

CONSTITUTIONAL LAW OF PRODUCTIVE FOREIGN INVESTMENT

The Constitutional Law of Productive Foreign Investment, issued by the National Constituent Assembly, was published in Official Gazette No. 41.310 of December 29, 2017 (the “Law”). The Law established the principles, policies, and procedures that rule the foreign investments that produce goods and services, in any of their categories. However, the application of special legislation regulating foreign investments in specific sectors of economy will prevail over the Law, including the sectors of hydrocarbons, mining, telecommunications and the media. The subject matter of the Law was declared to be of public interest.

Following are the most significant aspects of the Law:

- The following are subject to the application of the Law: (i) foreign companies and their affiliates, subsidiaries or related companies; (ii) Great National companies (*empresas Gran Nacionales*) the purposes and operation of which are subject to a strategic plan of two (2) or more States; (iii) private, public, and mixed national companies, and their affiliates, subsidiaries or related companies; (iv) national natural persons accredited as residents or domiciled abroad and foreign natural persons residing abroad who make investments in the national territory; and (v) foreign natural persons residing in the country who make foreign investment.
- Foreign investments will be subject to the jurisdiction of Venezuelan courts. However, after exhausting the internal remedies, provided that it has been previously agreed, it will be possible to use other dispute resolution mechanisms built in the frame of the integration of Latin America and the Caribbean, as well as in the frame of other integration schemes.
- The Ministry of the Popular Power with competence over foreign investment matters will be the governing body in relation to the observance of the Law and will be in charge of centralizing the Foreign Investment Registry and requesting the actions, definitions, and authorizations of the national agencies and entities with competence over the matter. The Law does not state what the future of the Superintendencia of Foreign Investments (*Superintendencia de Inversiones Extranjeras – SIEX*) will be.
- The concept of national investor with foreign investment (Venezuelans who live abroad for more than three years or Venezuelan companies that bring their funds to the country) is created.
- The value constituting the investment must be represented by assets that are one hundred percent (100%) located in the country, consisting of equipment, consumable supplies, or other goods and of other tangible assets required for starting the productive process. The provision that provides that intangible goods may only be contributed by non-affiliated companies in order to be considered foreign investment remains in the Law. The internal financing for establishing the investment may not exceed fifteen percent (15%) of the total amount of the same.

- In order to obtain the registration of a foreign investment, the contributions must be at the official rate of exchange in effect, for a minimum amount of € 800,000 or its equivalent in another foreign currency. The governing entity for foreign investment matters may establish a minimum amount for the constitution of the foreign investment, which may not be lower than ten percent (10%) of the amount described.
- For purposes of asserting the rights derived from the Law and its future Regulations, a minimum period of two (2) years of stay is required, as from the time when the investment takes place. This period of time may be increased in the foreign investment agreement if the governing entity so determines.
- The concept of Foreign Investment Agreement with the new foreign investors is created. Said agreements will contain (i) duties of the investment, such as: transfer of technology, specific amounts for the investment, obligation to reinvest profits, length of time of the investment, etc. and (ii) rights and benefits for the investor, such as: tax incentives, preferential rates for public services, assurance of purchases by the State, tax stability, preferential credit terms, etc.
- The foreign investment may enjoy favorable conditions, general or specific benefits or incentives for promotion and stimulus, differentiating the several types of investment.
- Foreign investors will be entitled to remit abroad, on an annual basis and after the end of the first economic year, up to one hundred percent (100%) of the proven profits or dividends resulting from their foreign investment, after meeting the objective of the investment. Only in cases of force majeure or extraordinary economic situations, may the National Executive reduce this percentage to a percentage between sixty percent (60%) and eighty percent (80%) of the profits. In the event of partial remittance, the difference may be accumulated with the profits obtained for up to a maximum of three economic years.
- The companies with an income that results, by more than seventy percent (70%), from traditional and mining exports are under the obligation to pay the taxes in foreign currency.
- Foreign investors will be entitled to fully or partially reinvest the profits obtained in national currency, which may be considered as foreign investment. Likewise, they will be entitled to remit to the country of origin, in whole or in part, the income derived from the sale of their stock or investment, as well as the amounts resulting from a capital decrease. In the event of liquidation of the company, the liquidated amount may be totally remitted abroad.
- The National Executive may apply special measures in connection with the regulation of the foreign investment and/or technological transfer and it may also limit the remittances abroad on account of invested capital and dividends generated by the foreign investment if extraordinary economic and financial circumstances occur that seriously affect the economic safety of the Nation.
- The Investment Agreement will be obligatory between the parties exclusively for investments exceeding the minimum investment amount of € 800.000; investments not exceeding said amount are excluded from the obligation to execute said agreements. The purchase of real property, the reinvestment of profits and capital increase are excluded as well.
- The obligation to register the foreign investment remains as a requirement to be the holder of the rights that the Law confers on investors.
- The equal treatment that must exist for foreign and national investments is ratified.
- Fines ranging between two percent (2%) and five percent (5%) of the total investment were established for those who fail to comply with two or more duties. Payment of the fines must

be made in the currency denomination of the investment, in a period of fifteen (15) business days after notification.

Lastly, the Decree with the Status, Value, and Force of Foreign Investment Law, published in Official Gazette Extraordinary No. 6.152 of November 18, 2014, was repealed, as well as all of the legal and sublegal provisions that conflict with the content of the Law. The National Executive was ordered to issue the Regulations within a period of ninety (90) days following the date of publication of the Law.

The Law became effective upon its publication in the Official Gazette.

Please click [here](#) in order to access the Law.

