

Law 16-95

Foreign Investment Law of the Dominican Republic

THE NATIONAL CONGRESS IN THE NAME OF THE REPUBLIC

WHEREAS: The Dominican State recognizes that Foreign Investment and technology transfers contribute to the economic growth and social development of the country insofar as they favor the generation of jobs and foreign currency, promote the process of capitalization and provide efficient production, marketing and management methods;

WHEREAS: It is advantageous for investors, whether foreign or national, should have similar rights and obligations in the investment fields;

THE FOLLOWING LAW HAS BEEN GIVEN

Art. 1.- For the purposes of this law on foreign investment, the following shall be understood to be:

a) Direct Foreign Investment:

Contributions originating from abroad, belonging to foreign individuals or corporations or individual nationals residing abroad, to the capital of a company operating in national territory;

b) Foreign Reinvestment:

That foreign investment made in whole or in part from the profits originating from a registered foreign company into the same company that generated them;

c) New Foreign Investment:

Foreign investment made in whole or in part from the profits originating from a duly registered direct foreign investment into a company different from that which generated the profits;

d) Foreign Investor:

The owner of a duly registered foreign investment;

e) National Investment:

That made by the State, municipalities and national corporations domiciled or resident in the National territory, as well as by foreign individuals residing in the national territory that do not meet the conditions for obtaining the certificate of foreign investor;

f) Central Bank:

This is the Central Bank of the Dominican Republic.

Art. 2.- Foreign Investment can assume the following forms:

a) Contributions in freely-convertible currency, exchanged in a banking institution authorized by the Central Bank.

b) Contributions in kind, such as industrial plants, new and re-conditioned machinery, new and re-conditioned equipment, replacements, spare parts and parts, raw material, intermediate products and final goods, as well as intangible technological contributions; and

c) Those financial instruments the Monetary Board relegates to the category of foreign investment, except those that may be the product of contributions or internment of an operation for the re-conversion of the Dominican foreign debt.

PARAGRAPH I: Independently of the investments foreseen in item b) of this article, contracts for technology transfer can be signed with foreign individuals or corporations, such as contracts for the license of technology, for technical assistance, basic and detailed engineering.

PARAGRAPH II: Intangible technological contributions are understood to be funds originating from technology, such as trademarks, product models or industrial processes or services, technical assistance and technical knowledge, franchise and management assistance. The application regulation of this law shall determine the general framework that will be applied to technology, including those areas in which the capitalization of intangible technological contributions will be allowed.

Art. 3.- Targets of Foreign Investment:

a) Investments in the capital of an existing or new company, as per the provisions contained in the Commercial Code of the Dominican Republic, including the establishment of branch offices, pursuant to the conditions set by the laws.

Foreign Investment in share companies must be represented in nominative shares.

b) Investments in real properties located in the Dominican Republic, with the limitations in effect and applicable to foreigners; and

c) Investments towards the acquisition of financial assets, pursuant to the general norms issued in this area by the monetary authorities.

Art. 4.- Within 90 days of making its investment, any foreign company or investor must register it with the Central Bank of the Dominican Republic. For these purposes, the following documents will be filed:

- a) Application for registration, containing all the information relevant to the invested capital and the area in which the investment has been made;
- b) Proof of entry into the country of the foreign currency or physical or tangible goods.
- c) Formative documents of the commercial corporation or the authorization of the operation of branch offices via the setting of domicile.

PARAGRAPH I: Once the document filing requisites have been met, the Central Bank will issue immediately to the applicant a Registration Certification of Direct Foreign Investment.

PARAGRAPH II: Foreign Re-Investment and New Foreign Investment, described in article 1 of this law, shall also be registered with the Central Bank, meeting the requisites provided by the regulation for applications.

PARAGRAPH III: In the case of companies operating in Industrial Free Zones, the registration and delivery of information shall be made in the National Council of Export Free Zones, which shall have the obligation of communicating this immediately to the Central Bank.

Art. 5.- Foreign Investment will not be allowed in the following categories:

- a) Disposal and remains of toxic, dangerous or radioactive garbage not produced in the country;
- b) Activities affecting the public health and the environmental equilibrium of the country, pursuant to the norms that apply in this regard; and
- c) Production of materials and equipment directly linked to national defense and security, except for an express authorization from the Chief Executive.

PARAGRAPH I: When the Foreign Investment affects the eco-system in its area of influence, the investor must present a proposal with the provisions for recovering the ecological damage it may cause.

PARAGRAPH II: The competent authorities related to the area in question shall have the responsibility for compliance with the provisions contained in this article.

PARAGRAPH III: Foreign investments shall be made in each area of the national economy, pursuant to the conditions and limitations imposed by the laws and regulations governing each one of said areas.

Art. 6.- Investors and the companies or corporations in which foreign investors may participate or be owners, shall have the same rights and obligations that the laws confer upon national investors, save the exceptions foreseen in this law or in special laws.

Art. 7.- The individuals or corporations that make investments defined in article 1 of this law, shall have the right to remit abroad, in freely-convertible currencies, without the need for prior authorization, the total amount of invested capital and the dividends declared during each fiscal period, up to the total amount of the net current profits of the period, upon payment of income tax, including the capital gains made and registered in the books of the company according to generally accepted accounting practices.

They can also repatriate, under the same conditions, the obligations resulting from technical service contracts where fees are established for the purposes of technology transfers and/or contracts for the local manufacture of foreign brands, which include clauses for the payment of royalties ("regalías") as long as said contracts and the amounts or procedures for the payments involved have been previously approved by the Central Bank of the Dominican Republic or an official agency subsequently designated to coordinate, facilitate and supervise everything related to foreign investment.

Art. 8.- Within the following 60 days, the foreign investor must convey to the Central Bank the following:

- a) Statement of profits contained in the fiscal year, duly certified by a Certified Public Accountant ("Contador P blico Autorizado"), specifying the percentage of said profits that were subject to remittance;
- b) Documentary proof of settlement of tax commitments.

Art. 9.- Non-compliance with this obligation will carry the applicable sanctions contained in the law that governs the obligation of supplying information to the Central Bank of the Republic.

The Central Bank must inform the National Congress annually of everything related to the flows of foreign investment in the country.

Art. 10.- Article 12, added to Law 622, of 28 December 1973 to Law 173, of 6 April 1966, is modified, so that hereinafter it reads in the following manner:

Art. 10.- Foreign individuals and corporations, as well as nationals, can engage in the Dominican Republic in the promotion or handling of the importation, sale, rental or any other kind of marketing or operations of merchandise and products of foreign origin that may be produced abroad or

in the country, whether acting as agent, representative, receiver of commissions, exclusive distributor, licensee or under any denomination. However, if the individual or corporation that is to engage in this activity has maintained a commercial relationship with local licensees, he or it must agree to and deliver beforehand and in writing the fair and complete indemnities for the losses and damages produced by such cause, on the basis of the factors and in the manner described in article 3 of this law.

Art. 11.- This law repeals Law Number 861, dated 22 July 1978, and Law No. 138 dated 24 June 1983. In like manner, it repeals item d) of article 3 of Law No. 251 of 11 May 1964 on International Fund Transfers.

Art. 12.- (Transitional). In the case of accumulated profits from previous periods retained as a consequence of the limitations on remittances established by Law No. 861, each company shall have the right to request the approval of a program for gradual repatriation, with a minimum of 5 years for fully effecting it.

The reassessment surpluses registered in the capital accounts of companies that have reassessed their assets will not be regarded as foreign investment for the purposes of repatriation of capital, except when said revaluation profits have been converted into liquid assets for the sale to third parties or parties related to the company.

Art. 13.- This law repeals any other express legal provision contrary to it.

GIVEN in the Meeting Hall of the House of Representatives, Palace of the National Congress, in Santo Domingo de Guzman, National District, Capital of the Dominican Republic, on this twenty fourth day of the month of October of the year nineteen hundred and ninety five; year 152 of the Independence and 133 of the Restoration.

Jose Ramon Fadul Fadul

L. Altagracia Guzman Marcelino

President

Secretary

Nelson de Js. Sanchez Vazquez

GIVEN in the Meeting Hall of the Senate, Palace of the National Congress, in Santo Domingo de Guzman, National District, Capital of the Dominican Republic, on this eighth day of the month of November of the year nineteen hundred and ninety-five; year 152 of the Independence and 133 of the Restoration.

AMABLE ARISTY CASTRO

President.

ENRIQUE PUJALS, Secretary

RAFAEL OCTAVIO SILVERIO, Secretary

In the exercise of the powers conferred upon me by article 55 of the Constitution of the Republic

I PROMULGATE this Law and order that it be published in the Official Gazette, for it to be known and complied with

GIVEN in Santo Domingo de Guzman, National District, Capital of the Dominican Republic on this twentieth (20th) day of the month of November of the year nineteen hundred and ninety-five; year 152 of the Independence and 133 of the Restoration.

Joaquín Balaguer

Presidente de la República Dominicana