

Republic of Cuba
Executive Committee of the Council of Ministers
Secretariat

The Secretary of the Council of Ministers and of his Executive Committee

CERTIFIES

That the Executive Committee of the Council of Ministers, in use of the faculties granted it by the Law, approved the following:

WHEREBY: Law No. 77 of September 5, 1995, Foreign Investment Law, established the norms for foreign investment in Cuba.

WHEREBY: Decision No. 3827 dated December 6, 2000 established the procedure to close contracts for the joint production of goods or for the rendering of services, as well as for hotel management and production management, with natural or juridical foreign persons, in accordance with their social or business purpose.

WHEREBY: The results obtained in the period elapsed since Decision 3827 are positive to the national economy, and the experience gained in its enforcement recommends the adjustment of the norm in order to achieve a better development and control of that activity.

THEREFORE: The Executive Committee of the Council of Ministers approved on November 11, 2004 the following:

DECISION

FIRST: State enterprises and entities with legal personality and companies of fully Cuban capital are empowered to close contracts for the cooperated production of goods or the rendering of services, as well as for hotel management, production management or service management with foreign individuals or corporations, in accordance with their social or business purpose, under the protection of the provisions of the present Decision, when it does not comply with the characteristics of the international economic associations ruled by Law No. 77 of September 5, 1995.

SECOND: THE CONTRACT FOR THE COOPERATED PRODUCTION OF GOODS OR FOR THE RENDERING OF SERVICES is one that is drawn up between a

Cuban state enterprise or entity, or a company of totally Cuban capital according to its social or business purpose, and a foreign individual or corporation with the purpose of developing a particular production of goods or rendering of services destined to the domestic market and/or export. By virtue of said contract, the foreign party delivers, finances or both, technology, raw materials, equipment, half-finished products and technical assistance in exchange for the price agreed for each one of these concepts based on the commercialization of the production or service.

THE PRODUCTION AND/OR SERVICE MANAGEMENT is one by means of which a Cuban enterprise or entity with legal personality or a company of totally Cuban capital engages a foreign juridical person to manage one or several production lines, a production or service installation, or a part of the activities that they perform, for a specific period, in exchange for the payment they mutually agree upon, conditioned to the results of the management activities carried out in accordance with the indicators that are being agreed upon.

THE HOTEL MANAGEMENT CONTRACT is the written agreement between the titleholder of a hotel ("Titleholder") and a professional management company ("Manager") by means of which the Manager accepts the responsibility granted him by the Titleholder of assuming and efficiently performing the management and commercialization of the services granted by the hotel in exchange for the payment of honoraries and without any transfer of property or of any other real right of the hotel.

THIRD: The contract for the joint production of goods or for the rendering of services, as well as for the production and/or service management must comply with the following requirements:

- a) Its object will be the development of a production or rendering of a particular service with the purpose of substituting imports, promoting export and/or that they represent savings for the country.
- b) No contributions will be made by the parties nor will a common fund be created between them.
- c) The state patrimony will not be shared.
- d) The business profits will not be shared.
- e) The selection of the supplier will be the result of a process of competition according to the legal provisions established.
- f) In no case will the signing of a contract of this nature grant the status of exclusive supplier to the parties.

The production and/or service management contracts, as well as those of hotel management, will additionally have the following requirements.

- a) Its purposes will be to achieve better services or productions to the client; greater profitability of the installation or of the production line or lines; to benefit from the use of an internationally renowned trademark; to benefit from the Manager's international advertising, commercialization and promotion; to use systems, designs, procedures and methods of proven efficiency; to profit from the Manager's administration abilities and, in some cases, to obtain financing.
- b) The results to be attained will be measurable according to the parameters agreed upon.
- c) The engaged foreign enterprise will act on behalf and in representation of the Cuban party as regards the signed management contract.

FOURTH: The contracts to be ruled by the present Decision will be proposed by the head of the institution to which the Cuban contracting party belongs, to the Ministry for Foreign Investment and Economic Co-operation, (MINVEC) which, after carrying out the corresponding evaluations, will present them to the Executive Committee of the Council of Ministers for approval. The decision approving the signing of the contract will be issued within a term of 45 calendar days counted from the date of acceptance of the request by MINVEC.

FIFTH: During the period of evaluation of said contracts, the Ministry for Foreign Investment and Economic Co-operation will be assessed by a Commission made up permanently by representatives from the Central Bank of Cuba, the Ministry of Economy and Planning, the Ministry of Foreign Trade, the Ministry of Finances and Prices, the Ministry of Labor and Social Security and the General Customs of the Republic, and may additionally be assisted by other organs of the Central State Administration they might consider pertinent according to the characteristics of the particular business. The Ministry of Tourism will be part of the Commission in the cases of Hotel Management contracts.

SIXTH: The contracts for the joint production of goods or the rendering of services will be destined to the achievement of concrete projects or targets in short periods that will not exceed three years from the moment the contract comes in force. Taking into consideration the characteristics of the business, the Executive Committee of the Council of Ministers may exceptionally authorize a longer period.

SEVENTH: The Cuban entity that is a party in the contract for the joint production of goods or rendering of services will be fully responsible for all the activities of direction, management and performance, and it may be advised by the foreign party in accordance with the technical assistance contract they sign with that purpose.

EIGHTH: The activities of import and export of goods related to the contracts ruled by the present Decision will be performed in conformity with the legal provisions; consequently, when the Cuban enterprise acting as a party in any of said contracts lacks authorization for the import and/or export of goods and the contract stipulates the supply or purchase-sale of goods, the contract(s) drawn up to those purposes must be signed by the authorized importing and/or exporting entities.

If, as a result of the stipulations of the previous paragraph, the purveyor or supplier of the goods is the same person that participates as the foreign party in the contracts referred to in the present Decision, the obligation of payment to said foreign purveyor or supplier will be assumed by the Cuban enterprise that participates in the contract for the joint production of goods or rendering of services, for hotel, production or service management, according to each case, from the income produced from the business itself.

Foreign individuals or companies related with the forms of investment ruled by the present Decision will not be allowed to perform import or export activities independently to or from Cuba.

NINTH: Foreign companies related to the forms of investment ruled by the present Decision whose presence might be required in Cuba for the fulfillment of those contracts must comply with the migratory and labor provisions in force in Cuba.

TENTH: Each contract for production or service in cooperation and hotel, production or service management will operate as an independent cost unit. The Cuban party of each contract will be authorized to open an independent bank account for the operations related with the fulfillment of the respective contract, which will only be used to honor the obligations contracted as a result of the signed contract.

ELEVENTH: The financing linked to any of the contracts ruled by the present Decision must be approved by the Central Bank of Cuba according to the terms agreed in that regard.

TWELFTH: Taxes, fees and contributions derived from the fulfillment of these contracts will be assumed separately by each Party according to their respective obligations and to the legislation in force.

THIRTEENTH: The granting of contracts for the production in cooperation or granting of services, as well as for the hotel, production and/or service management require the form of a public deed, and will come in force at the moment of their registration in the Mercantile Registry.

FOURTEENTH: It will be the duty of the Ministry of Foreign Investment and Economic Co-operation to control and supervise the fulfillment of the contracts for the production or services in cooperation and for the hotel, production and/or service management. Said function will be performed without detriment of the control and inspection tasks that correspond both to the Foreign Investment Sponsoring Organs and the remaining Organs of the State Central Administration that exert functions of that nature with ruling force.

FIFTEENTH: Contracts in operation at the time the present Decision is adopted will continue to do so according to the bases agreed upon. Nevertheless, those aspects related to changes in the contract on which basis they operate as well as extension requests will adjust when necessary to the terms established by the Ministry for Foreign Investment and Economic Co-operation and the Ministry of Tourism, according to each case, at the moment of implementation of the present document.

SIXTEENTH: The Ministry for Foreign Investment and Economic Co-operation, the Ministry of Tourism and the Ministry of Justice, as well as the remaining organs of the State Central Administration are hereby empowered to issue the complementary provisions in their respective areas of competence required for its fulfillment within a term that will not exceed sixty days counted from the coming into effect of this Decision.

AND FOR THE PURPOSE OF ITS PUBLICATION in the Official Gazette of the Republic, the present Certification is issued at the Palace of the Revolution, on the 11th day of the month of November of 2004, "Year of the 45th Anniversary of the Triumph of the Revolution".

Original signed
Carlos Lage Dávila

FOR ADMINISTRATIVE CONTROL
DECISION No. 5290
CONTRACT FOR THE JOINT PRODUCTION OF GOODS
OR RENDERING OF SERVICES