

Cuba

Business Guide

Compiled by:

SwissCubanCham + Embassy of Switzerland Cuba

Havana, April 2012

Macro economic situation

After the collapse of the former Soviet Union, Cuba entered into said “Special Period” which extended into the early 2000. During this “Special Period” Cuba had to adapt its foreign trade from COMECON exchanges to hard currency selling/buying. As a consequence, Cuba had to withhold basic investments in almost all sectors of the economy – situation that is aggravated by the maintained and even increased US embargo restrictions against the Island.

Over the last years Cuba’s economy steadily recovered, also thanks to foreign support from Venezuela, Spain, China and most recently from Brazil and Russia. Among the main drivers of the Cuban economy today are tourism, mining & energy and the export of medicine and medical services.

Under the new government of Raul Castro many reforms were implemented since 2010. The overall objective is to convert the Cuban Social Economy into a sustainable economic model. Beside important structural reforms and the creation of a private sector (complementary to the state sector), the economical focus remains on increasing agriculture output, the creation of special development zones, boost export industries and continue to insert the Cuban foreign trade in a wide geographical frame, however with an underpinned priority given to the ALBA states. The backbone of the economy remains centralized planning in a socialist state.

Business decisions in Cuba remain with state companies which themselves respond to state interests. For a business idea to succeed, same should therefore cope with such state interests. Exceptions to this basic rule might apply for the new private sector. A lecture of the Guidelines of the Economic a Social Policy is highly recommendable before entering into a business relation with Cuban entities.

[Link to Guidelines of the Economic and Social Policy of 2011.pdf](#)

Foreign Trade

Article 18 of the Cuban Constitution of 1976 defines a state foreign trade monopoly. The rector and control entity of this foreign trade monopoly is the Ministry of Foreign Trade and Investments (MINCEX) who grants import and export licenses to some 400 Cuba state companies, indicating in each license the custom tariffs and positions. Foreign companies therefore must sell / buy through one of the licensed Cuban import / export companies.

Cuban companies licensed for certain foreign trade operations are said to be able to act independently and are solely liable for their commitments. No import or export quotas apply. The disposability of (centrally managed) hard currency however might limit the scope and timing of each foreign trade operation. In this respect the securing of sales to Cuba through letters of credit (LC) is advisable. Many of the Cuban banks are foreign audited and the payment instruments (also unconfirmed LCs) are usually executed in a timely manner. Exporters of Swiss origin can also rely on existing SERV cover for selected Cuban LC issuing banks.

Beside sales- and purchase contracts, a commonly used contractual model in Cuban foreign trade is the commission contract through which the foreign seller maintains a consignment stock in Cuba and contracts a Cuban entity to sell these goods against a commission. The foreign company remains owner of the goods in Cuba until sold by the Cuban Agent.

All major foreign currencies can be used in Cuban foreign trade. The US embargo restrictions however impede Cuba to receive or pay US Dollars. Also, no payment to/from Cuba can transit through a branch of a US bank. Given these US imposed restrictions; many foreign banks avoid simple advice of payment instruments in US Dollars. It is therefore recommended to offer and contract directly in EUR, CHF or CAD.

Customs

Cuba is a member of the World Trade Organization (WTO) and a beneficiary of the General System of Preferences (GSP) scheme with Switzerland. Further memberships include the World Customs Organization and various regional trade agreement protocols. Cuba is neither a member of the World Bank nor the IMF.

The Cuban Customs nomenclature includes the Harmonized Commodity Description and Coding System with an 8-digit breakdown. A distinction is made for the most-favored nation tariffs (member nations of WTO and/or members of other bilateral trade agreements) and for general tariffs (other nations).

Art. XX of GATT defines de import- and export prohibitions, in line with international standards. Particular sanitary and fito-sanitary regulations apply, according to international conventions and UN recommendations of WHO and FAO.

Intellectual Property and trademarks; standards and norms

Cuba is a party to a number of international treaties and agreements dealing with the protection of intellectual property, including the World Intellectual Property Organization and the Paris Convention, among others. The Cuban Office for Industrial Property – Oficina Cubana de la Propiedad Industrial (OCPI) and Cuban law firms are member of the Interamerican Association of Industrial Property (ASIPI), the International Association for the Protection of Industrial Property (AIPPI) and participate at the annual meetings of the International Trade Mark Association.

Cuba is member of the International Standardization Organization (ISO). Particular Cuban technical standards might have compulsory or recommendatory nature. The Oficina Nacional de Normalización (NC) is the Cuban authority related to these matters.

Foreign Investments

The primary legal framework governing foreign investments in Cuba is set out in the Foreign Investment Act (Law 77 of 1995 on Foreign Investments). Detailed rules applicable to the operations of foreign investment vehicles are contained in the generally applicable legislation dealing with matters such as tax, banking, environment, construction, labor, insurance and others, as well as the Cuban Commercial Code and the Civil Code.

The Foreign Investment Act provides basic investment protection and other general rules relevant to foreign investors. It classifies foreign investments into direct investments (equity and management participation in a given project) and indirect investments (finance). Under the Foreign Investment Act, all sectors of the Cuban economy are open to foreign investments with the exception of health, education and the sector of the armed forces. Also, the acquisition of ownership and other property rights over real estate is expressly allowed for residential, tourism and commercial projects. Despite these ample legal possibilities only relatively few investments in real estate were executed over the last years: The Cuban authorities still prefer to negotiate finance participations rather than granting equity rights to foreign entities.

The Foreign Investment Act provides three main vehicles for foreign investments in Cuba:

- joint-Venture companies;
- international economic association contracts; and
- full foreign ownership companies

More recently, particular and less explicit forms include cooperation and management agreements of production and/or service entities. Such agreements can be negotiated simply between a Cuban entity and a foreign natural or legal person and also include the management of hotels.

Following the selection of an investment project and the conclusion of preliminary agreements (usually a letter of intent or a memorandum of understanding) with the Cuban counterpart, the parties are indicated to produce a feasibility study in line with international standards of due diligence and present an the investment proposal to the MINCEX. The dispute resolution clauses are freely negotiable and might include international arbitration clauses, including International Chamber of Commerce (ICC) and United Nations Commission on International Trade Law (UNCITRAL) arbitration.

The Foreign Investment Act provides that foreign investments in Cuba enjoy full protection and security and may not be expropriated, except for reasons of public utility or national interest, as declared by the Cuban Government in accordance with the Cuban constitution and prior to compensation based on the agreed commercial value of the assets, payable in a freely convertible currency. At any time, a foreign investor may sell or transfer to the Cuban Government or a third party, in whole or in part, its interest in a Cuban joint-venture company and prior approval of the Cuban Government. The Foreign Investment Act also guarantees that net profits, dividends and the proceeds resulting from the liquidation or sale of shares in a Cuban joint-venture or full foreign ownership company may be freely repatriated abroad (free from taxes, withholdings and deductions). Swiss investors enjoy additional benefits such as provided by the *Agreement for the Promotion and Protection of Investments*, executed in 1997 between the Federal Council of Switzerland and the Cuban Government. No agreement on double-taxation exists between Switzerland and Cuba.

Despite the existing and well defined legal framework governing foreign investments, the effective deployment of foreign investment in Cuba remains comparatively small. Limiting factors might be less the disposability of foreign capital eager to work in Cuba (despite the US embargo restrictions) than a rather restrictive handling of the inquiries by Cuba. Equity participations in so deemed “very attractive projects”, particularly in tourism, is kept in Cuban hands. The *Guidelines of the Economic and Social Policy* of 2011 now better define the priorities in which Cuba wants to attract foreign investment. Some include the access to new high tech and management practices, the opening of new export markets and the substitution of imports in all sectors of the economy.

[Link to Law 77 – Foreign Investment Act.pdf](#)

Prospection

The visiting (and participation) to one of the Cuba Commercial Fairs is recommended for parties interested in exploring business opportunities in Cuba. The most important Commercial Fair in Cuba is FIHAV that usually takes place end of November of each year in Havana. Many business sector specific fairs are being organized throughout the year. No import taxes will apply for commercial samples shown at commercial fairs.

The Cuban Chamber of Commerce is the official entity destined for match-making in all the sectors of the economy. The Swiss-Cuban Chamber of Commerce SWISSCUBANCHAM also supports inquiries from Swiss companies trying to establish business relations with Cuban entities. A typical example would then foresee a meeting with participants of the Swiss company, the Cuban foreign trade company and representatives from the Cuban economic sector the Swiss company would want to start business in. After a first prospection visit any further follow-up meetings with Cuban entities will require a business visa for the foreign visitors. Such visas are issued by the Cuban Consulate in the respective country.

Negotiations with Cuban entities are time consuming. Unless the foreign supplier offers an outstanding differentiation (Key Selling Factor) that would cope with a particular Cuban purchase need, the normal scenario will include a participation in a sort of tender business. Attractive payment terms and a professional follow-up after the offer submission and throughout the tender negotiation often determine success.

Setting up of a branch office

Although Cuba is very eager to attract foreign capital, it has still a rather restrictive legal framework to attract a larger number of companies.

The legal frame for the opening of branch offices in Cuba is subject to the requirements established in Decree 206 of 1996, "Regulations of the National Registry of Branch Offices and Agents of Foreign Mercantile Societies", and in Resolution No. 550 of 2001 of MINCEX.

The basic requirements for an application inquiry for a branch office in Cuba include: (i) min. USD 50,000.-- social capital of the foreign company; (ii) min. five years of registration in the country of origin; (iii) min. three years of continuous business with Cuba; (iv) annual business volume with Cuban entities exceeding USD 500,000.--. Exceptions might apply, depending on the state interest in particular foreign company proceeding with the inquiry.

The inquiry for opening a branch office in Cuba must be directed to the Cuban Chamber of Commerce. A typical license to open a branch office in Cuba is timely limited to 3 years, renewable, and would allow the employment of a Cuban workforce (through a state employment agency), the rent of an office, the purchase of cars and the contracting of services (communications, opening of a bank account, else) so to become operative.

The alternative of setting up a branch office is to enter into a representation contract with a Cuban company and/or to contract a consultant (such consultant cannot be involved in negotiations with Cuban entities) with an authorized Cuban Consultancy firm. In exceptional cases, an existing branch of a foreign company might include the representation of another foreign company active in the same economic sector.

Swiss companies are advised to also check experiences with already established firms.

Link to Cuban Chamber of Commerce: www.camaracuba.com

Taxation

The general Cuba tax rules are set out in Law 73 of 1994 on the Taxation System, as well as in various tax resolutions issued by the Ministry of Finance and Prices, the Law 77 of 1995 on the Foreign Investment Act and other complementary legislation.

Cuban and foreign legal persons, whatever their form of organization or property regime, are subject to the payment of corporate tax in connection with their business activities carried out in Cuba. In case of Cuba legal persons (including Cuban joint-ventures and full foreign ownership companies); corporate tax is payable in respect of world-wide income. A foreign legal persona is normally subject to the payment of corporate tax in Cuba when it has a permanent establishment, a fixed place of business or some form of representation. A permanent establishment is therefore constituted by branches, offices and any other facility including the provision of corporate consulting or management services (for a continual period of a least 6 months within a single 12 month period).

Proper accounting books and records must be maintained in accordance with the Cuban Financial Reporting Standards which have been adopted from the International Financial Reporting Standards (IFRS). The financial statements of any entity subject to taxation in Cuba must be audited annually by an auditor that is duly authorized by the Ministry of Finance and Prices.

The corporate tax rate for companies constituted under the Foreign Investment Act is 30% (vs 35% for Cuban entities including branch offices of foreign companies that invoice directly to Cuba customers). Additional taxes include tax on the use of labor, social security contributions, custom duties, land transportation tax on vehicles and document tax. Cuba does not apply a Value Added Tax (VAT).

It is a common business practice in Cuba for foreign companies to have their branch offices in Cuba only to generate expenses as all commercial commitments and invoices are issued and signed by the headquarters abroad. In these cases, despite the permanent establishment interpretation, no taxes are paid as no revenues are generated in Cuba. In most cases branches of foreign companies in Cuba are not engaged in corporate tax liability.

Basic addresses for doing business in Cuba

Swiss points of contact:

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Swiss Export Risk Insurance (SERV)

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Cuban (state run) points of contact:**Cámara de Comercio de la República de Cuba**

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