Foreign Investment and Agricultural Cooperatives in Cuba

The Cuban legal context

Agribusiness Challenges and Opportunities for the U.S. & Cuba

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Why Focus on Cooperatives?

- Some 80% of agriculture in Cuba is managed by cooperatives, not by state enterprises.
- US law is much more inclined to permit US investors to partner with cooperatives than with the Cuban state.
- This topic was important enough to be prominently featured by the Cuban Government in their latest “Portfolio of Opportunities for Foreign Investment” (pg 15 of 280).
Purpose of the Presentation

• This is not “how-to” legal advice
• Much less “whether-to” financial advice.
• Rather we are noting that current Cuban law grants some surprising faculties to agricultural cooperatives authorized to partner with foreign investors.
Partnerships between agricultural cooperatives and foreign investors

Agricultural cooperative partnership with a foreign investor may be **direct** or **indirect**.

- **Indirect partnership** involves contractual relations between the investor and the agricultural cooperatives.

- **Direct partnership** requires joint ownership by the cooperatives of the commercial entity formed in Cuba between the investor, the cooperatives and a Cuban state enterprise.
Partnerships between agricultural cooperatives and foreign investors can:

- Import duty free the machinery required for the partnership.
- Hold bank accounts in convertible currency
- Directly carry out foreign trade activities (import/export).
- Hire a limited number of employees outside of state employment agency.
- Reinvest earnings in expanded/updated production.

Although the participation of a Cuban government enterprise is not required by the law, we know of no case where an international partnership has been approved without the participation of a Cuban government enterprise.
Managerial Autonomy?

For those who have studied the successes and failures of Cuban agriculture during the past several decades, the commercial and managerial autonomy implied by these attributes represent a dramatic opportunity for rapid progress in Cuban agriculture.

However, each foreign investor + agricultural cooperative partnership requires government approval.

• Will a significant number of investors be interested?
• If so, will the Cuban government approve the partnerships?
Process for proposing a specific project

1. Exploratory stage
   - Identification of possible partners
   - Elaboration of economic-financial and legal documentation

2. Negotiation
   - Presentation of documentation to MINCEX / MINTUR or ZEDM as appropriate

3. Approval by the empowered governmental agency

Approval by the Empowered Government Agency

“In order to participate in business with foreign investment, agricultural cooperatives must function in a stable manner and have positive economic and production conditions.”

• We do not know if any U.S. investors have requested approval to partner with agricultural cooperatives.

• We do know that some foreign investors have been approved and are already partnering with Cuban agricultural cooperatives.

• We do not know to what extent such investor/cooperative associations are exercising their economic rights under the new laws.

We are very interested in exchanging information with others who are interested in the application of these new investment laws to agricultural cooperatives.
Sources:

Portfolio of Opportunities for Foreign Investment 2016-2017, especially page 15 “Foreign Investment with the partnership of agricultural cooperatives”

Cuba Investor Guide

Law No. 118 “Ley de Inversión Extranjera”

Decreto No. 325/2014 “Reglamento de la Ley de la Inversión Extranjera”

Resolución No. 16/2014 “Reglamento Sobre Régimen Laboral en la Inversión Extranjera”

Best source we have found to download these documents:

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