



FOREIGN INVESTMENT LAW INITIATIVE

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For your information, we have prepared a short summary about the more important aspects that the new project of law of Foreign Investment sets. We are aware of the big importance for our clients whose shareholders are foreign investors, we share our comments and thoughts, as result of our reviewing and analysis. The full version of project of law is only in Spanish.

Although it is still an unapproved bill, considering the practice of the National Assembly to approve without delay what is sent by the President of the Republic, we are sure that the essential aspects of this bill will not undergo major modifications and will be approved in the next few days.

From the analysis of the text, we value the following:

The project has a control bias and from the government's perspective, to create procedures that facilitate foreign investment and provide security to the foreign investor.

Of control, because it obliges the foreign investor to register as such before the government institutions and obliges him to present quarterly reports on the progress of his investment as well as financial statements, capital movements, etc:

“2. It establishes the mandatory registration of all Foreign Investments in the country; and for Strategic Investment purposes, MIFIC will be the facilitating instance for the implementation of a management model that concentrates and simplifies the procedures for the registration of investments and their business formalization. Regarding the establishment and follow-up of Foreign Investments, MIFIC will have an articulated management with the Secretariat of Investment and Export Promotion (SPIEX), the Central Bank of Nicaragua (BCN) and the respective sectorial governing authority according to the type of investment, which will allow a control of all the phases of the management of foreign investment in the country.”

These are obligations of the foreign investor:

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Understanding your Core Business

“3. Submit quarterly reports on compliance with the investment plan to the sectoral governing institutions.

4. To provide the Central Bank of Nicaragua, for statistical purposes, with all the information it requires for the follow-up and evolution of Foreign Investment in Nicaragua, which shall include, among others: financial statements, income and expenditures to and from abroad, internal and external indebtedness, and indicators of production, prices, salaries and employment generated.”.

The figure for a FOREIGN INVESTMENT CONTRACT is introduced:

“e) Foreign Investment Contract: Agreement signed between a foreign investor and the State of Nicaragua where the conditions, rights, obligations and guarantees of the parties, under which the investment will be made, are established.

Article 8: Subscription of the Foreign Investment Contract. The Foreign Investment contracts shall be subscribed according to the provisions of the sectorial legal system. In the case of Strategic Investments, the Foreign Investor shall execute a Foreign Investment Contract before the respective Sectorial Authority.”

It is understood that the quarterly reports, which become an obligation of the foreign investor, derive from the fulfillment of its investment commitments subscribed in the Contract.

The figure of the CERTIFICATE OF UNIQUE REGISTRATION OF FOREIGN INVESTMENT (RUIE) is created, which must be presented to carry out any procedure before the government institutions and, probably, for the opening of bank accounts. In other words, a company with foreign capital will hardly be able to incorporate and operate without having obtained this certificate, which is granted upon compliance with the registration procedure established in this law.

“Article 7. Certificate of Unique Registration of Foreign Investment (RUIE). The RUIE Certificate will be used to carry out the procedures for the materialization of the investment before the sectorial governing entities, for the requirement of the benefits established according to the economic activity to which it corresponds and for the accreditation of the foreign investor before the corresponding authorities.”.

POSITIVE ASPECTS OF THE LAW:

It establishes rights for the foreign investor, related to property, free convertibility, repatriation and free movement of foreign currency, payment of compensation for expropriation: respect by the State of Nicaragua to international arbitration awards, provided it is in accordance with the provisions of international Conventions or Agreements to which Nicaragua is a party.

“Article 12. Rights. The foreign investor shall enjoy the same rights and the means to exercise them that the laws grant to Nicaraguan investors, such as:

1. Enjoyment, use, enjoyment and dominion of the property related to his investment.

2. Free access to the purchase and sale of available foreign currency and free convertibility of currency, in accordance with the provisions of national laws and regulations on foreign exchange matters.

3. Make transfers abroad related to its invested capital, or by dissolution, liquidation or voluntary sale of the foreign investment, without prejudice to compliance with tax and labor obligations established by the National Legislation.

4. The remittance of any profit, dividend or gain generated in the national territory, after payment of the corresponding taxes.

5. The payments and remittance of the same, originated by debts contracted abroad and the interest accrued thereon, as well as royalties.

6. Payments derived from indemnification for expropriation.

7. To enjoy the incentives established within the national legal framework: sectorial laws, current tax legislation and regimes.”

A single authority is established as the gateway for foreign investment, which is the **NATIONAL COMMISSION FOR FOREIGN INVESTMENT**, this facilitates that the investor does not have to go from institution to institution, once the investment is approved by this authority, it is understood that everything will be facilitated with the rest of the institutions. Even for the incorporation and incorporation of new companies, the whole process of paperwork, especially before the DGI and the municipalities, which is excessively bureaucratic, is subordinated by law to this authority, which is expected to simplify the cumbersome procedures to which the new companies of foreign capital are subjected to complete their procedures to operate.

With respect to foreign capital companies that are already operating, the only provision of direct obligation found in the bill is:

“Article 19. Transitory Provisions. Any foreign investment according to the definition and scope of application of this Law, which is operating in the country at the date of entry into force of this Law, shall within a term of one hundred and twenty (120) calendar days carry out the registration process established therein before the Investment Directorate of MIFIC.”

It is to be expected that the obligation to submit periodic reports to the institutions and obtain the Foreign Investment Registration Certificate will also apply to already established investments. In any case, it will be necessary to wait for the issuance of the Regulations of the Law to determine with certainty the obligations derived for the companies already incorporated and operating.

We emphasize that we do not consider this initiative as a risk for the operation of companies already incorporated.

Analysis and summary prepared by ACZALAW NICARAGUA

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