Practice Update

Cuba Practice Update

April 1, 2014

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Cuban Parliament Passes New Foreign Investment Law

On March 29, 2014, Cuba's 576-member National Assembly unanimously approved a measure designed to encourage foreigners to invest more than $2 billion a year in the island's lagging economy. Cuban authorities claim that the new measure is a significant departure from its predecessor - law 77 of 1995, and promises foreign investors less government interference, reduced taxes on profits and employment, and greater bureaucratic efficiency.

Key provisions of the new law are said to include:

- Expanded Investment Opportunities: With a few exceptions (including healthcare and education-related services), every area of the Cuban economy will be open to investment. These include previously off-limits sectors, such as sugar and agriculture.
- Real Estate Acquisition: Under the new law, foreigners may be able to buy real estate, including residences and buildings for office space, as well as for use in tourism and other sectors.
- Corporate Tax Cuts: Tax rates on net corporate income have been slashed in half to 15 percent.

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During the first eight years of operations, all new foreign ventures are exempt from taxes on profits.

- Greater Efficiency: Government ministries and associated agencies will be required to make decisions within 60 days of receiving proposals from foreign investors.
- Repatriation of Profits Guarantees: According to the new law, the Cuban government guarantees the free transfer abroad of profits, dividends, and any revenue derived from the sale of real property or corporate shares, free of taxes or other duties.

This measure appears consistent with Cuba's broader ongoing reforms that seek to decentralize government control of its economy. If fully enacted, Cuba's new law will provide much needed incentives for foreign investment on the island, and Cuba's top economic planner Eduardo Murillo hopes that it will boost the island's GDP growth from an anemic 2.2 percent in 2013 to around 7 percent by 2016.

While liberalization of foreign investment is another promising sign of change in Cuba, the measure's success will be heavily dependent on how it is implemented under the accompanying regulations yet to be released. The fact remains that Cuba's historic relations with foreign investors have been problematic. For example, in 2013, Cuba jailed executives from British investment and trading firm Coral Capital Group Ltd. for unspecified violations of Cuban law, only releasing them after a year in Cuban prison. Accordingly, for success the Cubans will need to provide real incentives and guarantees for business - as well as demonstrate respect for the rule of law - through the regulations.

The new law also appears to be aimed at modifying Cuba's relations with the United States. Currently, U.S. law, including the Cuban Democracy Act of 1992 and the LIBERTAD (Helms-Burton) Act of 1996, explicitly prohibit U.S. persons and entities from investing in Cuba. Cuban sources have commented that the U.S. embargo is now harming American businesses interests, and have gone so far as to make clear that investments by Cuban Americans living abroad would be considered for approval.
