measures aimed at implementing a moral motivation system for the *organización superior de dirección empresarial* workers, and issue the relevant regulations;
18. approve the necessary measures in order to ensure the participation of the workers at the senior management level, as well as the procedures to that effect;
19. approve the internal control system and the necessary corrective measures when appropriate;
20. approve the system of care for the human being to be implemented in the *organización superior de dirección empresarial*;
21. approve regulations for the maintenance of movable goods, real estate, resources, equipment, instruments and work tools of the *organización superior de dirección empresarial*, as well as the annual maintenance plan;
22. approve the procedure for the organization of the supplying and purchasing of materials and products needed in order for the *organización superior de dirección empresarial* to perform its activities;
23. approve the quality control manual of the *organización superior de dirección empresarial*;
24. when appropriate, create in the *organización superior de dirección empresarial* the Quality Control Council, as well as the groups aimed at achieving improvements in this regard;
25. approve the rules of the *organización superior de dirección empresarial* regarding material consumption;
26. approve positions that confer officer status in the *organización superior de dirección empresarial*;
27. demand that *organización superior de dirección empresarial* personnel and *empresa* personnel perform and develop their activities in accordance with the requirements established for each position;
28. approve the key positions in the *organización superior de dirección empresarial* and create job description diagrams based on the competencies required for the job posts as appropriate;
29. apply disciplinary measures to *organización superior de dirección empresarial* workers, as well as to the general directors of the *empresas* that are integrated to it;
30. approve the salary scale for *cuadros*, in accordance with the established salary scale groups and the category for which the *organización superior de dirección empresarial* has been approved;
31. approve the wage regime for *organización superior de dirección empresarial* workers designated as primary specialists in the regulatory and monitoring areas;
32. if approved, issue the *organización superior de dirección empresarial* internal regulations for stimulus in convertible pesos (CUC);
33. approve the safety and security system of the *organización superior de dirección empresarial*;
34. approve the plan regarding requirements in times of peace in the *organización superior de dirección empresarial*;

35. approve measures aimed at complying with plans regarding requirements in exceptional situations;
36. approve disaster reduction plans and include defense needs in the annual plans;
37. present to the competent *organismo* a proposal for authorization of payment for social economic interest, seniority and other aspects of a similar nature;
38. approve the measures which make up the business intelligence system;
39. approve the general guidelines for the definition of policies to be followed in the *organización superior de dirección empresarial* in relation to industrial and intellectual property rights;
40. approve business planning procedures in the *organización superior de dirección empresarial*;
41. approve those measures proposed by workers which are appropriate for implementation when developing the plan;
42. approve the amount to be financed by the *empresas* so as to meet costs in Cuban pesos (CUP) incurred by the *organización superior de dirección empresarial*, in accordance with the expense budget;
43. propose the consolidated annual plan to the relevant *órgano* or *organismo* for its approval; approve the annual plan of each *empresa*, the guiding and tangential indicators, as well as modifications thereto, as long as this does not result in a modification of the guiding indicators approved for the *organización superior de dirección empresarial*;
44. approve the action plan resulting from the evaluations performed in conjunction with workers regarding compliance with the expense budget of the *organización superior de dirección empresarial*;
45. approve the agreements achieved at the quarterly meetings for analysis of the economic and financial results of the *empresas*;
46. sign commercial contracts for the operations corresponding to the *organización superior de dirección empresarial*; establish procedures for commercial contracts, and create, when appropriate, a consulting body for their analysis and evaluation;
47. approve the accounting manual;
48. approve the financial statements of the *organización superior de dirección empresarial*;
49. approve the certified financial-accounting systems, supported by information technology systems, that are going to be used in the accounting activity of the *organización superior de dirección empresarial*; demand that the *empresas* that are integrated to it use systems that are compatible with the abovementioned ones;
50. demand that every year *empresas* have their financial statements certified by auditing entities, as prescribed;
51. approve the self-monitoring plan of the *organización superior de dirección empresarial*; create multidisciplinary self-monitoring and problem-solving working groups;
52. approve the annual plan for comprehensive controls of the *empresas* that are integrated to the *organización superior de dirección empresarial*;
53. approve the Risk Prevention Plan of the *organización superior de dirección empresarial*;
54. approve measures to be taken regarding personnel responsible for deficiencies detected during audits or controls that yielded unsatisfactory results;
55. approve, when appropriate, the operating principles of the treasury-related activity, taking into account the characteristics and conditions and the actual need for it to be assumed by the *organización superior de dirección empresarial*, on the basis of the policies established by the relevant *organismo*;
56. demand that the *empresas* and the *organización superior de dirección empresarial* fulfill their tax obligations in a timely and appropriate manner;
57. demand efficient compliance with the guidelines established for the use of the currencies in which they operate;
58. approve the accounting system to be used, in accordance with the provisions contained in Cuban rules on financial information;
59. present for the approval of the *Junta de Gobierno* the proposal for reserves to be created within the *empresas* on the basis of after-tax profits, as well as the amount of those reserves; approve them in cases where a *Junta de Gobierno* has not been created;



60. adopt decisions regarding the use and efficient utilization of the financial and material resources assigned to the *organización superior de dirección empresarial* for the development of its functions; be accountable for optimal utilization of the workforce;
61. open and operate bank accounts as prescribed;
62. approve prices and rates as appropriate, in accordance with the provisions defined by the competent instance;
63. approve the reporting flow to be received from the *empresas*, as well as the internal reporting flow within the *organización superior de dirección empresarial*; establish regulations for internal and external reporting, as well as the reporting chains to be used by the various *cuadros* of the *organización superior de dirección empresarial*;
64. approve the management information and automation system to be used in the *organización superior de dirección empresarial*;
65. approve an amount for non-nominal investments by the *empresas* that are integrated to it;
66. approve feasibility studies for appropriate investments;
67. approve the measures to be implemented in the *organización superior de dirección empresarial* in order to comply with the product and service export policy approved by the leadership of the country;
68. present to the appropriate instance a proposal for carrying out acts of ownership over tangible fixed assets that are managed by the *organización superior de dirección empresarial* and the *empresas*;
69. approve a commercially useful destination for slow-moving and idle inventory;
70. approve the business communication system to be implemented in the *organización superior de dirección empresarial*, the communication management manual and the corporate identity manual; and
71. any other power which is legally assigned to them.

ARTICLE 26. In fulfilling the functions established for the *organización* and the powers assigned to them, the President or General Director of the *organización superior de dirección empresarial* is assisted by *directivos* (senior managers), specialists and workers who execute and develop policy projects, provisions, procedures and guidelines which regulate the work to be performed by the *empresas* that are integrated to it, as well as by the governing *órganos* that might be created.

ARTICLE 27. The President or General Director assigns functions to each regulatory and monitoring area of the *organización superior de dirección empresarial*, as well as to the *unidades empresariales de base* which are subordinated to it, and delegates specific powers to *cuadros* and officers in the entity.

#### CHAPTER VII

### FUNCTIONS OF STATE *EMPRESAS* AND POWERS OF THEIR GENERAL DIRECTORS

#### FIRST SECTION

#### Functions of state *empresas*

ARTICLE 28. State *empresas* have the following functions:

1. Remain up-to-date regarding the country's legislation; understand it completely and comply with it;
2. systematically direct, organize and monitor the correct implementation of the various systems in business management;
3. develop the regulatory basis and any other provisions which may be necessary in order to carry out organizational changes which ensure implementation of management systems and performance of the *empresa*;
4. periodically perform diagnostic evaluations of the status of the *empresa*, its regulatory and monitoring areas and the *unidades empresariales de base*; develop action plans in order to resolve existing problems;
5. develop and update the comprehensive strategy of the *empresa*, which shall include, among other items, the strategic goals, periodic evaluation of its compliance at the *consejo de dirección* and the measures that are needed in order to rectify anomalies;
6. determine, together with the workers, the distinctive values that must be prioritized within the *empresa*;
7. every year, develop the goals to be achieved by the *empresa*, in accordance with the approved business strategy, and periodically monitor compliance;

8. direct and guide the actions of the various regulatory and monitoring areas and of the *unidades empresariales de base* of the *empresa* in order to efficiently comply with assigned missions;
9. design operations of the *empresa* on the basis of horizontal, process-oriented structures that are appropriate to its technology and corporate purpose;
10. establish the functions and powers corresponding to each senior management level of the *empresa*, in accordance with the established structure, and select suitable personnel to this end;
11. organize and monitor the safety and security system, and plan measures to preserve the *empresa*'s equipment, resources, materials and information;
12. develop and update as necessary the plan regarding requirements in times of peace for defense, state reserve and civil defense *órganos*;
13. develop and coordinate with defense *órganos* the plans regarding requirements in exceptional situations;
14. develop and coordinate with civil defense *órganos* the emergency plans against disasters;
15. ensure close collaboration with political and labor union organizations, as well as with the *organización superior de dirección empresarial* and other *empresas* and with *órganos* and *organismos* of the *Administración Central del Estado* and *consejos de la Administración Provincial del Poder Popular* with which relationships may exist;
16. ensure the functioning of the governing *órganos* of the *empresa*;
17. plan meetings and primary tasks to be developed and complied with in the *empresa*;
18. periodically report to the appropriate instance on the performance and management results throughout the *empresa*; organize the reporting process of the various areas of the *empresa* before the *consejo de dirección*;
19. design and implement the procedures which organize the work system with the *cuadros* of the *empresa* and their reserves, in accordance with the guidelines and provisions issued by the Government for this purpose;
20. together with the labor union organization, develop and implement regulations regarding moral motivation of the workers at the *empresa*;
21. together with the labor union organization, develop and implement procedures which ensure the participation of the workers at the senior management level;
22. involve workers in internal control tasks and ensure that they fully understand and comply with the measures to be taken to avoid damage to state property;
23. together with the labor union organization, develop and implement the system of care for the human being in the *empresa*;
24. ensure that the production and provision of services is performed in accordance with the corporate purpose and with secondary, incidental and support activities;
25. perform tests to ensure correct implementation of the organizational system for the production of goods and services;
26. perform evaluations in order to make decisions on new products and services to be provided by the *empresa*;
27. develop regulations for the brigade or socialist work team and ensure compliance;
28. ensure that the maintenance system applied in the *empresa* corresponds to its technology, characteristics and work conditions, and develop its regulations;
29. develop procedures for the organization of the supplying and purchasing of materials and products that are needed for production, services and other activities carried out in the *empresa*;
30. develop the rules regarding material consumption at the *empresa*, as well as the energy intensity indices;
31. develop procedures to organize the metrics activities at the *empresa*, which must comply with the requirements of the national metrics administration.

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32. correctly apply techniques for warehouse economy, adapting them to the characteristics of the *empresa*, in order to achieve better warehouse management;
33. plan, collect, warehouse, rotate, maintain and conserve the accumulated reserves of supplies, and be responsible for their physical integrity, quality and control;
34. implement in the *empresa* the quality control system, and have it certified or approved by the authorizing entities, following the timetable prepared for these purposes;
35. develop the *empresa* quality control manual;
36. develop and implement the quality cost system for the *empresa*;
37. when appropriate, organize the functioning of the Quality Control Council of the *empresa* and of the improvement groups;
38. in conjunction with the labor union organization, determine the positions that confer officer status, in accordance with the provisions of current legislation;
39. ensure that the *empresa* personnel perform and develop their activities in accordance with the requirements established for each position;
40. organize work at the *empresa* on the basis of a broad profile and a sustained workload; create job description diagrams based on the competencies required for the various positions when appropriate and prioritize key posts;
41. organize the salary scale applicable to *cuadros* in accordance with the *empresa*'s approved category, and ensure that there are no salary inconsistencies;
42. evaluate and implement the wage regime applicable to leaders of brigades or socialist work teams and primary specialists of the *empresa*;
43. present to the *organización superior de dirección empresarial* a proposal for the approval of a stimulus in convertible pesos (CUC), in order for it to be presented before the relevant *organismo*; and, once approved, develop internal regulations for these purposes;
44. evaluate positions which are subject to abnormal working conditions and eliminate them where possible;
45. develop and implement the *empresa*'s environmental management system; periodically perform diagnostic evaluations of the environmental status and define measures for resolution;
46. design and implement the *empresa*'s innovation management system;
47. perform feasibility studies regarding investments, [and] improvement of products and services;
48. ensure introduction in the *empresa* of new technologies and innovations which have proven to be efficient;
49. design and implement a technology monitoring and business intelligence system which allows *empresa* personnel to update their knowledge, as part of their development;
50. ensure compliance with measures regarding industrial and intellectual property rights, as established by the relevant *organismo*;
51. ensure that the movement of innovators and people involved in streamlining, as well as the youth technical brigades, can operate properly, and ensure that the best solutions are implemented throughout the *empresa*;
52. develop procedures for business planning;
53. with the participation of workers and in coordination with the labor union organization, direct, organize and monitor development of the *empresa*'s annual plan in all of its categories and for each *unidad empresarial de base*, in accordance with the indications received from the *organización superior de dirección empresarial*, the *organismo* of the *Administración Central del Estado* or the *Consejo de la Administración Provincial del Poder Popular* to which it is integrated or subordinated, as appropriate;
54. after the *Junta de Gobierno* has pronounced itself on the pertinence of the *empresa*'s annual plan, present and defend it before the *organización superior de dirección empresarial*, the *organismo* of the *Administración Central del Estado* or the *Consejo de la Administración Provincial del Poder Popular* to which it is integrated or subordinated;
55. apportion the plan among the *unidades empresariales de base* that form part of the enterprise, in the interest of compliance, including state assignment;

56. periodically analyze with the workers the results obtained in operating the *empresa*, as well as compliance with guiding and tangential indicators approved in the plan, evaluate financial indicators, and adopt measures to eliminate anomalies in the *empresa*;
57. comply fully with the guidelines established for the use of the currencies in which they operate;
58. evaluate the risks of natural, technological and health disasters which may affect the *empresa*; determine which ones should be transferred to insurance *empresas* and which ones should be assumed by the entity;
59. develop and implement the procedure for commercial contracts in the *empresa*; organize its correct functioning in the relevant consulting body;
60. develop the accounting manual of the *empresa* and ensure compliance with the organizational measures so that it works correctly;
61. periodically issue financial statements, in accordance with the requirements established by the corresponding *organismo* in terms of time, quality and veracity;
62. ensure that the accounting-financial systems, supported by information technology, are certified by the competent authorities, that they are compatible with those used by the *organización superior de dirección empresarial* and that they ensure accuracy of operations and monitoring;
63. annually, certify the financial statements of the *empresa* with authorized entities;
64. deliver the financial statements to the municipal offices of the *Oficina Nacional de Estadística e Información* (National Office of Statistics and Information) and the territorial offices of the *Registro Mercantil* (Mercantile Registry), as appropriate;
65. design, harmonize, implement, self-monitor and systematically update the internal control system in accordance with its characteristics, competencies and institutional attributions, and encourage workers to participate in its overall management; identify risks and adopt measures to avoid damage to state property;
66. develop the Risk Prevention Plan and monitor compliance systematically;
67. develop the self-monitoring plan to be implemented in the *empresa*; create multidisciplinary work teams which execute self-monitoring and analyze problems and possible alternatives for their resolution;
68. in the *consejo de dirección*, evaluate deficient results regarding management, as identified during audits and controls; analyze the causes of the deficiencies detected and the appropriate disciplinary, labor-related, technical, financial, organizational and salary-related measures. Report the results of this analysis to the workers, the labor union organization and the higher instance;
69. determine the amounts and items for the use of depreciation as an internal revenue source for the purpose of financing new investments, as well as apportionment by *unidad empresarial de base*.
70. organize the treasury-related activity in accordance with the characteristics and conditions and the actual need for it to be assumed by the *empresa*, on the basis of the established policies;
71. in accordance with the provisions applicable in each case, ensure that taxes corresponding to the *empresa* are paid in a timely and appropriate manner;
72. manage receivables and payables in an efficient way so as to achieve the liquidity necessary for compliance with financial obligations;
73. document one hundred percent (100 %) of the accounts receivable and accounts payable; establish agreements on receivables and payables with customers and suppliers as appropriate;
74. develop, evaluate and constantly monitor compliance with the *empresa's* cash flows;
75. analyze the feasibility of creating reserves from retained profits, as well as the amount of those reserves, based on efficient compliance with the *empresa's* guiding indicators;

76. evaluate needs for bank loans, whenever appropriate, from a bank or non-bank financial institution, and establish a basis for repayment;
77. properly use and manage the financial and material resources of the *empresa*;
78. develop the cost accounting manual of the *empresa*. Ensure its correct implementation;
79. periodically analyze the results obtained in *empresa* expense- and cost reduction, as well as its relation to revenue; evaluate measures for expense reduction;
80. establish and apply prices and rates in accordance with the indications received from the *organización superior de dirección empresarial* or guiding *organismo*, as appropriate;
81. analyze any case of idle or slow-moving inventory for the development of their annual plans;
82. analyze the possible uses to be assigned to the tangible fixed assets managed by the *empresa*;
83. organize the reporting system to be implemented in the *empresa*, develop regulations for internal and external reporting, as well as the reporting chain for each *empresa* manager; ensure compliance;
84. collect and evaluate the statistical information related to the primary economic and production results achieved by the *unidades empresariales de base*;
85. develop the management information and automation system to be used in the *empresa*, in accordance with the general norms established by the *organización superior de dirección empresarial*, the *organismo* of the *Administración Central del Estado* or the *Consejo de la Administración Provincial del Poder Popular*, as appropriate;
86. develop and implement the system which organizes the marketing activity of the *empresa*; periodically evaluate and monitor compliance with the marketing plan;
87. in conjunction with the *directivos* of the *organización superior de dirección empresarial*, the *organismo* of the *Administración Central del Estado* or the *Consejo de la Administración Provincial del Poder Popular* to which it is integrated or subordinated, design the product and service export policy to be implemented; ensure compliance with the approved export plan for the year; and perform systematic studies on new possibilities for the export of products and services;
88. develop within the *empresa* a system for evaluating customer satisfaction with the purpose of improving production and services provided by the *empresa*;
89. ensure the substitution of imports to be included in the annual plan for each year; systematically monitor compliance;
90. design and implement the business communication system set forth in the communication management and corporate identity manuals, so as to ensure there is appropriate communication among the entire workforce in the *empresa*; and
91. any other function which may be required by law.

#### SECOND SECTION

##### **Powers of the general directors of State *empresas***

ARTICLE 29. The General Director of the *empresa* is its legal representative and has the following powers:

1. Decide on the actions which will ensure compliance with the country's legislation;
2. issue the regulatory basis for the *empresa* and any other provisions and regulations which ensure business management and compliance with laws and legal norms;
3. approve action plans to resolve deficiencies and problems detected during diagnostic evaluations of the *empresa*;
4. approve a comprehensive strategy that is in accordance with the strategy of the *organización superior de dirección empresarial*, the strategic goals and the value system;

5. approve annual goals and define actions to be taken in order to ensure efficient compliance with the tasks assigned to the *empresa*;
6. approve secondary activities derived from the corporate purpose, occasional activities aimed at avoiding interruptions in production or provision of services, and support activities, which should not be to the detriment of compliance with state assignment and with the mission for which it was created;
7. approve structure and staffing table;
8. approve resizing of structures in those cases where it might be impossible to restart production or provision of services during a period of up to two (2) months;
9. approve the functions of the regulatory and monitoring areas and those of the *unidades empresariales de base* that are part of the *empresa*, and delegate those powers corresponding to each *cuadro*;
10. approve measures to be implemented in order to ensure safety and security, as well as the corresponding regulations;
11. approve the plan regarding requirements in times of peace;
12. approve measures aimed at complying with plans regarding requirements in exceptional situations;
13. approve emergency plans against disasters;
14. select his/her governing team and designate the *cuadros* for the various positions, or present proposals in that regard as appropriate, in accordance with current provisions;
15. approve actions aimed at strengthening relations between the *empresa*'s senior management team, political and labor union organizations and other Government and State institutions;
16. create the collective senior management *órganos* within the *empresa* and issue regulations for its functioning;
17. approve the primary activity plan;
18. approve the plan for reporting before the *consejo de dirección* regarding management of the regulatory and monitoring areas and of the *unidades empresariales de base*, as well as the action plans derived from the latter;
19. approve measures for the implementation of the work system with the *cuadros* and their reserves;
20. approve appropriate measures aimed at implementing a moral motivation system, and issue the relevant regulations;
21. approve procedures to ensure participation of the workers at the senior management level;
22. approve the system of care for the human being to be implemented in the *empresa*;
23. approve the *empresa*'s Risk Prevention Plan, after its analysis within the relevant collective senior management *órgano*, and demand compliance from the *unidades empresariales de base*;
24. demand that the heads of the regulatory and monitoring areas and the heads of the *unidades empresariales de base* have a Risk Prevention Plan;
25. decide the actions to be taken in order to ensure rectification of any anomaly in production or economic activities;
26. demand monitoring of accumulated supply reserves and be accountable for it;
27. take responsibility for the quality and quantity of the products and services offered by the *empresa*, in accordance with customer agreements;
28. approve the guiding documents for the organization, planning, management and monitoring of the processes for the production of goods and services;
29. approve the distribution of production to be performed by the *unidades empresariales de base* in compliance with state assignment;
30. approve regulations for the brigades or socialist work teams of the *unidades empresariales de base*;

31. approve the procedure for the organization of the supplying and purchasing of materials and products needed in order to ensure the production or the provision of services;
32. approve the procedure for organizing metrics activities;
33. make a decision regarding the presence of a representative in the *empresas* that provide products or services, as well as create conditions for the work of the customer representative in the *empresa*, in accordance with the relevant contracts;
34. authorize personnel in the areas of quality control, technology, safety and health in the workplace and others to stop the process of production or service provision should serious violations of technology discipline occur;
35. approve the quality control manual;
36. approve the timetable for implementing, confirming or certifying the quality control system, as well as the action plan aimed at providing solutions to quality problems which affect the *empresa*;
37. approve the creation of the Quality Control Council and the improvement groups;
38. approve regulations and the annual plan for the maintenance of real estate, movable goods, resources, equipment, instruments and tools;
39. define procedures and techniques for the development of norms regarding material consumption to be followed in the *empresa* as well as for their amendment when there are changes that justify doing so;
40. approve those positions that confer officer status;
41. demand that workers in the regulatory and monitoring areas and personnel in the *unidades empresariales de base* perform and carry out their activities in accordance with the requirements established for each position;
42. approve the key positions in the *empresa* and the job description diagrams created on the basis of the competencies required for each position;
43. apply disciplinary measures to *empresa* workers and *cuadros*, and acknowledge outstanding results by means of moral or material motivation, as appropriate;
44. approve the salary scale for *cuadros*, in accordance with the established salary scale groups and the category for which the *empresa* has been approved;
45. approve the wage regime applicable to leaders of brigades or socialist work teams and primary specialists in the regulatory and monitoring areas of the *empresa* and in the *unidades empresariales de base*;
46. present to the competent *organismo* a proposal for authorization of payment for abnormal working conditions, social economic interest, seniority and other aspects of a similar nature;
47. approve the *empresa*'s internal regulations for stimulus in convertible pesos (CUC) when appropriate;
48. approve measures and tasks for the implementation of the environmental management system, and approve the environmental diagnostic evaluations to be performed;
49. approve the introduction of new products and services to be provided;
50. approve the business intelligence system;
51. approve the innovation management system;
52. approve measures for compliance with provisions regarding industrial and intellectual property rights;
53. approve business planning procedures and include those measures proposed by workers which are appropriate for implementation when developing the plan;
54. present the annual plan of the *empresa*, for its approval, to the *organización superior de dirección empresarial*, the *organismo* of the *Administración Central del Estado* or the *Consejo de la Administración Provincial del Poder Popular* to which the *empresa* is integrated or subordinated, [continued]

- and, when appropriate, to the *Junta de Gobierno*; once authorized, approve its apportionment among the *unidades empresariales de base* for monitoring purposes;
55. present proposals for modifications of the annual plan, when appropriate, to the head of the *organización superior de dirección empresarial*, the *organismo* of the *Administración Central del Estado* or the *Consejo de la Administración Provincial del Poder Popular* to which the enterprise is integrated or subordinated;
  56. approve appropriate investments, in accordance with current legislation;
  57. elevate to the *Junta de Gobierno* his/her dissatisfaction regarding payments to be made to the *organización superior de dirección empresarial* and charged to his/her costs, on the basis that they do not provide added value to the management of the *empresa*;
  58. approve the action plan resulting from the evaluations performed in conjunction with workers regarding compliance with the plan of the *empresa*, guiding indicators, quality control management, contracts, receivables and payables, and other issues;
  59. sign commercial contracts; establish procedures for commercial contracts in the *empresa* and create, where appropriate, a consulting body for their analysis and evaluation;
  60. approve the accounting manual of the *empresa* and define the accounting system to be used, in accordance with the provisions contained in Cuban rules on financial information;
  61. approve the certified financial-accounting systems, supported by information technology systems, that are going to be used;
  62. approve the self-monitoring plan of the *empresa*, as well as the aspects and indicators to be monitored in each regulatory and monitoring area and in the *unidades empresariales de base*;
  63. approve the creation of multidisciplinary self-monitoring and problem-solving working groups;
  64. approve the internal control system and the necessary corrective measures when appropriate;
  65. approve measures to be adopted regarding personnel responsible for deficiencies detected during audits or controls that yielded unsatisfactory results;
  66. approve established financial statements;
  67. after analysis within the *consejo de dirección*, present a proposal to the *organización superior de dirección empresarial*, the *organismo* of the *Administración Central del Estado* or the *Consejo de la Administración Provincial del Poder Popular*, as appropriate, for the creation of reserves from retained profits, as well as regarding the amount of those reserves;
  68. adopt decisions regarding the use and efficient utilization of the financial and material resources assigned for the performance of its functions; be accountable for optimal utilization of the workforce;
  69. approve requests for bank loans to be presented to a bank or a non-bank financial institution, as appropriate;
  70. open and operate bank accounts in accordance with the provisions issued by the relevant *organismo*;
  71. approve the expense systems to be used and adopt the cost accounting manual of the *empresa*;
  72. approve the appropriate prices and rates, in accordance with the regulations contained in current legislation, and set the internal sale prices and rates for semi-products and internal services to be offered among the *unidades empresariales de base*, within the approved framework;
  73. approve the reporting flow to be received from the *unidades empresariales de base*, as well as the internal flow to be used within the *empresa*; adopt regulations applicable to internal and external reporting, as well as the reporting chains to be used by the various managers;
  74. approve the management information and automation system to be used in the *empresa*;



75. approve the system for organizing marketing activities, as well as its annual plan;
76. approve the customer satisfaction evaluation system and adopt measures which ensure its implementation in the *empresa* and its *unidades empresariales de base*;
77. approve or propose to the appropriate instance the implementation of the results of feasibility studies regarding new investments and improvement of products and services;
78. approve or propose to the *organización superior de dirección empresarial*, the *organismo* of the *Administración Central del Estado* or the *Consejo de la Administración Provincial del Poder Popular* to which it is integrated or subordinated the product and service export policy to be implemented, as well as the measures to be taken as a result of studies on new possibilities for the export of products and services;
79. approve the plan for the substitution of imports;
80. present to the appropriate instance a proposal for carrying out acts of ownership over tangible fixed assets that are managed by the *empresa*;
81. approve a commercially useful destination for slow-moving and idle inventory, in accordance with the provisions of the relevant *organismos*;
82. approve the business communication system to be implemented in the *empresa*, the communication management manual and the corporate identity manual; and
83. any other power which is legally assigned.

ARTICLE 30. In fulfilling the functions established for the *empresa* and the powers assigned to him/her, the General Director of the *empresa* is assisted by *cuadros*, specialists and workers who execute and develop policy projects, provisions, procedures and indications which regulate the work to be performed by the *empresa*, as well as by the governing *órganos* that might be created.

ARTICLE 31.1. The General Director of the *empresa* assigns functions to each area and *unidad empresarial de base*, [and] delegates the appropriate powers to every Director of a regulatory and monitoring area and of the *unidad empresarial de base*, as well as to the heads of groups, brigades or socialist work teams.

2. For the purposes of what has been stated above, there are precise delimitations for the exercise of these powers, and compliance with them is subject to monitoring.

#### CHAPTER VIII

### FUNCTIONS OF THE *UNIDADES EMPRESARIALES DE BASE* AND POWERS OF THEIR GENERAL DIRECTORS

#### FIRST SECTION

##### Functions of the *unidades empresariales de base*

ARTICLE 32. The *unidades empresariales de base*, in accordance with their organizational characteristics, carry out the functions assigned by the General Management of the *empresa*, including the following, among others:

1. Ensure compliance with established legal norms with which they are required to comply, as well as with the provisions, regulations and systems approved by the *empresa*;
2. periodically develop comprehensive diagnostic evaluations regarding management of the *unidad empresarial de base*;
3. ensure the appropriate performance of the management systems that have been implemented;
4. each year, develop the goals to be reached in the *unidad empresarial de base*;
5. periodically report to the *consejo de dirección* of the *empresa* regarding performance of the *unidad empresarial de base* and its management results;
6. define and implement measures which ensure that workers participate in the *unidad empresarial de base* at the senior management level;

7. implement and systematically monitor compliance with the Risk Prevention Plan;
8. participate, in conjunction with the *empresa*, in the development of the regulations regarding moral motivation of workers and monitor their proper implementation;
9. motivate outstanding workers; evaluate *unidad empresarial de base* personnel and apply corrective measures when appropriate;
10. produce goods and services; ensure compliance with the guiding and tangential indicators approved for the *unidad empresarial de base*;
11. ensure compliance with the guiding documents for the organization, planning, managing and monitoring of the *unidad empresarial de base*'s processes for the production of goods and services;
12. evaluate and implement measures which ensure compliance with the regulations for the brigade or socialist work team;
13. implement the quality control management system in the *unidad empresarial de base*;
14. support the activities of the quality improvement groups created in the *unidad empresarial de base*;
15. ensure compliance with the system for control and maintenance of metrics tools;
16. comply with the safety and security system;
17. comply as appropriate with the plan regarding requirements in times of peace for defense, state reserve and civil defense entities;
18. comply as appropriate with the plans regarding requirements in exceptional situations;
19. monitor and organize measures for compliance with emergency plans against disasters;
20. ensure compliance with measures established in the manual on safety and health in the workplace;
21. develop the *unidad empresarial de base*'s draft annual plan with full participation of workers; evaluate the proposals presented by workers for inclusion in the annual plan;
22. periodically evaluate compliance with the *unidad empresarial de base*'s plan, the guiding and tangential indicators, and all of the approved categories;
23. maintain a record of its accounting operations and issue balance verification statements, given the necessary conditions;
24. ensure efficient management of receivables and payables and an efficient control of the bank accounts it operates, if this activity has been delegated to it;
25. ensure efficient contract management in accordance with established categories and amounts;
26. define the internal controls to be performed, their frequency, as well as the aspects and indicators to be monitored in each area;
27. design, harmonize, implement, self-monitor and systematically update the internal monitoring system in accordance with its characteristics and competencies, and encourage workers to participate in its overall management; identify risks and take measures to avoid damage to state property;
28. organize the functioning of the *unidad empresarial de base*'s Prevention and Control Committee;
29. organize the plan for the internal audits to be performed within the different structures of the *unidad empresarial de base*;

30. comply with measures set forth in the cost systems which have been adopted; periodically analyze the results achieved regarding expense- and cost reduction;
31. comply with the information set forth in the regulations of the *empresa* regarding reporting;
32. implement in the *unidad empresarial de base* the relevant measures regarding the communication management manual and the corporate identity manual approved by the *empresa*;
33. establish adequate communication between the *unidad empresarial de base*'s senior managers, workers and their managers; and
34. make payments to the State Budget, according to current legislation.

## SECOND SECTION

**Powers of the directors of the *unidades empresariales de base***

ARTICLE 33. Directors of *unidades empresariales de base*, in accordance with the authority conferred upon them by the General Management of the entity that created the *unidad empresarial de base*, have the following powers, among others:

1. Apply measures which ensure compliance with legal norms, as well as with the provisions, regulations and systems established by the *empresa*;
2. approve, or propose to the General Director of the *empresa* or the President or General Director of the *organización superior de dirección empresarial*, as appropriate:
  - a) the structure and staffing table to be adopted by the *unidad empresarial de base*;
  - b) the annual goals to be achieved in the *unidad empresarial de base*;
  - c) action plans, resulting from diagnostic evaluations, which allow for resolution of existing problems;
  - d) the creation of the senior management consulting bodies which are most appropriate to the characteristics of the *unidad*;
  - e) measures which ensure that workers participate in the management of the *unidad empresarial de base* at a senior level;
  - f) actions aimed at implementing regulations regarding moral motivation of workers in the unit and moral and material motivations for those workers with an outstanding behavior and outstanding results;
  - g) disciplinary measures to be applied to those workers who fail to comply with established norms;
  - h) regulations for the brigade or socialist work team, as well as measures to ensure compliance;
  - i) implementation of measures which ensure the organization, planning, management and monitoring of the processes for the production of goods and provision of services in the *unidad empresarial de base*;
  - j) measures which ensure compliance with the production and services developed in the *unidad*;
  - k) appropriate maintenance of real estate, movable goods, resources, equipment, instruments and tools that are managed by the *unidad empresarial de base*, as well as of the system for the control of metrics tools;
  - l) implementation of the *unidad empresarial de base*'s quality control system;
  - m) measures which ensure compliance with the *unidad*'s safety and security system;
  - n) actions which ensure compliance with requirements in times of peace for defense, state reserve and civil defense *órganos*;
  - o) measures for compliance with plans regarding requirements in exceptional situations for defense *órganos*;

- p) emergency plans against disasters;
  - q) measures which ensure compliance with the manual on safety and health in the workplace;
  - r) the timetable for development of the *unidad empresarial de base*'s annual plan;
  - s) implementation of the internal control system and measures to be included in the Risk Prevention Plan;
  - t) the internal audit plan to be carried out in the *unidad empresarial de base*; and
  - u) implementation of the cost system approved for the *unidad empresarial de base*;
3. present proposals to the senior management of the *empresa* regarding secondary activities derived from the corporate purpose, occasional activities aimed at avoiding interruptions in production or provision of services, and support activities, which should not be to the detriment of compliance with state assignment and with the mission for which it was created;
  4. approve the creation of quality improvement groups;
  5. sign employment contracts;
  6. present the draft annual plan, including its monthly breakdown, for the approval of the *empresa*'s senior management;
  7. at its level, approve other measurement indicators corresponding to the *unidad empresarial de base*;
  8. adopt agreements resulting from analyses performed regarding management and compliance with the plan;
  9. approve the balance verification statement to be handed over to the *empresa*;
  10. approve measures for efficient handling of receivables and payables;
  11. approve the composition of the multidisciplinary work teams which analyze problems and possible alternatives for their resolution;
  12. approve the composition of the *unidad empresarial de base*'s Prevention and Control Committee;
  13. approve the self-monitoring activities to be performed at the *unidad*, their frequency, and the aspects and indicators to be monitored in each structure of the *unidad empresarial de base*;
  14. approve measures which ensure the involvement of workers in internal control tasks; ensure that they have full knowledge of the measures to be implemented in order to avoid damage to state property; and
  15. approve the reports that the *unidad empresarial de base* presents to the *empresa*.

ARTICLE 34.1. As long as he/she is authorized by the head of the entity which created it, the Director of an *unidad empresarial de base* may:

1. Sign commercial contracts with providers and clients, in the name and representation of the *empresa* to which it is integrated, in accordance with the established requirements and specifications for the exercise of this power;
2. come before *Tribunales Populares* (People's Courts) on behalf of the *empresa* and represent it in judicial proceedings in cases related to breach of commercial contracts signed by him/her on behalf of the *empresa*.
3. use bank accounts according to the relevant decisions, and in compliance with current provisions on the subject.

#### **TEMPORARY PROVISIONS**

FIRST: Until completion of the process of institutional improvement at the *organismos* of the *Administración Central del Estado*, the *empresas* which are subordinate to them shall maintain that status.

SECOND: As an exception, the *unidades presupuestadas* (budgeted units) with special treatment shall remain integrated to *organizaciones superiores de dirección empresarial* until they are constituted [incorporated] as *empresas*.

#### SPECIAL PROVISIONS

FIRST: The *Ministro de las Fuerzas Armadas Revolucionarias* (Minister of the Revolutionary Armed Forces) and the *Ministro del Interior* (Minister of the Interior) enforce, as appropriate, the functions conferred upon *organizaciones superiores de dirección empresarial*, *empresas* and *unidades empresariales de base* subordinated or attended to by them, and the powers conferred upon their managers, in accordance with the characteristics of these *organismos*.

SECOND: The *Ministro de las Fuerzas Armadas Revolucionarias* has the power to create, merge, transfer, transform and close the *empresas* which are integrated to the Unions and *Grupos Empresariales* (Business Groups) in their system.

THIRD: Decree No. 281 “Regulations for the implementation and consolidation of State *empresas* governing and management system,” dated August 16, 2007, is applicable as a complement with regard to all the aspects not covered in this Decree in the area of good governing and management practices.

FOURTH: For questions related to labor and salary matters not expressly regulated in this Decree, the provisions contained in Law No. 116, “Labor Code”, and Decree No. 326, containing its Regulations, which became effective on June 16, 2014, as well as other provisions issued by the *Ministro de Trabajo y Seguridad Social* (Minister of Labor and Social Security), shall be applicable.

FIFTH: The provisions of this Decree are applicable, as appropriate, to *sociedades mercantiles* with wholly Cuban capital.

#### FINAL PROVISIONS

FIRST: The name *organización superior de dirección* (superior management organization) established in previous norms above shall hereinafter be modified to *organización superior de dirección empresarial*.

SECOND: The *Ministro de Economía y Planificación* remains authorized to issue legal provisions regarding the transfer of *unidades empresariales de base* among different *organizaciones superiores de dirección empresarial*, *organismos* of the *Administración Central del Estado* and *consejos de la Administración Provincial del Poder Popular y del municipio especial Isla de la Juventud* as appropriate.

THIRD: In addition, the *Ministro de Economía y Planificación* shall adopt the relevant decisions regarding the elements which must be contained in a resolution on the creation of an *empresa* and regarding the constitution of a liquidating committee and its functions when authorizing a closure.

FOURTH: The following are revoked:

1. Decree No. 42 “State *Empresas* General Regulations,” dated May 24, 1979;
2. Agreement No. 2258 of the *Comité Ejecutivo del Consejo de Ministros*, dated July 7 1988, which put into effect the “Norms regarding the Union and the State *Empresa*;”
3. In Decree No. 294 “Creation of the *organización superior de dirección* of the sugar group, its functions and the powers of its President,” dated October 29, 2011, number 7 and the final paragraph of Article 4;
4. In Decree No. 307 “Creation of the *organización superior de dirección* of the group of biotechnology and pharmaceutical industries, its functions and the powers of its President,” dated November 27, 2012, number 8 and the final paragraph of Article 5; and
5. In Decree No. 328 “Creation of the *organización superior de dirección empresarial* of Centro Histórico business group,” dated November 19, 2014, number 9 and the final paragraph of Article 5.

FIFTH: This Decree shall take effect ninety (90) business days after its publication in the *Gaceta Oficial de la República de Cuba*.

PUBLISH in the *Gaceta Oficial de la República de Cuba*.

ISSUED in the Palacio de la Revolución in La Habana, on the 5th day of the month of September, 2017.

**Raúl Castro Ruz**

Presidente de los consejos  
de Estados y de Ministros

## **Annex E**

ISSN 1682-7511

[Emblem of the Republic of Cuba]

**GACETA OFICIAL**  
**DE LA REPÚBLICA DE CUBA**  
**MINISTERIO DE JUSTICIA**

EXTRAORDINARY EDITION LA HABANA, WEDNESDAY, APRIL 10, 2019 YEAR CXVII

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Number 5

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*ASAMBLEA NACIONAL  
DEL PODER POPULAR*

**GOC-2019-406-EX5**

**CONSTITUTION OF THE REPUBLIC**  
**PREAMBLE**  
**WE, THE PEOPLE OF CUBA,**  
**[...]**



[...]

## SECTION II ECONOMIC FOUNDATIONS

**ARTICLE 18.** The Republic of Cuba is governed by a socialist economic system based on ownership by the entire people of the fundamental means of production as the primary form of ownership and on the planned direction of the economy, which considers, regulates, and monitors the market based on the interests of society.

**ARTICLE 19.** The State directs, regulates and monitors economic activity, reconciling national, territorial, collective, and individual interests for the benefit of society.

Socialist planning constitutes the central component of the system of governance of economic and social development. Its essential function consists in planning and conducting strategic development, envisaging the relevant balance between resources and needs.

**ARTICLE 20.** Workers participate in the processes of planning, regulation, management and monitoring of the economy.

Participation of labor collectives in the administration and management of State business entities and budgeted units is regulated by the law.

**ARTICLE 21.** The State promotes the advancement of science, technology and innovation as essential elements for economic and social development.

In addition, it implements forms of organization, financing and management of scientific activity, and promotes the systematic and accelerated introduction of its results into production and service processes through the relevant institutional and regulatory framework.

**ARTICLE 22.** The following are recognized as forms of ownership:

- (a) Socialist ownership by the entire people: that in which the State acts in representation and for the benefit of the people as the owner;
- (b) Cooperative ownership: that which is based on the collective work of partner owners and the effective implementation of the principles of cooperativism;
- (c) Ownership by political, mass, and social organizations: ownership exercised by these entities over assets assigned for the fulfillment of their goals;
- (d) Private ownership: ownership exercised over specific means of production by Cuban or foreign natural or legal persons; with a complementary role in the economy;
- (e) Mixed ownership: a combination of two or more forms of ownership;
- (f) Ownership by institutions or associations in their different forms: ownership exercised by these entities over their assets for the fulfillment of non-profit goals;

(g) Personal ownership: that which is exercised over belongings that, while not constituting means of production, contribute to the goal of meeting the material and spiritual needs of their owner.

All forms of ownership over means of production interact under similar conditions; the State regulates and monitors the way in which they contribute to economic and social development.

The exercise and scope of these forms of ownership are regulated by the law.

**ARTICLE 23.** The following are socialist property of the entire people: lands that do not belong to individuals or cooperatives integrated by these individuals; the subsoil; mineral deposits; mines; forests; waters; beaches; ways of communication, and living and non-living natural resources within the exclusive economic zone of the Republic.

These assets may not be transferred as property to natural or legal persons and are governed by the principles of inalienability, imprescriptibility, and immunity from seizure.

The transfer of other rights not involving transfer of ownership of these assets must have prior approval of the *Consejo de Estado* (Council of State), in accordance with the provisions of the law, provided that they are used for the country's economic and social development and do not affect the political, economic, or social foundations of the State.

**ARTICLE 24.** Socialist ownership by the entire people includes other assets, such as general interest infrastructure, key industries, and economic and social facilities, as well as other assets having a strategic importance for the country's economic and social development.

These assets are immune to seizure and may be transferred as property only in exceptional cases, and with the prior approval of the *Consejo de Ministros*, provided that they are used for the country's economic and social development and do not affect the political, economic, or social foundations of the State.

As regards the transfer of other rights over these assets, as well as their management, the process shall be carried out in accordance with the provisions of the law.

Budgeted institutions and State business entities have other assets that are socialist property of the entire people, over which they exercise the corresponding rights in accordance with the provisions of the law.

**ARTICLE 25.** The state creates budgeted institutions in order to fulfill essentially state and social functions.

**ARTICLE 26.** The State creates and organizes State business entities with the goal of carrying out economic activities related to production and provision of services.

These entities respond with their own assets for the obligations they incur, in accordance with the limits provided by the law.

The State is not liable for the obligations incurred by State business entities, and these entities are not liable for the obligations incurred by the State.

April 10, 2019

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**ARTICLE 27.** Socialist State *empresas* are the main subject of the national economy. They have autonomy as regards their administration and management; they perform the primary role in the production of goods and services and they fulfill their social responsibilities.

The principles regarding the organization and functioning of socialist State business entities are regulated by the law.

**ARTICLE 28.** The State promotes and provides guarantees to foreign investment, as an important element for the economic development of the country, on the basis of the protection and rational use of human and natural resources as well as respect for national sovereignty and independence.

Development of foreign investment within the national territory is regulated by the law.

**ARTICLE 29.** Private property over land is regulated by a special framework.

Leasing, sharecropping, and mortgage loans to individuals are prohibited.

Sale or other forms of transfer of this asset for valuable consideration may only take place once legal requirements are complied with, and without prejudice to the preferential right of the State to the acquisition of land through the payment of its fair price.

Acts of transfer of domain over this asset not performed in exchange for valuable consideration, and acts of transfer of rights of use and enjoyment thereof, require prior authorization of the relevant authority and shall be carried out in accordance with the provisions of the law.

**ARTICLE 30.** Concentration of ownership by non-State natural or legal persons is regulated by the State, and in addition the State guarantees an increasingly fairer redistribution of wealth in order to preserve boundaries that are compatible with the socialist values of equity and social justice.

Regulations ensuring effective compliance thereof are stipulated by law.

**ARTICLE 31.** Work is an essential value in our society. It constitutes a right, a social duty, and a source of honor for all people who are able to work.

Paid work must be the main source of income that sustains dignified living conditions [and] allows for the improvement of material and spiritual well-being and the realization of individual, collective, and social projects.

Remuneration in accordance with work performed is supplemented by the equitable and free provision of universal social services and other allowances and benefits.

[...]

[...]

### **FINAL PROVISIONS**

FIRST: The Constitution of the Republic of Cuba dated February 24, 1976, as modified by the reforms of 1978, 1992 and 2002, is hereby revoked.

SECOND: This Constitution shall enter into force once it is proclaimed through its publication in the *Gaceta Oficial de la República*.

[Emblem of the Republic of Cuba]

# GACETA OFICIAL

## DE LA REPÚBLICA DE CUBA

EXTRAORDINARY EDITION LA HABANA, MONDAY, JULY 13, 1992 YEAR XC

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**ASAMBLEA NACIONAL  
DEL PODER POPULAR**

JUAN ESCALONA REGUERA, President of the *Asamblea Nacional del Poder Popular* (National Assembly of Popular Power),

HEREBY STATES: That at the meeting that took place on July 12, 1992, with the nominal vote of more than two thirds of its total membership, in accordance with the provisions of Chapter XII, Article 141, of the Constitution of the Republic, the *Asamblea Nacional del Poder Popular* approved by unanimity the following Constitutional Reform Law:

WHEREAS: The process convened by the Call to the IV Congress of the Communist Party of Cuba ratified the democratic essence of the system of institutions constituted by the *órganos* of the *Poder Popular* (People's Power) and at the same time pointed out the need and possibility to improve the system on the basis of a practice that has been in effect for more than fifteen years;

WHEREAS: The public, open, frank and calm debate held by our people during the discussion on the aspects related to the *órganos* of the *Poder Popular* contained in the abovementioned Call proved the need to find ways to make our democratic institutions even more representative, promote a greater real participation of the people in those institutions and give more authority to delegates and assemblies;

WHEREAS: Because of the decisions that needed to be taken in order to improve the structures, powers and functions of those State governing *órganos* in their different instances; include precisions on government management in provinces and municipalities; establish new mechanisms for the election of *diputados* (representatives) to the *Asamblea Nacional* and of delegates to the provincial assemblies, as well as other matters of interest for the institutional life of the country, it became essential to introduce modifications in the Constitution of the Republic;

WHEREAS: In one of its recommendations, the Resolution on the improvement of the organization and functioning of the bodies of the *Poder Popular* approved by the IV Congress of the Communist Party of Cuba suggested that the *Asamblea Nacional* continue evaluating possible modifications to the Constitution of the Republic in order to achieve those objectives and also that, bearing in mind the experience accumulated over all these years, especially the concepts developed throughout the rectification process, as well as the changes operated in the international situation and their repercussion on our national reality, those analyses include other aspects of the constitutional text that are not directly related with that purpose but may require updating or precisions.

This Resolution was debated by the *Asamblea Nacional del Poder Popular* during its session from December 25 to December 27, 1991 and was unanimously adopted by *diputados*.

WHEREAS: The *Asamblea Nacional del Poder Popular* and the *Comité Central del Partido Comunista de Cuba*, through commissions created to that effect, examined and prepared the proposals for modifications of the Constitution they deemed necessary in order to immediately begin to implement the recommendations issued by the IV Congress, and agreed to jointly submit this draft Constitutional Reform to the *Asamblea Nacional* for its consideration;

THEREFORE: The *Asamblea Nacional del Poder Popular*, by virtue of the powers conferred upon it by Article 73 subsection a) and Article 141 of the Constitution of the Republic, agrees the following:

**“LEY DE REFORMA CONSTITUCIONAL”  
 (“CONSTITUTIONAL REFORM LAW”)**

...

[...]

ARTICLE 2.- Chapter I, "Political, Social and Economic Foundations of the State", is hereby modified as follows:

- a) Articles 11 and 19 are revoked;
- b) Article 2 becomes Article 4, with the same text;
- c) Articles 1, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 24 and 27 are hereby modified and will hereinafter read as follows:

[...]

July 13, 1992

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[...]

ARTICLE 17.- The State may be the direct administrator of the goods that make up the socialist property of the entire people, or it may create and organize *empresas* and entities charged with the administration of those goods; the structure, powers and functions of those *empresas* and entities, as well as their relationship regime, are regulated by the law.

These *empresas* and entities respond for the obligations they incur only with their own financial resources, within the limits provided by the law. The State is not liable for the obligations incurred by *empresas*, entities or other legal persons, and they are not liable for the obligations incurred by the State.

...

[...]

**FINAL PROVISIONS**

[...]

THIRD. This *Ley de Reforma Constitucional* shall take effect as of the date of its publication in the “*Gaceta Oficial*” de la República.

Issued at the Meeting Room of the *Asamblea Nacional del Poder Popular*, Palacio de las Convenciones, Ciudad de La Habana, on the twelfth day of the month of July 1992.



## **Annex F**

[Emblem of the Republic Cuba]  
**República de Cuba**  
**Ministerio de Economía y Planificación**  
**Ministro**

**RESOLUTION No. 127/2016**

**WHEREAS:** Agreement No. 5959 of the *Comité Ejecutivo del Consejo de Ministros* (Executive Committee of the Council of Ministers) dated April 2, 2007 in its Second Section, Subsection 6, provides that one of the specific functions of the *Ministerio de Economía y Planificación* (Ministry of Economy and Planning) consists in authorizing the creation, transfer, merger and closure of *empresas, uniones de empresas* and any other type of commercial organization or *unidad presupuestada* (budgeted unit) after having heard the opinion of the *Ministerios de Finanzas y Precios, de Trabajo y Seguridad Social, de Ciencia, Tecnología y Medio Ambiente, [y] de Comercio Exterior* (Ministries of Finance and Prices, Work and Social Security, Science, Technology and the Environment, and Foreign Commerce, as well as of other *Organismos*, as appropriate.

**WHEREAS:** The General Director of *Unión Cuba-Petróleo*, abbreviated name CUPET, requested modification of the corporate purpose of said Union, which has been attended to by the *Ministro de Energía y Minas* (Minister of Energy and Mining).

**WHEREAS:** Resolution No. 134 dated April 30, 2013 of the *Ministerio de Economía y Planificación* implements the new policy regarding corporate purposes.

**THEREFORE:** In exercise of the powers which have been conferred upon me in Article 100, subsection a), of the Constitution of the Republic of Cuba,

**I RESOLVE:**

**FIRST:** To modify the corporate purpose of *Unión Cuba-Petróleo*, abbreviated name CUPET, attended to by the *Ministro de Energía y Minas*, to be hereinafter as follows:

1. To commercialize hydrocarbons and their derivative products, as well as oils, fats and lubricants.

**SECOND:** The corporate purpose approved in this document is regulated by the definitions and general principles provided in Resolution No. 134 dated April 30, 2013 of the *Ministerio de Economía y Planificación*. In this regard, the General Director of the Union CUPET has the powers provided for in that resolution, which must be exercised by means of the relevant legal stipulations and in compliance with the obligations derived from said powers.

[Signature in left margin]

[Emblem of the Republic Cuba]  
**República de Cuba**  
**Ministerio de Economía y Planificación**  
**Ministro**

**THIRD:** This Resolution shall be effective as of the date it is signed.

**INFORM** the General Director of *Unión Cuba-Petróleo*, abbreviated name CUPET, the *Ministro de Energía y Minas* (Minister of Energy and Mining), the *Ministras de Justicia, de Finanzas y Precios, del Comercio Interior* and *de Trabajo y Seguridad Social* (Ministers of Justice, Finance and Prices, Domestic Commerce, and Work and Social Security), the *Secretaria del Consejo de Ministros* (Secretary of the Council of Ministers), the *Contralora General de la República* (General Comptroller of the Republic) and the President of the *Banco Central de Cuba* (Central Bank of Cuba) about this resolution.

**NOTIFY** the *Oficina Nacional de Estadística e Información* (National Office of Statistics and Information), the *Registro Mercantil* (Trade Registry), the *Registro Central Comercial* (Central Commercial Registry) and the *Dirección de Energética del Ministerio de Economía y Planificación* (Directorate of Energy of the Ministry of Economy and Planning).

**FILE** the original duly signed document with the *Dirección Jurídica* (Legal Directorate) of this Ministry.

**ISSUED** in La Habana on October 17, 2016

[Signature]

**RICARDO CABRISAS RUIZ**  
**MINISTER**

I CERTIFY:	[Signature]	9/18/2019
That this is a true copy of its original, which is held in the archives of the <i>Dirección Jurídica del Ministerio de Economía y Planificación</i> .		
_____ [Signature] <i>Dirección Jurídica</i>		

[Stamp, right margin obscured:]	
I CERTIFY:	[Signature]
That this is a true copy of its original, which is held in the archives of the <i>Dirección Jurídica del Ministerio de Economía y Planificación</i> .	
_____ [Signature] <i>Dirección Jurídica</i>	

EXEMPT  
Tax on Documents  
Law 113, Section VI, Article 220  
*Ministerio Finanzas y Precios*

*MINREX*

[Emblem of the Republic of Cuba]

***República de Cuba***

**E949602**

*Ministerio de Relaciones Exteriores*

*DACCRE*

I CERTIFY: That the authorizing officer's signature above is apparently authentic due to its similarity to the one kept on record and to the one he normally uses in official acts.

In view of the above, I confer my authorization with my signature and the seal of this Ministry, as an Officer authorized to certify signatures on documents in order for them to have legal effects abroad.

Issued in La Habana on Sept 19, 2019

*[Signature]*

**Daisy Morejón Díaz**

[Emblem of the Republic of Cuba]

**MINREX**

## **Annex G**

## MINISTRY

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**ECONOMICS AND PLANNING****RESOLUTION No. 134/2013**

WHEREAS: Agreement No. 5959 of the *Comité Ejecutivo del Consejo de Ministros* (Executive Committee of the Council of Ministers), dated April 2, 2007, in its Second Section, subsection 5, provides that one of the specific functions of the *Ministerio de Economía y Planificación* (Ministry of Economy and Planning) consists in directing and developing proposals on the improvement of the *Sistema de Dirección y Planificación de la Economía* (System for the Managing and Planning of the Economy) and the *Sistema de Gestión Empresarial* (Business Management System).

WHEREAS: The policy approved for the flexibilization of corporate purposes, in compliance with Guideline No. 13 of the *Política Económica y Social del Partido y la Revolución* (Social and Economic Policy of the Party and the Revolution), established that the *Ministerio de Economía y Planificación* is responsible for its compliance, besides approving those corporate purposes that fall within its competence.

WHEREAS: Resolutions No. 103, dated March 13, 1997, and No. 100, dated April 25, 2000, both issued by this Ministry, provide in their annexes, as regards corporate purposes that fall within the competence of the MEP [*Ministerio de Economía y Planificación*], among other issues, the concept of corporate purpose

and the requirements for its expansion and modification. In addition, Resolution No. 242, dated November 10, 2000, established the *Comisión de Objetos Sociales* (Corporate Purpose Commission) of this *organismo*.

THEREFORE: In exercise of the powers which have been conferred upon me in the Third Section, subsection 4, of Agreement No. 2817 of the *Comité Ejecutivo del Consejo de Ministros*, dated November 25, 1994,

**I Resolve:**

FIRST: To put into effect the following

**GUIDELINES FOR THE DEFINITION AND MODIFICATION OF CORPORATE PURPOSES**

## CHAPTER I

## FIRST SECTION

**Goals and Scope  
Of Application**

ARTICLE 1.- The purpose of this Resolution consists in setting forth the definitions and general principles to be fulfilled by the corporate purposes approved in the country by the relevant *organismos*, *órganos* or organizations, which are regulated in Chapter I and are general in scope. Furthermore, Chapter II sets forth the procedure to be followed for the approval of corporate purposes under the competence of the *Ministerio de Economía y Planificación*, hereinafter *MEP*.

## SECOND SECTION

**Definitions and general principles**

ARTICLE 2.- Corporate purpose is defined as the sum of the primary activities related to production, trade and services that make up the commercial transactions through which an entity engaged in business activity performs the mission for which it has been created.

The different terms used up to this moment for this definition are hereby unified; consequently, corporate purpose shall be the only term to be used hereinafter.

ARTICLE 3.- Only legal persons having a business mission, that is to say, those identified by primary activities related to production, trade and services that are commercial in nature, shall have a corporate purpose. Consequently, and due to their very nature, political, social and mass organizations, as well as similar organizations, shall not have a corporate purpose.

ARTICLE 4.- Corporate purpose is approved by the *organismo* or *órgano* which authorizes the creation of the legal person. It is decided by the authority with the powers to do so by means of the relevant legal instrument and it can be modified by that same authority when circumstances so merit.

ARTICLE 5.- No mention shall be made in corporate purposes to the type of currency and, as a rule, commercial activities mentioned in the corporate purpose can be provided to any natural person or legal person so long as they do not contravene the provisions of current legislation.

ARTICLE 6.- The director of the *empresa*, and his/her homologue for the rest of the legal persons, have the power to decide over secondary activities derived from the corporate purpose of the entity he/she directs and over occasional activities aimed at avoiding interruptions in production and provision of services. Furthermore, he/she decides about performance of support activities such as, among others, leasing of commercial and warehouse premises, parking services, and self-consumption. In principle, he/she can offer these activities to any natural person or legal person.

However, performance of secondary activities derived from the corporate purpose and of occasional and support activities should not be to the detriment of compliance with state assignment and with the mission for which the entity was created, and in no case should be performed in a way that runs contrary to current legislation.

ARTICLE 7.- No corporate purpose should be approved for an *Organización Superior de Dirección*

(*OSD*), since those entities perform governing, coordination and monitoring functions. On exceptional cases, when an *OSD* performs primary activities related to production, trade and services because there is a commercial interrelation between the *OSD* and the entities that are integrated to it, a corporate purpose shall be approved for it.

ARTICLE 8.- An *unidad presupuestada* (budgeted unit) does not have a corporate purpose; it only performs state functions assigned to it and approved by the *órgano* or *organismo* that created it.

ARTICLE 9.- On exceptional cases, when an *unidad presupuestada* performs primary commercial activities besides the functions that have been assigned to it, those activities shall be considered a corporate purpose, and the entity or body that authorized its creation, usually the *MEP*, shall approve a corporate purpose. With regard to secondary, occasional and support activities, the heads of *unidades presupuestadas* have the same powers set forth for *empresas* directors.

ARTICLE 10.- Guiding *organismos* issuing licenses or similar authorizations cannot limit or contradict the corporate purpose that has been approved, and when issuing them they must show the necessary agility and flexibility and only demand the fulfillment of technical requirements in order to grant them.

## CHAPTER II

**ON CORPORATE PURPOSES APPROVED BY THE MEP**

## FIRST SECTION

**The Comisión de Objetos Sociales (Corporate Purpose Committee)**

ARTICLE 11.- The *Ministerio de Economía y Planificación*, through a resolution, defines, expands or modifies the corporate purpose of state entities, following a request by the head of the *Organismo de la Administración Central del Estado*, the President of the *Consejo de la Administración Provincial del Poder Popular* or the Director of the *Organización Superior de Dirección* to which it is integrated, as appropriate, hereinafter also called the proposer.

The *MEP* resolution by which a corporate purpose is determined is final in nature, and consequently the proposer is not required to ratify the corporate purpose through a new legal provision.

ARTICLE 12.- The Commission tasked with analyzing and discussing proposals for corporate purposes, hereinafter *Comisión de Objetos Sociales*, will meet periodically and will be in charge of presenting a proposal for approval to the undersigned.

ARTICLE 13.- The *Comisión de Objetos Sociales* shall have the following functions:

1. Analyze proposals that have been presented on the definition, expansion or modification of corporate purposes, and introduce the necessary corrections, according to the relevant provisions.
2. Present to the Minister of the *MEP* a proposal based on the results of the analysis of the corporate purposes presented for its consideration.

ARTICLE 14.- The *MEP* shall convene the *Comisión de Objetos Sociales* with at least seven calendar days' notice, and the meeting shall be presided by the head of the organizational unit for corporate purposes of this *organismo*.

1. Said *Comisión* shall be composed of representatives of the ministries of *Finanzas y Precios, Trabajo y Seguridad Social, Comercio Interior, Comercio Exterior e Inversión Extranjera*, and *Justicia*, as well as the *Grupo Ejecutivo de Perfeccionamiento Empresarial* (Executive Group for Business Improvement.)
2. Furthermore, in accordance with the matters to be analyzed, representatives of the relevant governing *organismos* and *órganos*, as well as of any other organization and any other specialist or expert, shall be invited to the meetings of the *Comisión*.
3. The proposer shall ensure that the highest authority of the entity to be analyzed, or its legal representative, as well as any other representatives he/she deems relevant, attend the meeting of the *Comisión de Objetos Sociales*.

ARTICLE 15.- When the proposer presents to the *MEP* a corporate purpose definition, expansion or modification that has the approval of the governing *organismo*, there is no need to convene the *Comisión de Objetos Sociales*.

#### SECOND SECTION

##### **Information to be presented and processing of the corporate purpose proposals**

ARTICLE 16. A proposal for expansion or modification of a corporate purpose must contain the

official name of the entity; it must mention the legal provision whereby its current corporate purpose was

approved, the proposal and its underlying rationale, and the full text of the corporate purpose in its expanded or modified form.

In the case of the definition of a corporate purpose, since it is associated to the creation of an entity the documentation to be presented is the one corresponding to that organizational procedure, in accordance with the provisions of current legislation.

ARTICLE 17.- The proposer shall present before the *MEP* one copy on paper and digitally send the proposal for the new corporate purpose in accordance with the requirements set forth in the previous article.

ARTICLE 18.- Once the *MEP* has received the corporate purpose proposal, a date shall be set for its analysis and discussion at the *Comisión de Objetos Sociales*, except for the cases referred to in Article 15; once analyzed, it shall be submitted to the consideration of the undersigned for its approval, then a certified copy of the relevant resolution shall be sent to the proposer, and a digital copy shall be sent to the relevant recipients.

#### **TEMPORARY PROVISIONS**

FIRST.- Pending the adjustment of their corporate purpose to the provisions of this resolution, those entities whose corporate purpose is approved by the *MEP* shall be regulated by the former provisions.

SECOND.- The *organismos, órganos* and organizations which approve corporate purposes for entities outside the competence of the *MEP* must develop a timetable for revision and modification of those purposes and present it to the *MEP*, a process that must be completed during the current year. Furthermore, they must present the procedure for those approvals.

THIRD.- The *organismos* of the *Administración Central del Estado*, the *consejos* of the *Administración* and the national entities shall review, in coordination with the *MEP*, those regulations and guidelines they have issued and that affect corporate purposes in order to eliminate those which are not compatible with this provision. *Organismos, órganos* and organizations shall refrain from issuing prohibitions that contradict definitions and principles of corporate purposes.

FOURTH.- Resolution No. 631 of this *organismo*, dated December 11, 2008, which authorizes the provision of certain services without the need to



to modify the corporate purpose, shall remain in force for those entities for which the new concept of corporate purpose has not been approved. Consequently, that resolution will no longer remain in effect once the corporate purpose flexibilization policy has been implemented for all entities in the country.

**SPECIAL PROVISION**

LONE: The definition, expansion or modification of the corporate purposes of *sociedades mercantiles* (mercantile companies) whose capital is wholly Cuban shall be regulated by these provisions, as appropriate. Corporate purpose approval will be issued by means of a notification by the undersigned.

**FINAL PROVISION**

LONE: Revoke Resolution N0. 103, dated March 13, 1997, and Resolution 242, dated November 10, 2000. Rescind the ninth definition of Section I,

“Definitions of terms used in these Regulations,” as well as Section IV, subsection 2, both in the Annex to Resolution No. 100, dated April 25, 2000, of the *MEP*; First Section, related to the expansion of purposes, of Resolution No. 146, dated April 2, 1997, of the *MEP*, as well as all that was issued by the *Ministerio de Economía y Planificación* that runs contrary to what is contained in this legal provision.

FILE the original duly signed document with the *Dirección Jurídica* of this Ministry.

Publish in the *Gaceta Oficial de la República de Cuba*.

ISSUED in La Habana on April 30, 2013.

**Adel Yzquierdo Rodríguez**

*Ministro de Economía y  
Planificación*

## **Annex H**

ISSN 1682-7511

[Emblem of the Republic of Cuba]

# GACETA OFICIAL

DE LA REPÚBLICA DE CUBA

MINISTERIO DE JUSTICIA

ORDINARY EDITION

LA HABANA, THURSDAY, DECEMBER 27, 2012

YEAR CX

Website: <http://www.gacetaoficial.cu/>—[Address:] Calle Zanja No. 352 esquina a Escobar, Centro Habana

Telephone: 878-3849, 878-4435 y 873-7962

Number [Illegible] - - Price: \$0.80

Page 2077

[...]

**LAW-DECREE Number 304**  
"ON FINANCIAL CONTRACTS"

CHAPTER I

**GENERAL PROVISIONS**

SECTION ONE

**Scope of application and principles  
of the contract**

ARTICLE 1.1.- **Scope of application:** This Decree-Law is applicable to contracts understood as legal acts that create, modify or extinguish legal-financial relationships of a mandatory nature for the

fulfillment of an activity related to production, commerce or service provision, in which national natural persons and legal entities, as well as foreign natural persons and legal entities established or authorized to operate in the country, take part.

[...]

2.- The provisions contained in this Decree-Law do not apply to international contracts, unless the parties so agree voluntarily.

[...]

ARTICLE 6.- **Relativity of the contract:** The contract shall not incur obligations to third parties, nor do third parties have the right to invoke it in order to lay obligations upon the parties which they have not themselves established, except as otherwise agreed or as stipulated by law.

December 27, 2012

GACETA OFICIAL

2087

[...]

SIX: This Decree-Law shall become effective as of 30 days after its publication in the Gaceta Oficial de la República.

ISSUED in the Palacio de la Revolución, in La Habana, on the first of November of 2012.

**Raúl Castro Ruz**  
Presidente del  
Consejo de Estado



## **Annex I**

[Emblem of the Republic of Cuba]  
*Ministerio de Finanzas y Precios*  
*Ministra*

RESOLUTION No. 467/2015

WHEREAS: By means of Agreement No. 7334, dated December 19, 2012, the *Consejo de Ministros* (Council of Ministers) approved the goal, the functions and the specific powers of this Ministry, which include the responsibility to manage and monitor the implementation of the financial and fiscal policies approved by the State and the Government, which is regulated in Section One.

WHEREAS: Agreement No. 4395, dated April 22, 2002, of the *Comité Ejecutivo del Consejo de Ministros* (Executive Committee of the Council of Ministers), in its Section Two, numbers one, two and three, states that Unión CubaPetróleo centralizes the creation of the Reserve for Contingencies on the basis of the profits obtained from its business management activities as operator of the fuel system, centralizes the Contribution based on State Investment Returns corresponding to the *empresas* that make up the fuel system, and receives the funds deriving from the amortization of the *empresas* that make up the fuel system, respectively.

[At the bottom of pages 1 to 6, there is a signature and a round seal with the emblem of the Republic of Cuba that reads:]  
*Ministerio de Finanzas y Precios*  
*Dirección Jurídica*

[Emblem of the Republic of Cuba]  
*Ministerio de Finanzas y Precios*  
*Ministra*

WHEREAS: Resolution No. 327, dated July 23, 2014, issued by the undersigned, approved a specific system of financial relationships for the fuel system business entities that are integrated to Unión CubaPetróleo.

WHEREAS: The Director of Unión CubaPetróleo has made a request before this Ministry for the modification of the Sole Annex of Resolution 327 of 2014 so that it includes *Empresa de Mantenimiento del Petróleo* (EMPET) and *Empresa de Mantenimiento de Ductos* (EMCOR), in order to minimize costs and achieve efficiency in the value-added chain as regards fuel production, distribution and commercialization. The request has been accepted, bearing in mind the scale and significance these *empresas* have in the national economy; consequently, in order to avoid legislative dispersion, it is necessary to revoke the aforementioned regulation.

THEREFORE: By virtue of the authority conferred upon me by Article 100, subsection a), of the Constitution of the Republic of Cuba,



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*Ministerio de Finanzas y Precios*  
*Ministra*

I RESOLVE

ONE: To approve a specific system of financial relationships for the fuel system business entities that are integrated to Unión CubaPetróleo as listed in the Sole Annex, which is an integral part of this Resolution.

TWO: Each fuel system business entity must calculate its corresponding Reserve for Losses and Contingencies, in accordance with the provisions of current legislation.

THREE: At the end of each fiscal year, the resources each business entity calculates and assigns to the Reserve for Losses and Contingencies are transferred to the centralized fund created by Unión CubaPetróleo.

FOUR: Resources deposited in the centralized fund created in order to constitute the Reserve for Losses and Contingencies are used by Unión CubaPetróleo in order to cover losses affecting fuel system business entities, regardless of the volume of resources each entity has transferred to the fund.

The top limit for this centralized fund shall be five percent (5 %) of the State Investment account total amount corresponding to the fuel system *empresas* that are integrated to the Unión.

FIVE: If at the end of a fiscal year Unión CubaPetróleo finds that the resources accumulated in the Reserve for Losses and Contingencies are higher than the limits established in Section Four of this Resolution, it shall reduce the fund in the amount that exceeds that limit, and that amount shall be considered as financial income corresponding to the fiscal period in question.

SIX: On the basis of the Profit-after-Tax, fuel system business entities shall determine the amount corresponding to the Contribution to be made based on State

[Emblem of the Republic of Cuba]  
*Ministerio de Finanzas y Precios*  
*Ministra*

Investment Returns; the resources corresponding to that contribution are transferred to the Unión so that it makes the contribution in a centralized way.

SEVEN: After deducting from the Profit-after-Tax the amounts corresponding to the Reserve for Losses and Contingencies and to the Contribution based on State Investment Returns, fuel system business entities obtain the Profit-after-Tax to be retained, and they transfer the resulting amount to the Unión, which shall create a centralized fund in order to finance voluntary reserves being proposed.

EIGHT: Fuel system business entities propose to the Unión the voluntary reserves they wish to create, in accordance with the allocations authorized in current legislation to that effect. In accordance with the resources available in the fund and on the basis of the priorities determined for the creation of voluntary reserves, the Unión shall transfer the necessary resources so that the entities may afford the proposed expenses.

NINE: The fuel system business entities that are integrated to Unión CubaPetróleo contribute to the Unión the depreciation and amortization of their tangible and intangible fixed assets. The Unión shall use these resources to create a centralized fund.

TEN: With the resources deposited in the fund mentioned in the section above and the resources retained in the voluntary reserve for Investments, Unión CubaPetróleo shall finance the investments by the fuel system business entities that are approved by the relevant *órganos*.

ELEVEN: The remaining business entities that are integrated to Unión CubaPetróleo shall apply in their operations the financial relationship system currently in force in the country for State *empresas* and *sociedades mercantiles* (mercantile companies) with one hundred percent (100%) Cuban capital in their relationship with the State.

[Emblem of the Republic of Cuba]  
**Ministerio de Finanzas y Precios**  
**Ministra**

TWELVE: Revoke Resolution No. 327, dated July 23, 2014, issued by the undersigned.

THIRTEEN: This Resolution shall become effective seven (7) days after the date of its signature.

INFORM the Ministro de Energía y Minas about this Resolution.

TRANSMIT this Resolution to the *Director de la Unión CubaPetróleo*, the *Jefa de la Oficina Nacional de Administración Tributaria* (National Office of Tax Administration), the General Directors of *Política Fiscal, Ejecución y Atención Institucional* (Fiscal Policy, Execution and Institutional Attention) and the Directors of *Política Financiera, Ingresos, Política Contable y de Industrias* (Financial Policy, Income, Accounting and Industry Policy), all of them pertaining to this Ministry.

FILE the original at the *Dirección Jurídica* of this Ministry.

Issued in La Habana, on August 6, 2015.

Lina O. Pedraza Rodríguez  
Minister

Lic. _____ <i>[illegible]</i> _____ Legal Adviser of the <i>Ministerio de Finanzas y Precios</i> <b>I CERTIFY:</b> That this document is a [true copy] of its original, which is kept in the files of the <i>Dirección Jurídica</i> . Issued in La Habana on _____ 9/18/2019 _____
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[Emblem of the Republic of Cuba]  
*Ministerio de Finanzas y Precios*  
*Ministra*

Resolution No. 467/2015

Sole Annex

Page 1 of 1

**LIST OF FUEL SYSTEM EMPRESAS**

1. Empresa de Perforación y Extracción de Petróleo de Occidente
2. Empresa de Perforación y Extracción de Petróleo del Centro
3. Empresa de Perforación y Extracción de Petróleo de Majagua
4. Empresa Refinería Petróleo “Ñico López”
5. Empresa Refinería Petróleo “Hermanos Díaz”
6. Empresa Refinería Petróleo “Sergio Soto”
7. Empresa Comercializadora de Combustibles Pinar del Río
8. Empresa Comercializadora de Combustibles Habana
9. Empresa Comercializadora de Combustibles Matanzas
10. Empresa Comercializadora de Combustibles Villa Clara
11. Empresa Comercializadora de Combustibles Cienfuegos
12. Empresa Comercializadora de Combustibles Ciego de Ávila
13. Empresa Comercializadora de Combustibles Camagüey
14. Empresa Comercializadora de Combustibles Las Tunas
15. Empresa Comercializadora de Combustibles Holguín
16. Empresa Comercializadora de Combustibles Granma
17. Empresa Comercializadora de Combustibles Santiago de Cuba
18. Empresa Comercializadora de Combustibles Guantánamo
19. Empresa Comercializadora de Combustibles Isla de la Juventud
20. Empresa de Gas Licuado
21. Empresa de Gas Manufacturado
22. Unión Cuba Petróleo
23. Empresa de Transporte de Combustibles (TRANSCUPET)
24. Empresa de Reparación y Perforación Capital de Pozos de Petróleo y Gas (EMPERCAP)
25. Empresa de Mantenimiento del Petróleo (EMPET)
26. Empresa de Mantenimiento de Ductos (EMCOR)

EXEMPT  
Tax on Documents  
Law 113, Section VI, Article 220  
*Ministerio Finanzas y Precios*

*MINREX*

[Emblem of the Republic of Cuba]

**República de Cuba**

**E949603**

*Ministerio de Relaciones Exteriores*

*DACCRE*

I CERTIFY: That the authorizing officer's signature above is apparently authentic due to its similarity to the one kept on record and to the one he normally uses in official acts.

In view of the above, I confer my authorization with my signature and the seal of this Ministry, as an Officer authorized to certify signatures on documents in order for them to have legal effects abroad.

Issued in La Habana on Sept 19, 2019

*[Signature]*

**Daisy Morejón Díaz**

[Emblem of the Republic of Cuba]

**MINREX**

## **Annex J**

[Emblem of the Republic of Cuba]

# GACETA OFICIAL

## DE LA REPÚBLICA DE CUBA

### MINISTERIO DE JUSTICIA

EXTRAORDINARY EDITION

LA HABANA, TUESDAY, APRIL 18, 2017

YEAR CXV

Website: <http://www.gacetaoficial.cu/>— [Address:] Calle Zanja No. 352 esquina a Escobar, Centro Habana

Telephone: 7878-3849, 7878-4435 and 7873-7962

Number 18

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## MINISTRY

**FINANZAS Y PRECIOS (FINANCE AND PRICES)**  
**GOC-2017-352-EX18**

**RESOLUTION No. 138/2017**

WHEREAS: Resolutions No. 154 and 155, dated April 18, 2016, issued by the *Ministro de Finanzas y Precios ad interim*, approved the “*Procedimiento para el Sistema de Relaciones Financieras entre las empresas estatales, las sociedades mercantiles de capital ciento por ciento (100%) cubano y las organizaciones superiores de dirección empresarial, con el Estado*” (“Procedure for the System of Financial Relationships of State *empresas, sociedades mercantiles* (mercantile companies) with one hundred percent (100%) Cuban capital and *organizaciones superiores de dirección empresarial* with the State”) and the “*Reglamento para el otorgamiento del estímulo por la eficiencia económica de los trabajadores*” (“Regulations for the granting of stimulus for the economic efficiency of workers”), respectively.

WHEREAS: With the accumulated experience from practical application of the resolutions mentioned in the Whereas above and the advances in the modernization of the Cuban economic model, it has become necessary to adjust the System of Financial Relationships of State *empresas, sociedades mercantiles* with one hundred percent (100%) Cuban capital and *organizaciones superiores de dirección empresarial*, with the State and incorporate into it the adopted decisions, related to the policy of profit distribution to workers, which implies the repeal of these norms, in order to avoid legislative dispersion.

THEREFORE: In exercise of the authority conferred upon me by Article 100, Subsection (a) of the *Constitución de la República de Cuba*,

**I Resolve**

FIRST: To approve the following:

**“PROCEDURE FOR THE SYSTEM OF FINANCIAL RELATIONSHIPS OF STATE *EMPRESAS, SOCIEDADES MERCANTILES* WITH ONE HUNDRED PERCENT (100%) CUBAN CAPITAL AND *ORGANIZACIONES SUPERIORES DE DIRECCIÓN EMPRESARIAL* WITH THE STATE”**

## CHAPTER I

## GENERAL INFORMATION

ARTICLE 1. This Procedure regulates the System of Financial Relationships that State *empresas, sociedades mercantiles* with one

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hundred percent (100%) Cuban capital, hereinafter *sociedades mercantiles*, and *organizaciones superiores de dirección empresarial*, have with the State, as well as aspects related to business financial management.

ARTICLE 2. This Procedure is applicable in State *empresas*, *sociedades mercantiles* and *organizaciones superiores de dirección empresarial*.

ARTICLE 3. Profit distribution and the creation of voluntary reserves in State *empresas*, *sociedades mercantiles* and *organizaciones superiores de dirección empresarial* are approved by the *Junta de Gobierno*, and when the *Junta de Gobierno* has not been created, by the Vice-president, the Minister or the presidents of the *consejos de la Administración provincial o municipal de Isla de la Juventud* by which they are attended to, as appropriate.

ARTICLE 4. The official sources for obtaining data and calculating profit distribution are the financial statements, sworn statements and statistical information provided to the *Oficina Nacional de Estadística e Información* (National Office of Statistics and Information).

## CHAPTER II

### ON PROVISIONS AND RESERVES

#### SECTION ONE

##### **Mandatory Provisions**

ARTICLE 5. State *empresas* and *sociedades mercantiles* must create, as a charge to their financial expenses and on a mandatory basis, a Provision for uncollectable accounts, in accordance with the provisions to that effect issued by this Ministry.

ARTICLE 6.1. State *empresas* and *sociedades mercantiles* must create on a mandatory basis, as a charge to the Other Taxes, Fees and Contributions expense category, a Provision for the payment of short-term Social Security contributions, in accordance with the provisions of the *Ley del Presupuesto* (Budget Law) for each year. Excess payments under this provision shall be considered as loss expenses for the period, and the record for them shall not pass through the shortfall and loss account subject to investigation.

2. This provision must be adjusted to the limit established by this Ministry, based on the analyses performed for this purpose on a timely basis at year-end.

#### SECTION TWO

##### **Financial Asset Provision**

ARTICLE 7. Banks and non-bank financial institutions must create, as a charge to their expenses and on a mandatory basis, a Provision for financial assets, in accordance with the norms established by the *Banco Central de Cuba*.

#### SECTION THREE

##### **Voluntary Expense Provisions**

ARTICLE 8. State *empresas* and *sociedades mercantiles* must propose to the corresponding *Órgano* to which they are subordinated, integrated or related the appropriateness, or not, of creating operational provisions. The expense involved in the creation of these provisions is considered a non-deductible expense for the purpose of calculating the *Impuesto sobre Utilidades* (Taxes on Profits), with the exception of those which have fiscal authorization.

ARTICLE 9. The differences between real book profits and taxable profits which may result from the application of what is stated in the Article above must be assumed by the *empresas* and *sociedades mercantiles* along with real book profits after determining the Taxes on Profits to be paid.

#### SECTION FOUR

##### **Reserve for Losses and Contingencies**

ARTICLE 10. State *empresas* and *sociedades mercantiles* must create, on a mandatory basis, a reserve for losses and contingencies, in accordance with the regulations of this Ministry to that effect.



ARTICLE 11. Banks and non-bank financial institutions, which create this reserve under the provisions of Article 26 of Decree-Law No.173 "On Banks and Non-Bank Financial Institutions," dated May 28, 1977, are excluded from the aforementioned provision.

### CHAPTER III

## ON DISTRIBUTION OF AFTER-TAX PROFIT

### SECTION ONE

#### Returns on State Investment

ARTICLE 12.1. State *empresas* which at the end of each fiscal year have earned profits are subject to payment, under the Non-Taxable Income category, of a contribution based on State investment returns. The size of the contribution must be fifty percent (50%) as a minimum. The source for payment of this obligation is the profit remaining after determining Taxes on Profits and deducting the amount to be added to the reserve for losses and contingencies, in accordance with the model established by this Ministry.

2. On an exceptional basis, given duly justified causes and after a request from the corresponding empowered authority, this Ministry may approve amounts which are different from that established in the paragraph above. This request must be presented as part of the budget proposal of the *Órgano* or *Organismo* of the *Administración Central del Estado* or the *organización superior de dirección empresarial*, as appropriate.

ARTICLE 13.1. At the end of each of the first three (3) quarters of each fiscal year, State *empresas* must make a partial payment, as a contribution based on State investment returns, by applying the percentage (%) contribution expressed in Article 12.1 above to the after-Tax profits obtained at the end of each quarter less the mandatory reserves expressly authorized by Resolution.

2. The taxable profits for each quarter as mentioned in the Section above are calculated on the basis of the accumulated accounting results for each of the periods, after discounting the period immediately preceding it.

ARTICLE 14. Partial payments referenced in the Article above must be made within the fifteen (15) business days following the end of each of the first three quarters of the fiscal year. These payments must be made in Cuban pesos (CUP) and shall be added to the budget under the following paragraphs of the current *Clasificador de Recursos Financieros del Presupuesto del Estado*: 110010>Returns on State Investment, 110011>Returns on State Investment and 1100120>Returns on State Investment.

ARTICLE 15. If the period for voluntary payment of the aforementioned partial payments expires without payments being made, State *empresas* required to pay shall be subject to a late-payment fee and other sanctions provided for in the current tax legislation, in the amount and form established therein.

ARTICLE 16.1. At the end of each fiscal year, State *empresas* must determine the contribution based on State investment returns by means of the corresponding *Declaración Jurada de Ingresos No Tributarios* (Sworn Declaration of Non-Taxable Income). Partial payments shall be deducted from the annual obligation corresponding to this item.

2. If the annual obligation is less than the sum of the partial payments made, a request must be made to the *Oficina Nacional de Administración Tributaria* (National Office of Tax Administration) of the municipality corresponding to the tax domicile of the *empresa* for return of the excess amount paid, in accordance with corresponding regulations.

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ARTICLE 17. In State *empresas* in which retention of after-Tax profit is authorized for the purpose of creating voluntary reserves, these shall be determined by deducting from after-Tax profit the amount allocated to the mandatory reserve for losses and contingencies and the contribution based on State investment returns.

ARTICLE 18. Payment of the contribution based on State investment returns by State *empresas* which at the end of the fiscal year have proposed retention of profits shall be performed after receiving approval for the creation of voluntary reserves. This must occur on or before the thirty-first (31st) of May of each year.

ARTICLE 19. State *empresas* which at the end of their fiscal year do not receive approval to retain profits in order to create voluntary reserves shall determine the contribution based on State investment returns by ensuring that it coincides with their total after-Tax profits less the mandatory reserve for losses and contingencies.

## SECTION TWO

### On the Declaration of Dividends

ARTICLE 20. By the thirty-first (31st) of March of each year, *sociedades mercantiles* must declare as dividends the difference between after-Tax profits, after deducting the mandatory reserve for losses and contingencies, at the end of the previous fiscal year and the profits authorized to be retained for the creation of voluntary reserves. Declared dividends shall correspond to fifty percent (50%) of after-Tax profits less the amount allocated to the reserve for losses and contingencies as a minimum.

ARTICLE 21. *Sociedades mercantiles* which at the end of their fiscal year do not request retention of profits for the creation of voluntary reserves shall declare dividends for the total amount of their after-Tax profits less the mandatory reserve for losses and contingencies.

ARTICLE 22. *Sociedades mercantiles* must pay their shareholders the declared dividends in the proportion corresponding to the paid shares which they possess. One hundred percent (100%) Cuban *sociedades mercantiles* which are shareholders of other *sociedades mercantiles* must act in accordance with current legislation as regards earned dividends. Payment of dividends to shareholders must be made on or before the thirtieth (30th) of June of each year.

ARTICLE 23. State *empresas* which are shareholders of *sociedades mercantiles* must contribute to the Budget in Cuban pesos (CUP) the dividends they receive, in accordance with Paragraph 110020-Dividends of the current *Clasificador de Recursos Financieros del Presupuesto del Estado*. This contribution must be paid within the first ten (10) business days following their collection of the aforementioned dividends.

ARTICLE 24. If the period for the aforementioned voluntary payment expires without payments being made, those required to pay shall be subject to a late-payment fee and other sanctions provided for in the current tax legislation, and in the amount and form established therein.

ARTICLE 25.1. When the *sociedad mercantil* has not received approval for the creation of voluntary reserves, in the first quarter of the following year it must declare as dividends the difference between after-Tax profits at the end of the previous fiscal year and the profit proposed as retention for the creation of voluntary reserves.

2. Upon receipt of approval or refusal of the request for creation of voluntary reserves, the *sociedad mercantil* is obligated to make the corresponding adjustments to its declaration of dividends.

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## SECTION THREE

**Creation of Voluntary Reserves**

ARTICLE 26. For the purposes of this Resolution, voluntary reserves are understood to be the voluntarily financial accumulations made up of profits retained by business entities at the end of the fiscal year, in accordance with current legislation.

ARTICLE 27. State *empresas* and *sociedades mercantiles* may only create and use voluntary reserves derived from profits when they have been approved by the empowered authorities.

ARTICLE 28.1. At the end of each fiscal year, State *empresas* and *sociedades mercantiles* must propose and justify before the corresponding empowered authorities the creation of voluntary reserves to be allocated as follows:

- a) Amortization of investment credits;
- b) Increase in working capital;
- c) Approved investments using the entity's own resources;
- d) Research and development;
- e) Financing of training expenses;
- f) Financing of accounting losses from previous years;
- g) *Fondo de Compensación* (Compensation fund);
- h) Profit distribution to workers;
- i) Debt amortization;
- j) Other reserves to be contributed to the *organización superior de dirección empresarial*; and
- k) Other reserves.

2. Priority in the use and amount of voluntary reserves for financing these allocations must be proposed by the entity in accordance with its economic-financial plan, its strategic objectives and its contractual obligations.

ARTICLE 29. Voluntary reserves so created must be used for the purposes listed below:

- a) Amortization of investment credits: They finance reimbursement of bank credits allocated to the financing of investments.
- b) Increase in Working Capital: This reserve is used by business entities that do not have the required liquidity to achieve their results and perform the actions derived from them, as long as this is not for the purpose of hiding inefficiency in its business management.
- c) Approved investments using the entity's own resources: This reserve is used for the financing of approved investments with resources generated by the entity itself (depreciation and amortization of tangible and intangible fixed assets, sale of fixed tangible assets or their components after disassembly, amortization of long-term deferred expenses resulting from ongoing investments, investment reserves).
- d) Research and development: This reserve is created for the purpose of covering research expenses intended for the development of new products or processes, the introduction of new solutions included in the generalization plan for business entities and the carrying out of modifications which improve the quality of those in production, expenses involved in the design and manufacturing of prototypes for new products, [and] expenses related to the technical development plan. It generates the identification of tangible and intangible assets. This source of financing is part of the provisions of the "Financial, budgetary, accounting and pricing procedure to be applied in entities belonging to the field of science, technology and innovation."

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- e) Financing of training expenses: This reserve is used for the improvement, reclassification and updating of workers, technicians, professionals and managers who require it in order to better carry out their responsibilities within the business entity, in accordance with training plans.
- f) Financing of accounting losses from previous years: This is used by business entities which experience accounting losses.
- g) *Fondo de Compensación*: This is the contribution made by State *empresas* and *sociedades mercantiles* at the request of *organizaciones superiores de dirección empresarial* so as to create a fund to cover temporary financial imbalances experienced by the State *empresas* and *sociedades mercantiles* which are integrated to them.
- h) Profit distribution to workers: This is used to pay workers on the basis of profits obtained by the business entity at the end of the fiscal year, in accordance with the provisions issued by this Ministry.
- i) Debt amortization: This reserve is created to finance debts which the business entity may have, including debts generated by loans received from the *Fondo de Compensación* administered by the *organización superior de dirección empresarial* which are still outstanding.
- j) Other reserves to be contributed to the *organización superior de dirección empresarial*: These are created by business entities and allocated to the main offices of the *organizaciones superiores de dirección empresarial* for the purpose of constituting therein reserves allocated to financing investments, should its own resources be insufficient; distribute profits to workers; create a common fund to finance science, technology and innovation activities which are of common interest or for the common benefit of all, using the resources available in the research and development reserve authorized to each of them, in accordance with the provisions of current legislation to that effect; and other decisions approved by the *Gobierno Central*.
- k) Other reserves: Accumulated funds expressly authorized by the *Ministerio de Finanzas y Precios* for an *empresa, sociedad mercantil* or *organización superior de dirección empresarial*.

ARTICLE 30.1. The use of voluntary reserves, in accordance with their allocation, influences the following decisions:

- a) Reinvestment of profits to increase the State Investment account or subscribed and paid Social Capital: This is generated through the creation of new tangible and intangible assets in the business entity. In the case of *sociedades mercantiles* in which the subscribed social capital has not been fully paid, this is the first capitalization action.
- b) Extraction of liquidity from the entities: This is manifested in the utilization of reserves which use is associated with the extraction of money from the business entity.
- c) Reinvestment of profits for the restitution of Net Assets or Accounting Capital: This is carried out by releasing voluntary reserves created to finance accounting losses.

2. The release of the following voluntary reserves increases the State investment account or the subscribed Social Capital:

- a) Amortization of investment credits;
- b) Increase in working capital;
- c) Approved investments using its own resources;

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- d) Research and development;
- e) Financing of training expenses;
- f) Debt amortization.

The use of these voluntary reserves is recorded in the corresponding asset or expenditure accounts; the increase in State Investment or Subscribed Social Capital occurs simultaneously.

3. Voluntary reserves which generate immediate extraction of liquidity in business entities are the following:

- a) Profit distribution to workers.
- b) *Fondo de Compensación* contributed to the *organización superior de dirección empresarial*.
- c) Other reserves to be contributed to the *organización superior de dirección empresarial*.

The use of these reserves is recorded as a reduction in the bank Cash Accounts.

4. The voluntary reserve for the financing of accounting losses from previous years shall be paid against the account for losses not yet financed, which results in the restitution of the Net Assets or Accounting Capital of the business entity, either partially or in full.

5. For the accounting records of other voluntary reserves, the allocation to be given to those reserves shall be taken into account.

6. The notes to the financial statements must include an analysis of the process of creation and utilization of voluntary reserves.

ARTICLE 31. Proposals for retention of some profits for the purpose of increasing working capital or financing accounting losses from previous years must be presented by State *empresas* or *sociedades mercantiles* to the corresponding empowered authority, accompanied by an analysis of the financial situation of the entity making the request, as well as the financial records, including the notes, in accordance with the provisions of the *Normas Cubanas de Información Financiera*, as of the end of the fiscal year being liquidated. When these requirements are not fulfilled, retention of profits for these purposes shall not be approved.

ARTICLE 32.1 A State *empresa* or *sociedad mercantil* may not use the total amount of profits to be distributed in the voluntary reserve for payment to workers.

2. In making the decision on the amount to be used, the financial particularities of each *empresa* shall be taken into account.

ARTICLE 33.1. State *empresas* and *sociedades mercantiles* authorized to create voluntary reserves from after-Tax profits do not contribute to the Budget the accumulated and unutilized reserves existing therein once the fiscal year for which they were planned has ended.

2. If the reserves were created in periods prior to the one being liquidated, they shall continue to be used until depleted, with the exception of the reserve for payment of profit distribution to workers, which is to be redistributed to other voluntary reserves.

3. State *empresas* and *sociedades mercantiles* must safeguard the rationality of the accumulation, avoid the immobilization of financial resources and propose to the empowered authority the redistribution of unused amounts to other voluntary reserves.

4. Directors of State *empresas* and *sociedades mercantiles* and heads of *organizaciones superiores de dirección empresarial* are required to inform the empowered authority regarding the use of the approved voluntary reserves.

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## SECTION FOUR

**Fondo de Compensación**

ARTICLE 34.1. The empowered authority shall approve the amount of the *Fondo de Compensación* after it has been analyzed and agreed by the *Consejo de Dirección* of the *organización superior de dirección empresarial*.

2. The *Fondo de Compensación* must be reasonable and take into account the technical-production characteristics and financial situation of the integrated State *empresas* and *sociedades mercantiles*; it is not to be created in a single fiscal year.

ARTICLE 35. The creation of this *Fondo de Compensación* is to be carried out by means of the accumulation of resources coming from the integrated State *empresas* and *sociedades mercantiles*.

ARTICLE 36. *Organizaciones superiores de dirección empresarial* administer the *Fondo de Compensación* and use it to cover temporary financial imbalances in the integrated State *empresas* and *sociedades mercantiles*.

ARTICLE 37. State *empresas* and *sociedades mercantiles* which have received resources from the *Fondo de Compensación* in order to cover temporary financial imbalances must create payment agreements and return those funds to the *Fondo de Compensación* free of interest, taking into account their economic-productive characteristics, in accordance with the Procedure approved for these purposes by the *organización superior de dirección empresarial*.

ARTICLE 38. The President of the *organización superior de dirección empresarial* has the authority to define the period in which each State *empresa* or *sociedad mercantil* integrated to it is to return the loan received.

ARTICLE 39. State *empresas* and *sociedades mercantiles* which are not integrated to an *organización superior de dirección empresarial*, that is to say, that are directly subordinated or related to an *Organismo* of the *Administración Central del Estado* or to a *Consejo de la Administración Provincial o del municipio especial Isla de la Juventud*, shall not create voluntary reserves for allocation to the *Fondo de Compensación* or other reserves for allocation to the *organización superior de dirección empresarial*.

## SECTION FIVE

**Distribution of Profit to Workers**

ARTICLE 40. All State *empresas*, *sociedades mercantiles* with one hundred percent (100%) Cuban capital and main offices of *organizaciones superiores de dirección empresarial* shall accede to the distribution of profits to workers in the period going from the first (1st) of January to the thirty-first (31st) of December of the previous year.

ARTICLE 41. The principles to be taken into account for profit distribution to workers in business entities and in main offices of *organizaciones superiores de dirección empresarial* are the following:

- a) The amount to be granted per worker may be equivalent to up to three (3) average monthly salaries earned by the worker in the year being liquidated.
- b) Profit distribution to workers is not to be equal and must correspond to the actual time worked, the contribution performed and the complexity and responsibility of each worker. For this purpose, mechanisms may be used to guarantee that the worker who earns the most is the one that contributes most significantly to the results of the business entity (a Labor Participation Coefficient or other mechanism).

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c) For all pertinent effects, and even while it is not considered a salary expense, payment to workers as a result of profit distribution is a source for the calculation of Social Security benefits, and therefore it is a source for the calculation of the *Contribución Especial a la Seguridad Social* (Special Contribution to Social Security), as established by this Ministry. The amount paid to each worker is recorded on Form SC-4-08, *Registro de Salarios y Tiempo de Servicio* (Record of Salaries and Length of Service), in the month in which the payment is made.

d) Profit distribution to workers is to be paid in Cuban pesos (CUP).

ARTICLE 42. The requirements to be fulfilled by business entities and main offices of *organizaciones superiores de dirección empresarial* in order to have the right to payment for profit distribution are as follows:

a) Compliance with the guiding indicators approved for the corresponding year for each business entity and main office of *organizaciones superiores de dirección empresarial*. In the case of *organizaciones superiores de dirección empresarial* and business entities for which the *Ministerio de Trabajo y Seguridad Social* has approved adjustments of the indicators in order for them to apply the payment system based on results, these are to be used in the process for approval and creation of this reserve.

b) Not having financial or tax audits in which the internal monitoring system has been evaluated as Deficient or Poor in the period for which the distribution is to take place. This principle is also applicable to the main offices of *organizaciones superiores de dirección empresarial*. If, at the end of the year, an audit is in progress, the reserve shall be created, but it may not be distributed until the evaluation grade has been received; should the internal monitoring system be considered Deficient or Poor, the amount of the created reserve shall be allocated to another voluntary reserve.

c) If the entity has not been audited during the period, the reserve is not to be formed if the entity has had two (2) consecutive financial or tax audits in which the internal monitoring system has been graded Deficient or Poor.

d) Should audits which are not of the financial or tax type have internal monitoring systems graded Deficient or Poor, the reserve shall be created and only workers who appear in the record as having administrative responsibility are affected. In this case, the amount that would have corresponded to the workers affected shall not be redistributed, and it shall be assigned to another voluntary reserve.

e) Not to have overdue debts with the tax authorities at the end of the period under analysis.

ARTICLE 43.1. Workers who have worked a minimum of six (6) months in the year under evaluation have the right to profit distribution, with the exception of:

a) Those who work in cyclical activities, for whom the minimum work time is considered to be fifty percent (50%) of the time stipulated in the work contract;

b) Those benefitting from maternity leave; and

c) Those who, by decision of upper management or in the interest of the business entity, have been included on a full-time basis in the specialization course being taught at the *Escuela Superior de Cuadros del Estado y del Gobierno* or other similar course, when they have not fulfilled the requirement of having worked at least one (1) semester in the year under evaluation as a result of their incorporation to the educational program, as long as they comply with the remaining requirements established by this Resolution.

2. In the case of workers who have retired during the period under evaluation, regardless of the month in which retirement occurred, the Commission is required to communicate to them the decision made and to inform them that they have up to three (3) months to process their payment.

3. In the case of workers who worked at least one (1) semester in the year but are not currently working in the business entity, the granting of profit distribution is to be analyzed and approved by the Commission created for that purpose, which is required to communicate to them the decision made and to inform them that they have up to three (3) months to process their payment.

ARTICLE 44. Workers with the right to receive payment corresponding to profit distribution have to fulfill the following conditions:

- a) Having obtained satisfactory results in the year-end performance evaluation.
- b) Maintaining a correct attitude as regards care for state property and technological discipline.
- c) Not having been sanctioned for indiscipline in the year under evaluation.
- d) Not being implicated in a punishable or corrupt activity under investigation, in which case s/he has the right to collect profit distribution if, once the investigation is concluded, it is shown that s/he bears no responsibility.

In this case, the reserve shall be created, and, should it be determined that the worker has been implicated, the amount created shall be allocated to other voluntary reserves and not redistributed among the rest of the workers.

ARTICLE 45. In the case of workers who have the right to collect profit distribution and at the time of payment are performing a mission abroad on behalf of the entity, payment may be collected by the persons they designate, upon presentation of the corresponding documents.

ARTICLE 46. In the case of workers with the right to collect profit distribution who when the payment is to be made are deceased, this right shall be exercised by the family members who have the right to a pension from the Social Security or otherwise by the heirs who prove that status.

ARTICLE 47.1. In order to analyze the granting of profit distribution to workers, a Commission shall be created within the business entity and within the main office of the *organización superior de dirección empresarial* which shall be made up of one (1) representative of Management, one (1) representative of the Labor Union and between three (3) and five (5) workers elected in an *Asamblea de Trabajadores*.

2. In addition, a Procedure shall be created to define the way to carry out the process of granting and distributing this reserve, which must be known by workers and must be approved and signed by the Director of the business entity or the President or General Director of the *organización superior de dirección empresarial*, as appropriate.

ARTICLE 48. For payment of profit distribution to workers, a pay slip must be created, which has to be approved by the Director of the business entity or the President or General Director of the *organización superior de dirección empresarial*, as appropriate.

ARTICLE 49. Should any complaints occur, the responses provided by the General Director are final. Because this is the highest level in the proceeding, no further administrative or judicial demands are possible.

ARTICLE 50.1. In case of failure to achieve guiding indicators, the authority that approves profit distribution shall have the power to approve, on an exceptional basis, the creation of a voluntary reserve allocated to the distribution of profits to workers as long as it is proven that said failure was not the responsibility of the business entity. The audit requirement is not subject to analysis for the identification of an exceptional situation.



2. An exceptional situation is granted so as to create this voluntary reserve of up to one (1) month of the workers' average salary in the tax year being liquidated.

3. No appeals are possible in relation to the decision adopted by the authority empowered to evaluate an exceptional situation.

ARTICLE 51. The authority that approves the profit distribution process shall have the power to evaluate and decide on the impact of the planned unexecuted expenses which are not directly associated with business efficiency, as well as on their inclusion, or not, in the distribution to workers.

ARTICLE 52. The heads or presidents of the *Órganos* and *Organismos* of the *Administración Central del Estado*, the *consejos de la Administración de las asambleas provinciales del Poder Popular y del municipio especial de Isla de la Juventud* and the *organizaciones superiores de dirección empresarial*, as appropriate, shall monitor the process of profit distribution to workers in the business entities that are subordinated to them.

#### SECTION SIX

##### **Retained Profits from Previous Periods**

ARTICLE 53. In case there are business entities with retained profits from previous periods for which no allocation was approved by the empowered authority, said amount shall be included in the process of profit distribution for the current fiscal year; this amount shall not be considered in the reserve for profit distribution to workers.

#### CHAPTER IV

##### **ON THE FINANCING OF INVESTMENTS**

ARTICLE 54.1. *Organizaciones superiores de dirección empresarial*, State *empresas* and *sociedades mercantiles* shall not contribute the depreciation or the amortization of tangible and intangible fixed assets, nor the amortization of long-term deferred expenses. They shall allocate these resources to the financing of investment, equipment upgrades, modernization and other uses, in accordance with the priorities identified for their development and for the expansion of their activities.

2. These resources shall be used in accordance with the determination made by the State *empresa* or *sociedad mercantil* itself, based on the approved investment plan for the year.

ARTICLE 55.1. For the purposes of financial planning, State *empresas* and *sociedades mercantiles* finance repayment of bank credits received for financing investments, tangible investments they have proposed as new investments, ongoing investments or debt payments carried from the end of the previous year, as well as the purchase of non-technological equipment and other fixed assets, by using, in the first place, those resources arising from the annual depreciation and amortization of tangible and intangible fixed assets. If that source is insufficient to cover the desired amount, they then use those resources deriving from the sale of tangible fixed assets or their components after disassembly, the amortization of long-term deferred expenses resulting from ongoing investments, the investment reserve and medium and long-term bank credits.

2. Credits granted for the financing of investments constitute an advance of decentralized resources which must remain available in future fiscal years until they are fully repaid.

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ARTICLE 56. The sources of financing mentioned in the Article above shall be used by the State *empresa* or *sociedad mercantil* once approval of their Investment Plan has been issued by the *Ministerio de Economía y Planificación*, the *Órgano* or *Organismo* of the *Administración Central del Estado*, the *organización superior de dirección empresarial* or the State *empresa* or *sociedad mercantil* itself, as appropriate.

ARTICLE 57. In the case of investments by *organizaciones superiores de dirección empresarial*, the primary sources of financing to be used shall be depreciation and amortization of their tangible and intangible fixed assets. Should these be insufficient, they shall use the reserve created from the contributions of retained profits made by the State *empresas* and *sociedades mercantiles* integrated to them.

ARTICLE 58. Investments in business activity which are financed on an exceptional basis as a charge to the *Presupuesto del Estado* (State Budget) shall be decided upon centrally. State *empresas* with approved investments which are financed, wholly or in part, by means of budget resources shall use an independent current account in order to monitor the movements of the budget resources received for that purpose.

ARTICLE 59. The *Presupuesto del Estado* shall not finance material investments by *sociedades mercantiles*. When, on an exceptional basis, it is decided centrally that the *Presupuesto del Estado* is to participate in the financing of material investments by a *sociedad mercantil*, this Ministry, through one of the shareholders, shall allocate financial resources to capital transfers intended to increase the capital of the *sociedad mercantil*.

ARTICLE 60.1. The depreciation and amortization policy for tangible and intangible fixed assets is to be adopted in a decentralized manner by each State *empresa*, *sociedad mercantil* or *organización superior de dirección empresarial*, as appropriate. For the purpose of determining Taxes on Profits, they must follow the provisions of current legislation on this topic.

2. The depreciation policy must contain, as a minimum, the following: the calculation method to be used; the depreciation or amortization rates to be used by the entity, which must be determined on the basis of the useful life of fixed assets and the production or service characteristics of the entity, in accordance with those defined by this Ministry, and must be expressed without decimal fractions; [and] the number of years that each fixed asset is to be depreciated or amortized, according to its estimated useful life, its characteristics and the use to which it will be subjected.

#### CHAPTER V

#### REQUEST FOR APPROVAL OF VOLUNTARY RESERVES BASED ON PROFIT AND OF DECENTRALIZED FINANCING OF INVESTMENTS

ARTICLE 61.1. State *empresas* and *sociedades mercantiles* must present the corresponding empowered authority with proposals for the creation of voluntary reserves based on retained profits and for the resources needed for decentralized financing of investments, using the “*Solicitud de Aprobación de Reservas Voluntarias a partir de Utilidades y Financiamiento Descentralizado de Inversiones*” (“Request for the Approval of Voluntary Reserves based on Profit and of Decentralized Financing of Investments”) form, hereinafter the request, which is attached to this Procedure as Attachment No. 1 and is an integral part of this Resolution.

2. The request must be accompanied by a copy of the Sworn Declaration of Taxes on Profits presented to the corresponding *Oficina Nacional de Administración Tributaria* and a report substantiating the amounts proposed.

ARTICLE 62. The proposal form for creating voluntary reserves and decentralized financing of investments must be presented by all State *empresas* and *sociedades mercantiles*, even if they have ended with losses the fiscal year being liquidated or they do not plan to carry out investments in the new fiscal year.

ARTICLE 63. Any necessary modification or updating of the “*Solicitud de Aprobación de Reservas Voluntarias a partir de Utilidades y Financiamiento Descentralizado de Inversiones*” form shall be approved by means of an express Resolution of this Ministry.

ARTICLE 64. Proposals for the creation of voluntary reserves and for decentralized financing of investments must be presented to the corresponding empowered authorities by all State *empresas* and *sociedades mercantiles* by the thirty-first (31st) of March of each year.

ARTICLE 65. After the proposals contained in the requests have been reviewed and analyzed, and if they are deemed to be appropriate for the development of the business entities in accordance with their strategic plan, they shall be approved by the corresponding empowered authorities.

ARTICLE 66. In case of doubt, or if the proposals are not deemed to be appropriate, they shall be analyzed by the corresponding empowered authority together with the entity making the proposal, so as to hear the latter’s criteria regarding the proposed request.

ARTICLE 67. The decision made regarding creation of voluntary reserves and decentralized financing of investments shall be communicated on or before the thirtieth (30th) of April of each year by the corresponding empowered authority to the State *empresa* or *sociedad mercantil* that made the request.

ARTICLE 68.1. The *Órganos* and *Organismos* of the *Administración Central del Estado*, the *consejos de la Administración provinciales del Poder Popular y del municipio especial Isla de la Juventud* and the *organizaciones superiores de dirección empresarial* are required to inform the *Dirección General de Atención Institucional* of this Ministry of the results regarding the approval of the creation of voluntary reserves and the approval of decentralized financing of investments in all State *empresas* and *sociedades mercantiles* subordinated, related or integrated to them, by means of the “*Resumen de Aprobación de Creación de Reservas Voluntarias a partir de Utilidades y Financiamiento Descentralizado de Inversiones*” (“Summary of the Approval of Creation of Voluntary Reserves based on Profit and of Decentralized Financing of Investments”) form, which has been added to this document as Attachment No. 2 and is an integral part of this Resolution.

2. This information must be submitted by the thirtieth (30th) of June of the year following the fiscal year being liquidated, together with an Evaluation Report of the approval process for the requests for the creation of voluntary reserves based on profits and for decentralized financing of investments, indicating the most significant aspects thereof and including a list of the business entities authorized to finance accounting losses from previous years and working capital increases by using after-Tax profits, as well as the amount corresponding to that profit.

## CHAPTER VI

### ON THE FINANCIAL TREATMENT OF LOSSES

ARTICLE 69. State *empresas* and *sociedades mercantiles* which experience accounting losses in a fiscal year must perform an analysis of these losses and of their financial situation and make a decision on whether or not they require financing, as well as on the amount needed to amortize those losses.

ARTICLE 70. Should financial resources be needed in order to finance these losses, the sources of financing to be used are the following:

- a) Resources accumulated in the reserve for losses and contingencies created in the business entity;
- b) Requests for loans from the *Fondo de Compensación*;
- c) Other financial sources, such as bank credits; and
- d) The *Presupuesto del Estado*, as a last resort.

ARTICLE 71. Losses recognized by tax authorities (tax losses) which are not covered shall be financed by means of pre-tax profits from future periods, in accordance with the provisions to that effect in current tax legislation.

ARTICLE 72. When accounting losses are higher than tax losses covered by future taxable earnings, as provided in the Article above, State *empresas* and *sociedades mercantiles* must make a proposal to the corresponding empowered authority regarding the financing of these losses through the retention of after-Tax profits.

ARTICLE 73. Accounting losses from previous periods which exceed tax losses may be partially or totally financed by using after-Tax profits once the established percentage (%) of contribution based on State investment returns and established dividends, as well as the established priority allocations, have been complied with.

#### CHAPTER VII

#### ON THE FINANCING OF *ORGANIZACIONES SUPERIORES DE DIRECCIÓN EMPRESARIAL*

ARTICLE 74. The empowered authority referred to in Article 3 of this document shall approve the expense budget proposal of the *organización superior de dirección empresarial* for each fiscal year.

ARTICLE 75. The ongoing expenses of an *organización superior de dirección empresarial* are financed by means of contributions made, as a charge to their expenses, by the State *empresas* and *sociedades mercantiles* which are integrated to it, in accordance with the Budget approved for it for the fiscal year.

ARTICLE 76. Contributions made by State *empresas* and *sociedades mercantiles* to the *organizaciones superiores de dirección empresarial* to which they are integrated must correspond to the amount determined for each of them, in accordance with their production characteristics and financial situation.

ARTICLE 77. When at the end of a fiscal year *organizaciones superiores de dirección empresarial* have surplus resources available, these are to be the primary source of financing for the next fiscal year.

ARTICLE 78. A positive result achieved by an *organización superior de dirección empresarial* at the end of a fiscal year which is derived from contributions by the business entities integrated to it shall not be taxable under Taxes on Profits.

ARTICLE 79.1. *Organizaciones superiores de dirección empresarial* shall be authorized to create voluntary reserves based on profits to be retained from the State *empresas* and *sociedades mercantiles* integrated to them in order to finance investments and the payment of profit distribution to workers.

2. The amount to be contributed by each State *empresa* or *sociedad mercantil* shall be determined based on their respective economic-financial results and technical-productive characteristics.

#### CHAPTER VIII

#### BANKS AND NON-BANK FINANCIAL INSTITUTIONS

ARTICLE 80. The *Banco Central de Cuba* shall provide guidance to banks and non-bank financial institutions regarding compliance with the regulations in this Procedure, adapting it to the particularities of the banking system, as well as regarding compliance with the specific aspects detailed in this chapter.

ARTICLE 81. Banks and non-bank financial institutions must use the “*Solicitud de Aprobación de Reservas Voluntarias a partir de Utilidades y Financiamiento Descentralizado de Inversiones para el Sistema Bancario*” (“Request for the Approval of Voluntary Reserves based on Profit and of Decentralized Financing of Investments for the Bank System”) form, which is attached as Attachment No. 3 and is an integral part of this Resolution.

ARTICLE 82. Banks and non-bank financial institutions must present their proposals for voluntary reserves based on profits and for decentralized financing of investments to the *Banco Central de Cuba*, or the appropriate entity, for approval.

ARTICLE 83.1. These institutions must present to the *Banco Central de Cuba* or the appropriate entity their proposals for increases in legal capital or share capital, depending on whether they are State [*empresas*] or *sociedades mercantiles*, in accordance with the provisions of Decree-Law No. 173, Chapter III, “On the characteristics of financial intermediaries,” Section One, “On Capital,” Articles 28 and 29.

2. Retention of profits for increases in the capital of financial institutions does not constitute a voluntary reserve, but another allocation of net after-Tax profits resulting from [the institution’s] own decision or from the need to comply with the requirements established by the *Banco Central de Cuba*. The need for this retention shall be decided by the banks in advance of the constitution of voluntary reserves.

ARTICLE 84.1. State banks are subject to payment of a contribution based on State investment returns representing thirty percent (30%) of the after-Tax profits to be distributed less the mandatory reserve for losses and contingencies.

2. The *Banco Central de Cuba* may approve a different percentage (%) for the contribution that each bank must make based on State investment returns, taking the percentage (%) established above as a baseline.

ARTICLE 85. The difference between the approved percentage (%) to be contributed by the *Banco Central* based on State investment returns in accordance with the Article above and the percentage (%) established in Article 12.1 of this Resolution is to be used to cover the capitalization needs of other banks within the system as proposed by the *Banco Central*, by means of capital transfers approved by the *Ministerio de Finanzas y Precios*.

ARTICLE 86.1. The percentage (%) of profits retained by State banks and the extraordinary income of banks or non-bank financial institutions which are *sociedades mercantiles* shall be allocated to capitalization, to the creation of voluntary reserves and to the creation of the *Fondo de Garantías* (Guarantee Fund).

2. In the case of the *Fondo de Garantías*, the *Banco Central de Cuba* is required to define for each institution the percentage (%) to be used for its creation and maintenance.

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ARTICLE 87. The *Banco Central de Cuba* is required to inform the *Dirección General de Atención Institucional* of this Ministry of the results of said approval by using the form included as Attachment No. 2 of this Procedure.

## CHAPTER IX

## ON THE SWORN DECLARATION OF NON-TAXABLE INCOME

ARTICLE 88. State *empresas* must present the *Declaración Jurada de Ingresos No Tributarios*, once the empowered authority has approved their request for the creation of voluntary reserves and for decentralized financing of investments.

ARTICLE 89. At the end of a fiscal year, State *empresas*, regardless of their performance, are required to present the *Declaración Jurada de Ingresos No Tributarios*, by the thirty-first (31st) of May of the year following the end of the fiscal year, to the *Oficina Nacional de Administración Tributaria* of the municipality corresponding to their tax domicile, with copy to the *Órgano* or *Organismo* of the *Administración Central del Estado*, the *consejo de la Administración Provincial del Poder Popular y del municipio especial Isla de la Juventud* or the *organización superior de dirección empresarial* to which they are subordinated or integrated, as appropriate.

ARTICLE 90. By means of the *Declaración Jurada* established in Article 89 above, State *empresas* shall liquidate annually, after the end of each fiscal year and on a voluntary basis, their non-tax obligations to the State, that is to say, the annual liquidation of the contribution based on State investment returns, in accordance with the partial payments they have already made.

ARTICLE 91. If the period for voluntary presentation of the *Declaración Jurada de Ingresos No Tributarios* by State *empresas* expires and the presentation has not been made, those entities that have not made their presentation shall be subject to the sanctions provided for in current tax legislation, in the amount and form established therein. If the entity is unable to comply with the presentation of the *Declaración Jurada* during the voluntary period because it is lacking approval of the proposed provisions and reserves, it shall request from the *Oficina Nacional de Administración Tributaria* in the municipality corresponding to its tax domicile an extension for the presentation of said Declaration for a period of up to two (2) months.

## CHAPTER X

## ON GENERAL PROCEDURES

ARTICLE 92. The *Órganos* and *Organismos* of the *Administración Central del Estado* and the *consejos de la Administración provinciales del Poder Popular y del municipio especial Isla de la Juventud* with State *empresas* and *sociedades mercantiles* subordinated or related to them and not integrated to an *organización superior de dirección empresarial* shall be authorized, based on actions by the Treasury, to redistribute financial resources temporarily unassigned in some *empresas* to cover liquidity insufficiencies in others by means of transfers which must be recorded as rights of the State *empresas* and *sociedades mercantiles* relinquishing the funds and obligations of those acquiring them. In these cases, the acceptance of the General Director of the *empresa* relinquishing the funds is required.

ARTICLE 93. Redistribution of these resources shall be based on payment agreements in which the terms and timeframes for their repayment by the acquiring entities are established. The heads of the *Organismos* of the *Administración Central del Estado* and the presidents of the *consejos de la Administración provinciales y del municipio especial Isla de la Juventud* must approve these agreements and shall be responsible for monitoring their strict compliance.

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ARTICLE 94. Within the appropriate timeframe, the corresponding empowered authorities must adopt measures ensuring compliance with the general procedures established by means of this document, so that State *empresas* and *sociedades mercantiles* can present their *Declaración Jurada de Ingresos No Tributarios* within the timeframe established in Article 90.

ARTICLE 95. The heads of the *Organismos* of the *Administración Central del Estado*, of the *consejos de la Administración provinciales y municipales del Poder Popular* and of the *organizaciones superiores de dirección empresarial* to which the State *empresas* and *sociedades mercantiles* are subordinated or related are required to monitor the entire process established in this Procedure.

ARTICLE 96. The *Ministerio de Finanzas y Precios*, once the period for presentation and approval of the requests for the creation of voluntary reserves and for decentralized financing of investments has ended, shall verify the results obtained, confirm that the approvals issued comply with the provisions of this Procedure, and inform the results to the empowered authority for approval of the reserves.

#### TRANSITORY PROVISION

SOLE PROVISION [sic]: For the purposes of liquidation of the 2016 fiscal year, and on an exceptional basis, the terms provided for in this procedure are extended as follows:

1. Proposals for the creation of voluntary reserves based on profits and for decentralized financing of investment, as well as declarations of dividends, until April 30th (Articles 20 and 64).
2. Approval of voluntary reserves based on profits and of decentralized financing of investment, until May 31st (Article 67).

TWO: Directors of business entities shall be authorized to use, as a charge to retained profits not yet distributed as voluntary reserves, up to twenty percent (20%) of financing prior to the approval process. The amount allocated for distribution of profits to workers is exempted from this authorization.

At the time of approval of voluntary reserves, the amounts and allocations executed in advance are taken into account.

THREE: For *organizaciones superiores de dirección empresarial* whose main offices perform production, commercial or service activities, this Ministry shall approve a specific financial relationship system.

FOUR: The heads or presidents of the *Órganos* and *Organismos* of the *Administración Central del Estado*, of the *consejos de la Administración provinciales del Poder Popular y del municipio especial Isla de la Juventud* and of the *organizaciones superiores de dirección empresarial*, as appropriate, are required to establish the necessary procedures for the monitoring of that which is regulated by this document.

FIVE: The heads or presidents of the *Órganos* and *Organismos* of the *Administración Central del Estado*, of the *consejos de la Administración provinciales del Poder Popular y del municipio especial Isla de la Juventud* and of the *organizaciones superiores de dirección empresarial*, as appropriate, are required to inform the *Dirección Institucional* of the Ministry attending them about the results of the process of profit distribution to workers by the thirtieth (30th) of August of the year following that to which the distribution corresponds, by means of the form which is added herein as Attachment No. 4 and is an integral part of this Resolution.

April 18, 2017

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SIX: The *Ministerio de las Fuerzas Armadas Revolucionarias* and the *Ministerio del Interior* shall adjust compliance with the provisions of this document to their own characteristics.

SEVEN: This Resolution is applicable to the profit liquidation and distribution transactions for the 2016 fiscal year and thereafter.

EIGHT: Resolutions Nos. 154 and 155, dated April 18, 2016, issued by the *Ministro de Finanzas y Precios ad interim*, are hereby revoked.

PUBLISH in the Gaceta Oficial de la República de Cuba.

FILE the original in the *Dirección Jurídica* of this Ministry.

Issued in La Habana, on the 5th day of the month of April of 2017.

**Lina O. Pedraza Rodríguez**  
Ministra de Finanzas y Precios

[...]



## **Annex K**

9/30/2019

Code of Commerce of the Republic of Cuba

**BOOK TWO: ON SPECIAL COMMERCIAL CONTRACTS**  
**TITLE ONE: ON *COMPAÑÍAS MERCANTILES* (MERCANTILE COMPANIES)**

**Section One: On the Formation of *Compañías* and their Classes**

**Article 116.** An association contract by which two or more persons commit to placing goods, industry or one of these things in common for the purpose of obtaining profits shall be a mercantile contract, regardless of its class, as long as it has been formed in accordance with the provisions of this Code.

Once it has been formed, the *Compañía mercantil* shall have legal personality in all of its acts and contracts.

**Article 117.** A mercantile contract entered into in accordance with the essential requirements provided by the law shall be valid and binding for those entering into it, regardless of the licit and honest form, conditions and combinations the parties agree on, as long as they are not expressly prohibited in this Code.

The following may be freely created: territorial, agricultural and issue and discount banks, mortgage credit companies, public works concessionary companies, general warehouse manufacturing companies, mining companies, capital and lifetime annuity formation companies, insurance companies and other associations whose purpose is any industrial or commercial business.

9/30/2019

Code of Commerce of the Republic of Cuba

**Article 118.** Contracts between *compañías mercantiles* and any person able to undertake an obligation shall also be valid and effective, as long as they are licit and honest and appear to be in compliance with the requirements established by the following article.

**Article 119.** All commercial companies, prior to beginning their operations, must create a record of their formation, agreements and conditions in a public document which must be presented for registration at the *Registro Mercantil* (Mercantile Registry), in accordance with the provisions of Article 17.

In accordance with the provisions of Article 25, additional public documents shall be subject to the same formalities when they in any way modify or alter the original Company contract. Partners may not make private agreements, and all agreements must be recorded in the articles of incorporation.

**Article 120.** Those in charge of corporate management who contravene the provisions of the article above shall be jointly and severely responsible to persons outside the company with whom they have entered into contracts on behalf of the company.

**Article 121.** A *compañía mercantil* shall be regulated by the clauses and conditions of its contracts, and if the contract contains no provisions or stipulations on the matter at issue, by the provisions of this Code.

**Article 122.** As a general rule, *compañías mercantiles* shall be formed by adopting one of the following modalities:

1. The *regular colectiva* (normal collective company), in which all of the partners, in the name of the collective and under a corporate name, commit themselves to participate, in established proportions, in the same rights and obligations.
2. The *comanditaria* (limited partnership), in which one or various individuals contribute a determined amount to the common fund, so as to participate in the results of the corporate operations, which will be managed solely by others under a collective name.
3. The *anónima* (corporation), in which in creating the common fund in accordance with certain parts or portions, as represented by stock or by means of another indubitable method, the partners entrust its management to removable *mandatarios* (delegates) or *administradores* (administrators) who shall represent the Company under a name that is appropriate to the object or business for which its funds are to be used.

**Article 123.** Based on the nature of their operations, *compañías mercantiles* can be:

Credit corporations;

Issue and discount banks;

Territorial credit companies;

Mining companies;

Agricultural banks;

Railroad, tramway and public works concessionaires;

General warehousing companies;

and other types, as long as their agreements are licit and their purpose is industry or commerce.

## **Annex L**

[Handwritten] 7591/2014  
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in the left margin]

[Emblem of the Republic of Cuba]

*República de Cuba*  
*Consejo de Ministros*  
*Secretaría*

The Secretary of the *Consejo de Ministros* and of its *Comité Ejecutivo*

**CERTIFIES**

**WHEREAS:** Decree No. 302, dated August 2, 2012, “On the creation, structure, organization and functioning of *Juntas de Gobierno*”, in its Article 3, establishes that designation of the President and other members of the *Junta* is carried out by Agreement of the instance which creates it.

**WHEREAS:** The *Comité Ejecutivo del Consejo de Ministros*, through Agreement 7396, dated May 3, 2013, ratified the existence of the *Juntas de Gobierno* of *Unión CUBAPETRÓLEO*,

**REDACTED – CONCERNS OTHER ENTITIES**

**THEREFORE:** The *Consejo de Ministros*, by virtue of the powers conferred upon it by Article 13 Subsection h) and in accordance with the provisions of Article 30, both of Decree-Law No. 272, dated July 16, 2010, “On the Organization and Functioning of the *Consejo de Ministros*”, adopted on July 17, 2014 the following

**AGREEMENT**

**FIRST:**

**REDACTED – CONCERNS OTHER ENTITIES**

**SECOND:** Appoint the *compañeros* listed below as presidents and other members of the *Juntas de Gobierno* ratified and created by Agreement No. 7396 of the *Comité Ejecutivo del Consejo de Ministros*:

[Emblem of the Republic of Cuba]  
*República de Cuba*  
*Ministerio de Energía y Minas*  
*DIRECCIÓN JURÍDICA*

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in the left margin]

[Emblem of the Republic of Cuba]

*República de Cuba*  
*Consejo de Ministros*  
*Secretaría*

I. Of the *Ministerio de Energía y Minas*

1. *Unión CUBAPETRÓLEO, CUPET.*

**President**

Meisi Bolaños Weis

Vice Minister MFP

**Members**

Laritza Izquierdo Varona

Chief of Department  
MEP

Deborah Rivas Saavedra

Director General of  
Foreign Investment  
*MINCEX*

Juan Torres Naranjo

President *OSDE*

Raúl Pérez de Prado

Director General of  
Petroleum and Gas  
*MINEM*

**REDACTED – CONCERNS OTHER ENTITIES**

[Emblem of the Republic of Cuba]  
*República de Cuba*  
*Ministerio de Energía y Minas*  
*DIRECCIÓN JURÍDICA*

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in the left margin]

[Emblem of the Republic of Cuba]  
*República de Cuba*  
*Consejo de Ministros*  
*Secretaría*

**REDACTED – CONCERNS OTHER ENTITIES**

[Emblem of the Republic of Cuba]  
*República de Cuba*  
*Ministerio de Energía y Minas*  
  
*DIRECCIÓN JURÍDICA*

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in the left margin]

[Emblem of the Republic of Cuba]  
*República de Cuba*  
*Consejo de Ministros*  
*Secretaría*

**REDACTED – CONCERNS OTHER ENTITIES**

[Emblem of the Republic of Cuba]  
*República de Cuba*  
*Ministerio de Energía y Minas*  
*DIRECCIÓN JURÍDICA*



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in the middle of the page]

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*República de Cuba*  
*Consejo de Ministros*  
*Secretaría*

**REDACTED – CONCERNS OTHER ENTITIES**

**THIRD:** The *Juntas de Gobierno* shall commence their functions as of the month of September 2014.

And so as to provide copies to the Ministers of *Finanzas y Precios, Economía y Planificación, Trabajo y Seguridad Social, Energía REDACTED – CONCERNS OTHER ENTITIES Comercio Exterior y la Inversión Extranjera, REDACTED – CONCERNS OTHER ENTITIES* and to the Presidents of *Banco Central de Cuba, REDACTED – CONCERNS OTHER ENTITIES* this certification is issued in the Palacio de la Revolución on the 17th day of the month of July of 2014, “YEAR 56 OF THE REVOLUTION”.

[Signature]  
José Amado Ricardo Guerra

FOR ADMINISTRATIVE CONTROL  
Agreement No. 7591  
DENOMINATION, SCOPE AND APPOINTMENT OF  
MEMBERS OF *JUNTAS DE GOBIERNO*  
GEPE

CMEB  
Reg 11224-O

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[Illegible seal]

[Emblem of the Republic of Cuba]  
*República de Cuba*  
*Ministerio de Energía y Minas*  
  
*DIRECCIÓN JURÍDICA*

[Signature]

*MINISTERIO DE ENERGÍA Y MINAS*  
*Dirección Jurídica*

I, Lic. Iván Oquendo Gómez, Esq., *Director Jurídico* at the  
*Ministerio de Energía y Minas,*  
CERTIFY

That this Agreement is a true copy of the one sent by the *Comité Ejecutivo del Consejo de Ministros*, which is kept in the files of the *Dirección Jurídica* of this Ministry. -----

La Habana, October 1, 2019 -----

[Round raised seal]

[Signature]

EXEMPT  
Tax on Documents  
Law 113, Section VI, Article 220  
*Ministerio de Finanzas y Precios*

*MINREX*

[Emblem of the Republic of Cuba]

***República de Cuba***

**E960524**

*Ministerio de Relaciones Exteriores  
DACCRE*

I CERTIFY: That the authorizing officer's signature above is apparently authentic due to its similarity to the one kept on record and to the one he normally uses in official acts.

In view of the above, I confer my authorization with my signature and the seal of this Ministry, as an Officer authorized to certify signatures on documents in order for them to have legal effects abroad.

Issued in La Habana on Oct 02, 2019

*[Signature]*

[Emblem of the Republic of Cuba]

**Camilo Ruiz Montero  
MINREX**

## **Annex M**

ISSN 1682-7511

[Emblem of the Republic of Cuba]

**GACETA OFICIAL**  
**DE LA REPÚBLICA DE CUBA**  
**MINISTERIO DE JUSTICIA**

EXTRAORDINARY EDITION LA HABANA, TUESDAY, JUNE 17, 2014 YEAR CXII

Website: <http://www.gacetaoficial.cu/>—[Address:] Calle Zanja No. 352 esquina a Escobar, Centro Habana  
Telephone: 878-3849, 7878-4435 and 7873-7962

Number 29

Page 453

[...]

**LAW No. 116**  
**LABOR CODE**  
CHAPTER ONE  
**GENERAL PROVISIONS**  
SECTION ONE  
**Foundations and principles**  
**of the labor law**

[...]

June 17, 2014

GACETA OFICIAL

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[...]

ARTICLE 21.- The employer hires workers directly in accordance with the production and service needs. When it is necessary to cover a position, he shall issue a notice in that regard.

The *Ministerio de Trabajo y Seguridad Social* (Ministry of Labor and Social Security) can assign certain persons to be hired due to reasons of State or social interest, in accordance with the entities' needs.

The *Reglamento* for this Code govern the procedures for compliance with the provisions of this Article.

[...]

June 17, 2014

GACETA OFICIAL

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[...]

Publish in the *Gaceta Oficial de la República de Cuba*.

Issued at the Meeting Room of the *Asamblea Nacional del Poder Popular*, Palacio de las Convenciones, in La Habana, on December 20, 2013.

## **CERTIFICATE OF TRANSLATION**

**I, Nahum Hahn, am competent to translate from Spanish into English, and certify that the translation of the attached document, “Declaration of Dr. Marta Milagro Moreno Cruz”, including Annexes A-M attached thereto, is true and accurate to the best of my abilities, knowledge and belief.**

**October 7, 2019**

A handwritten signature in black ink, appearing to read 'Nahum Hahn', written over the printed name.

**Nahum Hahn**

**161 Gordonhurst Ave.**

**Montclair, NJ 07043**

**(917) 680-4699**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

_____	)	
EXXON MOBIL CORPORATION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.: 19-1277 (APM)
	)	
CORPORACIÓN CIMEX, S.A., AND	)	
UNIÓN CUBA-PETRÓLEO,	)	
	)	
Defendants.	)	
_____	)	

**ORIGINAL SPANISH**

**DECLARATION OF DR. MARTA MILAGRO MORENO CRUZ**



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	
EXXON MOBIL CORPORATION,	)	Civil Action No.: 19-1277 (APM)
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
CORPORACIÓN CIMEX, S.A., AND	)	
UNIÓN CUBA-PETRÓLEO,	)	
	)	
Defendants.	)	
_____	)	

**DECLARACIÓN DE LA DRA. MARTA MILAGRO MORENO CRUZ**

La Dra. Marta Milagro Moreno Cruz declara bajo pena de perjurio en virtud de las leyes de los Estados Unidos de América que lo siguiente es verdadero y correcto:

1. Soy la Decana de la Facultad de Derecho de la Universidad de La Habana, Cuba, y he tenido este puesto desde abril de 2016. Me gradué como Licenciada en Derecho, de la Facultad de Derecho de la Universidad de La Habana en 1982, y obtuve un Doctorado en Ciencias Jurídicas de la Universidad de La Habana en 1989. Fui nombrada Profesora de la Facultad de Derecho en el año 1982 y ostento en la actualidad la máxima categoría docente de Profesora Titular. He dictado cursos sobre derecho económico cubano, entre otros temas relacionados con el derecho cubano, y he realizado numerosas publicaciones sobre ese tema, así como sobre otros temas legales. Adjunto mi *curriculum vitae* como Anexo A.

2. El abogado de la UNIÓN CUBA-PETRÓLEO (en adelante a veces "CUPET") en el litigio mencionado más arriba me ha solicitado que presente una declaración de perito en cuanto a si CUPET es distinta e independiente, y separada y aparte, del Estado cubano en virtud de la ley cubana, y en cuanto a si existe en la ley cubana algún fundamento para considerar que sea agente del Estado cubano o para equipararla de alguna otra manera con el Estado cubano. Formulo esta Declaración sobre la base de mis conocimientos acerca de la ley cubana, incluido el estudio que he realizado acerca de las leyes, resoluciones y otros instrumentos jurídicos particularmente aplicables a CUPET. Como es tradicional para los académicos en Cuba, formulo esta Declaración sin cobrar honorarios.

3. Mi opinión es que CUPET es una entidad jurídica distinta e independiente, y separada y aparte, del Estado cubano en virtud de la ley cubana, y que no existe en la ley cubana ningún fundamento para considerar que sea agente del Estado cubano ni para equipararla de alguna otra manera con el Estado cubano.

4. Baso mi opinión, entre otras cosas, en lo siguiente:

a. CUPET fue creada el 25 de marzo de 1992 en virtud de la Resolución No. 23/1992, emitida por el Ministerio de la Industria Básica de Cuba (de la que se adjunta a la presente una copia fiel y auténtica como Anexo B). Según se dispone en esa Resolución, la Unión del Petróleo y la Unión del Combustible se fusionaron para formar CUPET, que “a todos los efectos legales, es continuadora y se subroga en el lugar y grado, de la Unión del Petróleo y de la Unión del Combustible.” Artículo Quinto, Resolución No. 23/1992.

b. CUPET es una “Unión,” que es una de las diferentes categorías de personas jurídicas reconocidas por la ley cubana. El Código Civil de Cuba, Ley No. 59/1987(16 de julio de 1987) en su Artículo 39.2 a) y ch) reconoce “las empresas y uniones de empresas estatales”, así como también las “sociedades”, como “personas jurídicas.” El mismo Artículo 39.2 del Código Civil reconoce expresamente al Estado cubano como una persona jurídica diferente. Se adjunta a la presente como Anexo C una copia fiel y auténtica de las disposiciones del Código Civil de Cuba citadas en esta Declaración.

c. De conformidad con el Artículo 39.1 del Código Civil, las “personas jurídicas”, y por consiguiente CUPET, poseen patrimonio propio y capacidad legal para demandar y ser demandadas, y por otra parte tienen capacidad para ser sujetos de derechos y obligaciones. (“Las personas jurídicas son entidades que, poseyendo patrimonio propio, tienen capacidad para ser sujetos de derechos y obligaciones”). Asimismo según el Artículo 41 del propio Código Civil las personas jurídicas para ejercer sus actividades, tienen la capacidad que determinen la ley y sus estatutos o reglamentos.

El Decreto No. 335, emitido por el Consejo de Ministros (5 de septiembre de 2017) es aplicable a las Uniones como tipo de “Organización Superior de Dirección Empresarial” (“Superior Organization of Business Management”, en su forma abreviada “OSDE”). Artículos 1, 2 & 8.1. Las Uniones son “integrada[s] por empresas que por sus características organizativas, tecnológicas, productivas y económicas tienen una alta interrelación y dependencia entre sí”, Artículo 8.3. El Artículo 6.1 dispone que una OSDE (y por ende CUPET, como uno de los tipos de OSDE) tiene “personalidad jurídica y patrimonio propio.” Se adjunta a la presente una copia fiel y auténtica del Decreto No. 335 como Anexo D.

d. Los activos y pasivos de CUPET son distintos de los del Estado cubano. Esto es inherente al Artículo 39.1 del Código Civil. Por otra parte, el Código Civil, en sus Artículos 44.3 y 44.1, dispone expresamente que “[e]l Estado no responde de las obligaciones de otras personas jurídicas, ni éstas de las de aquél”, y que “[l]as personas jurídicas responden de sus obligaciones con los bienes que integran su patrimonio.” Asimismo, el Decreto No. 335 dispone, en su Artículo 6.1, que las OSDE tienen “patrimonio propio,” y, en el Artículo 6.2, que responden de sus obligaciones “con sus recursos financieros.”

e. La separación de CUPET con respecto al Estado, que las disposiciones legales mencionadas establecen y ponen de manifiesto, tiene rango constitucional.

El Artículo 26 de la Constitución de Cuba dispone que:

El Estado crea y organiza entidades empresariales estatales con el objetivo de desarrollar actividades económicas de producción y prestación de servicios.

Estas entidades responden de las obligaciones contraídas con su patrimonio, en correspondencia con los límites que determine la ley.

El Estado no responde de las obligaciones contraídas por las entidades empresariales estatales y estas tampoco responden de las de aquel.

Adicionalmente, el Artículo 27 establece que las empresas estatales “[d]ispone[n] de autonomía en su administración y gestión”.

Antes de que se aprobara en 2019 la actual Constitución de Cuba, la Constitución de Cuba, reformada en 1992, disponía en el Artículo 17 que el Estado *o bien* “administra directamente los bienes que integran la propiedad socialista de todo el pueblo; o podrá crear y organizar empresas y entidades encargadas de su administración...”. El Artículo 17 disponía además que “[e]stas empresas y entidades responden de sus obligaciones sólo con sus recursos financieros, dentro de las limitaciones establecidas por la ley. El Estado no responde de las obligaciones contraídas por las empresas, entidades u otras personas jurídicas y estas tampoco responden de las de aquel”.

Se adjunta a la presente como Anexo E una copia fiel y auténtica de los Artículos 26 y 27 de la Constitución de Cuba (2019) y del Artículo 17 de la Constitución de Cuba reformada en 1992.

f. El objeto social de CUPET, que define el ámbito autorizado de sus actividades, fue establecido en una resolución del Ministerio de Economía y Planificación. En la Resolución No. 127/2016, emitida por el Ministerio de Economía y Planificación (17 de octubre de 2016), se dispone que el objeto social de CUPET es:

Comercializar hidrocarburos y sus derivados, así como aceites, grasas y lubricantes.

Se adjunta a la presente como Anexo F una copia fiel y auténtica de la Resolución No. 127/2016.

En virtud de la ley cubana, tendrán objeto social “[s]olo ... aquellas personas jurídicas cuya misión sea empresarial, es decir, que se identifiquen por actividades principales productivas, comerciales y de servicios de carácter mercantil”. Artículo 3, Resolución No. 134/2013, emitida por el Ministerio de Economía y Planificación (30 de abril de 2013), del que se adjunta a la presente, como Anexo G, una copia fiel y auténtica. Como se señala en el Artículo 2 de esa Resolución, “[s]e define objeto social como el conjunto de las principales actividades productivas, comerciales y de servicios que conforman las transacciones mercantiles a través de

las cuales una entidad que realiza actividad de carácter empresarial, desempeña la misión para la que ha sido creada”.

g. CUPET no tiene autoridad gubernamental o regulatoria.

h. CUPET no tiene autoridad legal para vincular al Estado a ningún contrato, y el Estado no tiene autoridad legal para vincular a CUPET a ningún contrato. Este principio es inherente a las disposiciones de la ley cubana de que las Uniones y el Estado son personas jurídicas separadas. Además, no existe ninguna disposición de la ley cubana que autorice al Estado a vincular a CUPET a un contrato o que autorice a CUPET a vincular al Estado a un contrato. Además, el principio está codificado en el Artículo 6 del Decreto-Ley No. 304 “De La Contratación Económica” (1 de noviembre de 2012), que regula el principio de relatividad de los contratos económicos. Esto dispone que “[e]l contrato no genera obligaciones a cargo de terceros, ni los terceros tienen derecho a invocarlo para hacer recaer sobre las partes obligaciones que estas no han convenido, salvo pacto o disposición legal en contrario.” Se adjunta a la presente, como anexo H, una copia fiel y auténtica del Artículo 6 de Decreto-Ley No. 304.

i. La Constitución de Cuba define cuáles son las instituciones que constituyen el Estado cubano, pero CUPET no es una de esas instituciones. El Título VI, “Estructura del Estado”, especifica los componentes del Estado cubano: la Asamblea Nacional del Poder Popular, el Consejo de Estado, el Presidente y el Vicepresidente de la República, el Gobierno de la República, los Tribunales, la Fiscalía General de la República y la Contraloría General de la República.

Según el Artículo 133 de la Constitución, “el Consejo de Ministros es el máximo órgano ejecutivo administrativo y constituye el Gobierno de la República.” El Artículo 137 inciso j de la Constitución establece que corresponde al Consejo de Ministros dirigir la administración del Estado. Asimismo el Artículo 146 de la Constitución, referido a la Administración Central del Estado, dispone que “[e]l número, denominación, misión y funciones de los ministerios y demás organismos que forman parte de la Administración Central del Estado son determinados por la ley.” Según lo establecen la Ley No. 67 (19 de abril de 1983) y las enmiendas ulteriores, la Administración Central del Estado está integrada por el Consejo de Ministros, su Comité Ejecutivo, y también los siguientes Ministerios y demás Organismos de la Administración Central del Estado:

1. Ministerio de Industrias
2. Ministerio de Energía y Minas
3. Ministerio de la Industria Alimentaria
4. Ministerio de la Construcción
5. Ministerio de la Agricultura
6. Ministerio del Transporte
7. Ministerio de Comunicaciones
8. Ministerio del Comercio Interior
9. Ministerio del Comercio Exterior y la Inversión Extranjera
10. Ministerio de Ciencia, Tecnología y Medio Ambiente
11. Ministerio de Educación

12. Ministerio de Educación Superior
13. Ministerio de Cultura
14. Ministerio de Salud Pública
15. Ministerio de Finanzas y Precios
16. Ministerio de Turismo
17. Ministerio de Economía y Planificación
18. Ministerio de Trabajo y Seguridad Social
19. Ministerio de Justicia
20. Ministerio de Relaciones Exteriores
21. Ministerio de las Fuerzas Armadas Revolucionarias
22. Ministerio del Interior
23. Instituto Nacional de Recursos Hidráulicos
24. Instituto Nacional de Reservas Estatales
25. Instituto Cubano de Radio y Televisión
26. Instituto Nacional de Deportes, Educación Física y Recreación
27. Oficina Nacional de Estadística e Información
28. Oficina Nacional de Administración Tributaria
29. Oficina Nacional de Normalización
30. Oficina Nacional de Recursos Minerales
31. Oficina Nacional de Inspección Estatal del Transporte
32. Oficina Nacional de Diseño
33. Oficina Nacional para el Control del Uso Racional de la Energía
34. Oficina Nacional de Inspección del Trabajo
35. Oficina de la Zona Especial de Desarrollo del Mariel

Las Oficinas que forman parte de la Administración Central del Estado se encuentran adscriptas a un organismo de la Administración Central del Estado identificado arriba, o subordinadas al Consejo de Ministros, según corresponda.

j. Las disposiciones mencionadas y otras disposiciones jurídicas discutidas en esta Declaración demuestran que CUPET y las empresas que la integran deben funcionar como una organización comercial distinta e integrada. El Artículo 9 del Decreto No. 335 dispone que una Unión que (como CUPET) “con sus empresas constituye un sistema integrado, cubre sus gastos con sus ingresos y como resultado obtiene utilidades a partir de su propia actividad económica. ...[L]a Unión y sus empresas establecen relaciones monetario-mercantiles entre sí”.

k. El Decreto No. 335 dispone que la dirección, gestión y funcionamiento de una OSDE, y por consiguiente de CUPET, están a cargo del *Consejo de Dirección*, que es su “principal órgano de dirección” y de su Director General, que es miembro del *Consejo de Dirección*. Decreto No. 335, Capítulos IV, Artículo 19 y VI, Sección Segunda. Cuentan según la ley con la autoridad necesaria para ocuparse de la dirección, gestión y funcionamiento de CUPET, y con la correspondiente responsabilidad. Decreto No. 335, en particular los Capítulos IV y VI. El Director General nombra a los otros miembros del *Consejo de Dirección*. Artículo 25, numeral 11, Decreto No. 335.

l. Como persona jurídica, CUPET concerta contratos en su propio nombre. No se requiere aprobación gubernamental para que pueda concertar un contrato, excepto si CUPET

establece relaciones con partes extranjeras sujetas a la Ley de la Inversión Extranjera, Ley No. 118/2014 (29 de marzo de 2014), Artículos 2b), 7, 21.1, 21.2, 21.3 y 21.4, una ley de aplicación general que regula las inversiones extranjeras en Cuba.

m. En virtud del Decreto No. 335, CUPET, en su calidad de OSDE y de Unión, ejecuta funciones generales de “dirección y control” con respecto a las entidades (que sean empresas estatales o sociedades mercantiles) que la integran (Artículo 10.1), centrándose prioritariamente en los “resultados integrales” de toda la organización (Artículo 10.3). Según la ley cubana, el término “entidad” incorpora ambas empresas estatales y sociedades mercantiles y el término sociedad mercantil incorpora sociedades anónimas como un tipo de sociedad mercantil.

n. Cada una de las empresas estatales que integran CUPET, de conformidad con lo que exige la ley, efectúa un pago financiero anual a una reserva para pérdidas y contingencias que mantiene CUPET. Artículos Segundo y Tercero, Resolución No. 467/2015, emitida por el Ministerio de Finanzas y Precios (6 de agosto de 2015), de la que se adjunta a la presente una copia fiel y auténtica como Anexo I. Una sociedad anónima, como una forma de sociedad mercantil, mantiene con carácter obligatorio bajo la ley cubana su propia reserva para pérdidas y contingencias. Artículo 10, Resolución No. 138/2017.

o. CUPET está sujeta a legislación impositiva de aplicación general que estipula que todas las entidades comerciales en Cuba deben pagar al Tesoro estatal un impuesto del (35%) sobre sus utilidades anuales netas, así como otros tributos generales en virtud de leyes que también se aplican a todas las entidades comerciales en Cuba (por ejemplo, la ley que exige el pago de la contribución a la seguridad social basado en los salarios que se abona a los empleados). Véase Ley No. 113/2012 (23 de julio de 2012). Lo mismo ocurre con las empresas estatales y las sociedades anónimas que integran a CUPET.

p. En virtud de la ley, CUPET debe pagar al Tesoro estatal como mínimo una mitad de las utilidades netas que quedan después de los impuestos y las reservas para pérdidas y contingencias requeridas bajo la ley, y en virtud de la ley debe retener el resto. Lo mismo se aplica a las empresas estatales que la integran. Artículo 12.1, Resolución No. 138/2017 emitida por el Ministerio de Finanzas y Precios (5 de abril 2017), de la que se adjunta a la presente una copia fiel y auténtica como Anexo J. En virtud de la ley, cada una de las sociedades anónimas que integran CUPET debe pagar a sus accionistas, en calidad de dividendos y de conformidad con el porcentaje que corresponda a cada accionista en la sociedad anónima, como mínimo una mitad de las utilidades netas que quedan después de los impuestos y de las reservas para pérdidas y contingencias requeridas bajo la ley. Artículos 20 y 22, Resolución No. 138/2017.

q. En virtud de los Artículos 3, 27 y 28 de la Resolución No. 138/2017, CUPET, y las empresas estatales y sociedades mercantiles que la integran, proponen y fundamentan a las autoridades facultadas correspondientes al cierre de cada ejercicio económico, la creación de reservas voluntarias a partir de sus utilidades destinadas al incremento de capital de trabajo, amortizar créditos para inversiones, distribución de utilidades a los trabajadores, capacitación, desarrollo e investigación, contribución de un fondo de compensación, entre otras reservas.

r. He explicado anteriormente las características legales de las empresas estatales. En cuanto a la sociedad anónima, ya he señalado que una sociedad, de la cual una sociedad anónima es un tipo, es una de las categorías de personas jurídicas reconocidas por la ley cubana. El Artículo 39.2 ch) del Código Civil de Cuba. Por lo tanto, una sociedad anónima, como una persona jurídica, tiene todos los derechos, capacidades, obligaciones y estatus que son diferentes de los del Estado, que es una persona jurídica diferente, en virtud de la ley cubana mencionada anteriormente. Una compañía mercantil se constituye en virtud de los artículos 116 - 123 del Código de Comercio de Cuba, que disponen que las Compañías Mercantiles están formadas por dos o más personas que acuerdan colocar bienes en común para obtener lucro. Artículo 116 del Código de Comercio de Cuba. El término "compañía mercantil" es sinónimo del término "sociedad mercantil" según la ley cubana. Una vez formada, la "Compañía Mercantil tendrá personalidad jurídica en todos sus actos y contratos". *Id.* El artículo 122 establece que "[p]or regla general, las Compañías Mercantiles se constituirán adoptando alguna de las siguientes formas: ... [l]a anónima en que formando el fondo común los asociados por parte o porciones ciertas, figuradas por acciones o de otra manera indubitada, encargan su manejo a mandatarios o administradores amovibles que representan a la Compañía bajo una denominación apropiada al objeto o empresa a que se destine sus fondos." Una copia fiel y auténtica de las disposiciones citadas del Código de Comercio se adjunta como Anexo K.

s. En consecuencia con los párrafos precedentes, el Director General de CUPET tiene la facultad de proponer a la aprobación de su Junta de Gobierno la propuesta de reservas a crear en CUPET y las empresas que la integran, a partir de las utilidades, después del impuesto, así como las cuantías de estas. Artículo 25, numeral 59, del Decreto No. 335; Artículo 3, Resolución No. 138/2017. La Junta de Gobierno está integrada por una persona del Ministerio de Energía y Minas, una del Ministerio de Finanzas y Precios, una del Ministerio del Comercio Exterior y una del Ministerio de Economía y Planificación, y por el Director General de CUPET. Artículo Segundo (I)(1), Acuerdo 7591, emitido por el Comité Ejecutivo del Consejo de Ministros (17 de julio de 2014), se adjunta a la presente una copia fiel y auténtica de esta disposición como Anexo L.

t. Aunque las palabras literales del Decreto No. 335 solo establecen que es la Junta de Gobierno la que revisa y aprueba el uso de sus reservas por una empresa que integra a un OSDE, si una sociedad anónima integra a un OSDE, la decisión sobre el uso de sus reservas debe ser aprobada por una Junta de Gobierno también. Decreto No. 335, Disposición Especial Quinta.

u. CUPET y las empresas estatales y sociedades anónimas que la integran, contratan directamente a sus empleados. Artículo 21, Ley No. 116/2013(20 de diciembre de 2013) (Código de Trabajo de Cuba); se adjunta a la presente una copia fiel y auténtica de esta disposición como Anexo M. El Código de Trabajo estipula normas vinculantes respecto a los salarios, régimen de trabajo y descanso, seguridad y salud en el trabajo y otros derechos laborales consagrados en la Constitución, para todas las personas empleadas en Cuba. Artículos 2(c) y 109 de la Ley 116/2013, artículos 127-131 del Decreto No. 326/2014, Reglamento del Código del Trabajo, emitido por el Consejo de Ministros (12 de junio 2014). Las normas en materia salarial aplicables a los empleados de CUPET son diferentes de las que se aplican a los empleados de ministerios y otros Órganos de la Administración Central del Estado. A diferencia de los empleados gubernamentales, el sistema salarial que se aplica a CUPET depende en parte de la

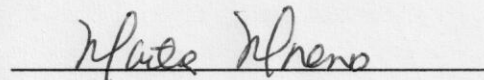
rentabilidad de CUPET y de otros indicadores de desempeño establecidos. Resolución 6, emitida por el Ministerio de Trabajo y Seguridad Social (21 de marzo de 2016).

v. En virtud de la ley generalmente aplicable a las OSDE, CUPET elabora y presenta ante el Ministerio de Economía y Planificación, para su aprobación, un plan empresarial anual consolidado (es decir, consolidando su propio plan y los planes de cada una de las empresas y sociedades anónimas que integran CUPET, que CUPET aprueba). Artículo 25, numeral 43, del Decreto No. 335.

w. Las *Indicaciones Metodológicas para la Elaboración del Plan 2020*, emitidas por el Ministerio de Economía y Planificación, disponibles en <https://www.mep.gob.cu/es/planificacion>, se refieren a la elaboración del plan nacional para la economía. Establece que los Ministerios emitirán “Directivas de Gobierno y no emitir[án] Directivas específicas a las Entidades ni enmarcamientos previos”. *Indicaciones Metodológicas para la Elaboración del Plan 2020*, en la página 6. A diferencia de las “directivas específicas,” las “Directivas de Gobierno” son aplicables a todas las entidades cubanas, incluyendo las OSDEs. Las Indicaciones Metodológicas dan como ejemplos: “[i] Incrementar el valor de las exportaciones y sus ingresos ... [y p]riorizar la asignación de recursos financieros y materiales a la industria nacional en virtud de: ...[a]segurar producciones y servicios dirigidas a satisfacer las demandas de la economía interna, fundamentalmente en: i. Producción de alimentos, ii. Transporte, iii. Informatización de la sociedad, iv. Vivienda, v. Medicamentos.” *Id.*, en las páginas 6-7.

Ejecutado: Octubre 7, 2019

Firma:



Nombre:

Dra. Marta Milagro Moreno Cruz



## **Anexo A**

**CURRICULUM VITAE  
MARTA MILAGRO MORENO CRUZ**

- **DECANA DE LA FACULTAD DE DERECHO DE LA UNIVERSIDAD DE LA HABANA (UH) A PARTIR DE ABRIL 2016.**
- **LICENCIADA EN DERECHO. FACULTAD DE DERECHO UH 1982.**
- **PRESIDENTA DE LA CATEDRA PROPIEDAD INTELECTUAL UH, PERTENECIENTE A LAS CÁTEDRAS UNITWIN DE LA UNESCO.**
- **DOCTORA EN CIENCIAS JURIDICAS. UH. 1989.**
- **PROFESORA TITULAR**
- **VICEPRESIDENTA DEL TRIBUNAL DE GRADOS CIENTÍFICOS EN CIENCIAS JURÍDICAS.**
- **ARBITRO DE LA CORTE CUBANA DE ARBITRAJE COMERCIAL INTERNACIONAL DESDE AÑO 2011.**
- **PRESIDENTA DE LA SOCIEDAD DE DERECHO ECONÓMICO Y FINANCIERO DE LA UNIÓN NACIONAL DE JURISTAS DE CUBA.**

**Docencia Impartida:**

A partir del mes de abril del 2016 es la Decana de la Facultad de Derecho de la UH.

Vicedecana Docente de la Facultad de Derecho desde 1991 al 1993 y desde 1996 hasta el 2003.

Desde 2011 hasta abril de 2016 ostentó el cargo de jefe del Departamento de Asesoría Jurídica e Internacional de la Facultad de Derecho de la UH.

Desde el año 1982 ha impartido las asignaturas de Derecho Económico en la Facultad de Derecho y de Legislación Económica en el área de Ciencias Económicas.

A partir del curso 1993-1994 creó la asignatura Derecho de Propiedad Industrial, por primera vez impartida en las Facultades de Derecho del País.

Desde 1988 también crea la asignatura de Derecho de Autor.

Ha impartido docencia de postgrado en Maestrías y Doctorados Curriculares, así como en cursos de superación profesional en la materia de Derecho Económico, Derecho Mercantil y Propiedad Intelectual.

Dirige la Cátedra de Propiedad Intelectual de la UH, que en el año 1999 comenzó a formar parte de la RED UNITWIN de la UNESCO.

En los años 2006 y 2007 fue profesora en Cuba y en Venezuela de la Maestría Gestión de la Propiedad Intelectual rectorada por la Oficina Cubana de la Propiedad Industrial de Cuba.

En el año 2000, 2001 y 2002 ha impartido conferencias en Universidades de Bolivia como profesora invitada en materia de Metodología de la Investigación Social y Propiedad Intelectual.

Miembro desde septiembre de 2000 de la Asociación Internacional de profesores de Propiedad Intelectual (ATRIP).

En 2011 formó parte de los Tribunales de la Maestría Fundamentos Teóricos, Pedagógicos y Epistemológicos de la enseñanza del Derecho.

En 2013 impartió docencia de Metodología de la Investigación Social en la Maestría de Ciencias Penales en Guatemala.

En el año 2017 invitada como profesora al Instituto de Ciencias Políticas y Jurídicas de Grenoble en Francia.

Asimismo ha impartido actividades académicas en la Facultad de Derecho de la Universidad de Valencia y en las Facultades de Derecho de Guayaquil y Chimborazo en Ecuador.

Asesora de la Oficina de transferencia de Resultados de la Investigación Científica de la UH. OTRI y Consultora en el Centro Internacional de la Habana. CIH del Ministerio de Educación Superior.

Desde septiembre del 2011 es árbitro de la Corte Cubana de Arbitraje Comercial Internacional.

Se desempeña como miembro del Comité Académico del Diplomado de Administración Pública para la Escuela de Cuadros de Primer Nivel del Estado Cubano y Coordinador del Módulo de Derecho.

A partir del año 2011 ha impartido disímiles diplomados y cursos en materia de organización empresarial cubana, contratación económica y Propiedad Intelectual solicitados por diferentes Organismos de la Administración Central del Estado, empresas, Organización Nacional de Bufetes Colectivos, Tribunal Supremo Popular y Fiscalía General de la República.

Profesora de la Maestría de Derecho Constitucional y Administrativo, de la Maestría de Gestión de la Propiedad Intelectual de la OCPI y de de la Maestría Derecho de la Economía de la Facultad de Derecho de la UH.

Ha participado como experta y asesora en diferentes proyectos de políticas públicas y legislativas del país:

- Experta de la Asamblea Nacional del Poder Popular en la elaboración del paquete normativo sobre la inversión extranjera en Cuba. 2014
- Elaboración de la Política en materia de Propiedad Industrial y de las normas jurídicas que la respaldan. 2013 al 2015.
- Elaboración del Decreto ley en materia de contratación económica.2012
- Impartición de seminarios a directivos de las organizaciones empresariales del país sobre las nuevas normativas en materia de Organizaciones Superiores de Dirección Empresarial, Empresas y Unidades Empresariales de Base en el 2017.
- Asesora de la Comisión de la ANPP encargada de la elaboración de la Nueva Constitución de la República y su proclamación. 2018 y 2019.

- Miembro del Grupo Ejecutivo encargado de dirigir el proceso de elaboración de las normas jurídicas que deben complementar la Nueva Constitución de la República. 2018 hasta la fecha.

#### **Principales Artículos Científicos:**

1. La regulación jurídica de las principales actividades científico-técnicas en Cuba. Trabajo de Diploma para optar por el título de Licenciado en Derecho. 1983
2. La innovación y la racionalización. Su importancia para el desarrollo de la ciencia y la técnica en nuestro país. 1985
3. El Sistema de Arbitraje Estatal y su influencia en la disciplina económica: la contratación económica como expresión de esa disciplina. Publicado en el boletín informativo. Sistema de Arbitraje Estatal.1990
4. Algunas consideraciones acerca de la responsabilidad personal en la esfera contractual y arbitral. Publicado en la Revista Cubana de Derecho. Revista de Derecho económico. Sistema de Arbitraje. 1991
5. El plan y el contrato económico en los marcos de la economía socialista planificada. Revista de Derecho económico. Sistema de Arbitraje 1990
6. Consideraciones teóricas acerca de los órganos de Arbitraje Estatal y el derecho procesal arbitral. Publicado en la Revista Cubana de Derecho.1989
7. Particularidades de la personalidad jurídica en los sujetos del Derecho económico. Revista de Derecho económico. Sistema de Arbitraje 1990
8. Derecho económico como rama del Derecho. Revista de Derecho económico. Sistema de Arbitraje 1992
9. La enseñanza del derecho económico en Cuba y en diferentes países socialistas. Revista de Derecho económico. Sistema de Arbitraje 1991
10. Influencia de la actividad del Arbitraje Estatal en el perfeccionamiento de la disciplina económica y la dirección de la economía nacional. Trabajo con el cual obtuvo el Grado Científico de Doctora en Ciencias Jurídicas. Revista de Derecho económico. Sistema de Arbitraje Estatal Año 2 número 8. 1989.
11. Consideraciones acerca de la Propiedad Industrial en Cuba. Publicado en la Revista Derecho de los Negocios de la Universidad Carlos III de Madrid, España 1995.
12. El Acuerdo ADPIC de la OMC. Su influencia en la legislación cubana. Premio Ignacio Agramonte en 1996. Revista Cubana de Derecho No 12 1997.
13. Principales transformaciones económicas en Cuba a partir de 1990. Revista de Ciencias Sociales III 1997 Agora. Valencia, España.
14. La cooperativización en la economía cubana. Su reglamentación jurídica. Revista CIRIEC, España. No 9, Octubre 1998.
15. Protección jurídica de las creaciones intelectuales en las Universidades. Especial referencia a Cuba. Publicadas en las Memorias del VIII Seminario Latino Iberoamericano de Gestión tecnológica.1999
16. El proceso de adopción del Acuerdo de los Derechos de 'Propiedad Intelectual relacionados con el comercio, incluido el comercio de mercancías falsificadas y su repercusión en materia de Derecho de Autor. Publicado en Revista Breviario del Derecho de Autor. LIVROSCA 2000 Caracas.
17. La formación de trabajadores sociales: una experiencia cubana. Publicada en las memorias del evento pedagogía 2003.

18. Breves Comentarios sobre la nueva regulación de las Invenciones en Cuba. Revista Cubana de Derecho. No. 41 de enero- junio, ISSN 0864-165X de todas las publicaciones electrónicas de la UNJC, Octubre 2013.  
[http://vlex.com/source/revista-cubana-derecho-2615/issue\\_nbr/%2341](http://vlex.com/source/revista-cubana-derecho-2615/issue_nbr/%2341).
19. La gestión y comercialización de los resultados científico-técnicos de las universidades cubanas y su vínculo con la industria. Rendija. Revista Cubana de la Propiedad Industrial. Noviembre 2013 No 14. ISSN: 1563-1672.
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24. Libro Panorama general de algunas instituciones jurídico-económicas en Cuba. Lit Edizioni Srl. Castelvechi Febrero 2016 ISBN-13:978-88-6944-628-3.
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28. El Derecho Económico como disciplina científica en el proceso de actualización del modelo económico social cubano. Principales desafíos. Dra. Marta Moreno Cruz y Dr. Orestes Díaz Legón. Publicado en el libro. Estudios Jurídicos. Homenaje al profesor doctor Eurípides Valdés Lobán. Coordinadores Andry Matilla Correa y Alie Pérez Véliz Ediciones Loynaz 2016 ISBN 978-959-219-486-1.
29. Estudios sobre Arbitraje en Cuba. Coordinadores: Rodolfo Dávalos Fernández y Marta Moreno Cruz. Artículo. Formas alternativas de solución de conflictos en la Propiedad Intelectual. Dra. Marta Moreno Cruz. Dra. Dánice Vázquez D Alvaré. Edición de la ONBC 2017. ISBN: 978-959-7234-50-0.
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#### **Libros de Textos Publicados:**

1. Apuntes de Derecho Económico. Colectivo de Autores.1984 Editorial Félix Varela
2. Temas complementarios de Derecho Económico I. Colectivo de Autores.1990 Editorial Félix Varela

3. Temas Complementarios de Derecho Económico II. Colectivo de Autores.1993 Editorial Félix Varela.
4. Cuaderno de Orientaciones para el estudio y casos prácticos de Derecho Económico. Colectivo de Autores.1993 Editorial Félix Varela
5. Selección de Documentos de Derecho Económico. Colectivo de Autores.1995. Editorial Félix Varela
6. Selección de Lecturas de Derecho de Autor. Colectivo de Autores. Editorial Félix Varela. La Habana 2000.
7. Selección de Lecturas de Propiedad Industrial. Editorial Félix Varela. Año 2003
8. Temas de Derecho Venezolano. Año 2004. Editorial Félix Varela
9. Protección de la Propiedad Industrial en Cuba y Brasil. Londres: Blucher 2015 ISSN 2318-695 x ISBN 978-85-8039-091-9 DOI 10.5151/icupro-cbs 21-012.En colaboración con autores brasileños.
10. Libro La propiedad industrial en Brasil y en Cuba. Coordinador Silvia Beatriz Beger Uchoa. Universidad de Federal Alagoas. Maceio Brasil y Marta Moreno Cruz facultad de Derecho UH. EDUFAL 2015. ISBN 978-85-7177-913-6.
11. Libro: El Cooperativismo en Cuba. Situación actual y propuestas para su regulación y fomento. Coordinación: Dra. Gemma Fajardo García (Universitat de Valencia) Marta Moreno Cruz (Universidad de La Habana). Editorial CIRIEC. España Centro Internacional de Investigación e Información sobre la Economía Pública, Social y cooperativa. ISBN 978-84-944774-8-5. Año 2018.
12. Estudios sobre Arbitraje en Cuba. Coordinadores: Rodolfo Dávalos Fernández y Marta Moreno Cruz. Artículo. Edición de la ONBC 2017. ISBN: 978-959-7234-50-0.

### **Investigaciones Realizadas**

1. El perfeccionamiento del Sistema de Dirección y Planificación de la economía cubana y la nueva legislación económica. Año 1990.
2. La organización empresarial cubana. Año 1992.
3. La Propiedad Industrial en Cuba. Esta investigación obtuvo el premio al mayor impacto social en la Facultad de Derecho de la UH en al año 1993.
4. Ha colaborado en dos investigaciones desarrolladas por la Asamblea Nacional del Poder Popular: Principales dificultades en el desarrollo de la contratación económica y Principales problemas en el proceso inversionista. Año 1994.
5. Influencia del Acuerdo de los derechos de Propiedad Intelectual vinculados con el comercio de la OMC en la legislación cubana y en la estrategia de comercialización de los resultados de algunos centros de investigación. Premio Alma Mater. Universidad de la Habana 1995.
6. Protección de las creaciones intelectuales en las universidades y centros públicos de investigación. Premio del MES 1998.
7. Las prácticas restrictivas al derecho de la competencia. Su reflejo en la Cuba de hoy. Premio Alma Mater. 1999.
8. La formación del trabajador social en Cuba. Presentada al Concurso Alma Mater. Año 2002.
9. Políticas institucionales y normativas para la protección, gestión y comercialización de las creaciones intelectuales en las universidades cubanas. 2013.
10. La contratación económica en la economía cubana. Solicitud del PCC en La Habana. 2013.
11. Programa Nacional de Economía: Formas jurídicas organizativas de los sujetos de gestión estatal y no estatales en la economía cubana actual. En ejecución desde 2017.

### **Principales Eventos científicos, Conferencias y Seminarios.**

1. Mayor Ignacio Agramonte. UNJC. 1989
2. Primer Evento Científico del Sector Industria del Sistema de Arbitraje Estatal. 1988
3. Primer evento Científico de Derecho Económico Pinar del río. 1990.
4. IV Seminario Provincial sobre Derecho económico y Arbitraje Estatal. Pinar del río. 1990.
5. Participación en múltiples ciclos de conferencias ofrecidas por especialistas extranjeros, fundamentalmente en materia de Derecho económico, Propiedad Intelectual y Derecho Mercantil.
6. Taller III Conferencia de Ciencias Sociales de la UH. 1983.
7. I Conferencia Científica de la facultad de Derecho. Universidad de Oriente. 1986.
8. Primera Jornada Científica del arbitraje Estatal. 1986.
9. Concurso del Sistema de Arbitraje estatal por el V Aniversario de la actividad jurisdiccional de estos órganos. 1985. Obtuvo el primer lugar y la publicación del trabajo presentado.
10. V Conferencia Científica de Ciencias Sociales. 1987.
11. Primer Evento Científico sobre el Derecho Económico en Cuba. Sociedad de Derecho Económico, Financiero y Mercantil de la UNJC. 1986.
12. Coloquio Científico Inter Universidades de Derecho Económico. Universidad Central de las Villas. 1987.
13. V Exposición Nacional Forjadores del Futuro de las Brigadas Técnicas Juveniles. Nivel Municipal y provincial. 1988.
14. Concurso Internacional sobre Derecho económico en América Latina. Universidad de Oriente. 1991.
15. Taller Protección de la Propiedad intelectual. 1992. Impartido por consultores del Programa de Naciones Unidas para el desarrollo.
16. Taller de Formación acerca de: Propiedad Intelectual y licencias en la Industria Biofarmacéutica. 1995. Auspiciado por el Programa de Naciones Unidas para el desarrollo.
17. Taller sobre Agentes de la Propiedad Industrial celebrado en la ONIITEM. 1995.
18. Seminario Nacional de Cooperación Universidad Empresa. 1995
19. Ciclo de Conferencias sobre Propiedad Industrial impartido por el profesor Alberto Bercovitz. UH. 1995
20. Congreso Iberoamericano sobre Derecho de Autor y derechos Conexos. Uruguay 1997
21. VII Seminario Latino Iberoamericano de gestión, Tecnología, ALTEC 99. Valencia España.
22. I Seminario Internacional relativo a sistemas de registro de Marcas y Franquicias. Cámara de Comercio y Bufete LEX. SA. Abril. 1999.
23. Jornada sobre Derecho de Contratos. 2001. Participación como ponente.
24. Evento Marcas 2000 convocado por la Oficina Cubana de la Propiedad Industrial.
25. Seminario La transferencia de resultados de investigación universitaria. Año 2000. UH.
26. Coordinadora y ponente en el Seminario sobre el Derecho Internacional del Comercio y las Inversiones en una economía global. Año 2000. UH.
27. Mesa Redonda sobre la Enseñanza de la Propiedad Intelectual. Año 2001 con motivo del Día Mundial de la Propiedad Intelectual.
28. Taller Internacional sobre la Enseñanza del derecho de Autor. 2002.
29. Academia de la OMPI sobre Propiedad Intelectual. Año 2000.



30. Primer Congreso de Propiedad Industrial. Año 2002
31. II Taller Internacional sobre Trabajo Social. Septiembre del 2002.
32. II Encuentro de Abogados Cuba- EU Mesa Redonda sobre Propiedad Intelectual. Año 2002.
33. II Encuentro Internacional de Derecho de Contratos. Año 2003. Ponente.
34. Evento Pedagogía 2003. Ponente del trabajo. La formación de los trabajadores sociales: una experiencia cubana.
35. Congreso internacional de Propiedad Industrial. Panel: La protección de la propiedad intelectual en las universidades. Abril 2011
36. Evento Internacional. Propiedad Industrial. Perspectivas de la enseñanza de la propiedad intelectual en las universidades cubanas. Abril 2012.
37. VI Seminario Permanente Cubano- Hispano: Derecho del Comercio y la Integración. La evolución del Arbitraje en Latinoamérica.2012.
38. I Encuentro Nacional de Asesoría Jurídica y Administración de Empresa. Santiago de Cuba. Las nuevas normativas cubanas en materia de propiedad industrial. 2012.
39. I Simposio Internacional Cuba- Alemania. Perspectivas del Derecho Público en el Siglo XXI. 2012
40. V Seminario Internacional sobre Solución de Conflictos en la Propiedad Intelectual. Retos en materia de solución de conflictos en materia de propiedad intelectual en Cuba. Octubre 2012.
41. Taller: Retos del derecho de Autor. Feria Internacional del Libro. Editorial Félix Varela. Febrero 2013.
42. Simposio Cuba – Alemania: Economía, Derecho y Sociedad en el Siglo XXI. Ponente y Conferencista en el acto de Clausura. Marzo 2013
43. VII Fórum Nacional de Gestores de Innovación y Transferencia de tecnología FORTEC. Experiencias de la protección de la propiedad intelectual en las universidades cubanas. Brasil. Abril 2013.
44. Participación como conferencista en el Evento Internacional Marcas 2013. Retos de la Propiedad Industrial. Abril 2013. Políticas institucionales y normativas para la gestión y comercialización de las creaciones intelectuales de las universidades cubanas.
45. Taller Internacional sobre Política Institucional de Propiedad Industrial, Innovación y Transferencia de Tecnología en las Universidades organizado por la UH, la Oficina Cubana de Propiedad Industrial y la Organización Mundial de la PI. Julio 2013.UH Ponencia: Políticas institucionales y normativas para la gestión y comercialización de las creaciones intelectuales en las universidades cubanas.
46. Taller Cuba Brasil en el Siglo XXI. Septiembre 2012. Cuba. Presentación del proyecto de investigación en el Eje Temático III. Rol de la Innovación en el desarrollo socio económico sostenible. Nombre del Proyecto: Mecanismos de cooperación bilateral Cuba/ Brasil para la promoción, protección y comercialización recíproca de las creaciones tecnológicas de la academia en función de las necesidades económicas y sociales de ambos países.
47. Taller Cuba y Brasil en el Siglo XXI. Brasil. Recife y Maceio. Del 28 de julio al 5 de agosto 2013. Ponente: Marcos legales y realidad cubana de la Propiedad Intelectual y la Transferencia de Tecnología.
48. Evento Comercio Exterior e Inversión Extranjera. Octubre 2013. Facultad de Derecho UH y Unión Nacional de Juristas de Cuba. Coordinadora del Panel sobre el Arbitraje de Inversiones. Experiencia cubana
49. Jornada Internacional de Contratos. Enero 2014. La insolvencia patrimonial del deudor como causa de incumplimiento contractual. Una patente de curso en caso de crisis?

50. Jornada Científica Justicia y Derecho, TSP (La Habana, 23-24 enero 2014). Ponencia: "Papel del Derecho en el proceso de transformaciones de la economía cubana actual".
51. V Congreso Internacional de Propiedad Industrial (La Habana, 28-30 abril 2014). Ponencia: "La comercialización de los resultados de investigación científica en las universidades cubanas. Casos de estudio".
52. Seminario sobre la inversión extranjera. Junio 2014. Facultad de Derecho UH. La propiedad industrial y la nueva ley de inversión extranjera.
53. Tercer Foro Internacional Economía/ Empresa UNACH Julio. 2014 Riobamba Ecuador. Conferencia sobre el Vínculo Economía y Derecho en el proceso actual de transformaciones económicas en Cuba.
54. Conferencia sobre Propiedad Intelectual a estudiantes de la Carrera de Derecho. UNACH Riobamba. Ecuador. Julio 2014
55. Foro Nacional Internacional Académico. I Seminario Internacional Multidisciplinario de Derecho y Economía. Ponencia "El papel del Derecho en el proceso de transformaciones del modelo económico social cubano" Julio 2014. Riobamba Ecuador.
56. VI Seminario Internacional sobre Propiedad Intelectual. Panel: La protección de las creaciones intelectuales en las universidades cubanas. Especial referencia a la UH. Octubre 2014.
57. Taller Internacional. Universidad OTAVALO Ecuador. Diciembre 2014. "Perfeccionamiento de la enseñanza del Derecho en Ecuador."
58. XIV Jornada Internacional de Contratos: Panel: Reformas contractuales en Cuba. Las nuevas normativas en materia de contratación económica en Cuba. Enero 2015.
59. Convención Científica Internacional. Universidad de Matanzas. Abril 2015. Novedades en materia de Propiedad Industrial en Cuba.
60. Evento Internacional: La Propiedad Industrial y la Transferencia de Tecnología. Ponencia: Gestión de la transferencia tecnológica en el marco de las universidades. Especial referencia a la Universidad de La Habana. Abril 2015.
61. IX Encuentro Nacional FORTEC. Brasil 19 al 22 de mayo 2015. Experiencias cubanas en el vínculo Universidad Empresa en la transferencia de tecnología.
62. II Seminario Internacional de Sanidad Agropecuaria. Taller de Internacionalización y Negociación del Conocimiento: Retos y Perspectivas. Evento SISA Mayo 2015. Ponencia: Experiencia de la UH en la negociación y transferencia de sus resultados innovadores.
63. Congreso Institucional sobre Instituciones Económicas, Comercio e Inversiones en América latina. La nueva ley cubana sobre inversiones. Facultad de Derecho. UH 1 a 3 de junio 2015.
64. Evento Científico Facultad de Derecho de la UH/ Facultad de Jurisprudencia Universidad Católica Santiago de Guayaquil.: Ponencia La inversión extranjera en Cuba. 21 al 23 de julio 2015.
65. I Simposio Brasil- Cuba de Derecho Público. Del 9 al 11 de septiembre de 2015. Facultad de Derecho UH. Sociedad Cubana de Derecho Constitucional y Administrativo de la UNJC y Universidad Federal de Pernambuco (Brasil). Ponencia. Las políticas públicas en materia de innovación y tecnología en Cuba.
66. X Encuentro Internacional: Comercio Exterior e Inversión Extranjera. La Habana. Cuba. Del 14 al 16 de octubre de 2015. Ponencia: La inversión extranjera y la propiedad industrial.
67. VII Encuentro Nacional y I Internacional de Derecho Administrativo. La Habana. Cuba. Noviembre 2015. Retos del Derecho Administrativo en Cuba en materia

- de Propiedad Industrial.
68. I Taller Internacional de Administración Pública. Noviembre 2015. La Habana. Las barreras administrativas en el funcionamiento de las empresas públicas en Cuba.
  69. Primer Encuentro Internacional "El Derecho Mercantil y sus retos en el Siglo XXI". Palabras de clausura. Diciembre 2015
  70. Jornada Derecho de Contratos. Enero 2016. Conferencia: Contratación y Propiedad Industrial en la sociedad del conocimiento. Panel: Novedades en materia de contratación en propiedad industrial en Cuba.
  71. Evento Internacional. El contrato internacional y las relaciones económicas internacionales. Roma. Italia. Ponencia: La inversión extranjera en Cuba. Garantías del sistema jurídico cubano. Febrero 2016
  72. Encuentro Internacional Cuba/Ecuador: Economía y Derecho". Reflexiones actuales. Coordinadora de sesión. Marzo 2016.
  73. I Congreso Internacional de Derecho de la Insolvencia (I-e-CIDI). Del 7 al 16 de marzo de 2016. Ponencia "Los instrumentos concursales: Complemento necesario del Derecho Concursal actual. Su tratamiento jurídico en el marco del concurso en Cuba.
  74. Evento Internacional "Propiedad Industrial y Transferencia de Tecnología en las Universidades. Ponencia: Sistema de propiedad industrial en la UH. 13 y 14 de mayo 2016. La Habana
  75. III Simposio Internacional Cubano Germano de Derecho "Estado, Derecho y Economía: Retos ante la sociedad Global. Ponencia. "La transferencia de tecnología en Cuba. 9 y 10 de mayo 2016. La Habana
  76. Evento Internacional "Propiedad Industrial y Transferencia de Tecnología. Ponencia. "Formas alternativas de solución de controversias y Propiedad Industrial" 10, 11 y 12 de mayo 2016. La Habana
  77. I Encuentro Internacional entre la Universidad de Florida. Gainesville y la Facultad de Derecho de la UH. Ponencia "Garantías del sistema jurídico cubano en materia de inversión extranjera". 9 y 10 de mayo 2016. La Habana
  78. XII Encuentro Internacional Escuela de Verano La Habana 2016 sobre Temas Penales y Contemporáneos, VII Fórum Iberoamericano sobre Derecho penal Económico, II Encuentro de la Habana de Decanos y Directores de Facultades y Escuelas de Derecho. Panel: La enseñanza postgraduada en las Facultades de Derecho. 8 de julio 2016 La Habana
  79. Evento Científico Facultad de Derecho de la UH/ Facultad de Jurisprudencia Universidad Católica Santiago de Guayaquil.: Ponencia Papel del Derecho en el proceso de transformaciones del modelo económico y social cubano. 26 al 28 de julio 2016.
  80. X Conferencia Internacional sobre Arbitraje y Mediación. Ponencia" Arbitrabilidad en materia de Propiedad Industrial. 17 al 19 de octubre 2016. La Habana.
  81. VII Seminario Internacional: Retos de la Propiedad Intelectual en el Mundo actual. Ponencia Panel "Actualización de la Propiedad Industrial en las Universidades". 19 al 21 de octubre. La Habana.
  82. Taller Cuba/Italia: La intervención del Estado en la Economía. Ponencia: Retos en la organización y funcionamiento de las empresas públicas en Cuba. Diciembre 2016.
  83. Evento Internacional Jornada de Contratos: Desafíos de los tribunales cubanos ante la reforma contractual del 2012. Enero 2017.
  84. Jornada Internacional 30 Años del Código Civil Cubano. Vigencia del Código Civil en la contratación económica. Del 21 al 23 de junio 2017.

85. Evento VI Congreso Internacional de Propiedad Industrial. Algunas reflexiones del régimen jurídico-administrativo de la propiedad industrial en Cuba. Del 25 al 27 de abril de 2017.
86. IV Seminario de Actualización para Asesores Jurídicos. La Habana Cuba del 18 al 20 de septiembre 2017.
87. Congreso Internacional Abogacía 2017. Curso precongreso. La contratación económica en Cuba. Cuestiones al debate. 26 de septiembre 2017.
88. 2do Encuentro Internacional de Gestión y Dirección Empresarial: Panel Importancia del contrato en la gestión económica. Dra. Johana Odriozola Guitart, Msc Narciso Cobo Roura, Dra. Marta Moreno Cruz 12 de octubre 2017.
89. II Simposio Brasil-Cuba de Derecho Público. Facultad de Derecho de la UH, Universidad Federal de Pernambuco (UFPE)-(Brasil), la Universidad católica de Pernambuco (UNICAP)- Brasil y la Sociedad Cubana de Derecho Constitucional y Administrativo de la UNJC (Cuba) 20 y 21 de noviembre de 2017. Algunas reflexiones del régimen jurídico administrativo de la propiedad Industrial en Cuba.
90. III Taller Internacional de Administración Pública. Universidad de La Habana. Centro de Estudios de Administración Pública y Fundación Friedrich Ebert. Oficina para Cuba. 29 de noviembre 2017. Coordinadora del Panel: "La empresa pública y el desarrollo local. Interacción de actores. Presentación: "La empresa Pública: barreras en su funcionamiento en la economía cubana actual."
91. XVII Jornada Internacional de Derecho de Contratos. UNJC. Del 24 al 26 de enero de 2018. "El control en el proceso de contratación económica"
92. Pre-Evento del XIV Encuentro Internacional Ciencias Penales 2108 y Segundo Evento Legalidad, Derecho y Sociedad. 13 de marzo 2018. Coordinadora del Panel: "Transformaciones económicas en la economía cubana actual. Marco regulatorio". Presentación: Nuevas Normas del Sistema Empresarial Estatal Cubano: Algunas reflexiones.
93. Evento Internacional "Propiedad Intelectual e Industrial conexiones y puntos de encuentro. 20 de marzo de 2018. Fundación AISGE, CENDA y Facultad de Derecho UH. "Originalidad y Novedad: obras derivadas y modelos de utilidad."
94. III Seminario Internacional "Derecho, Finanzas y Desarrollo". Panel: Transformaciones económicas en Cuba y Marco Regulatorio". Presentación: La empresa pública en el marco de las transformaciones de la economía cubana actual" 4, 5 y 6 de abril de 2018.
95. Jornada de Propiedad Intelectual. Universidad Nacional de Chimborazo. "La propiedad industrial en la sociedad del conocimiento. Panorama actual:" Del 17 al 19 de abril de 2018. Universidad Nacional de Chimborazo. Ecuador.
96. Congreso Internacional de Propiedad Industrial: "Las Políticas de Ciencia, Tecnología e Innovación. Especial referencia a las políticas de propiedad industrial y su reflejo en las universidades." Del 24 al 26 de abril 2018.
97. Evento Nacional de Asesores Jurídicos. Contraloría General de la República de Cuba. 9 "El control en el proceso de contratación económica nacional". 9 de mayo 2018.
98. Encuentro Internacional Justicia y Derecho. "Retos que afronta el Derecho Económico ante la actualización del modelo económico y social cubano." Del 23 al 25 de mayo de 2018.
99. Seminario Taller Relación Público –Privado. Red de Administración Pública y Centro de Estudio de la Administración Pública de la UH. Ponencia: La relación público – privado en los marcos de la actuación económica en Cuba en la actualidad. 13 de junio de 2018

100. "Primer Congreso Internacional de Derecho Penal 2018. Ponente: "Una mirada jurídico-económica del fenómeno de la corrupción" 8, 9 y 10 de octubre de 2018. Facultad de Derecho UNAM. México.
101. "XI Conferencia Internacional sobre Arbitraje y Mediación. Ponente: "El Arbitraje de la Organización Mundial de la Propiedad Intelectual (OMPI) 12 y 13 de noviembre de 2018.
102. Seminario Internacional de Propiedad Intelectual. Ponente: "Las políticas de ciencia tecnología e innovación y su reflejo en la propiedad industrial, en especial en las universidades cubanas". 13, 14 y 15 de noviembre de 2018.
103. IV Taller Internacional de Administración Pública "Los cambios Constitucionales y su influencia en la empresa pública cubana" 21 de noviembre de 2018.
104. Seminario Internacional de la Propiedad Industrial. Facultad de Derecho de la UH. Ponente: "Importancia de la PI y principales retos ante la actualización del modelo económico y social cubano" 13 y 14 de diciembre de 2018.
105. Seminario "La gestión del Conocimiento y la exportación en las redes de las Universidades Cubanas" "El uso de la PI en las empresas cubanas" 23 de enero de 2019. La Habana.
106. Congreso Internacional de Propiedad Industrial "El uso del Arbitraje de la OMPI en materia de Propiedad Industrial:" 24 al 26 de abril de 2019.
107. Evento Internacional Economía, Finanzas y Desarrollo "La Nueva Constitución económica cubana de 2019: Trascendencia de los cambios" 11 de abril de 2019.
108. Encuentro Cuba /España de Derecho de Trabajo y Seguridad Social "Retos ante los nuevos cambios legislativos en materia de empresarial en Cuba". 30 de mayo de 2019.

#### **Algunos Cursos de Postgrados recibidos:**

1. El Sistema de Dirección y Planificación de la Economía. 1982. UH
2. El Arbitraje Estatal en Cuba. 1983. Facultad de Derecho UH.
3. Curso de Idioma Ruso. Facultad preparatoria. 1983- 1984.
4. Curso de pedagogía. 1985. UH.
5. Curso de Filosofía Marxista leninista. 1985. UH.
6. Derecho Económico y Arbitraje Estatal. 1986. UH
7. Actualización para árbitros y especialistas en temas de Legislación Económica. 1987. Arbitraje estatal Nacional.
8. Informática Aplicada a las ciencias jurídicas. 1986. UH
9. Estudio Comparativo del Sistema Jurídico Civil en los países socialistas 1988. UH
10. Taller de Evaluación Curricular. 1991. Universidad Autónoma de México. Centro de investigaciones y servicios educativos.
11. Temas de derecho comercial Internacional. 1990. Instituto de Comercio Exterior.
12. Las empresas mixtas. Su regulación jurídica. 1992. UH.
13. Ciclo de conferencias ofrecidas por especialistas de la Universidad Autónoma de Madrid. Facultad de Derecho. UH. 1994.
14. Derecho Civil y Derecho Notarial. Impartido por el Dr. Sebastián Palmer Cabrera, notario español. UH 1994.
15. Derecho a la competencia. Universidad Carlos III Madrid. 1996.
16. Estados Unidos, La Revolución Bolivariana y el contexto actual de América Latina. 2009.
17. Imperialismo, Revolución y Relaciones Internacionales. 2009
18. Actualización sobre la Revolución Bolivariana. 2010

19. Introducción a la Ley de Patentes de EU y Aspectos Afines a la Ley de Propiedad Intelectual y la Ley de Secreto Empresarial. Diciembre 2011.
20. Taller Nacional sobre Cuestiones de Política Pública relacionadas con el Acuerdo sobre los ADPIC. Organización Mundial del Comercio. Abril 2016

**Ha impartido cursos de postgrados en:**

1. Doctorado de la Universidad de Valencia en Cuba.
2. Maestría Derecho de los Negocios de Barcelona en Cuba.
3. Maestría de Ciencia, tecnología y Sociedad. UH
4. Maestría de Administración de Negocios. Facultad de Economía.
5. Diplomado del MINBAS. Propiedad Industrial.
6. Diplomado a cuadros dirigentes del Poder Popular.
7. Maestría en Administración Pública. UH.
8. Especialidad en Asesoría Jurídica. Módulo de propiedad Industrial.
9. Maestría rectorada por la OCPI. Gestión de la Propiedad Intelectual EN Cuba y Venezuela.
10. Maestría de Derecho Civil. Módulo de Metodología de la Investigación y Propiedad Industrial. Bolivia
11. Diplomado Europeo de Administración y Dirección de Empresas.
12. Diplomado a dirigentes de empresas en Perfeccionamiento Empresarial.
13. Diplomado Administración Pública. Escuela de Cuadros Nacional. 2011 al 2014.
14. Diplomado Organización Mundial del Comercio. Octubre 2012.
15. Diplomado. Entrenamiento en materia de contratación económica. De junio 2012 a junio 2013.
16. Curso Contratación económica. Marzo 2013.
17. Maestría Derecho Constitucional y Administrativo. Módulo Empresas públicas y Derecho de la Competencia. 2012.
18. Curso: Negocios Conjuntos con Capital Extranjero. Noviembre 2012.
19. Diplomado. Derecho de los negocios Norteamericano. 2012
20. Maestría en Derecho Penal. Módulo de Metodología de la Investigación Social. Junio 2013. Guatemala.
21. Coordinadora de la Maestría de Derecho de la Economía iniciada en Enero 2014.
22. Miembro del Comité Académico de la Maestría Gestión de la Propiedad Intelectual. Desde 2000 hasta la fecha.
23. Maestría Derecho Constitucional y Administrativo. Desde 2013 hasta la fecha.
24. Entrenamiento en materia de contratación económica y solución de controversias. Junio 2014 hasta 2018. Coordinadora.
25. Diplomado en Administración Pública. Escuela Nacional de Cuadros del Estado y el Gobierno. Del 2011 hasta la fecha.
26. Especialidad en Administración Pública. Escuela Nacional de Cuadros del Estado y el Gobierno. 2012 al 2013 y 2013 al 2014. Módulo de Derecho.
27. Especialidad en Dirección y Gestión Empresarial. Escuela Nacional de Cuadros del Estado y el Gobierno. Del 2012 al 2014. Módulo de Derecho.
28. Maestría Propiedad Intelectual. Universidad Católica de Guayaquil. Módulos "Tratados Internacionales". Julio 2015.
29. Profesora y tutora del Doctorado de la Facultad de Derecho de la UH con la Universidad Católica de Guayaquil.
30. Coordinadora del Diplomado "Asesoramiento a las personas jurídicas" que se imparte en la ONBC.

31. Imparte conferencias en materia de contratación económica, propiedad intelectual e inversión extranjera a delegaciones de estudiantes y profesores de universidades norteamericanas y de otros países.
32. Postgrado "Novedades en materia de propiedad intelectual" Desde 2013 al 2018.
33. Profesora invitada en el Instituto de Estudios Políticos y Jurídicos. Grenoble. Francia. Diciembre 2017

#### **Otros datos de interés.**

1. Cursó un entrenamiento en Derecho Económico en el Instituto de Economía Bruno Leuchner de Berlín, Alemania. 1989.
2. Impartió docencia en la República de Cabo Verde en la especialidad de Derecho Económico y legislación económica. 1986 y 19991.
3. Tutora de múltiples trabajos de curso y de diploma de los estudiantes de la Facultad de Derecho en temas de su especialidad.
4. Obtuvo en dos ocasiones el Sello Forjadores del futuro por la relevante trayectoria investigativa.
5. Presidenta de la Comisión de Perfeccionamiento del plan de estudio de la Facultad de Derecho UH desde 1990 al 1993.
6. Presidenta de la Comisión de Carrera de la Facultad de Derecho desde 1995 al 2001.
7. Integrante del programa ALFA sobre Integración económica y Jurídica. estancia en Francia en 1999 como miembro e investigadora de la RED.
8. Cursó la Academia de la OMPI celebrada en La Habana en abril del 2000.
9. Ha realizado práctica profesional en diferentes centros: órganos del Sistema de Arbitraje Estatal, notaria desde 1994 hasta 2001.
10. Cursó estancia de investigación en la Facultad de Derecho, Universidad de Valencia, en el departamento de Derecho Mercantil en 1996 y en el 2016.
11. Recibió curso en Estocolmo en 1998 sobre Sistemas de Derecho y Derecho Económico para los países en vías de desarrollo.
12. Curso de Derecho de Autor de la OMPI. Universidad de los Andes, Mérida, Venezuela. 1999
13. Miembro de la Sección de Ciencias Sociales de la Comisión Nacional de Grados Científicos desde 1998 al 2002.
14. Vicepresidenta del Tribunal Permanente de Grados Científicos en Ciencias Jurídicas.
15. Impartición de ciclo de conferencias en la Facultad de Derecho Universidad de Valencia, 1996.
16. Obtuvo la Moneda de la propiedad Industrial concedida por la Oficina Cubana de la propiedad Industrial. 1999.
17. En los años 2015 y 2017 realizó una visita de intercambio académico a la Universidad de Gainesville en la Florida y en el 2017 a la Universidad de Texas.
18. Ha participado en la elaboración o dictámenes de varios proyectos legislativos en materia de Derecho Económico y Propiedad Intelectual.

#### ***Tutorías y oponencias de doctorado, maestría y especialidad. Miembro de tribunales de defensas doctorales y de colectivos científicos de predefensa.***

Ha formado tres doctores en ciencias jurídicas. Actualmente es tutora de 6 aspirantes. Ha sido tutora de múltiples tesis de maestrías y especialidades, así como

oponente y miembro de tribunales. Asimismo miembro de diferentes colectivos científicos de predefensas de maestrías y doctorados.

**Pertenencia actual a los Grupos de investigación:**

- *Grupo Universitario de Investigación Jurídica “Julio Fernández Bulté”*, Facultad de Derecho, Universidad de La Habana (abril 2012- ). Miembro Titular Fundador.

- Políticas institucionales y normativas para la protección, gestión y comercialización de las creaciones intelectuales en las universidades cubanas. Coordinadora, Año 2013 hasta la fecha.

-Los agentes económicos estatales y no estatales en la economía cubana actual. Coordinadora. Año 2013 hasta la fecha.

Programa Nacional de Economía: Investigación: Formas jurídicas organizativas de los sujetos de gestión estatales y no estatales en la economía cubana actual. Año 2017  
Presidenta de la Comisión de Ciencias Jurídicas de la Comisión de Implementación y Desarrollo desde marzo de 2019.



## **Anexo B**

MINISTERIO DE LA INDUSTRIA BASICA

RESOLUCION No. 023/92

POR CUANTO: El Decreto-Ley No. 67 de 19 de abril de 1983 de Organización de la Administración Central del Estado, por su artículo 53, incisos q) y r) faculta a los Jefes de los Organismos para dictar disposiciones de obligatorio cumplimiento para las entidades de su propio sistema y en el marco de su competencia para los demás Organismos y sus dependencias,

POR CUANTO: Mediante la Resolución No. 659 de fecha 19 de marzo de 1992 de la Comisión Nacional del Sistema de Dirección de la Economía se autoriza la fusión de la Unión del Petróleo con la Unión del Combustible, así como el cambio de nombre y traspaso de algunas entidades.

POR CUANTO: Por Acuerdo del Consejo de Estado de fecha 14 de mayo de 1983 fue designado el que resuelve Ministro de la Industria Básica.

POR TANTO: En uso de las facultades que me están conferidas,

RESUELVO :

PRIMERO: Fusionar la Unión del Petróleo con la Unión del Combustible, denominándose la resultante de la fusión Unión-Cuba-Petróleo, la que se denominará también en forma abreviada "CUPET", la cual estará subordinada a este Ministerio y estará integrada por las empresas y unidades que conformaban ambas Uniones.

SEGUNDO: Cambiar los nombres de las siguientes entidades:

- La Empresa Nacional de Geofísica se denominará Empresa de Geofísica.
- La Empresa de Gas Manufacturado de La Habana, se denominará Empresa de Gas Manufacturado.
- Las Empresas Productoras de Derivados del Petróleo de La Habana, de Santiago de Cuba y de Cabaiguán se denominarán respectivamente Empresa Refinería de Petróleo "Nico López", Empresa Refinería de Petróleo "Hermanos Díaz" y Empresa Refinería de Petróleo "Sergio Soto".
- Las Unidades Básicas denominadas Unidad de Distribución de Derivados del Petróleo de Isla de la Juventud y de Cienfuegos, Unidad de Transporte y Unidad Central de Almacenes se denominarán respectivamente Unidad Distribuidora de Combustibles de Isla de la Juventud, Unidad Distribuidora de Combustibles de Cienfuegos, Unidad de Mecanización y Unidad de Abastecimiento.

Los demás cambios de nombres aprobados por la Comisión Nacional del Sistema de Dirección de la Economía, serán aplicados posteriormente en resolución que a tal fin se dicte por el que resuelve.



TERCERO: Traspasar la Unidad de Fracturación, Cementación y Pruebas de Pozo para la Empresa de Geofísica.

CUARTO: Traspasar el Centro Politécnico del Petróleo para la Empresa de Perforación y Extracción de Petróleo del Centro.

QUINTO: La Unión resultante de la fusión que por la presente se dispone a todos los efectos legales, es continuadora y se subroga en el lugar y grado, de la Unión del Petróleo y de la Unión del Combustible.

SEXTO: La Dirección de la Unión Cuba-Petróleo "CUPET" no radica en ninguna de sus empresas y su dirección, organización y funcionamiento, así como las entidades que la conforman se registrarán por las disposiciones legales correspondientes y su estructura y plantilla serán aprobadas de acuerdo a lo dispuesto por el Comité Estatal de Trabajo y Seguridad Social.

SEPTIMO: La presente Resolución comenzará a regir a partir del 1ro. de Abril de 1992.

OCTAVO: Notifíquese a los Viceministros, al Director de la Unión Cuba-Petróleo, a los directores de las empresas y demás entidades, a la Junta Central de Planificación, a los Comités Estatales de Finanzas, Estadísticas, Trabajo y Seguridad Social, Banco Nacional de Cuba, Comisión Nacional y Comisiones Provinciales y de Isla de la Juventud del Sistema de Dirección de la Economía y a cuantas demás personas jurídicas proceda.

DADA en Ciudad de La Habana a los 25 días del mes de marzo de 1992 "AÑO 34 DE LA REVOLUCION"

Marcos Portal León  
MINISTRO



EXENTO  
Impuesto sobre documentos  
Ley 113, Título 4, Artículo 220  
Ministerio Finanzas y Precios

MINREX  
Ministerio de Relaciones Exteriores  
DACCRE

República de Cuba E 949600  
Ministerio de Relaciones Exteriores  
DACCRE

CERTIFICO: Que al parecer la firma que antecede del funcionario autorizante de este documento, es auténtica por la semejanza que guarda con la que obra en el registro y con la que él acostumbra a usar en sus actos oficiales.  
En fe de lo cual autorizo la presente con mi firma y el sello de este ministerio.  
Funcionario autorizado para certificar autenticaciones de firmas de documentos para su efecto legal en el exterior.

**Daisy Morejon Diaz**  
Dado en La Habana

 **MINREX**

19 SET. 2019



## **Anexo C**

# GACETA OFICIAL

DE LA REPUBLICA DE CUBA



Ley No. 59

Código Civil

OF. C. M.

# GACETA OFICIAL

## DE LA REPUBLICA DE CUBA

EXTRAORDINARIA

LA HABANA, JUEVES 15 DE OCTUBRE DE 1987

AÑO LXXXV

Imprenta: Zanja N° 352, esq. a Escobar. — Habana 2

Número 9 — Precio \$0.10

Página 39

### ASAMBLEA NACIONAL DEL PODER POPULAR

FLAVIO BRAVO PARDO, *Presidente de la Asamblea Nacional del Poder Popular de la República de Cuba.*

HIAGO SABER: Que la Asamblea Nacional del Poder Popular, en su sesión celebrada el día dieciséis de julio de 1987, correspondiente al primer periodo ordinario de sesiones de la tercera legislatura, ha aprobado lo siguiente:

POR CUANTO: El Código Civil que comenzó a regir en Cuba el 5 de noviembre de 1889 ha sido objeto de sucesivos cambios, los cuales adquirieron especial relevancia a partir de 1959 al iniciarse las transformaciones básicas en nuestra sociedad que condujeron a la asunción por parte del Estado de los medios e instrumentos fundamentales de producción.

POR CUANTO: Es necesario reelaborar el conjunto de nuestro Derecho Civil en armonía con la realidad socio-económica actual, incorporar a él nuevas instituciones, suprimir las que resultan inaplicables y acoger las más recientes contribuciones de la doctrina jurídica del socialismo, así como incorporar a este texto legal algunos contratos que no eran de naturaleza civil destinados a satisfacer necesidades de la población con el objeto de ofrecer a ésta las garantías inherentes a la legislación civil.

POR CUANTO: El nuevo Código Civil, además de garantizar y salvaguardar los intereses de las personas en sus relaciones jurídicas, debe fortalecer nuestro sistema económico y jurídico, estimular la ayuda mutua entre los miembros de la sociedad y reflejar la moral inherente a los intereses de la clase obrera.

POR TANTO: La Asamblea Nacional del Poder Popular, en uso de las atribuciones que le están conferidas en el inciso b) del artículo 73 de la Constitución de la República, aprueba la siguiente

#### LEY No. 59 CODIGO CIVIL

##### DISPOSICIONES PRELIMINARES

ARTICULO 1. El Código Civil regula relaciones patrimoniales y otras no patrimoniales vinculadas a ellas, en

tre personas situadas en plano de igualdad, al objeto de satisfacer necesidades materiales y espirituales.

ARTICULO 2. Las disposiciones del presente Código se interpretan y aplican de conformidad con los fundamentos políticos, sociales y económicos del Estado cubano expresados en la Constitución de la República.

ARTICULO 3. La ignorancia de los preceptos de este Código no excusa de su cumplimiento.

ARTICULO 4. Los derechos que este Código reconoce han de ejercerse de acuerdo con su contenido social y finalidad, y no es lícito su ejercicio cuando el fin perseguido sea causar daño a otro.

ARTICULO 5. Los derechos concedidos por este Código son renunciables, a no ser que la renuncia redunde en menoscabo del interés social o en perjuicio de tercero.

ARTICULO 6. La buena fe se presume cuando el Código la exige para el nacimiento o los efectos de un derecho.

ARTICULO 7. Las leyes civiles no tienen efecto retroactivo, a menos que en ellas se disponga lo contrario por razones de interés social o utilidad pública.

ARTICULO 8. Las disposiciones de este Código son supletorias respecto a materias civiles u otras reguladas en leyes especiales.

ARTICULO 9.1. Si en las leyes se habla de meses, semanas, días o noches, se entiende que los meses son de treinta días, las semanas de siete días, los días de veinticuatro horas, y las noches desde las seis pasado meridiano hasta las seis antemeridiano. Si los meses se determinan por sus nombres, se computarán por los días que respectivamente tengan.

2. Los plazos empiezan a contarse a partir del día siguiente a aquél en que ocurre el acontecimiento o hecho fijado para su inicio y se cuenta en ellos el día del vencimiento. Si el plazo fuere prorrogado, la prórroga comienza a contarse a partir del día siguiente a la terminación del plazo original.

3. Los términos civiles se computan en días naturales, salvo las excepciones dispuestas en la ley. Si el cumplimiento de una obligación o el ejercicio de un derecho es

2. El ejercicio de la capacidad se rige por las disposiciones de este Código y la legislación especial, según el caso.

3. El domicilio de las personas naturales es el que como tal consta en el registro oficial correspondiente.

#### SECCION SEGUNDA

##### Ejercicio de la capacidad jurídica civil

ARTICULO 29.1. La plena capacidad para ejercer los derechos y realizar actos jurídicos se adquiere:

a) por arribar a la mayoría de edad, que comienza a los 18 años cumplidos; y

b) por matrimonio del menor.

2. La ley, no obstante, puede establecer otras edades para realizar determinados actos.

ARTICULO 30. Tienen restringida su capacidad para realizar actos jurídicos, salvo para satisfacer sus necesidades normales de la vida diaria:

a) los menores de edad que han cumplido 10 años de nacidos, los que pueden disponer del estipendio que les ha sido asignado y, cuando alcancen la edad laboral, de la retribución por su trabajo;

b) los que padecen de enfermedad o retraso mental que no los priva totalmente de discernimiento; y

c) los que por impedimento físico no pueden expresar su voluntad de modo inequívoco.

ARTICULO 31. Carecen de capacidad para realizar actos jurídicos:

a) los menores de 10 años de edad; y

b) los mayores de edad que han sido declarados incapaces para regir su persona y bienes.

ARTICULO 32. La incapacidad de las personas referidas en los artículos anteriores se suple en la forma regulada en el Código de Familia y en la ley procesal civil.

#### SECCION TERCERA

##### Ausencia y presunción de muerte

ARTICULO 33.1. La persona natural que haya desaparecido de su domicilio sin tenerse indicios de su paradero durante más de un año, puede ser declarada ausente.

2. El declarado ausente es representado por su cónyuge y, a falta de éste, por un hijo mayor de edad, padre, abuelo o hermano, y si son varios los parientes del mismo grado y no hay acuerdo entre ellos, por el que, entre éstos, designe el tribunal. Excepcionalmente, y cuando existan razones que lo aconsejen, el tribunal puede designar personas distintas de las relacionadas anteriormente.

3. La ausencia es declarada judicialmente a instancia de parte interesada o del fiscal.

ARTICULO 34.1. Si transcurren tres años sin tenerse noticias del desaparecido, éste puede ser declarado presuntamente muerto, haya sido declarado ausente o no.

2. La declaración judicial de presunción de muerte se hace a instancia de parte interesada o de fiscal.

ARTICULO 35.1. La persona que haya desaparecido al producirse un desastre aéreo, marítimo o terrestre u otra calamidad pública o accidente, puede ser declarada presuntamente muerta después del transcurso de seis meses de ocurrido el referido acontecimiento.

2. Si la desaparición hubiere ocurrido en operaciones militares, el término se extenderá a un año.

ARTICULO 36.1. Declarada la presunción de muerte, queda expedito para los interesados el ejercicio de los mismos derechos que les hubieran correspondido de ser la muerte acreditada por certificación médica.

2. Los efectos de la declaración se retrotraen al momento en que se produjo el acontecimiento que hizo presumir la muerte o se tuvieron las últimas noticias del desaparecido.

ARTICULO 37. Si el declarado ausente o presuntamente muerto se presenta o se prueba su existencia, el tribunal anula la declaración de ausencia o presunción de muerte y dispone que, salvo los casos de excepción que establece la ley, se le restituya en todos sus derechos, y recobre sus bienes en el estado en que se encuentren y el precio de los enajenados o los adquiridos con él, pero no podrá reclamar frutos.

#### SECCION CUARTA

##### Derechos inherentes a la personalidad

ARTICULO 38. La violación de los derechos inherentes a la personalidad consagrados en la Constitución, que afecte al patrimonio o al honor de su titular, confiere a éste o a sus causahabientes la facultad de exigir:

a) el cese inmediato de la violación o la eliminación de sus efectos, de ser posible;

b) la retractación por parte del ofensor; y

c) la reparación de los daños y perjuicios causados,

#### CAPITULO II

##### PERSONAS JURIDICAS

ARTICULO 39.1. Las personas jurídicas son entidades que, poseyendo patrimonio propio, tienen capacidad para ser sujetos de derechos y obligaciones.

2. Son personas jurídicas, además del Estado:

a) las empresas y uniones de empresas estatales;

b) las cooperativas;

c) las organizaciones políticas, de masas, sociales y sus empresas;



- ch) las sociedades y asociaciones constituidas de conformidad con los requisitos establecidos en las leyes;
- d) las fundaciones, entendiéndose por tales el conjunto de bienes creado como patrimonio separado por acto de liberalidad del que era su propietario, para dedicarlos al cumplimiento de determinado fin permitido por la ley sin ánimo de lucro, y constituidas de conformidad con los requisitos establecidos en las leyes;
- e) las empresas no estatales autorizadas para realizar sus actividades; y
- f) las demás entidades a las que la ley confiere personalidad jurídica.

ARTICULO 40.1. La constitución, régimen y disolución de las personas jurídicas se establecen y regulan en la ley, sus estatutos y reglamentos.

2. La organización y el funcionamiento del Estado son los que se establecen en la Constitución de la República y en las leyes.

ARTICULO 41. Las personas jurídicas, para ejercer sus actividades, tienen la capacidad que determinen la ley y sus estatutos o reglamentos.

ARTICULO 42.1. Las personas jurídicas realizan sus actividades por medio de sus órganos de dirección legalmente designados o elegidos.

2. El procedimiento para la designación o elección de los órganos de dirección, se establece en sus estatutos o reglamentos y en las disposiciones legales correspondientes. En el caso del Estado se está a lo dispuesto en el apartado 2 del artículo 40.

3. Los actos realizados por dichos órganos en relación con las actividades de la persona jurídica, obligan a ésta.

4. Por los daños ocasionados a la persona jurídica o a tercero a causa de la gestión negligente de sus órganos, responden, además, personalmente, sus autores.

ARTICULO 43. El domicilio de las personas jurídicas es el determinado en la disposición legal que las crea, en sus estatutos o reglamentos y, en su defecto, el lugar donde esté establecida su representación legal o radique su órgano superior de dirección.

ARTICULO 44.1. Las personas jurídicas responden de sus obligaciones con los bienes que integran su patrimonio.

2. El patrimonio de las empresas estatales está integrado por los medios básicos, de rotación y financieros que les asigna el Estado. Estas empresas sólo responden de sus obligaciones con sus recursos financieros, dentro de las limitaciones establecidas en la legislación económica.

3. El Estado no responde de las obligaciones de otras personas jurídicas, ni éstas de las de aquél.

### TITULO III

#### OBJETO DE LA RELACION JURIDICA

ARTICULO 45.1. El objeto de la relación jurídica es un bien, una prestación o un patrimonio, que sean de lícita apropiación o recepción.

2. Por su objeto, las relaciones jurídicas pueden ser: sobre bienes materiales, de obligaciones y de sucesiones.

ARTICULO 46.1. Las relaciones jurídicas sobre bienes materiales recaen directamente sobre cosas y confieren a su titular, frente a cualquier otra persona, la facultad de ejercitar su derecho dentro de los límites establecidos por la ley.

2. Los bienes materiales pueden ser inmuebles o muebles; son inmuebles la tierra, los demás bienes incorporados a ella y los que se unen de manera permanente a los antes referidos para su explotación o utilización. Son bienes muebles todos los demás.

3. Las relaciones jurídicas de obligaciones facultan a una persona a exigir de otra una prestación. La prestación puede consistir en dar, hacer o no hacer alguna cosa.

4. Las relaciones jurídicas de sucesiones implican la transmisión del patrimonio de una persona, por el hecho de su muerte, a otra.

### TITULO IV

#### CAUSAS DE LA RELACION JURIDICA

##### CAPITULO I

##### DISPOSICION GENERAL

ARTICULO 47. Las causas que generan la relación jurídica son:

- a) los acontecimientos naturales;
- b) los actos jurídicos;
- c) los actos ilícitos;
- ch) el enriquecimiento indebido; y
- d) las actividades que generan riesgo.

##### CAPITULO II

##### ACONTECIMIENTOS NATURALES

ARTICULO 48. Los acontecimientos naturales son hechos que ocurren con independencia de la voluntad del hombre y tienen los efectos jurídicos que la ley les atribuye.

##### CAPITULO III

##### ACTO JURIDICO

##### SECCION PRIMERA

##### Concepto

ARTICULO 49.1. El acto jurídico es una manifestación lícita, de voluntad, expresa o tácita, que produce los

## **Anexo D**

# GACETA OFICIAL

DE LA REPÚBLICA DE CUBA

MINISTERIO DE JUSTICIA

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EXTRAORDINARIA LA HABANA, MIÉRCOLES 13 DE DICIEMBRE DE 2017 AÑO CXV

Sitio Web: <http://www.gacetaoficial.cu/>—Calle Zanja No. 352 esquina a Escobar, Centro Habana

Teléfonos: 7878-3849, 7878-4435 y 7873-7962

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Número 58

Página 1077

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GOC-2017-841-EX58

**DECRETO No. 335**

POR CUANTO: A partir de los cambios introducidos en el sistema empresarial como parte del proceso de actualización del modelo económico cubano y la decisión de extender las funciones, facultades, conceptos y principios propios del perfeccionamiento empresarial a todo el sistema empresarial estatal, resulta necesario dictar una disposición que dé cumplimiento a ello y a su vez actualice y compile las normas vigentes a estos efectos.

POR TANTO: El Consejo de Ministros en el ejercicio de las atribuciones que le están conferidas por el inciso k) del artículo 98, de la Constitución de la República de Cuba, decreta lo siguiente:

**DEL SISTEMA EMPRESARIAL ESTATAL CUBANO****CAPÍTULO I****ÁMBITO DE APLICACIÓN Y PRINCIPIOS GENERALES**

ARTÍCULO 1.1. El presente Decreto es de aplicación a todas las entidades empresariales estatales cubanas.

2. Las entidades que aplican el Sistema de Dirección y Gestión Empresarial se rigen además por las disposiciones específicas del sistema empresarial estatal cubano y por su base reglamentaria interna.

ARTÍCULO 2. El sistema empresarial estatal cubano está integrado, fundamentalmente, por organizaciones superiores de dirección empresarial, empresas, unidades empresariales de base.

ARTÍCULO 3. La constitución de organizaciones superiores de dirección empresarial, empresas y unidades empresariales de base se sustenta en mayor racionalidad económica, simplificación de los procesos de dirección y obtención de mejores resultados productivos y de servicios; sin que el volumen de operaciones, la cantidad de trabajadores o cualquier otro indicador influyan directamente en esa decisión.

**CAPÍTULO II****LAS ORGANIZACIONES SUPERIORES DE DIRECCIÓN EMPRESARIAL**

ARTÍCULO 4. Las organizaciones superiores de dirección empresarial surgen por necesidad de la dirección del Gobierno en sus diferentes instancias o para sustentar la separación de las funciones estatales de las empresariales, lo que permite organizar las empresas en correspondencia con los intereses estatales, sus semejanzas tecnológicas y productivas; flexibilizar los procesos de dirección, lograr prontitud en la solución de problemas y fortalecer el control; así como garantizar un vínculo efectivo de la investigación con la producción y la mejor utilización y preservación del potencial científico.

ARTÍCULO 5.1. Las organizaciones superiores de dirección empresarial se crean a instancias del Consejo de Ministros, los jefes de organismos de la Administración Central del Estado o por los presidentes de los consejos de la Administración Provincial del Poder Popular y Municipal Isla de la Juventud, según corresponda, de conformidad con la legislación vigente y según el procedimiento establecido.

2. El órgano u organismo de la Administración Central del Estado que crea la organización superior de dirección empresarial dispone sobre cualquier otro movimiento organizativo, de conformidad con la legislación vigente y según el procedimiento establecido.

ARTÍCULO 6.1. Las organizaciones superiores de dirección empresarial se integran por empresas; tienen personalidad jurídica y patrimonio propio; financian sus gastos con los aportes de las entidades que la agrupan; y su gestión tributa en beneficio de estas.

2. Asimismo, las organizaciones superiores de dirección empresarial responden por las obligaciones que le son inherentes con sus recursos financieros y no asumen las contraídas por las entidades que las integran.

ARTÍCULO 7.1. Las organizaciones superiores de dirección empresarial pueden estar integradas por entidades de ciencia, tecnología e innovación autofinanciadas, con el objetivo de lograr una gestión integral y económicamente sostenible de la ciencia, la tecnología y la innovación.

2. Además pueden patrocinar sociedades mercantiles de capital totalmente cubano.

ARTÍCULO 8.1. Las organizaciones superiores de dirección empresarial se organizan en Grupos o Uniones, en correspondencia con las características organizativas y tecnológicas de las entidades que la integran.

2. Se denomina Grupo Empresarial a la organización superior de dirección empresarial integrada por empresas con diferentes estructuras de producción, tecnológicas, de servicios, investigación y comercialización; sin que tengan, necesariamente, una interrelación directa entre sí.

3. Se denomina Unión a la organización superior de dirección empresarial integrada por empresas que por sus características organizativas, tecnológicas, productivas y económicas tienen una alta interrelación y dependencia entre sí, que pueden o no ser parte de un sistema integrado. Corresponde al Presidente o Director General de la Unión definir cuáles empresas de dicha organización forman parte de este sistema, así como las consecuencias económicas y financieras que se derivan de ello.

ARTICULO 9. La Unión que con sus empresas constituya un sistema integrado, cubre sus gastos con sus ingresos y como resultado obtiene utilidades a partir de su propia actividad económica. En estos casos, la Unión y sus empresas establecen relaciones monetario-mercantiles entre sí.

ARTÍCULO 10.1. Las organizaciones superiores de dirección empresarial ejecutan funciones de dirección y control con respecto a las entidades que la integran, sin intervenir en su gestión y con estricto respeto a la autonomía de aquellas; para el cumplimiento de lo anterior cuentan con una estructura de dirección reducida.

2. La gestión de dirección se centra en cuestiones estratégicas vinculadas a la definición y cumplimiento de objetivos, evaluación y aprobación de planes, sistema de trabajo con los cuadros, cumplimiento del objeto social, creación de reservas provenientes de las utilidades retenidas, así como en el desarrollo, investigación y obtención de nuevos productos y servicios.

3. El control se ejerce, prioritariamente, en los resultados integrales de toda la organización, así como en el uso de los recursos asignados centralmente por el Gobierno.

4. En el caso particular de la Unión ejecutan además las referidas funciones sobre la producción y los servicios.

ARTÍCULO 11. Las organizaciones superiores de dirección empresarial adquieren la categoría que confiere el Ministerio de Trabajo y Seguridad Social, en correspondencia con la que posean las empresas que la integran.

### CAPÍTULO III LA EMPRESA

ARTÍCULO 12.1. La empresa estatal es una entidad con personalidad jurídica y patrimonio propio, creada para la producción de bienes y la prestación de servicios, a los efectos de cumplir de manera eficiente su gestión empresarial, conforme al plan anual aprobado.

2. Cubre sus gastos con sus ingresos; cumple con los aportes destinados al Estado y reserva recursos para su propio desarrollo y beneficio.

3. Es de propiedad estatal y se integra a organizaciones superiores de dirección empresarial.

4. No puede subordinarse a otra empresa ni tener pérdidas.

5. Responde por las obligaciones que le son inherentes con sus recursos financieros y no asume las contraídas por la organización superior de dirección empresarial a la que se integra.

ARTÍCULO 13. La empresa se crea, traspasa, fusiona, transforma o extingue por disposición del Presidente o Director General de la organización superior de dirección empresarial, jefe del organismo de la Administración Central del Estado, o Presidente del Consejo de la Administración Provincial del Poder Popular y del Municipio Especial Isla de la Juventud, previa autorización del Ministro de Economía y Planificación, según el procedimiento establecido a tales efectos.

ARTICULO 14. La empresa se organiza por procesos; unos garantizan la ejecución de funciones de regulación y control; otros materializan la producción de bienes, la prestación de servicios, la comercialización, el mantenimiento y la logística, según corresponda.

ARTICULO 15. La empresa es materialmente responsable por los daños y perjuicios que ocasione a otras empresas, órganos, organismos de la Administración Central del Estado e instituciones estatales u otras entidades, a la ciudadanía, a los recursos naturales o al medio ambiente. En consecuencia, está obligada a restituirlos, repararlos o indemnizarlos, según corresponda.

ARTICULO 16. Las empresas son categorizadas según lo establecido a estos efectos por el Ministerio de Trabajo y Seguridad Social.

### CAPÍTULO IV DISPOSICIONES COMUNES A LAS ORGANIZACIONES SUPERIORES DE DIRECCIÓN EMPRESARIAL Y A LAS EMPRESAS

ARTÍCULO 17.1. La disposición que cree, traspase, fusione, transforme, extinga o ejecute cualquier otro movimiento organizativo de una organización superior de dirección

empresarial o empresa, se notifica por la autoridad que la dicta a la entidad correspondiente.

2. Los movimientos organizativos a que se refiere el Apartado anterior, así como el domicilio social son de obligatoria inscripción o actualización en el Registro Estatal de Empresas y Unidades Presupuestadas por el Presidente o Director General de la organización superior de dirección empresarial o empresa, según corresponda.

3. En el caso de la creación, la inscripción otorga la personalidad jurídica a la entidad creada y se constituye como centro contable e informante.

4. La organización superior de dirección empresarial o empresa se inscribe, además, en los registros públicos que correspondan, de acuerdo con lo establecido en la legislación vigente.

ARTÍCULO 18. Las organizaciones superiores de dirección empresarial, en lo que corresponda, se insertan en el proceso de planificación de actividades que tiene establecido el país y las empresas, lo hacen a partir de las incidencias que determine la organización superior de dirección empresarial a la que se integran o el órgano u organismo al que se subordinan.

ARTÍCULO 19. El consejo de dirección es el principal órgano de dirección de la organización superior de dirección empresarial y de la empresa.

#### CAPÍTULO V

#### LAS UNIDADES EMPRESARIALES DE BASE

ARTÍCULO 20.1. Las unidades empresariales de base son divisiones internas que se crean por la organización superior de dirección empresarial o la empresa, para organizar los procesos de producción de bienes y prestación de servicios, actúan con independencia relativa, se subordinan al jefe de la entidad que las crea y no tienen personalidad jurídica ni patrimonio propio.

2. La unidad empresarial de base es la única estructura a partir de la cual se organizan todos los procesos de producción o de prestación de servicios; puede crearse con carácter temporal o permanente, en correspondencia con las características del proceso que realicen.

3. En las unidades empresariales de base creadas por organizaciones superiores de dirección con destino a prestar servicios a terceros, se valora si resulta conveniente, organizativa y económicamente; integrarla a una empresa que realice funciones similares o afines, convertirla en empresa independiente o mantenerla como unidad empresarial de base.

ARTÍCULO 21. Al diseñar las unidades empresariales de base, el Director de la entidad que las crea, garantiza que no se produzcan contradicciones en las denominaciones de las estructuras y de los cargos utilizados, ni en las concepciones organizativas con las que se crean y verifica que cada una responda a uno o a varios de los procesos definidos en la organización.

ARTÍCULO 22.1. Las unidades empresariales de base se caracterizan por tener autonomía controlada, a partir de los límites que se establecen para el ejercicio de su gestión económica corriente; todos sus ingresos pertenecen a la entidad que las crea, y lo que produzca tributa centralmente a los resultados de aquella.

2. Pueden funcionar bajo el principio de cubrir sus gastos con sus ingresos, y aportar un margen de beneficio a la empresa o a la organización superior de dirección empresarial, según corresponda, o no producir ingresos, en cuyo caso sus gastos son financiados a partir de los ingresos de la entidad que las crea.

3. Las funciones de la unidad empresarial de base y las facultades de sus directores les son expresamente definidas y delegadas por el jefe de la organización superior de dirección empresarial o de la empresa, según corresponda.

4. Las unidades empresariales de base pueden constituir centros informantes en la provincia donde radiquen, sin que ello signifique duplicidad en la estadística del país.

ARTÍCULO 23.1. En la disposición por la que se crea una unidad empresarial de base se establece:

1. Denominación de la unidad empresarial de base y funciones que se le asignan;
2. facultades delegadas al jefe de la unidad;
3. estructura organizativa y denominación hasta nivel de brigadas;
4. plantilla de cargos;
5. sistemas de pago a aplicar;
6. presupuesto de ingresos y gastos, según corresponda con las operaciones de la unidad;
7. si opera cuenta bancaria o no y las especificidades de esta;
8. los registros contables que lleva la unidad; y
9. otros aspectos que se consideren necesarios.

2. La denominación específica de una unidad empresarial de base se adecua a las características de la actividad que realiza; adopta la más conveniente para identificar su objetivo, que puede ser: unidad básica; fábrica; establecimiento; agencia; complejo; división; sucursal; granja agropecuaria; dirección integral de proyecto; brigada independiente u otras que se estime pertinente.

**CAPÍTULO VI**  
**FUNCIONES DE LAS ORGANIZACIONES**  
**SUPERIORES DE DIRECCIÓN EMPRESARIAL Y FACULTADES DE SUS**  
**PRESIDENTES O DIRECTORES GENERALES**  
**SECCIÓN PRIMERA**

**Funciones de las organizaciones superiores de dirección empresarial**

ARTÍCULO 24. Las organizaciones superiores de dirección empresarial tienen las funciones siguientes:

1. Mantenerse actualizadas y cumplir la legislación vigente, particularmente aquella aplicable en su ámbito de competencia;
2. elaborar e implantar la base reglamentaria a aplicar en la organización superior de dirección empresarial;
3. realizar periódicamente diagnósticos de la situación de la organización superior de dirección empresarial y elaborar los planes de acción que permitan resolver los problemas existentes;
4. controlar sistemáticamente en las empresas que la integran la implantación de los distintos sistemas de la gestión empresarial;
5. elaborar y actualizar la estrategia integral de la organización superior de dirección empresarial; evaluar su cumplimiento en el consejo de dirección; tomar las medidas necesarias para rectificar desviaciones; así como orientar y controlar el cumplimiento de este aspecto en las empresas que la integran;
6. determinar, de conjunto con los trabajadores, los valores que distinguen y deben jerarquizarse en la organización superior de dirección empresarial;
7. elaborar cada año los objetivos a alcanzar en la organización superior de dirección empresarial, en correspondencia con la estrategia empresarial aprobada, y controlar periódicamente su cumplimiento;
8. dirigir al personal y orientar las acciones de la organización superior de dirección empresarial para el cumplimiento eficiente de la misión asignada;
9. diseñar el funcionamiento de la organización superior de dirección empresarial sobre la base de estructuras planas y por procesos, adecuadas a su tecnología y misión;
10. evaluar los traspasos de una unidad empresarial de base de una empresa hacia otra de su misma organización superior de dirección empresarial o entre empresas que no pertenecen a la misma organización superior de dirección empresarial;
11. controlar que las empresas que la integran produzcan y presten sus servicios en correspondencia con lo aprobado en el objeto social;
12. establecer las funciones y las facultades que debe desarrollar cada nivel de dirección de la organización superior de dirección empresarial, en correspondencia con la estructura establecida, y seleccionar el personal idóneo para el desempeño de estas;
13. evaluar el funcionamiento de la organización superior de dirección empresarial y de las empresas que lo integran, lo que incluye el análisis para la creación, extinción, traspaso o fusión de estas últimas;
14. garantizar una estrecha colaboración entre las organizaciones políticas y sindicales, y las empresas, órganos y organismos de la Administración Central del Estado y consejos de la Administración Provincial del Poder Popular con los que tenga relaciones;
15. reglamentar y aplicar el funcionamiento de los órganos de dirección colectiva de la organización superior de dirección empresarial;
16. programar las reuniones y otras actividades principales a desarrollar en la organización superior de dirección empresarial;
17. rendir cuentas periódicamente a la instancia correspondiente del desempeño y del resultado de la gestión de toda la organización; organizar el proceso de rendición de cuentas en las diferentes áreas de la organización superior de dirección empresarial y empresas ante su consejo de dirección;

18. diseñar e implantar el procedimiento que organiza el sistema de trabajo con los cuadros de la organización superior de dirección empresarial y sus reservas, en correspondencia con los lineamientos y las disposiciones que a estos efectos se emiten por el Gobierno; así como orientar y controlar el cumplimiento de este aspecto en las empresas;
19. elaborar, de conjunto con la organización sindical, el reglamento para la estimulación moral de los trabajadores de la organización superior de dirección empresarial;
20. diseñar, armonizar, implementar, autocontrolar y actualizar de forma sistemática, el sistema de control interno, conforme a sus características, competencias y atribuciones institucionales, e instar a los trabajadores a que participen en toda la gestión de este; determinar riesgos y tomar medidas para evitar daños a la propiedad estatal;
21. garantizar el desarrollo de la función de auditoría en las empresas y entidades que integran la organización superior de dirección empresarial, en correspondencia con las normas establecidas al respecto;
22. elaborar e implantar, de conjunto con la organización sindical, el sistema de atención al hombre en la organización superior de dirección empresarial;
23. elaborar el reglamento que organiza el mantenimiento de inmuebles, muebles, medios y equipos en la organización superior de dirección empresarial, y controlar sistemáticamente su cumplimiento;
24. elaborar el procedimiento para la organización de los abastecimientos y las compras de insumos o productos para la actividad de la organización superior de dirección empresarial;
25. aplicar el sistema de gestión de la calidad de la organización superior de dirección empresarial, certificándolo o avalándolo con las entidades autorizadas, según cronograma elaborado a estos efectos;
26. elaborar el manual de la calidad de la organización superior de dirección empresarial;
27. organizar y reglamentar, en los casos que corresponda, el funcionamiento del Consejo de Calidad en la organización superior de dirección empresarial;
28. elaborar las normas de consumo material y los índices de intensidad energética en la organización superior de dirección empresarial;
29. determinar, de conjunto con la organización sindical, los cargos de las categorías de operarios, técnicos, trabajadores administrativos y de servicios que por sus características son designados en la organización superior de dirección empresarial, así como aquellos cargos cuya ocupación determina la condición de funcionarios;
30. garantizar que el personal de la organización superior de dirección empresarial desempeñe y desarrolle sus actividades de acuerdo con las exigencias establecidas para cada cargo;
31. organizar el trabajo en la organización superior de dirección empresarial, según la carga de labores y sobre la base del perfil amplio; elaborar los profesiogramas a partir de las competencias de los puestos de trabajo en los casos que corresponda y priorizar los puestos claves;
32. diseñar las medidas necesarias a implantar para fortalecer la disciplina en la organización superior de dirección empresarial;
33. determinar los diferentes salarios de la escala a aplicar a los cuadros, en correspondencia con la categoría aprobada para la organización superior de dirección empresarial; garantizar que no se produzcan incongruencias salariales;
34. evaluar y determinar el tratamiento salarial a aplicar a los especialistas principales de la organización superior de dirección empresarial, cuando corresponda;
35. elaborar y controlar el cumplimiento del reglamento de estimulación en pesos convertibles (CUC) de la organización superior de dirección empresarial, en los casos que corresponda;
36. organizar y controlar en la organización superior de dirección empresarial el sistema de seguridad y protección; planificar medidas para preservar los equipos, medios, materiales e información;
37. confeccionar y mantener actualizado el plan de las demandas de tiempo de paz para los órganos de la defensa, la reserva estatal y la defensa civil;



38. confeccionar y conciliar los planes de la demanda en situaciones excepcionales con los órganos de la defensa;
39. confeccionar y compatibilizar con los órganos de la defensa civil los planes contra catástrofes;
40. diseñar e implantar el sistema de inteligencia empresarial, que permita la actualización de los conocimientos del personal de la organización superior de dirección empresarial;
41. garantizar, en los casos que corresponda, el cumplimiento de lo establecido en materia de propiedad industrial y de derecho de autor en la organización superior de dirección empresarial;
42. apoyar el movimiento de innovadores y racionalizadores, así como promover la generalización de las mejores experiencias surgidas en las empresas;
43. dirigir, coordinar y controlar el proceso de elaboración del plan anual con la participación de los trabajadores desde su concepción inicial, e introducir aquellas medidas propuestas que sean factibles;
44. elaborar el presupuesto de gastos de la organización superior de dirección empresarial y determinar las necesidades de financiamiento a asumir por las empresas; controlar periódicamente su ejecución y tomar las medidas para garantizar el ahorro;
45. analizar los proyectos de planes anuales de las empresas y exigir el incremento de la eficiencia, de los aportes al Estado, del encargo estatal y la reducción de los gastos;
46. presentar y defender el plan anual de las empresas en la Junta de Gobierno, y posteriormente en el órgano u organismo el plan consolidado; de no estar creada la Junta se presenta este último al órgano u organismo correspondiente;
47. desagregar el plan entre las empresas que la integran, en interés de su cumplimiento y control;
48. analizar periódicamente con los trabajadores los resultados obtenidos en la gestión de la organización superior de dirección empresarial, evaluar el cumplimiento del presupuesto de gastos aprobado, los índices financieros obtenidos y los indicadores directivos y límite en las empresas. Adoptar las medidas para erradicar las desviaciones;
49. organizar el funcionamiento del sistema de contratación económica de la organización superior de dirección empresarial; y definir su procedimiento, así como la creación del órgano consultivo si corresponde;
50. elaborar el manual de contabilidad de la organización superior de dirección empresarial y tomar las medidas organizativas para su correcto funcionamiento;
51. emitir periódicamente los estados financieros y controlar este aspecto en las empresas;
52. garantizar que los sistemas contable-financieros soportados en tecnologías de la información que utilizan las empresas sean compatibles y estén certificados por la autoridad competente;
53. certificar los estados financieros de la organización superior de dirección empresarial con entidades autorizadas y exigir el cumplimiento de este aspecto en las empresas que la integran;
54. organizar racionalmente controles integrales a las empresas;
55. elaborar y controlar sistemáticamente el cumplimiento del Plan de Prevención de Riesgos en la organización superior de dirección empresarial;
56. evaluar con cada empresa los resultados deficientes en la gestión, demostrados en auditorías y controles; analizar las causas de las deficiencias detectadas y las medidas disciplinarias, laborales, técnicas, económicas, organizativas y salariales que procedan;
57. organizar la actividad de tesorería, teniendo en cuenta las características, condiciones y la necesidad real de asumirla en la organización superior de dirección empresarial;
58. garantizar en tiempo y forma, según lo dispuesto en cada caso, el pago de los tributos correspondientes;
59. documentar la totalidad de las cuentas por cobrar y pagar; establecer convenios de cobros y pagos con clientes y suministradores, en los casos que procedan;
60. analizar las propuestas de las empresas para la creación de las reservas provenientes de las utilidades después del impuesto y sus cuantías, según lo dispuesto a estos efectos por el organismo correspondiente;

61. determinar el monto y los conceptos para la utilización de la depreciación como fuente propia para financiar nuevas inversiones;
62. utilizar y administrar correctamente los recursos financieros y materiales de la organización superior de dirección empresarial;
63. cumplir con calidad las orientaciones establecidas en el uso de las monedas con que opera;
64. formar y aplicar los precios y tarifas que les correspondan; orientar y controlar su correcta formación en las empresas;
65. organizar el sistema de información que incluya los requerimientos informativos de las empresas que la integran, en correspondencia con lo establecido; elaborar el reglamento de información interna y externa; así como los cuadros de mando de la información de cada jefe de la organización superior de dirección empresarial;
66. elaborar el sistema de informatización y automatización de la gestión en correspondencia con las normas generales establecidas;
67. desagregar entre las empresas que las integran un monto para inversiones no nominales, según corresponda;
68. analizar las existencias de inventarios ociosos y lento movimiento de toda la organización para la elaboración de los planes anuales;
69. analizar las propuestas de las empresas integradas sobre el destino de los activos fijos tangibles que administran;
70. evaluar los estudios de factibilidad de inversiones en los casos que corresponda;
71. diseñar, de conjunto con las empresas que la integran, la política de exportaciones de productos y servicios de toda la organización superior de dirección empresarial;
72. diseñar el sistema de comunicación empresarial a implantar en la organización superior de dirección empresarial, expresados en el manual de gestión de comunicación y el manual de identidad corporativa; y
73. cualquier otra que se disponga legalmente.

#### SECCIÓN SEGUNDA

##### **Facultades de los presidentes o directores generales de las organizaciones superiores de dirección empresarial**

ARTÍCULO 25. Los presidentes o directores generales de las organizaciones superiores de dirección empresarial son sus representantes legales y tienen las facultades siguientes:

1. Decidir las acciones a tomar en la organización superior de dirección empresarial, que garanticen el conocimiento y cumplimiento de la legislación establecida en el país;
2. dictar la base reglamentaria y otras disposiciones que garanticen el cumplimiento de las leyes y normas jurídicas;
3. aprobar los diagnósticos de la organización superior de dirección empresarial y los planes de acción que permitan resolver las deficiencias detectadas;
4. proponer a la Junta de Gobierno la estrategia integral de la organización superior de dirección empresarial, que incluye, entre otros, los objetivos estratégicos y el sistema de valores a implantar, así como exigir su cumplimiento en las empresas. Aprobar la estrategia en los casos en que no exista Junta de Gobierno;
5. aprobar los objetivos anuales y definir las acciones para garantizar el cumplimiento eficiente de las tareas asignadas a la organización superior de dirección empresarial;
6. aprobar la estructura y plantilla para la oficina central de la organización superior de dirección empresarial;
7. aprobar el traspaso de unidades empresariales de base de una empresa a otra integrada a la propia organización superior de dirección empresarial;
8. proponer para su aprobación al Ministro de Economía y Planificación, al organismo de la Administración Central del Estado o al Consejo de la Administración Provincial del Poder Popular, según corresponda, el traspaso de unidades empresariales de base subordinadas a empresas integradas a otras organizaciones superiores de dirección empresarial;
9. presentar al Ministro de Economía y Planificación o proponer al organismo o al Consejo de la Administración Provincial del Poder Popular, según corresponda, la creación, extinción, traspaso o fusión de empresas en correspondencia con lo establecido;
10. aprobar las funciones de las áreas de regulación y control de la organización superior de dirección empresarial; delegar facultades a cada jefe;

11. escoger su equipo de dirección y designar los cuadros que pertenecen a su relación de cargos o proponerlos según corresponda, oído el parecer de la Comisión de Cuadros y con arreglo a las disposiciones vigentes, así como designar los cuadros de las empresas en los casos que les compete;
12. aprobar las acciones para fortalecer las relaciones entre la dirección de la organización superior de dirección empresarial, las organizaciones políticas, sindicales y otras instituciones del Gobierno y el Estado;
13. crear los órganos de dirección en la organización superior de dirección empresarial y dictar el reglamento para su funcionamiento;
14. aprobar el plan de trabajo anual y mensual de la organización superior de dirección empresarial y el de los directores de las empresas que la integran;
15. aprobar el plan de rendición de cuentas ante el consejo de dirección, sobre la gestión de las áreas de la organización superior de dirección empresarial y de las empresas que la integran, así como los planes de medidas derivados de la rendición de cuentas;
16. aprobar el procedimiento que organiza el sistema de trabajo con los cuadros y sus reservas de la organización superior de dirección empresarial;
17. aprobar las medidas que correspondan para implantar el sistema de estimulación moral a los trabajadores de la organización superior de dirección empresarial y dictar su reglamento;
18. aprobar las acciones a implantar que garantizan la participación de los trabajadores en la dirección, así como el procedimiento para ello;
19. aprobar el sistema de control interno y las medidas correctivas para su restablecimiento cuando corresponda;
20. aprobar el sistema de atención al hombre a implantar en la organización superior de dirección empresarial;
21. aprobar el reglamento de mantenimiento de los muebles, inmuebles, medios, equipos, instrumentos y herramientas de trabajo de la organización superior de dirección empresarial y el plan anual de mantenimiento;
22. aprobar el procedimiento para la organización de los abastecimientos y las compras de insumos o productos para la actividad de la organización superior de dirección empresarial;
23. aprobar el manual de calidad de la organización superior de dirección empresarial;
24. crear, en los casos que corresponda, el Consejo de la Calidad en la organización superior de dirección empresarial y los grupos de mejoras a este nivel;
25. aprobar las normas de consumo material de la organización superior de dirección empresarial;
26. aprobar los cargos cuya ocupación determina la categoría de funcionarios en la organización superior de dirección empresarial;
27. exigir que el personal de la organización superior de dirección empresarial y de las empresas desempeñen y desarrollen sus actividades de acuerdo con las exigencias establecidas para cada cargo;
28. aprobar los puestos claves de la organización superior de dirección empresarial y elaborar los profesiogramas a partir de las competencias de los puestos de trabajo en los casos que corresponda;
29. aplicar medidas disciplinarias a los trabajadores de la organización superior de dirección empresarial, así como a los directores generales de las empresas que la integran;
30. aprobar el salario escala de los cuadros, en correspondencia con los grupos de la escala única establecida y la categoría aprobada a la organización superior de dirección empresarial;
31. aprobar el tratamiento salarial a los trabajadores designados como especialistas principales de las áreas de regulación y control de la organización superior de dirección empresarial;
32. dictar el reglamento interno de estimulación en pesos convertibles (CUC) de la organización superior de dirección empresarial, de estar aprobado;
33. aprobar el sistema de seguridad y protección de la organización superior de dirección empresarial;
34. aprobar el plan de demanda de tiempo de paz en la organización superior de dirección empresarial;

35. aprobar las medidas para el cumplimiento de los planes de la demanda en situaciones excepcionales;
36. aprobar los planes de reducción de desastres e incluir en los anuales las necesidades de la defensa;
37. proponer al organismo competente que se autorice el pago por concepto de interés económico social, antigüedad y otros de similar naturaleza;
38. aprobar las medidas que integran el sistema de inteligencia empresarial;
39. aprobar los lineamientos generales para definir la política a seguir en la organización superior de dirección empresarial, relativa a la propiedad industrial y el derecho de autor;
40. aprobar el procedimiento de la planificación empresarial en la organización superior de dirección empresarial;
41. aprobar, de las medidas planteadas por los trabajadores, las que correspondan aplicar en el proceso de elaboración del plan;
42. aprobar el monto a financiar por las empresas para sufragar los gastos en pesos cubanos (CUP) de la organización superior de dirección empresarial, en correspondencia con el presupuesto de gastos;
43. proponer el plan anual consolidado al órgano u organismo correspondiente para su aprobación; aprobar el plan anual de cada empresa, los indicadores directivos y límite, así como sus modificaciones, siempre que no resulte una modificación de los indicadores directivos aprobados para la organización superior de dirección empresarial;
44. aprobar el plan de medidas que se genere de los análisis efectuados con los trabajadores sobre el cumplimiento del presupuesto de gastos de la organización superior de dirección empresarial;
45. aprobar los acuerdos de las reuniones trimestrales para el análisis de los resultados económicos y financieros de las empresas;
46. firmar contratos económicos para las operaciones propias de la organización superior de dirección empresarial; establecer el procedimiento para la contratación económica y crear, en los casos que corresponda, el órgano consultivo para su análisis y evaluación;
47. aprobar el manual de contabilidad;
48. aprobar los estados financieros de la organización superior de dirección empresarial;
49. aprobar los sistemas contable-financieros, soportados en tecnologías de la información certificados, a utilizar en la actividad contable de la organización superior de dirección empresarial; exigir a las empresas que la integran la compatibilidad de estos;
50. exigir que las empresas certifiquen sus estados financieros cada año con entidades auditoras, según lo establecido;
51. aprobar el plan de autocontrol de la organización superior de dirección empresarial; crear grupos de trabajo multidisciplinarios de autocontrol y solución de problemas;
52. aprobar el plan anual de controles integrales a las empresas que integran la organización superior de dirección empresarial;
53. aprobar el Plan de Prevención de Riesgos de la organización superior de dirección empresarial;
54. aprobar las medidas a tomar con el personal responsable de las deficiencias detectadas en auditorías o controles no satisfactorios;
55. aprobar, en los casos que corresponda, los principios de funcionamiento de la actividad de tesorería, teniendo en cuenta las características, condiciones y la necesidad real de asumirla en la organización superior de dirección empresarial, a partir de las políticas establecidas por el organismo correspondiente;
56. exigir a las empresas y a la organización superior de dirección empresarial el pago de sus obligaciones tributarias en tiempo y forma;
57. exigir el cumplimiento eficiente de las orientaciones establecidas en el uso de las monedas con que operan;
58. aprobar el sistema de cuentas a emplear, en correspondencia con lo establecido en las normas cubanas de información financiera;
59. proponer a la aprobación de la Junta de Gobierno la propuesta de reservas a crear en las empresas, a partir de las utilidades después del impuesto a retener y las cuantías de estas; aprobarlas en el caso que no esté creada la Junta de Gobierno;

60. decidir sobre el empleo y uso eficiente de los recursos financieros y materiales de la organización superior de dirección empresarial, asignados para el desarrollo de sus funciones; responder por la óptima utilización de la fuerza de trabajo;
61. abrir y operar cuentas bancarias según lo establecido;
62. aprobar los precios y tarifas que le correspondan, según lo definido por la instancia competente;
63. aprobar el flujo informativo a recibir de las empresas, así como el interno de la organización superior de dirección empresarial; establecer el reglamento de información interna y externa, así como los cuadros de mando de información a utilizar por los diferentes jefes en la organización superior de dirección empresarial;
64. aprobar el sistema de informatización y automatización de la gestión a utilizar en la organización superior de dirección empresarial;
65. aprobar a las empresas que la integran un monto para inversiones no nominales;
66. aprobar los estudios de factibilidad de las inversiones que correspondan;
67. aprobar las acciones a implantar en la organización superior de dirección empresarial, para cumplir con la política de exportaciones de productos y servicios aprobadas por la dirección del país;
68. proponer a la instancia que corresponda la realización de actos de dominio sobre los activos fijos tangibles que son administrados por la organización superior de dirección empresarial y las empresas;
69. aprobar el destino económicamente útil de los inventarios de lento movimiento y ociosos;
70. aprobar el sistema de comunicación empresarial a implantar en la organización superior de dirección empresarial, el manual de gestión de comunicación y el manual de identidad corporativa; y
71. cualquier otra que se le asigne legalmente.

ARTÍCULO 26. El Presidente o Director General de la organización superior de dirección empresarial, para cumplir las funciones establecidas a la organización y las facultades asignadas a este, se auxilia de los directivos, especialistas y trabajadores que se encargan de ejecutar y elaborar proyectos de políticas, disposiciones, procedimientos e indicaciones que regulan los trabajos a desarrollar por las empresas que la integran, así como de los órganos de dirección que se creen.

ARTÍCULO 27. El Presidente o Director General asigna funciones a cada área de regulación y control de la organización superior de dirección empresarial, así como a las unidades empresariales de base que le estén subordinadas y delega facultades específicas en los cuadros y funcionarios de la entidad.

**CAPÍTULO VII**  
**FUNCIONES DE LAS EMPRESAS ESTATALES**  
**Y FACULTADES DE SUS DIRECTORES GENERALES**  
**SECCIÓN PRIMERA**

**Funciones de las empresas estatales**

ARTÍCULO 28. Las empresas estatales tienen las funciones siguientes:

1. Mantenerse actualizadas de las legislaciones que se dicten por el país; dominarlas y cumplirlas;
2. dirigir, organizar y controlar sistemáticamente la correcta implantación de los distintos sistemas en la gestión empresarial;
3. elaborar la base reglamentaria y cuantas otras disposiciones sean necesarias para instrumentar las transformaciones organizativas que aseguran la implantación de los sistemas de gestión y el desempeño de la empresa;
4. realizar periódicamente diagnósticos de la situación de la empresa, sus áreas de regulación y control y de las unidades empresariales de base; elaborar planes de acción que permitan resolver los problemas existentes;
5. elaborar y actualizar la estrategia integral de la empresa que incluye, entre otros, los objetivos estratégicos, evaluar su cumplimiento periódicamente en el consejo de dirección y las medidas necesarias para rectificar desviaciones;
6. determinar de conjunto con los trabajadores los valores que distinguen y deben jerarquizarse en la empresa;
7. elaborar cada año los objetivos a alcanzar en la empresa, en correspondencia con la estrategia empresarial aprobada; controlar periódicamente su cumplimiento;

8. dirigir y orientar las acciones de las diferentes áreas de regulación y control y de las unidades empresariales de base de la empresa, para el cumplimiento eficiente de las misiones asignadas;
9. diseñar el funcionamiento de la empresa sobre la base de estructuras planas y por procesos, adecuada a su tecnología y objeto social;
10. establecer las funciones y facultades que debe desarrollar cada nivel de dirección en la empresa, en correspondencia con la estructura aprobada; seleccionar el personal idóneo para el desempeño de las mismas;
11. organizar y controlar el sistema de seguridad y protección, así como planificar las medidas para preservar los equipos, medios, materiales e información de la empresa;
12. confeccionar y mantener actualizado el plan de las demandas de tiempo de paz para los órganos de la defensa, la reserva estatal y la defensa civil;
13. confeccionar y conciliar los planes de la demanda en situaciones excepcionales con los órganos de la defensa;
14. confeccionar y compatibilizar con los órganos de la defensa civil los planes contra catástrofes;
15. garantizar una estrecha colaboración con las organizaciones políticas, sindicales, así como con la organización superior de dirección empresarial, otras empresas y con órganos, organismos de la Administración Central del Estado o consejos de la Administración Provincial del Poder Popular con los que tenga relaciones;
16. garantizar el funcionamiento de los órganos de dirección de la empresa;
17. programar las reuniones y tareas principales a desarrollar y cumplir en la empresa;
18. rendir cuentas periódicamente a la instancia correspondiente del resultado del desempeño y de la gestión de toda la empresa; organizar este proceso en las diferentes áreas de la empresa ante el consejo de dirección;
19. diseñar e implantar el procedimiento que organiza el sistema de trabajo con los cuadros de la empresa y sus reservas, en correspondencia con los lineamientos y las disposiciones que a estos efectos se emiten por el Gobierno;
20. elaborar e implantar, de conjunto con la organización sindical, el reglamento de estimulación moral a los trabajadores de la empresa;
21. elaborar e implantar, de conjunto con la organización sindical, el procedimiento que garantiza la participación de los trabajadores en la dirección;
22. involucrar a los trabajadores en las tareas del control interno y garantizar que dominen y cumplan las medidas a tomar para evitar daños a la propiedad estatal;
23. elaborar e implantar, de conjunto con la organización sindical, el sistema de atención al hombre en la empresa;
24. garantizar que la producción y la prestación de servicios se realice en correspondencia con el objeto social y las actividades secundarias, eventuales y de apoyo;
25. realizar estudios para una correcta aplicación del sistema de organización de la producción de bienes y servicios;
26. efectuar evaluaciones para determinar nuevos productos y servicios a brindar por la empresa;
27. elaborar el reglamento de la brigada o equipo de trabajo socialista y garantizar su cumplimiento;
28. garantizar que el sistema de mantenimiento que se aplique en la empresa esté en correspondencia con su tecnología, características y condiciones de trabajo, y elaborar su reglamento;
29. elaborar el procedimiento para la organización de los abastecimientos y las compras de insumos o productos que garantizan la producción, los servicios y demás actividades que se desarrollan en la empresa;
30. elaborar las normas de consumo material y los índices de intensidad energética en la empresa;
31. elaborar el procedimiento que organiza la actividad metrológica en la empresa que cumpla con los requisitos del servicio nacional de metrología;

32. aplicar correctamente las técnicas de economía de almacenes, adecuándolas a las características de la empresa, para una mejor gestión del almacenamiento;
33. planificar, acumular, almacenar, rotar, mantener, conservar y responder por la integridad física, calidad y control de las reservas materiales acumuladas;
34. aplicar el sistema de gestión de la calidad en la empresa, certificándolo o avalándolo con las entidades autorizadas, según el cronograma elaborado a tales efectos;
35. elaborar el manual de la calidad de la empresa;
36. elaborar y aplicar el sistema de costos de la calidad de la empresa;
37. organizar cuando corresponda el funcionamiento del Consejo de la Calidad de la empresa y de los grupos de mejora;
38. determinar, de conjunto con la organización sindical, los cargos cuya ocupación determina la categoría de funcionarios, según lo establecido en la legislación vigente;
39. garantizar que el personal de la empresa desempeñe y desarrolle sus actividades de acuerdo con las exigencias establecidas para cada cargo;
40. organizar el trabajo en la empresa sobre la base del perfil amplio y la carga de trabajo sostenido; elaborar cuando corresponda los profesiogramas a partir de las competencias de los puestos de trabajo y priorizar los puestos claves;
41. organizar la estructura salarial a aplicar a los cuadros en correspondencia con la categoría aprobada a la empresa y garantizar que no se produzcan incongruencias salariales;
42. evaluar y aplicar el tratamiento salarial que corresponde a los jefes de brigadas o equipos de trabajo socialista y especialistas principales de la empresa;
43. proponer a la organización superior de dirección empresarial la aprobación de la estimulación en pesos convertibles (CUC), para su tramitación con el organismo correspondiente y elaborar el reglamento interno a estos efectos, una vez aprobado;
44. evaluar los puestos que están sometidos a condiciones laborales anormales y eliminar las que sean posibles;
45. elaborar e implantar el sistema de gestión ambiental en la empresa; realizar periódicamente diagnósticos de la situación ambiental y definir las medidas para su solución;
46. diseñar e implantar el sistema de gestión de la innovación de la empresa;
47. realizar los estudios de factibilidad de inversiones, mejora de productos y servicios;
48. garantizar la introducción en la empresa de nuevas técnicas e innovaciones de efectividad comprobada;
49. diseñar e implantar el sistema de vigilancia tecnológica e inteligencia empresarial que permita la actualización de los conocimientos del personal de la empresa en función de su desarrollo;
50. garantizar el cumplimiento de las medidas de la propiedad industrial y el derecho de autor, de acuerdo con lo establecido por el organismo correspondiente;
51. garantizar el funcionamiento del movimiento de innovadores, racionalizadores, las brigadas técnicas juveniles, así como la generalización e implantación en la empresa de las mejores soluciones;
52. elaborar el procedimiento de la planificación empresarial;
53. dirigir, organizar y controlar, con la participación de los trabajadores y en coordinación con la organización sindical, el proceso de elaboración del plan anual de la empresa en todas sus categorías y por unidades empresariales de base, de acuerdo con las indicaciones recibidas de la organización superior de dirección empresarial, del organismo de la Administración Central del Estado o del Consejo de la Administración Provincial del Poder Popular al cual se integra o subordina, según corresponda;
54. presentar y defender el plan anual de la empresa, previo pronunciamiento de su pertinencia por la Junta de Gobierno, en la organización superior de dirección empresarial, organismo de la Administración Central del Estado o Consejo de la Administración Provincial del Poder Popular al cual se integra o subordina;
55. desagregar el plan entre las unidades empresariales de base que agrupa, en interés de su cumplimiento, incluido el encargo estatal;

56. analizar periódicamente con los trabajadores los resultados obtenidos en la gestión de la empresa, el cumplimiento de los indicadores directivos y límite aprobados en el plan, evaluar los índices financieros; tomar las medidas para erradicar las desviaciones en la empresa;
57. cumplir con calidad los procedimientos establecidos en el uso de las monedas con que operan;
58. evaluar los riesgos por desastres naturales, tecnológicos y sanitarios que puedan afectar la empresa; determinar cuáles deben ser transferidos a empresas de seguros y los que asume la entidad;
59. elaborar y aplicar el procedimiento para la contratación económica en la empresa; organizar su correcto funcionamiento en el órgano consultivo que corresponda;
60. elaborar el manual de contabilidad de la empresa y garantizar el cumplimiento de las medidas organizativas para su correcto funcionamiento;
61. emitir periódicamente los estados financieros, de acuerdo con los requerimientos establecidos por el organismo correspondiente en términos de tiempo, calidad y veracidad;
62. asegurar que los sistemas contable-financieros, soportados en tecnologías de la información, estén certificados por las autoridades competentes, sean compatibles con los utilizados por la organización superior de dirección empresarial y garanticen la exactitud de las operaciones y el control;
63. certificar anualmente los estados financieros de la empresa con entidades autorizadas;
64. entregar los estados financieros en las oficinas municipales de la Oficina Nacional de Estadística e Información y en las oficinas territoriales del Registro Mercantil, según corresponda;
65. diseñar, armonizar, implementar, autocontrolar y actualizar de forma sistemática, el sistema de control interno, conforme a sus características, competencias y atribuciones institucionales, e instar a los trabajadores a que participen en toda la gestión de este; determinar riesgos y tomar medidas para evitar daños a la propiedad estatal;
66. elaborar el Plan de Prevención de Riesgos y controlar sistemáticamente su cumplimiento;
67. elaborar el plan de autocontroles a realizar en la empresa; crear equipos de trabajo multidisciplinarios que ejecuten autocontroles y analicen problemas y posibles alternativas de solución;
68. evaluar en el consejo de dirección los resultados deficientes en la gestión, demostrados en auditorías y controles; las causas de las deficiencias detectadas y las medidas disciplinarias, laborales, técnicas, económicas, organizativas y salariales que procedan. Informar los resultados de este análisis a los trabajadores, a la organización sindical y a la instancia superior;
69. determinar el monto y los conceptos para la utilización de la depreciación como fuente propia para financiar nuevas inversiones, así como la desagregación por unidad empresarial de base;
70. organizar la actividad de tesorería de acuerdo con las características, condiciones y la necesidad real de asumirla en la empresa, a partir de las políticas establecidas;
71. garantizar, según lo dispuesto en cada caso, el pago de los tributos correspondientes de la empresa en tiempo y forma;
72. ejecutar una eficiente gestión de cobros y pagos, que permita lograr la liquidez necesaria para cumplir sus obligaciones económicas;
73. documentar el ciento por ciento (100 %) de las cuentas por cobrar y pagar; establecer convenios de cobros y pagos con clientes y suministradores en los casos que corresponda;
74. elaborar, evaluar y controlar permanentemente el cumplimiento de los flujos de efectivo en la empresa;
75. analizar la factibilidad de crear reservas provenientes de las utilidades retenidas y sus cuantías, sobre la base del cumplimiento eficiente de los indicadores directivos de la empresa;



76. evaluar las necesidades de créditos bancarios, fundamentar su recuperación, siempre que proceda, en un banco o institución financiera no bancaria;
77. utilizar y administrar correctamente los recursos financieros y materiales de la empresa;
78. elaborar el manual de la contabilidad de costos de la empresa. Garantizar su correcta aplicación;
79. analizar periódicamente los resultados obtenidos en la reducción de los gastos y costos en la empresa; así como su relación con los ingresos; evaluar las medidas para la disminución de los gastos;
80. formar y aplicar los precios y tarifas, en correspondencia con las indicaciones recibidas de la organización superior de dirección empresarial u organismo rector, según corresponda;
81. analizar las existencias de inventarios ociosos y lento movimiento para la elaboración de sus planes anuales;
82. analizar los posibles destinos de los activos fijos tangibles administrados por la empresa;
83. organizar el sistema de información a implantar en la empresa, elaborar el reglamento de información interna y externa, así como los cuadros de mando de información de cada jefe de la empresa; garantizar su cumplimiento;
84. captar y evaluar para su trabajo la información estadística de los principales resultados económicos y productivos de las unidades empresariales de base;
85. elaborar el sistema de informatización y automatización de la gestión a utilizar en la empresa, de acuerdo con las normas generales establecidas por la organización superior de dirección empresarial, el organismo de la Administración Central del Estado o el Consejo de la Administración Provincial del Poder Popular, según corresponda;
86. elaborar y aplicar el sistema que organiza la actividad de mercadotecnia en la empresa; evaluar periódicamente y controlar el cumplimiento del plan de mercadotecnia;
87. diseñar, de conjunto con los directivos de la organización superior de dirección empresarial, organismo de la Administración Central del Estado o Consejo de la Administración Provincial del Poder Popular al cual se integra o subordina, la política de exportaciones de productos y servicios a implantar; garantizar el cumplimiento del plan de exportaciones aprobado para el año; y realizar estudios sistemáticos de las nuevas posibilidades de exportación de productos y servicios;
88. elaborar en la empresa un sistema de evaluación de la satisfacción del cliente, que permita la mejora y el perfeccionamiento de las producciones y servicios de la empresa;
89. garantizar la sustitución de importaciones a incluir en el plan anual de cada año; controlar sistemáticamente su cumplimiento;
90. diseñar e implantar el sistema de comunicación empresarial expresado en los manuales de gestión de comunicación y el de identidad corporativa, que garantice una adecuada comunicación entre todos los trabajadores de la empresa; y
91. cualquier otra que se establezca legalmente.

## SECCIÓN SEGUNDA

### **Facultades de los directores generales de las empresas estatales**

ARTÍCULO 29. El Director General de la empresa es su representante legal y tiene las facultades siguientes:

1. Decidir las acciones que garanticen el cumplimiento de la legislación establecida en el país;
2. dictar la base reglamentaria de la empresa y cuantas otras disposiciones y reglamentos garanticen la gestión empresarial y el cumplimiento de las leyes y normas jurídicas;
3. aprobar el plan de medidas para solucionar deficiencias y problemas detectados en los diagnósticos de la empresa;
4. aprobar la estrategia integral en correspondencia con la de la organización superior de dirección empresarial, los objetivos estratégicos y el sistema de valores;

5. aprobar los objetivos anuales y definir las acciones para garantizar el cumplimiento eficiente de las tareas asignadas a la empresa;
6. aprobar las actividades secundarias derivadas del objeto social, las eventuales que eviten la paralización de la producción o los servicios y las de apoyo, que no deben ir en detrimento del cumplimiento de su encargo estatal y de la misión para la cual fue creada;
7. aprobar la estructura y la plantilla;
8. aprobar el redimensionamiento de las estructuras, en aquellos casos que se prevé la imposibilidad de reiniciar la producción o la prestación de los servicios en un período de hasta dos (2) meses;
9. aprobar las funciones de las áreas de regulación y control y de las unidades empresariales de base de la empresa, así como delegar las facultades correspondientes a cada cuadro;
10. aprobar las medidas a implantar para garantizar la seguridad y protección, así como el reglamento correspondiente;
11. aprobar el plan de demandas de tiempo de paz;
12. aprobar las medidas para el cumplimiento de los planes de demanda en situaciones excepcionales;
13. aprobar los planes contra catástrofes;
14. escoger su equipo de dirección y designar los cuadros que pertenecen a su relación de cargos o proponerlos según corresponda, con arreglo a las disposiciones vigentes;
15. aprobar las acciones para fortalecer las relaciones entre la dirección de la empresa, las organizaciones políticas y sindicales, así como otras instituciones del Gobierno y el Estado;
16. crear los órganos de dirección colectiva en la empresa y dictar el reglamento para su funcionamiento;
17. aprobar el plan de actividades principales;
18. aprobar el plan de rendición de cuentas ante el consejo de dirección sobre la gestión de las áreas de regulación y control y de las unidades empresariales de base, así como los planes de acción que se deriven de estas;
19. aprobar las medidas para aplicar el sistema de trabajo con los cuadros y sus reservas;
20. aprobar las medidas que correspondan para implantar el sistema de estimulación moral y dictar el reglamento correspondiente;
21. aprobar el procedimiento que garantiza la participación de los trabajadores en la dirección;
22. aprobar el sistema de atención al hombre a implantar en la empresa;
23. aprobar el Plan de Prevención de Riesgos de la empresa, previo análisis en el órgano colectivo de dirección que corresponda y exigir su cumplimiento en las unidades empresariales de base;
24. exigir a los jefes de las áreas de regulación y control y de las unidades empresariales de base la existencia del Plan de Prevención de Riesgos;
25. decidir las acciones para garantizar la rectificación de cualquier desviación negativa en el ejercicio productivo y económico;
26. exigir y responder por el control de las reservas materiales acumuladas;
27. responder por la calidad y cantidad de productos y servicios que oferta la empresa, en correspondencia con lo pactado con los clientes;
28. aprobar documentos rectores para la organización, planificación, dirección y control de los procesos de producción de bienes y servicios;
29. aprobar la distribución de las producciones a ejecutar entre las unidades empresariales de base en cumplimiento del encargo estatal;
30. aprobar el reglamento de las brigadas o equipos de trabajo socialista de las unidades empresariales de base;

31. aprobar el procedimiento para la organización de los abastecimientos y las compras de insumos o productos para garantizar la producción o los servicios que se prestan;
32. aprobar el procedimiento que organiza la actividad de metrología;
33. decidir sobre la existencia de su representante en empresas que le entreguen producciones o presten servicios, así como crear condiciones para el trabajo del representante del cliente en la empresa, de acuerdo con los contratos firmados;
34. autorizar al personal de garantía de la calidad, técnico, de seguridad y salud en el trabajo y otros a paralizar el proceso productivo o de prestación de servicios, ante graves violaciones de la disciplina tecnológica;
35. aprobar el manual de calidad;
36. aprobar el cronograma para implantar, avalar o certificar el sistema de gestión de la calidad, así como el plan de medidas para dar solución a los problemas de calidad que afecten a la empresa;
37. aprobar la creación del Consejo de la Calidad y los grupos de mejora;
38. aprobar el reglamento y el plan anual de mantenimiento de los inmuebles, muebles, medios, equipos, instrumentos y herramientas;
39. definir procedimientos y técnicas para elaborar las normas de consumo material, que rigen el trabajo en la empresa, y su modificación cuando se produzcan cambios que lo justifiquen;
40. aprobar los cargos cuya ocupación determina la categoría de funcionarios;
41. exigir que los trabajadores de las áreas de regulación y control y de las unidades empresariales de base desempeñen y desarrollen sus actividades, de acuerdo con las exigencias establecidas para cada cargo;
42. aprobar los puestos claves de la empresa y los profesiogramas elaborados a partir de las competencias de los puestos de trabajo;
43. aplicar medidas disciplinarias a trabajadores y cuadros de la empresa, así como reconocer los resultados relevantes a través de estímulos morales o materiales, según corresponda;
44. aprobar el salario de los cargos de cuadros, en correspondencia con los grupos de la escala única establecida y la categoría aprobada a la empresa;
45. aprobar el tratamiento salarial a los jefes de brigadas o equipos de trabajo socialista y especialistas principales de las áreas de regulación y control de la empresa y de las unidades empresariales de base;
46. proponer al organismo competente que se autorice el pago por concepto de condiciones laborales anormales, interés económico social, antigüedad y otros de similar naturaleza;
47. aprobar el reglamento interno de estimulación en pesos convertibles (CUC) de la empresa en los casos que corresponda;
48. aprobar las medidas y tareas para la implantación del sistema de gestión ambiental, así como aprobar los diagnósticos ambientales a realizar;
49. aprobar la introducción de nuevos productos y servicios a brindar;
50. aprobar el sistema de inteligencia empresarial;
51. aprobar el sistema de gestión de la innovación;
52. aprobar las medidas para el cumplimiento de lo establecido en materia de propiedad industrial y derecho de autor;
53. aprobar el procedimiento de planificación empresarial y, de las medidas planteadas por los trabajadores, incluir las que correspondan durante el proceso de elaboración del plan;
54. proponer a la organización superior de dirección empresarial, organismo de la Administración Central del Estado o Consejo de la Administración Provincial del Poder Popular al cual se integra o subordina el plan anual de la empresa para su

- aprobación y, cuando corresponda, a la Junta de Gobierno; una vez autorizado, aprobar su desagregación entre las unidades empresariales de base para su control;
55. proponer al jefe de la organización superior de dirección empresarial, organismo de la Administración Central del Estado o Consejo de la Administración Provincial del Poder Popular al cual se integra o subordina las modificaciones al plan anual en los casos que corresponda;
  56. aprobar las inversiones que correspondan, de acuerdo con la legislación vigente;
  57. elevar a la Junta de Gobierno su inconformidad sobre aportes a realizar a la organización superior de dirección empresarial con cargo a sus gastos, por considerar que no aportan valor agregado a la gestión de la empresa;
  58. aprobar el plan de medidas que se genere del análisis efectuado con los trabajadores sobre el cumplimiento del plan de la empresa, de los indicadores directivos, la gestión de la calidad, la contratación, cobros y pagos, entre otros aspectos;
  59. firmar contratos económicos, establecer el procedimiento para la contratación económica en la empresa y crear, en los casos que corresponda, el órgano consultivo para su análisis y evaluación;
  60. aprobar el manual de contabilidad de la empresa y definir el sistema de cuentas a emplear, en correspondencia con lo establecido en las normas cubanas de información financiera;
  61. aprobar los sistemas contable-financieros soportados en tecnologías de la información certificados a utilizar;
  62. aprobar el plan de autocontrol de la empresa, así como los aspectos e indicadores a controlar en cada área de regulación y control y de las unidades empresariales de base;
  63. aprobar la creación de grupos de trabajo multidisciplinarios de autocontrol y solución de problemas;
  64. aprobar el sistema de control interno y las medidas correctivas para su restablecimiento cuando corresponda;
  65. aprobar las medidas a aplicar al personal responsable de las deficiencias detectadas en auditorías o controles no satisfactorios;
  66. aprobar los estados financieros establecidos;
  67. proponer, previo análisis en su consejo de dirección, la creación de reservas provenientes de las utilidades retenidas y sus cuantías, a la organización superior de dirección empresarial, al organismo de la Administración Central del Estado o Consejo de la Administración Provincial del Poder Popular, según corresponda;
  68. decidir sobre el empleo y uso eficiente de los recursos financieros y materiales asignados para el desarrollo de sus funciones; responder por la óptima utilización de la fuerza de trabajo;
  69. aprobar la solicitud de créditos bancarios a presentar al banco o a la institución financiera no bancaria que corresponda;
  70. abrir y operar cuentas bancarias en correspondencia con lo establecido por el organismo correspondiente;
  71. aprobar los sistemas de costos a emplear y establecer el manual de contabilidad de costos de la empresa;
  72. aprobar los precios y tarifas que le correspondan, conforme a lo regulado en la legislación vigente, así como establecer los precios y tarifas internas de ventas de semiproductos y servicios internos a ofrecer entre las unidades empresariales de base, en el marco de lo aprobado;
  73. aprobar el flujo informativo a recibir de las unidades empresariales de base y el interno a utilizar en la empresa; establecer el reglamento de información interna y externa, así como los cuadros de mando de información a utilizar por los diferentes jefes;
  74. aprobar el sistema de informatización y automatización de la gestión a utilizar en la empresa;

75. aprobar el sistema que organiza la actividad de mercadotecnia y anualmente su plan;
76. aprobar el sistema de evaluación de la satisfacción del cliente y las medidas que garanticen la aplicación de este en la empresa y sus unidades empresariales de base;
77. aprobar o proponer a la instancia que corresponda la implantación de los resultados de los estudios de factibilidad de nuevas inversiones y de las mejoras de los productos y servicios;
78. aprobar o proponer a la organización superior de dirección empresarial, organismo de la Administración Central del Estado o Consejo de la Administración Provincial del Poder Popular al cual se integra o subordina la política de exportaciones de productos y servicios a implantar, así como las acciones a establecer resultantes de estudios sobre nuevas posibilidades de exportación de productos y servicios;
79. aprobar el plan de sustitución de importaciones;
80. proponer a la instancia que corresponda realizar actos de dominio sobre el destino de los activos fijos tangibles administrados por la empresa;
81. aprobar el destino económicamente útil de los inventarios de lento movimiento y ociosos, en correspondencia con lo establecido por los organismos correspondientes;
82. aprobar el sistema de comunicación empresarial a implantar en la empresa, el manual de gestión de comunicación y el manual de identidad corporativa; y
83. cualquier otra que se determine legalmente.

ARTÍCULO 30. El Director General de la empresa para cumplir las funciones establecidas a la empresa y las facultades asignadas a este, se auxilia de los cuadros, especialistas y trabajadores que se encargan de ejecutar y elaborar proyectos de políticas, disposiciones, procedimientos e indicaciones que regulan los trabajos a desarrollar por la empresa, así como de los órganos de dirección que se creen.

ARTÍCULO 31.1. El Director General de la empresa asigna funciones a cada área y unidad empresarial de base; delega las facultades que corresponda a cada Director de área de regulación y control y de la unidad empresarial de base, así como a los jefes de grupos, brigadas o equipos de trabajo socialista.

2. Para lo anterior se establecen con precisión los límites del ejercicio de estas facultades; además de controlar su cumplimiento.

#### CAPÍTULO VIII

### **FUNCIONES DE LAS UNIDADES EMPRESARIALES DE BASE Y FACULTADES DE SUS DIRECTORES SECCIÓN PRIMERA**

#### **Funciones de las unidades empresariales de base**

ARTÍCULO 32. Las unidades empresariales de base, en correspondencia con las características organizativas que poseen, desarrollan las funciones conferidas por la Dirección General de la empresa, entre otras las siguientes:

1. Garantizar el cumplimiento de las normas jurídicas establecidas que le correspondan cumplir, así como las disposiciones, reglamentos y sistemas aprobados en la empresa;
2. elaborar periódicamente diagnósticos integrales sobre la gestión de la unidad empresarial de base;
3. garantizar el funcionamiento adecuado de los sistemas de gestión aplicados;
4. elaborar cada año los objetivos a alcanzar en la unidad empresarial de base;
5. rendir cuentas periódicamente ante el consejo de dirección de la empresa sobre el desempeño de la unidad empresarial de base y del resultado de su gestión;
6. definir e implantar las medidas que garanticen la participación de los trabajadores en la dirección de la unidad empresarial de base;

7. implantar y controlar sistemáticamente el cumplimiento del Plan de Prevención de Riesgos;
8. participar de conjunto con la empresa en la elaboración del reglamento de la estimulación moral de los trabajadores y controlar su adecuada aplicación;
9. estimular a los trabajadores destacados, así como evaluar y tomar las medidas correctivas con el personal de la unidad empresarial de base cuando corresponda;
10. producir bienes y servicios; garantizar el cumplimiento de los indicadores directivos y límite aprobados a la unidad empresarial de base;
11. garantizar el cumplimiento de los documentos rectores para la organización, planificación, dirección y control de los procesos de producción de bienes y servicios de la unidad empresarial de base;
12. evaluar e implementar las medidas que aseguren el cumplimiento del reglamento de la brigada o equipo de trabajo socialista;
13. implantar el sistema de gestión de la calidad en la unidad empresarial de base;
14. apoyar el trabajo de los grupos de mejora de la calidad creados en su unidad empresarial de base;
15. garantizar el cumplimiento del sistema de control y mantenimiento de los medios de medición;
16. cumplir con el sistema de seguridad y protección;
17. cumplir en lo que le corresponde con el plan de las demandas de tiempo de paz para los órganos de la defensa, la reserva estatal y la defensa civil;
18. cumplir en lo que le corresponde con los planes de la demanda en situaciones excepcionales;
19. controlar y organizar las medidas para el cumplimiento de los planes contra catástrofes;
20. garantizar el cumplimiento de las medidas establecidas en el manual de seguridad y salud en el trabajo;
21. elaborar el proyecto del plan anual de la unidad empresarial de base con una amplia participación de los trabajadores en su confección; evaluar las propuestas efectuadas por los trabajadores a incluir en el plan anual;
22. evaluar periódicamente el cumplimiento del plan de la unidad empresarial de base, de los indicadores directivos y límite, así como de todas las categorías aprobadas;
23. llevar el registro de sus hechos contables y emitir el balance de comprobación de saldos, si existen condiciones para ello;
24. garantizar una eficiente gestión de cobros y pagos y de control de las cuentas bancarias que opere, si se le delega esta actividad;
25. garantizar una eficiente gestión de contratación en los conceptos y montos establecidos;
26. definir los controles internos a realizar, su periodicidad, así como los aspectos e indicadores a controlar en cada área;
27. diseñar, armonizar, implementar, autocontrolar y actualizar de forma sistemática, el sistema de control interno, conforme a sus características y competencias, e instar a los trabajadores a que participen en toda la gestión de este; determinar riesgos y tomar medidas para evitar daños a la propiedad estatal;
28. organizar el funcionamiento del Comité de Prevención y Control de la unidad empresarial de base;
29. organizar el plan de auditorías internas a realizar en las diferentes estructuras de la unidad empresarial de base;

30. cumplir con las medidas establecidas en los sistemas de costos aprobados; analizar periódicamente los resultados obtenidos en la reducción de los gastos y costos;
31. cumplir con la información establecida en el reglamento de información de la empresa;
32. implantar las medidas que corresponden en la unidad empresarial de base referentes al manual de gestión de comunicación y el manual de identidad corporativa aprobado en la empresa;
33. establecer una adecuada comunicación entre la dirección de la unidad empresarial de base, los trabajadores y sus jefes; y
34. ejecutar pagos al Presupuesto del Estado, según lo establecido en la legislación vigente.

## SECCIÓN SEGUNDA

### **Facultades de los directores de unidades empresariales de base**

ARTÍCULO 33. Los directores de las unidades empresariales de base, en correspondencia con las atribuciones que le son conferidas por la Dirección General de la entidad que las crea, ejercen entre otras, las facultades siguientes:

1. Aplicar las medidas que garanticen el cumplimiento de las normas jurídicas, así como de las disposiciones, reglamentos y sistemas establecidos en la empresa;
2. aprobar, o proponer al Director General de la empresa o al Presidente o Director General de la organización superior de dirección empresarial, según corresponda:
  - a) la estructura y plantilla que debe adoptar la unidad empresarial de base;
  - b) los objetivos a alcanzar anualmente en la unidad empresarial de base;
  - c) los planes de acción que permitan resolver los problemas existentes, resultantes de los diagnósticos realizados;
  - d) la creación de los órganos asesores de dirección que más se ajusten a las características de la unidad;
  - e) las medidas que aseguran la participación de los trabajadores en la dirección de la unidad empresarial de base;
  - f) las acciones para la aplicación del reglamento de la estimulación moral a los trabajadores de la unidad y los estímulos morales y materiales que corresponden a aquellos con actitudes y resultados relevantes;
  - g) las medidas disciplinarias a aplicar a los trabajadores que incumplen con lo establecido;
  - h) el reglamento de la brigada o equipo de trabajo socialista, así como las medidas que aseguran su cumplimiento;
  - i) la implantación de medidas que garanticen la organización, planificación, dirección y control de los procesos de producción de bienes y servicios de la unidad empresarial de base;
  - j) las medidas que aseguren el cumplimiento de las producciones y servicios que se desarrollan en la unidad;
  - k) mantenimiento adecuado de los inmuebles, muebles, medios, equipos, instrumentos y herramientas que son administrados por la unidad empresarial de base, así como del sistema de control de los medios de medición;
  - l) la implantación del sistema de gestión de la calidad de la unidad empresarial de base;
- m) las medidas que garanticen el cumplimiento del sistema de seguridad y protección de la unidad;
- n) las acciones que aseguran el cumplimiento de las demandas de tiempo de paz para los órganos de la defensa, la reserva estatal y la defensa civil;
- o) las medidas para el cumplimiento de los planes de la demanda en situaciones excepcionales con los órganos de la defensa;

- p) los planes contra catástrofes;
  - q) las medidas que garanticen el cumplimiento del manual de seguridad y salud en el trabajo;
  - r) el cronograma para la elaboración del plan anual de la unidad empresarial de base;
  - s) la implantación del sistema de control interno y las medidas a incorporar en el Plan de Prevención de Riesgos;
  - t) el plan de auditoría interna a realizar en la unidad empresarial de base; y
  - u) la implantación del sistema de costo aprobado para la unidad empresarial de base;
3. proponer a la dirección de la empresa las actividades secundarias derivadas del objeto social, las eventuales que eviten la paralización de la producción o los servicios y las de apoyo, las que no deben ir en detrimento del cumplimiento del encargo estatal aprobado y de la misión para la cual fue creada;
  4. aprobar la creación de los grupos de mejora de la calidad;
  5. firmar contratos laborales;
  6. presentar para su aprobación a la dirección de la empresa el proyecto de plan anual con su desagregación mensual;
  7. aprobar a su nivel otros indicadores a medir propios de la unidad empresarial de base;
  8. adoptar los acuerdos como resultado de los análisis efectuados sobre la gestión y el cumplimiento del plan;
  9. aprobar el balance de comprobación de saldos a entregar en la empresa;
  10. aprobar las medidas para una eficiente gestión de cobros y pagos;
  11. aprobar la composición de los equipos de trabajo multidisciplinarios que analicen problemas y posibles alternativas de soluciones;
  12. aprobar la composición del Comité de Prevención y Control de la unidad empresarial de base;
  13. aprobar los autocontroles a realizar en la unidad, su periodicidad, así como los aspectos e indicadores a controlar en cada estructura de la unidad empresarial de base;
  14. aprobar las medidas que aseguren que los trabajadores participen en las tareas del control interno; garantizar que dominen las acciones a implantar para evitar los riesgos contra la propiedad estatal; y
  15. aprobar las informaciones que rinde la unidad empresarial de base hacia la empresa.

ARTÍCULO 34.1. Los directores de unidades empresariales de base, siempre que estén facultados por el jefe de la entidad que la crea, pueden:

1. Suscribir contratos económicos con proveedores y clientes a nombre y en representación de la empresa a la que se integran, de acuerdo con los requerimientos y especificaciones que para el ejercicio de esta facultad se establezca;
2. personarse a nombre de la empresa en los Tribunales Populares y representarla en los procesos judiciales, por incumplimiento de contratos económicos suscritos por ellos a nombre de aquella.
3. operar las cuentas bancarias que se decida, cumpliendo las disposiciones vigentes en la materia.

### **DISPOSICIONES TRANSITORIAS**

PRIMERA: Hasta tanto concluya el proceso de perfeccionamiento institucional en los organismos de la Administración Central del Estado, las empresas que se subordinan a estos mantienen ese status.



SEGUNDA: Las unidades presupuestadas con tratamiento especial se mantienen excepcionalmente integradas a organizaciones superiores de dirección empresarial hasta tanto sean constituidas como empresas.

#### **DISPOSICIONES ESPECIALES**

PRIMERA: Los ministros de las Fuerzas Armadas Revolucionarias y del Interior aplican, en lo pertinente, las funciones establecidas para las organizaciones superiores de dirección empresarial, empresas y unidades empresariales de base que se le subordinan o atienden, y las facultades de sus jefes, de acuerdo con las características de esos organismos.

SEGUNDA: El Ministro de las Fuerzas Armadas Revolucionarias está facultado para crear, fusionar, traspasar, transformar y extinguir las empresas que integran las Uniones y Grupos Empresariales de su sistema.

TERCERA: Es de aplicación complementaria para todo lo no previsto en el presente Decreto, en lo que a las buenas prácticas de dirección y gestión se refiere, el Decreto No. 281 “Reglamento para la implantación y consolidación del sistema de dirección y gestión empresarial estatal”, de 16 de agosto de 2007.

CUARTA: En las cuestiones en materia laboral y salarial no reguladas expresamente en el presente Decreto se aplican las disposiciones contenidas en la Ley No. 116 “Código de Trabajo” y el Decreto No. 326, su Reglamento, puestos en vigor el 16 de junio de 2014, así como las demás que se dicten por el Ministro de Trabajo y Seguridad Social.

QUINTA: A las sociedades mercantiles de capital totalmente cubano se les aplica, en lo pertinente, lo dispuesto en este Decreto.

#### **DISPOSICIONES FINALES**

PRIMERA: La denominación de organización superior de dirección establecida en normas anteriores en lo adelante queda modificada por la organización superior de dirección empresarial.

SEGUNDA: El Ministro de Economía y Planificación queda facultado para establecer las disposiciones legales sobre el traspaso de las unidades empresariales de base entre diferentes organizaciones superiores de dirección empresarial, organismos de la Administración Central del Estado y consejos de la Administración Provincial del Poder Popular y del municipio especial Isla de la Juventud, según corresponda.

TERCERA: El Ministro de Economía y Planificación dispone, además, lo pertinente sobre los elementos que debe contener la resolución de creación de una empresa y sobre la constitución de la comisión liquidadora y sus funciones cuando autorice una extinción.

CUARTA: Se derogan:

1. El Decreto No. 42 “Reglamento General de la Empresa Estatal,” de 24 de mayo de 1979;
2. el Acuerdo No. 2258 del Comité Ejecutivo del Consejo de Ministros, de 7 de julio de 1988, que puso en vigor las “Normas sobre la Unión y la Empresa Estatal”;
3. del Decreto No. 294 “Creación de la organización superior de dirección grupo azucarero, sus funciones y facultades de su Presidente”, de 29 de octubre de 2011, el numeral 7 y el párrafo final del artículo 4;
4. del Decreto No. 307 “Creación de la organización superior de dirección grupo de las industrias biotecnológica y farmacéutica, sus funciones y facultades de su Presidente”, de 27 de noviembre de 2012; el numeral 8 y el párrafo final del artículo 5; y
5. del Decreto No. 328 “Creación de la organización superior de dirección empresarial grupo empresarial Centro Histórico”, de 19 de noviembre de 2014; el numeral 9 y el párrafo final del artículo 5.

QUINTA: Este Decreto entra en vigor a los noventa (90) días hábiles posteriores a su publicación en la Gaceta Oficial de la República de Cuba.

PUBLÍQUESE en la Gaceta Oficial de la República de Cuba.

DADO en el Palacio de la Revolución, en La Habana, a los 5 días del mes de septiembre de 2017.

**Raúl Castro Ruz**

Presidente de los consejos  
de Estados y de Ministros

## **Anexo E**

# GACETA OFICIAL

DE LA REPÚBLICA DE CUBA

MINISTERIO DE JUSTICIA

EXTRAORDINARIA LA HABANA, MIÉRCOLES 10 DE ABRIL DE 2019 AÑO CXVII

Sitio Web: <http://www.gacetaoficial.gob.cu/>—Calle Zanja No. 352 esquina a Escobar, Centro Habana

Teléfonos: 7878-4435 y 7870-0576

Número 5

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## ASAMBLEA NACIONAL DEL PODER POPULAR

GOC-2019-406-EX5

### CONSTITUCIÓN DE LA REPÚBLICA PREÁMBULO

#### NOSOTROS, EL PUEBLO DE CUBA,

inspirados en el heroísmo y patriotismo de los que lucharon por una Patria libre, independiente, soberana, democrática, de justicia social y solidaridad humana, forjada en el sacrificio de nuestros antecesores;

por los aborígenes que se resistieron a la sumisión;

por los esclavos que se rebelaron contra sus amos;

por los que despertaron la conciencia nacional y el ansia cubana de patria y libertad;

por los patriotas que a partir de 1868 iniciaron y participaron en nuestras luchas independentistas contra el colonialismo español, y a los que en el último impulso de 1895 les fuera frustrada la victoria al producirse la intervención y ocupación militar del imperialismo yanqui en 1898;

por los que lucharon durante más de cincuenta años contra el dominio imperialista, la corrupción política, la falta de derechos y libertades populares, el desempleo, la explotación impuesta por capitalistas, terratenientes y otros males sociales;

por los que promovieron, integraron y desarrollaron las primeras organizaciones de obreros, campesinos y estudiantes; difundieron las ideas socialistas y fundaron los primeros movimientos revolucionarios, marxistas y leninistas;

por los integrantes de la vanguardia de la Generación del Centenario del natalicio de Martí, que nutridos por su magisterio nos condujeron a la victoria revolucionaria popular de enero de 1959;

**ARTÍCULO 17.** La República de Cuba puede conceder asilo, de conformidad con la ley, a los perseguidos por sus ideales o luchas por la liberación nacional, por actividades progresistas, por el socialismo y la paz, por los derechos democráticos y sus reivindicaciones, así como a los que luchan contra el imperialismo, el fascismo, el colonialismo, el neocolonialismo y cualquier otra forma de dominación, la discriminación y el racismo.

## TÍTULO II

### FUNDAMENTOS ECONÓMICOS

**ARTÍCULO 18.** En la República de Cuba rige un sistema de economía socialista basado en la propiedad de todo el pueblo sobre los medios fundamentales de producción como la forma de propiedad principal, y la dirección planificada de la economía, que tiene en cuenta, regula y controla el mercado en función de los intereses de la sociedad.

**ARTÍCULO 19.** El Estado dirige, regula y controla la actividad económica conciliando los intereses nacionales, territoriales, colectivos e individuales en beneficio de la sociedad.

La planificación socialista constituye el componente central del sistema de dirección del desarrollo económico y social. Su función esencial es proyectar y conducir el desarrollo estratégico, previendo los equilibrios pertinentes entre los recursos y las necesidades.

**ARTÍCULO 20.** Los trabajadores participan en los procesos de planificación, regulación, gestión y control de la economía.

La ley regula la participación de los colectivos laborales en la administración y gestión de las entidades empresariales estatales y unidades presupuestadas.

**ARTÍCULO 21.** El Estado promueve el avance de la ciencia, la tecnología y la innovación como elementos imprescindibles para el desarrollo económico y social.

Igualmente implementa formas de organización, financiamiento y gestión de la actividad científica; propicia la introducción sistemática y acelerada de sus resultados en los procesos productivos y de servicios, mediante el marco institucional y regulatorio correspondiente.

**ARTÍCULO 22.** Se reconocen como formas de propiedad, las siguientes:

- a) socialista de todo el pueblo: en la que el Estado actúa en representación y beneficio de aquel como propietario;
- b) cooperativa: la sustentada en el trabajo colectivo de sus socios propietarios y en el ejercicio efectivo de los principios del cooperativismo;
- c) de las organizaciones políticas, de masas y sociales: la que ejercen estos sujetos sobre los bienes destinados al cumplimiento de sus fines;
- d) privada: la que se ejerce sobre determinados medios de producción por personas naturales o jurídicas cubanas o extranjeras; con un papel complementario en la economía;
- e) mixta: la formada por la combinación de dos o más formas de propiedad;
- f) de instituciones y formas asociativas: la que ejercen estos sujetos sobre sus bienes para el cumplimiento de fines de carácter no lucrativo;

g) personal: la que se ejerce sobre los bienes que, sin constituir medios de producción, contribuyen a la satisfacción de las necesidades materiales y espirituales de su titular.

Todas las formas de propiedad sobre los medios de producción interactúan en similares condiciones; el Estado regula y controla el modo en que contribuyen al desarrollo económico y social.

La ley regula lo relativo al ejercicio y alcance de las formas de propiedad.

**ARTÍCULO 23.** Son de propiedad socialista de todo el pueblo: las tierras que no pertenecen a particulares o a cooperativas integradas por estos, el subsuelo, los yacimientos minerales, las minas, los bosques, las aguas, las playas, las vías de comunicación y los recursos naturales tanto vivos como no vivos dentro de la zona económica exclusiva de la República.

Estos bienes no pueden transmitirse en propiedad a personas naturales o jurídicas y se rigen por los principios de inalienabilidad, imprescriptibilidad e inembargabilidad.

La transmisión de otros derechos que no impliquen transferencia de propiedad sobre estos bienes, se hará previa aprobación del Consejo de Estado, conforme a lo previsto en la ley, siempre que se destinen a los fines del desarrollo económico y social del país y no afecten los fundamentos políticos, económicos y sociales del Estado.

**ARTÍCULO 24.** La propiedad socialista de todo el pueblo incluye otros bienes como las infraestructuras de interés general, principales industrias e instalaciones económicas y sociales, así como otros de carácter estratégico para el desarrollo económico y social del país.

Estos bienes son inembargables y pueden transmitirse en propiedad solo en casos excepcionales, siempre que se destinen a los fines del desarrollo económico y social del país y no afecten los fundamentos políticos, económicos y sociales del Estado, previa aprobación del Consejo de Ministros.

En cuanto a la transmisión de otros derechos sobre estos bienes, así como a su gestión, se actuará conforme a lo previsto en la ley.

Las instituciones presupuestadas y las entidades empresariales estatales cuentan con otros bienes de propiedad socialista de todo el pueblo, sobre los cuales ejercen los derechos que le corresponden de conformidad con lo previsto en la ley.

**ARTÍCULO 25.** El Estado crea instituciones presupuestadas para cumplir esencialmente funciones estatales y sociales.

**ARTÍCULO 26.** El Estado crea y organiza entidades empresariales estatales con el objetivo de desarrollar actividades económicas de producción y prestación de servicios.

Estas entidades responden de las obligaciones contraídas con su patrimonio, en correspondencia con los límites que determine la ley.

El Estado no responde de las obligaciones contraídas por las entidades empresariales estatales y estas tampoco responden de las de aquel.

**ARTÍCULO 27.** La empresa estatal socialista es el sujeto principal de la economía nacional. Dispone de autonomía en su administración y gestión; desempeña el papel principal en la producción de bienes y servicios y cumple con sus responsabilidades sociales.

La ley regula los principios de organización y funcionamiento de la empresa estatal socialista.

**ARTÍCULO 28.** El Estado promueve y brinda garantías a la inversión extranjera, como elemento importante para el desarrollo económico del país, sobre la base de la protección y el uso racional de los recursos humanos y naturales, así como del respeto a la soberanía e independencia nacionales.

La ley establece lo relativo al desarrollo de la inversión extranjera en el territorio nacional.

**ARTÍCULO 29.** La propiedad privada sobre la tierra se regula por un régimen especial.

Se prohíbe el arrendamiento, la aparcería y los préstamos hipotecarios a particulares.

La compraventa u otra transmisión onerosa de este bien solo podrá realizarse previo cumplimiento de los requisitos que establece la ley y sin perjuicio del derecho preferente del Estado a su adquisición mediante el pago de su justo precio.

Los actos traslativos de dominio no onerosos o de derechos de uso y disfrute sobre este bien se realizan previa autorización de la autoridad competente y de conformidad con lo establecido en la ley.

**ARTÍCULO 30.** La concentración de la propiedad en personas naturales o jurídicas no estatales es regulada por el Estado, el que garantiza además, una cada vez más justa redistribución de la riqueza, con el fin de preservar los límites compatibles con los valores socialistas de equidad y justicia social.

La ley establece las regulaciones que garantizan su efectivo cumplimiento.

**ARTÍCULO 31.** El trabajo es un valor primordial de nuestra sociedad. Constituye un derecho, un deber social y un motivo de honor de todas las personas en condiciones de trabajar.

El trabajo remunerado debe ser la fuente principal de ingresos que sustenta condiciones de vida dignas, permite elevar el bienestar material y espiritual y la realización de los proyectos individuales, colectivos y sociales.

La remuneración con arreglo al trabajo aportado se complementa con la satisfacción equitativa y gratuita de servicios sociales universales y otras prestaciones y beneficios.

### **TÍTULO III FUNDAMENTOS DE LA POLÍTICA EDUCACIONAL, CIENTÍFICA Y CULTURAL**

**ARTÍCULO 32.** El Estado orienta, fomenta y promueve la educación, las ciencias y la cultura en todas sus manifestaciones.

En su política educativa, científica y cultural se atiende a los postulados siguientes:

SÉPTIMA: La Asamblea Nacional del Poder Popular en el plazo de un año, luego de la entrada en vigor de la Constitución, aprueba su reglamento y el del Consejo de Estado.

OCTAVA: El Consejo de Ministros en el plazo de dos años de vigencia de la Constitución, presenta a la Asamblea Nacional del Poder Popular el proyecto de nuevo reglamento de ese órgano y el de los gobiernos provinciales.

NOVENA: La Asamblea Nacional del Poder Popular en el plazo de dos años de vigencia de la Constitución, aprueba el reglamento de las asambleas municipales del Poder Popular y de sus consejos de la administración.

DÉCIMA: El Consejo de Gobierno del Tribunal Supremo Popular, en el plazo de dieciocho meses de entrada en vigor de la Constitución, presenta a la Asamblea Nacional del Poder Popular el proyecto de nueva Ley de los Tribunales Populares, ajustado a los cambios que en la presente Constitución se establecen, así como las propuestas de modificaciones a la Ley de Procedimiento Penal y a la Ley de Procedimiento Civil, Administrativo, Laboral y Económico, que correspondan.

DECIMOPRIMERA: Atendiendo a los resultados de la Consulta Popular realizada, la Asamblea Nacional del Poder Popular dispondrá, en el plazo de dos años de vigencia de la Constitución, iniciar el proceso de consulta popular y referendo del proyecto de Código de Familia, en el que debe figurar la forma de constituir el matrimonio.

DECIMOSEGUNDA: La Asamblea Nacional del Poder Popular, en el plazo de dieciocho meses de entrada en vigor de la Constitución, aprueba las modificaciones legislativas requeridas para hacer efectivo lo previsto en su Artículo 99, referido a la posibilidad de los ciudadanos de acceder a la vía judicial para reclamar sus derechos.

DECIMOTERCERA: La Asamblea Nacional del Poder Popular aprueba, en el plazo de un año de entrada en vigor de la Constitución, un cronograma legislativo que dé cumplimiento a la elaboración de las leyes que desarrollan los preceptos establecidos en esta Constitución.

### **DISPOSICIONES FINALES**

PRIMERA: Se deroga la Constitución de la República de Cuba, de 24 de febrero de 1976, tal como quedó redactada por las reformas de 1978, 1992 y 2002.

SEGUNDA: La presente Constitución entra en vigor, una vez proclamada, a partir de su publicación en la Gaceta Oficial de la República.