

# FOREIGN INVESTORS' PROPERTY RIGHTS AND LEGAL GUARANTIES AGAINST NON-COMMERCIAL RISKS IN CUBA<sup>1</sup>

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There is a framework under Cuban law which establishes (i) property rights for foreign investors, and (ii) legal guaranties protecting foreign investors against non-commercial risks. For property rights, it derives from the Constitution of the Republic of Cuba and the Law on Foreign Investment. For legal guaranties protecting against non-commercial risks, the framework results from international bilateral treaties for the reciprocal promotion and protection of investments, as well as from the Constitution of the Republic and the Law on Foreign Investment.

My first purpose is to review that legal framework. It is not to advocate for amendment or replacement of the legal framework. I am implicitly assuming that (a) the framework will remain in existence following the date when it becomes lawful under U.S. law to trade and invest in Cuba, subject only to the dynamics of the political process which will eventually take place in Cuba, and (b) U.S. persons and companies will wish to trade with and invest in Cuba even while

Cuba's domestic political process unfolds. Accordingly, my second purpose is to begin to educate U.S. persons and companies on the general status of Cuban law concerning foreign investors property rights, and legal guaranties against non-commercial risks.

## FOREIGN INVESTORS' PROPERTY RIGHTS The Constitution of the Republic of Cuba

In accordance with the national Constitution,<sup>2</sup> the property rights of foreign investors will depend upon the type or category of the respective assets. Assets are generally divided into (i) assets forming part of the "socialist state patrimony," (ii) small agricultural holdings, and (iii) assets derived from personal work.

Foreign investors cannot acquire or hold rights to small agricultural holdings, pursuant to Article 19 of the national Constitution.<sup>3</sup> These assets may be owned only by "small agricultural producers," and may be transferred only to agricultural cooperatives and other "small agricultural producers," subject in

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1. These comments were prepared for delivery in Miami, Florida at the Conference on The Future For Investment and Economic Development in Cuba, held on February 29 and March 1, 1996 at the Radisson Hotel Conference Center.

2. *Official Gazette of the Republic of Cuba*, Extraordinary Edition, No. 7 (August 1, 1992).

3. The following is an English translation of the text of the provision: "The State recognizes the ownership of small agricultural producers to the lands which legally belong to them, and to the other immovable and movable goods which may be necessary for them to carry on the exploitation to which they are engaged, in accordance with that established in law. The small agricultural producers, upon prior authorization of the competent state organism and the compliance with the remaining legal requirements, may incorporate their lands only to cooperatives for agricultural production. They may also sell them, exchange them or otherwise transfer them to the State, and to cooperatives of agricultural production or to small agricultural producers in those cases and in accordance with the forms and conditions established in law, without prejudice to the preferential right of the State to acquire them by means of payment of their just price. Leasing, sub-division, mortgage loans and any other act implying a lien or assignment of the rights derived from the ownership of small agricultural producers to their lands are prohibited. The State supports the individual production of the small agricultural producers who contribute to the national economy."

## Foreign Investors' Property Rights and Legal Guaranties Against Non-Commercial Risks in Cuba

each case to the State's preferential right of acquisition for a "just price."

Foreign investors may be able to acquire and hold rights to assets derived from personal work. They are defined by Article 21 of the national Constitution<sup>4</sup> as the assets acquired by individuals through personal work, including personal residences. Article 21 of the national Constitution does not prohibit owners of assets derived from personal work from transferring the assets, but legislation specifically governing the particular assets would have to be reviewed during the course of due diligence to determine whether it prohibits or restricts transfers to foreign investors.

Foreign investors can acquire and hold rights pursuant to Article 15 of the national Constitution<sup>5</sup> to assets forming part of the "socialist state patrimony," but in each case upon prior and specific approval of the Council of Ministers of the Republic.

The concept of "socialist state patrimony" is broadly defined by Article 15 of the national Constitution to include "all lands not owned by small agricultural producers or cooperatives formed by small agricultural producers, the subsoil, mines, living and nonliving natural resources located within the economic maritime zone of the Republic, forests, waters, roads, sugar mills, factories, fundamental means of trans-

portation, and all enterprises, banks and installations which have been nationalized and expropriated from the imperialists, large landowners and bourgeois, as well as the factories, enterprises and economic installations and scientific, social, cultural and sports centers constructed, developed or acquired by the State, and those which it may construct, develop or acquire in the future."

Accordingly, foreign investors may acquire property rights perhaps with respect to assets derived from the personal work of the transferor, and undoubtedly and most importantly, to assets included within the "socialist state patrimony," which are the significant economic assets in Cuba. The property rights may include even ownership rights. The single exception is limited to means of public communication, for example, media as well as radio and television stations, which in accordance with Article 53 of the national Constitution<sup>6</sup> may not be privately owned.

Foreign investors may do so indirectly through "mixed enterprises, companies and economic associations" organized in accordance with the laws of Cuba.

The Cuban State recognizes ownership rights with respect to those entities, pursuant to Article 23 of the

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4. The following is an English translation of the text of the provision: "Private ownership to income and savings derived from personal work, to the housing possessed with just title of ownership, and to the other goods and objects used for the satisfaction of the material and cultural needs of the individual are guaranteed. Likewise, ownership to the means and instruments of personal or family work, which may not be used to obtain income derived from the exploitation of the work of third parties, is guaranteed. The law will establish the amount up to which conditions of personal property may be attachable."

5. The following is an English translation of the text of the provision: "a) all lands not owned by small agricultural producers or cooperatives formed by small agricultural producers, the subsoil, mines, living and nonliving natural resources located within the economic maritime zone of the Republic, forests, waters, roads; b) sugar mills, factories, fundamental means of transportation, and all enterprises, banks and installations which have been nationalized and expropriated from the imperialists, large landowners and bourgeois, as well as the factories, enterprises and economic installations and scientific, social, cultural and sports centers constructed, developed or acquired by the State, and those which it may construct, develop or acquire in the future. The property of these goods may not be transferred to natural or legal persons, other than in exceptional cases in which the partial or total transfer of any economic objectives will be dedicated to the development purpose of the country, and do not affect the political, social and economic foundations of the State, upon prior approval of the Council of Ministries or its Executive Committee. The transfer of other rights with respect to these goods to State enterprises or other authorized entities, for the fulfillment of their purposes, will be made in accordance with the provisions of law."

6. The following is an English translation of the text of the provision: "The liberty of speech and press of citizens in accordance with the purposes of the socialist society is recognized. The condition material to their exercise exist by the fact that the press, radio, television, films and other means of public broadcasting are state or social property, and in no case may be the subject of private ownership, which guarantees their use for the exclusive service of the working people and the interest of society. The law will regulate the exercise of these liberties."

national Constitution.<sup>7</sup> It reads as follows in relevant part: “The State recognizes the ownership of the mixed enterprises, companies and economic associations which may be organized under law.” Moreover, it mandates that “use, enjoyment, and disposition of assets belonging to [their] patrimonies will be governed by the provisions established by law and in treaties, as well as by the particular articles and by-laws by which they are governed”.

### The Law on Foreign Investment

The foreign investors’ property rights are substantially similar regardless of the business entities through which they engage in business. Generally, the Law on Foreign Investment<sup>8</sup> contemplates three forms of business entities, namely, (i) “mixed enterprises” or joint ventures, (ii) “contracts of international economic association” or unincorporated consortiums or partnerships, and (iii) “enterprises entirely of foreign capital,” or companies wholly-owned by one or more foreign investors.

Foreign investors have indirect property rights with respect to the assets of the respective business entities, which in turn will have rights of ownership or use, management and disposition of their assets pursuant to Article 23 of the national Constitution as noted above, and their constituent documents. These assets will certainly include assets originally forming part of the “socialist state patrimony,” but transferred by the Cuban State with the approval of the Council of Ministers of the Republic.

One point bears emphasis. The Law on Foreign Investment does not prohibit Cuban partners from transferring ownership of assets to joint ventures and unincorporated consortiums or partnerships. It therefore allows for the possibility of direct ownership of assets by the joint ventures and unincorporated consortiums or partnerships, and indirect ownership thereof by their foreign investors.

Similarly noteworthy is that foreign investors might acquire ownership to real estate, even if indirectly. Pursuant to Article 16 of the Law on Foreign Investment,<sup>9</sup> real estate may be used by foreign investors only to construct tourist facilities, and housing and offices for foreign investors. The acquisition will be subject to ad hoc or specific conditions, in accordance to Article 18 of the Law on Foreign Investment,<sup>10</sup> to be established in the particular authorization.

Foreign investors in joint ventures and wholly-owned foreign companies have constitutionally recognized ownership rights with respect to their shares of capital stock. On the other hand, foreign investors participating in unincorporated consortiums or partnerships maintain direct ownership rights with respect to their capital contributions, pursuant to Article 14 (1)(d) of the Law on Foreign Investment.<sup>11</sup>

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7. The following is an English translation of the text of the provision: “The State recognizes the ownership of the mixed enterprises, companies and economic associations which may be organized under law. The use, enjoyment, and disposition of assets belonging to [their] patrimonies will be governed by the provisions established by law and in treaties, as well as by the particular articles and bylaws by which they are governed.”

8. Law No. 77, published in *Official Gazette*, Extraordinary edition (September 6, 1995).

9. The following is an English translation of the text of the provision: “1. Under the authorization of this Act, investments can be made in real estate and acquire ownership and other property rights over that real estate. 2. The investments in real estate discussed in the previous paragraph can be utilized for: a) Housing and other structures destined for private residence or tourism activities of persons who are not permanent residents in Cuba; b) Housing or offices of foreign companies; c) Real estate development for use in tourism.”

10. The following is an English translation of the text of the provision: “The conditions and terms under which the purchase and transfer of real estate discussed in Article 16 of this Act are determined in the authorization and must be in accord with current legislation.”

11. The following is an English translation of the text of the provision: “1. d) Each contracting party makes separate contributions, which constitute a cumulative amount which they own at all times, and even though they do not constitute capital stock, it is in their interest to establish a common fund, as long as the portion of ownership belonging to each of the parties is well defined.”

## Foreign Investors' Property Rights and Legal Guaranties Against Non-Commercial Risks in Cuba

Foreign investors are entitled in accordance with Article 6 of the Law on Foreign Investment<sup>12</sup> to purchase the shares of capital stock or equivalent equity interests of the other foreign investors in their joint ventures and unincorporated consortiums or partnerships in the event the latter wish to sell their shares of capital stock or equivalent equity interests. The foreign investors may freely establish transfer prices.

Foreign investors have the right as well under Article 6 of the Law on Foreign Investment to sell their shares of capital stock in their joint ventures and wholly-owned foreign companies, and their equivalent equity interests in their unincorporated consortiums or partnerships, either to the Cuban State or to third parties. Except in cases of wholly-owned foreign companies, all transfers are subject to the previously noted right of first refusal. Each transfer requires approval of the Ministry or agency of the Cuban government which approved the respective foreign investment. Transfer prices may be freely established by the parties, or at their elections, by internationally recognized appraisers licensed by the Ministry of Finances and Prices or the Ministry for Foreign Investment and Economic Collaboration to operate in Cuba. They are payable in freely convertible currency unless otherwise agreed by the parties.

Upon liquidation of their joint ventures, unincorporated consortiums or partnerships and wholly-owned foreign companies, foreign investors are entitled, pursuant to Article 4(2) of the Law on Foreign Investment,<sup>13</sup> to payment of their prorata shares of the liquidation proceeds. The allocations may be freely established by the parties, or at their election, by in-

ternationally recognized appraisers licensed by the Ministry of Finances and Prices or the Ministry for Foreign Investment and Economic Collaboration to operate in Cuba. They are payable in freely convertible currency unless otherwise agreed by the parties.

### Property Claims of U.S. Citizens and Companies

We cannot conclude our review of foreign investors' property rights without discussing at least briefly the effects of the unsettled claims of U.S. citizens and companies, and Cuban exiles generally, on those property rights.

First, the claims of U.S. citizens and companies, which derive from two sources: the International Claims Settlement Act of 1949, and more recently, the Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996.

**Claims derived from the International Claims Settlement Act of 1949:**<sup>14</sup> These are the unsettled claims of nationals of the United States and companies more than 50% beneficially owned by nationals of the United States against the Government of Cuba for losses generally resulting from expropriations occurring between January 1, 1959 and October 16, 1964.

They are protected under international law, which requires governments to pay "just compensation" to aliens upon expropriation of their properties.<sup>15</sup>

The claims have been certified by the Foreign Claims Settlement Commission to the Secretary of State for use in the future negotiations of a claims settlement agreement with the Government of Cuba. They total

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12. The following is an English translation of the text of the provision: "1. At any moment, subject to the consent of all parties, the foreign investor in an international economic association can sell or transfer its total or partial share of the company to the State or a third party, subject to government authorization, receiving the corresponding price in freely convertible currency, except in the case of an express agreement to the contrary. 2. The foreign investor in a company with totally foreign capital can at any moment sell or transfer, in any form, to the State or a third party and subject to authorization by the Government, its total or partial share of the company, receiving the corresponding price in freely convertible currency, except in the case of an express agreement to the contrary."

13. The following is an English translation of the text of the provision: "2. If the period is not extended, at the time of its expiration, the joint venture, international economic-association contract or company with totally foreign capital shall be liquidated, as stipulated in the constituent documents and existing legislation, and the portion due to the foreign investor shall be paid in freely convertible currency, except in the case of an express agreement to the contrary."

14. See, e.g., Foreign Claims Settlement Commission of the United States, *1989 Annual Report*.

15. Restatement (Third) of the Foreign Relations Law of the United States § 712 (1987).

US\$1,851,057,358 in principal only. Pursuant to U.S. law, the decisions of the Foreign Claims Settlement Commission are final and conclusive on all questions of fact and law, and are not subject to review by any other agency of the United States, or by any U.S. court.

The settlement agreement between Cuba and the United States will be binding on the certified claimants. It will take the form of payment of a lump sum by Cuba to the United States, which will then be distributed prorata by the U.S. Treasury among the certified claimants. Accordingly, settlement and payment of these claims will not involve restitution of assets to any of the certified claimants, and will not affect the property rights of foreign investors.

Incidentally, it is reasonable to expect the United States to settle these claims for considerably less than face value. For example, the United States settled claims totaling US\$ 70,466,019 in principal against the former USSR for US\$ 8,658,722, or 12.29 percent and claims totaling US\$ 196,681,841 in principal against China for US\$ 80,500,000, or 40.93 percent. However, the United States settled claims totaling US\$99,471,984 in principal against Vietnam for US\$203,800,000, or 204.88 percent.

**Claims derived from the Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996:** Generally, any U.S. party, including but not limited to claimants certified by the U.S. Foreign Claims Settlement Commission, may file a claim in U.S. federal district court against the non-U.S. party deemed to be “trafficking” in the “confiscated” “property” of the U.S. national after November 1, 1996. The entitlement originally on November 1 as well now accrues on April 1, 1997. The concept of “property” is broadly defined to include any tangible as well as intangible asset having a value of at least \$50,000, and excluding only residential properties. Liability will be the greater of (i) the value of the property as evidenced by the U.S. national’s claim, if any, certified by the

U.S. Foreign Claims Settlement Commission, plus interest, or (ii) the amount established by the U.S. national, plus interest, or (iii) the fair market value of the property, calculated as being the then current value of the property, or the value of the property when confiscated, plus interest, whichever is greater. It may be tripled in the event the defendant receives notice of the claim of ownership from the U.S. national.

These claims are not protected under international law, if the claimant was not a U.S. national at the time of the taking of the property.

Settlement and payment of these claims might, but need not, involve restitution of assets to the claimants. Defendant foreign investors may not own or otherwise have legal capacity to transfer the respective assets, or be willing to do so. However, defendant foreign investors will at least be indirectly, and perhaps materially, affected by the settlement and payment of these claims. That possibility will clearly affect the certainty of foreign investments in Cuba, and indirectly, the property rights of foreign investors.

Second, the claims of Cuban exiles generally, and their descendants.<sup>16</sup> They are not protected under international law. Whether claims are deemed to exist, and if so, the rules which will govern their settlement will be entirely a question of Cuban law and policy.

The following points bear emphasis: (i) It is less than clear whether the Cuban government violated Cuban law when it expropriated the property of its citizens after January 1, 1959. The claimants argue that the expropriations violated the rules established by the Constitution of 1940, but the argument is not conclusive because of the irregular constitutional status of Cuba at the time. The Government of General Fulgencio Batista, which preceded the current Government of Cuba, suspended the national Constitution in 1952, several years before the expropriations.<sup>17</sup> (ii) It is unreasonable in my view to expect

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16. Juan C. Consuegra-Barquín, “Cuba’s Residential Property Ownership Dilemma: A Human Rights Issue under International Law,” *Rutgers Law Review*, Vol. 46, No. 2 (Winter 1994).

17. Constitutional Act of 1952.

## Foreign Investors' Property Rights and Legal Guaranties Against Non-Commercial Risks in Cuba

the Government of Cuba to repudiate its expropriations of the properties of its citizens. (iii) As a matter of policy, the Government of Cuba might ultimately decide to repudiate expropriations at least of commercial assets to encourage local investments by the Cuban exile community. If so, the resulting privatizations may involve restitution of assets, which in turn may affect the pace and certainty of foreign investment in Cuba, as well as the property rights of foreign investors.

### LEGAL GUARANTIES PROTECTING FOREIGN INVESTORS AGAINST NON-COMMERCIAL RISKS

#### The Constitution of the Republic of Cuba

The national Constitution does not generally prohibit expropriations, or mandate payment of “just, adequate and effective compensation” to foreign investors in the event they occur. Instead, Article 25 of the national Constitution authorizes expropriation in exchange for “the proper indemnification.” It provides as follows:

”The expropriation of assets is authorized for reasons of public utility or social interest and with the proper indemnification.

The law will establish the procedure for the expropriation and the bases for determining its utility and necessity, as well as the form of indemnification, taking into account the economic and social interests of the expropriated party.”

#### The Law on Foreign Investment

The Law on Foreign Investment strengthens considerably the constitutional protections against expropriations by establishing standards which are consis-

tent with generally recognized principles of international law.

Pursuant to Article 3 of the Law on Foreign Investment,<sup>18</sup> no foreign investment, including reinvested earnings, may be expropriated other than for reasons of public utility or social interest, declared by the Government, in accordance with applicable provisions of the national Constitution, then current law, and most importantly, international treaties for the reciprocal promotion and protection of investments.

Moreover, Article 3 of the Law on Foreign Investment mandates payment equal to the “commercial value” thereof in exchange for the expropriated foreign investment, in freely convertible currency. In the event of disagreement with respect to its amount, the “commercial value” of the foreign investment would be established by internationally recognized appraisers licensed by the Ministry of Finances and Prices or the Ministry for Foreign Investment and Economic Collaboration to operate in Cuba.

In addition to protection against expropriations, foreign investors are guaranteed remittance and repatriation rights. This probably does not mean that foreign investors will be guaranteed availability of freely convertible currency; instead, it likely means that foreign investors having access to freely convertible currency may acquire the currency to carry out the remittances and repatriations.

Specifically, foreign investors are entitled to remit earnings derived from their foreign investments, in freely convertible currency, pursuant to Article 8.1 (a) of the Law on Foreign Investment.<sup>19</sup> They have the right under Article 8.1 (b) of the Foreign Invest-

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18. The following is an English translation of the text of the provision: “The foreign investors within Cuban national territory enjoy full protection and security and their assets cannot be expropriated, except for reasons of the public good or in the interest of society, as declared by the Government, in accordance with the Constitution of the Republic, current legislation, and international agreements covering the mutual promotion and protection of investments undertaken in Cuba. In the case of expropriation, indemnification is made in freely convertible currency and is equal to the commercial value established by mutual agreement. If an agreement is not reached, the price is set by an organization with international recognized prestige in the assessment of business assets, authorized by the Ministry of Finance and Prices and contracted for that purpose with the assent of all parties, or of the foreign investor and the Ministry of Foreign Investment and Economic Cooperation, if the affected party is a company with totally foreign capital.”

19. The following is an English translation of the text of the provision: “The State guarantees the foreign investor the free transference abroad, in freely convertible currency, free from taxes or any fee related to such transference, of: 1. a) Net profits or dividends obtained as a result of the investment.”

ment Law<sup>20</sup> to remit, in freely convertible currency, the proceeds derived from the sale of their shares of capital stock in their joint ventures and wholly-owned foreign companies, and their equivalent equity interests in their unincorporated consortiums or partnerships, to the Cuban State or to third parties.

Finally, upon liquidation of their joint ventures, unincorporated consortiums or partnerships and wholly-owned foreign companies, foreign investors are entitled in accordance as well with Article 8.1 (b) of the Foreign Investment Law to repatriate their prorate shares of the liquidation proceeds, in freely convertible currency.

### **International Treaties for the Reciprocal Promotion and Protection of Investments**

Cuba's international treaties for the reciprocal promotion and protection of investments are the third and last element of the framework protecting foreign investors against non-commercial risks.

The international treaties for the reciprocal promotion and protection of investments between Cuba, on the one hand, and Spain,<sup>21</sup> the United Kingdom of Great Britain and Northern Ireland,<sup>22</sup> on the other, are illustrative. They are substantially similar, and may provide the general blueprint of an eventual investment treaty between Cuba and the U.S.

The treaties cover "foreign investments" made by nationals and companies of Spain or the U.K. in Cuba, and viceversa. The concept of what constitutes a "foreign investment" is broadly defined to mean all assets, without distinctions, including intellectual property rights, know-how and business concessions.

In the case of Cuba, all protected foreign investments are entitled to the following treaty guaranties:

1. *Protection*: This generally means freedom from unreasonable or discriminatory measures in Cuba which would impair management, maintenance, use, development, enjoyment, sale or liquidation of the foreign investment.
2. *National treatment and most-favored-nation benefits*: This generally means fair and equitable treatment in Cuba, no less favorable than the treatment from time to time given by Cuba to foreign investments of third country nationals and companies.
3. *Expropriation*: This means that Cuba cannot expropriate a foreign investment except for non-discriminatory reasons of public utility, and against prompt, adequate and effective compensation in freely convertible currency. The amount of compensation must equal the fair market value of the foreign investment before the expropriation became publicly known. This guaranty is therefore substantially similar to the one established by Article 3 of the Law on Foreign Investment, which as noted also prohibits any expropriation other than for reasons of public utility, and mandates payment in freely convertible currency of compensation equal to the "commercial value" of the foreign investment.
4. *Convertibility*: This means that a protected foreign investor is entitled to transfer from Cuba, in freely convertible currency, all earnings and proceeds derived from the respective foreign investment. It assumes local availability of freely convertible currency, as does the similar guaranty contained in Article 8 of the Law on Foreign Investment.

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20. The following is an English translation of the text of the provision: "The State guarantees the foreign investor the free transference abroad, in freely convertible currency, free from taxes or any fee related to such transference, of: 1. b) The moneys due him or her in the cases discussed in Articles 3, 4 and 6 of this Act."

21. "Acuerdo 110/000138 Entre el Reino de España y la República de Cuba para la Promoción y Protección Recíproca de Inversiones," La Habana, May 27, 1994, published in *Boletín Oficial de las Cortes Generales* (December 23, 1994).

22. "Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Cuba for the Promotion and Protection of Investments," London, January 30, 1995, published in Treaty Series No. 50 (London : HMSO, 1995).

## Foreign Investors' Property Rights and Legal Guaranties Against Non-Commercial Risks in Cuba

5. *Compensation for losses.* This generally means compensation upon loss to or of the foreign investment in Cuba due to war or other armed conflict, a state of national emergency, revolt, insurrection or riot. The compensation must be equal to compensation paid to Cuban nationals and third country nationals under similar circumstances.
6. *Dispute resolution.* This means that the protected foreign investor, at its election, may require Cuba to arbitrate any dispute concerning any treaty obligation. The protected foreign investor may choose the forum generally from the International Court of Arbitration of the International Chamber of Commerce, on the one hand, or on the other, an ad hoc panel to be established under the Arbitration Rules of the United Nations Commission on International Trade Law. The resulting award will be final and non-appealable. Incidentally, Cuba has ratified the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, or New York Convention. Spain and the U.K. have too, as has the U.S. Accordingly, Cuba's submission to international arbitration to resolve investment disputes is a significant benefit to foreign investors entitled to invoke these international treaties for the reciprocal promotion and protection of investments.

### CONCLUSIONS

We can draw at least four conclusions from this review of Cuba's framework establishing (i) property rights for foreign investors, and (ii) legal guaranties protecting foreign investors against non-commercial risks.

First, foreign investors have direct ownership rights with respect to their shares of capital stock and equivalent equity interests in their joint ventures, unincorporated consortiums or partnerships and wholly-owned foreign companies, and indirect rights of ownership or use, management and disposition with respect to assets of the latter. These assets will certainly include assets previously in the "socialist state patrimony," because they represent the most significant economic assets in Cuba, and may now even include real estate.

Second, the guaranty against expropriation of foreign investments is consistent with generally accepted principles of international law.

Third, the guaranty of free convertibility effectively removes exchange controls as a non-commercial risk for foreign investors while freely convertible currency is available.

Fourth, foreign investors of countries having international treaties with Cuba for the reciprocal promotion and protection of investments enjoy the significant treaty benefit of being able to submit investment disputes to binding arbitration pursuant to international rules of arbitration.