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BANCO CENTRAL

DE LA

REPUBLICA DOMINICANA



**FOREIGN
INVESTMENT LAW,
LAW No. 861
OF JULY 22, 1978**

9487 G. O. 11 Nov. 1978

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FOREIGN INVESTMENT LAW, LAW NO. 861,
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(9487 G. O. ; 11 November, 1978)

NATIONAL CONGRESS
IN THE NAME OF THE REPUBLIC

WHEREAS the Dominican State recognizes that foreign investment and technology are a necessary contribution to our country's economic development, insofar as they help to create jobs that promote the process of capital accumulation, facilitate the participation of national capital therein, without discouraging national private investment, which will result in a net saving of foreign exchange and in efficient contributions of production methods, marketing and management;

WHEREAS both national and foreign investors must be protected by measures establishing their rights and obligations and determining foreign investment's sphere of action in the country.

HAS ENACTED THE FOLLOWING LAW:

NUMBER: 861

TITLE I

DEFINITIONS

Article 1 – For the purpose of this law, the following definitions are applicable:

- a) *Direct Foreign Investment*: Are contributions proceeding from abroad, owned by natural or legal foreigners or by non-resident Dominicans; to the capital of an enterprise in freely convertible currencies, in machinery or equipment, in tools, instruments, or accessories and parts with the purpose of obtaining registration of the investment with the Central Bank. Likewise are investments in natio-

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nal currency generated by registered foreign investment according to the strictures of this law.

- b) *Foreign Reinvestment*: Is direct foreign investment for the purpose of being registered through all or part of the profits derived from a registered foreign investment in the same company that has generated them.
- c) *New Foreign Investment*: Is direct foreign investment with the purpose of registration, carried out with profits derived, in whole or in part, from a registered foreign investment, in a different enterprise than the one that generated the profits.
- d) *Registered Foreign Investment*: Is the value of direct foreign investment duly registered at the Central Bank of the Dominican Republic, prior to and following the effective date of this Law, and whose registration grants the rights provided for in Article 15.
- e) *Foreign Investor*: Is the owner of a direct foreign investment.
- f) *National Investor*: Is the State, any Municipality, any autonomous institution, any association duly incorporated in the country and any natural or legal person that does not have investment registered with the Central Bank and any national enterprise as defined hereinafter.
- g) *National Enterprise*: Is any Company founded in the country in accordance with the laws of the Dominican Republic, more than seventy percent (70o/o) of whose capital belongs to national investors, provided that proportion is reflected in the technical, financial, administrative and sales management of the enterprise.
- h) *Mixed Enterprise*: Is any company organized in the country in accordance with the laws of the Dominican Repu-

blic, fifty-one percent (51o/o) to seventy percent (70o/o) of whose capital is owned by national investors, provided that this ratio is reflected in the technical, financial, administrative and commercial management of the enterprise.

- i) *Foreign Enterprise*: Is any company organized in the country in accordance with the laws of the Dominican Republic less than fifty-one percent (51o/o) of whose capital is owned by national investors or any greater proportion if not reflected in the technical, financial, administrative and commercial management of the enterprise.
- j) *Central Bank*: Is the Central Bank of the Dominican Republic.
- k) *Directorate*: Is the Directorate of Foreign Investment created in Article 2.

TITLE II

DIRECTORATE OF FOREIGN INVESTMENT

Article 2 – A Directorate of Foreign Investment is hereby established for the application of this Law. This Directorate consists of the Governor of the Central Bank, the Secretary of State for Industry and Commerce, the Secretary of State for Finance, the Technical Secretary of the President, the Executive Director of the Dominican Center for Export Promotion any or all of whom may be represented by officials designated by them, a representative of the Association of Industries of the Dominican Republic, a representative of the Dominican Association of Farmers, a representative of the Official Chamber of Commerce, Agriculture and Industry of the National District; and a representative of the National Council of Businessmen.

The Directorate shall be presided over by the Governor of the Central Bank, or in his absence by the Secretary of State for

Industry and Commerce, or in the absence of both, by the Secretary of State for Finance. The Directorate will have an Executive Secretary who will be an official of the Department of Foreign Exchange of the Central Bank and who will be designated by the Directorate.

PARAGRAPH I. The members of the Directorate shall hold sessions in the building of the Central Bank after a meeting has been called by its President. The Directorate shall consider direct foreign investments, foreign reinvestments, new foreign investments and licensing contracts for the transfer of technology on the basis of the cases submitted to it by the Executive Secretary with his explicit recommendation in each instance. The Directorate shall adopt the resolutions deemed convenient which shall be sent to the interested parties and the institutions and corresponding government departments.

PARAGRAPH II. Copies of the documentation relevant to requests for approval of new investments and licensing contracts for the transfer of technology will be remitted for study purposes to the members of the Directorate at least ten (10) days prior to the date of the meeting in which they will be discussed.

Article 3 — The Directorate shall meet validly with the attendance of more than half of its members and resolutions shall be adopted by a simple majority of those present. In case of a tie, the vote of the person presiding over the Directorate shall be decisive.

Article 4 — The Directorate shall approve during its first session an Internal Regulation which shall stipulate the standards to be adopted for the better application of this Law.

TITLE III

APPLICATION FOR REGISTRATION AND REGISTRATION OF DIRECT FOREIGN INVESTMENT, NEW FOREIGN INVESTMENT AND FOREIGN REINVESTMENT

Article 5 — Any foreign investor, except in the cases provided for in Article 42 of this Law, wishing to make a new investment in the country shall submit his written application to the Directorate. The application shall comply with the requirements stipulated in the Directorate's Internal Regulation. The Directorate's approval confers the right on the owner of a foreign direct investment to register it with the Central Bank in accordance with the provisions of this Law. Registration shall be requested within a period not exceeding one year from the date of the Directorate's resolution of approval.

The Central Bank shall not register new investments that have not received the Directorate's prior approval.

Article 6 — The registration of foreign reinvestment and new foreign investment must be formally requested in writing of the Directorate by the foreign investor directly, by the natural or judicial person authorized to do so by the foreign investor, or by the enterprise where the investment or reinvestment is to be made.

Article 7 — The Directorate shall consider and render judgment on applications for foreign reinvestment and new foreign investment and the decisions thereon shall be transmitted in writing to the interested party. If the Directorate's decision should be favorable, the foreign reinvestment or the new foreign investment shall be registered at the Central Bank.

Article 8 — The amount of the direct foreign investment shall be registered in national currency.

Article 9 — An essential condition for the registration of direct foreign investment at the Central Bank is that all the stock of the foreign enterprise be in nominal, not bearer, shares.

PARAGRAPH. Existing bearer shares in enterprises mentioned in the preceding Article shall be converted into nominal shares within six months of the effective date of this Law.

Article 10 – If the Directorate should determine that the preceding Article's provisions have been violated, it shall immediately cancel the registration of the violator's direct foreign investment, with the consequent forfeiture by the violating foreign investor of all rights conferred upon it by this Law.

Article 11 – If the direct foreign investment participates in the capital of an enterprise that operates, simultaneously, both in permitted and non-permitted fields according to Article 23 of this Law, the Directorate shall require as a condition for filing or maintaining the registration of the direct foreign investment that the enterprise keep separate accounting systems which show clearly the activities of the instant registered foreign direct investment.

Article 12 – The Directorate will supervise compliance with the present Law by means of Central Bank inspectors who, duly authorized, can review books, records and whatever other documents are necessary relative to the registered foreign investment or the foreign investors and who, in case of an infraction of the present Law or its regulations, shall draw up charges thereof which shall be considered true until proved otherwise.

PARAGRAPH I. The Central Bank shall:

- a) Centralize the statistical, accounting, information and control registries pertaining to foreign direct investments and licensing contracts for the transfer of technology;
- b) Authorize the transfer abroad, in freely convertible foreign exchange, of any amounts to the remittance of which foreign investors are entitled in accordance with this Law.

PARAGRAPH II. Charges asserting violations shall be remitted by the Directorate to the Fiscal Attorney of the Natio-

nal District and the Court of First Instance of the National District, sitting as a criminal court, shall have exclusive competence to hear charges of violations of this Law and its regulations.

TITLE IV

ASSETS THAT CAN BE REGISTERED

Article 13 – In addition to the investment of freely convertible foreign currency, the Directorate may authorize registration of direct foreign investment of machinery or equipment, tools, instruments, accessories and parts contributed in kind for the establishment and operation of enterprises in permitted fields if the interested party provides the necessary documents required by the Directorate.

Similarly, such investment may consist of resource from the profits of foreign direct investments registered previously, in accordance with the provisions of this Law.

PARAGRAPH. The value of goods proceeding from abroad, for importation of which the Central Bank does not grant foreign exchange, shall not be registered as direct foreign investment.

Article 14 – Once direct foreign investment is approved by the Directorate, it is the responsibility of the Central Bank to determine if the stated values for used or rebuilt machinery or equipment, tools, instruments, accessories and parts are true market values, in accordance with procedures established by the Directorate. The Central Bank may require any documents it deems necessary to justify, in its judgement, the value of the goods that are desired to be registered as direct foreign investment. In case the value of the direct foreign investment is determined to be less than the value approved by the Directorate, the Central Bank shall register such direct foreign investment at its lesser established value.

Similarly, the Central Bank may order an expert evaluation

of the condition of the items, the cost of which to be paid by the Foreign Investor or the enterprise receiving the investment.

TITLE V

RIGHTS CONFERRED BY REGISTRATION

Article 15 – The registration at the Central Bank of a direct foreign investment grants the right to exchange local currency for freely convertible foreign exchange for transfer abroad of the value of the registered investment and the profits generated thereby, in the amounts and under the conditions hereinafter established. Conversion to foreign currency of the amounts to which a foreign investor is entitled to remit abroad shall be made at the rate of exchange in force at the time of remittance.

TITLE VI

TRANSFER AND REINVESTMENT OR INVESTMENT OF PROFITS

Article 16 – The net profits of each fiscal period, obtained from the registered foreign investment, may be remitted abroad in freely convertible foreign exchange, provided that they do not exceed eighteen percent (18o/o) of the amount of the registered foreign investment. Before permitting the exercise of rights established in this Article, the Central Bank shall verify that foreign investors have complied with their tax obligations and that declared profits are accurate.

PARAGRAPH. In no case will the value of repatriated funds, plus foreign reinvestment, plus investment in other companies exceed 18o/o of registered foreign investment in the same fiscal period.

Article 17 – Profits in excess of 18o/o of the registered foreign investment may not be added to the profits of other fiscal periods in order to complete this percentage.

Article 18 – For remitting profits abroad, and for foreign reinvestments and/or investments in other enterprises, in cases where foreign investments have been registered less than a full fiscal year, the date on which the investment registration was made by the Central Bank will be used to establish the proportionate level of annual profits from the registered foreign investment within the fiscal year for the above purposes.

Article 19 – Foreign investors have a maximum period of two years from the date of the close of a fiscal year to apply to the appropriate organization for approval of the end use assigned to the profits of that period, within the 18o/o mentioned in Article 16. Once this deadline has expired, the foreign investor has no right to remit via the Central Bank, and/or reinvest or invest in another enterprise, the profits of the aforesaid fiscal year.

Article 20 – The Directorate may authorize a conditional registration until it has determined whether the conditions required for new foreign investments with capital derived from annual profits in excess of eighteen percent (18o/o) of the registered foreign investment have been met only:

- a) If such investments are made in the capital of export enterprises in the agri-business or tourism sectors;
- b) If more than eighty per cent (80o/o) of the sales of such enterprises represents an inflow of foreign exchange to the Central Bank;
- c) If these enterprises turn over to the Central Bank, through commercial banks, the total amount of foreign exchange generated by them; and
- d) When the participation of the foreign direct investment in the capital of the enterprise does not exceed thirty percent (30o/o) of the said capital.

The Directorate may also allow resources obtained from

annual profits of more than eighteen per cent (18o/o) of the registered investment to be lent in national currency to enterprises that meet all conditions stipulated in Clauses (a), (b), (c) and (d) of this Article. These loans may not be granted for a period of less than eight (8) years, shall be paid in proportional amounts, and may not bear any effective interest greater than six percent (6o/o) per annum as defined in Article 27 of this Law. Also, during any year, amortizations cannot exceed more than twenty per cent (20o/o) of the originally loaned capital.

Remittances in foreign currency of the profits, amortizations and interest mentioned in this Articles shall not exceed, however, thirty per cent (30o/o) of the foreign exchange generated and exchanged by the enterprise in a year.

PARAGRAPH I. The provisions of this Article shall apply only to annual profits in excess of eighteen per cent (18o/o) of the registered foreign investment.

PARAGRAPH II. Upon the determination by the Directorate that enterprises in whose capital direct foreign investment is made or who are beneficiaries of loans with resources in either case derived from annual profits exceeding eighteen per cent (18o/o) of the registered foreign investment are not complying with the stipulations of this Article, all benefits granted to a foreign investor owning such registered foreign investment shall be totally and finally withdrawn.

TITLE VII

REMITTANCE OF INVESTED CAPITAL

Article 21 – Any foreign investor has the right to remit the registered capital when it sells its shares, participations or rights to national or foreign investors, or when the enterprise in which it made its investment is liquidated, provided it has complied with its tax and exchange obligations. The sale, transfer or cession of shares, participations or rights by a foreign investor to another must be communicated to the Cen-

tral Bank within thirty (30) days of the transaction. The new investor will be registered at the Central Bank as the owner of the direct foreign investment and will have the same rights as its predecessor.

PARAGRAPH. The Executive Secretary shall inform the Directorate of all such transfers.

Article 22 – The capital that can be remitted is understood to be that registered as investment in accordance with the provisions of this Law, less the net losses suffered by the enterprise, if any.

PARAGRAPH I. In the event of the liquidation of an enterprise in which direct foreign investment participates, the Directorate shall determine amounts of capital that can be remitted abroad in accordance with the provisions of this Law.

PARAGRAPH II. The Directorate will verify that the sales value of the liquidated assets, shares and other property titles sold or transferred to national or foreign investors conforms to true market values. However, no profits obtained from the sale of real estate shall be admitted as capital gains if the Directorate considers it a speculative transaction. A remittable capital gain of up to two percent (2o/o) per annum on the registered foreign investment from the date on which the direct foreign investment was registered is authorized. This two percent (2o/o) per annum shall be cumulative up to a maximum of twenty percent (20o/o) of the foreign investment registered at the time of the transaction.

TITLE VIII

INVESTMENT AREAS

Article 23 – The Directorate, on learning of an application for registration of a direct foreign investment, shall give priority to those participating in enterprises dedicated to the exportation

of goods and/or services and, in general, to activities benefiting the balance of payments.

The Directorate may not authorize the registration of a direct foreign investment in areas that in the judgement of the Directorate are adequately covered or do not contribute to the economic development of the country, nor may the Directorate authorize registration of a foreign direct investment in the following areas:

- a) Public Services, such as potable water and aqueducts, electrical energy, mail, telecommunications and telephones.
- b) The exploitation of radioactive materials, minerals, and hydrocarbons, which shall be regulated by special laws.
- c) Direct foreign investment used to acquire shares or property rights of national investors. Excepted are those cases in which the new investment is made in an enterprise to avoid imminent bankruptcy if they meet the following conditions:
 - (i) The enterprise does not function in those areas indicated in heading a) of this Article.
 - (ii) The Directorate verifies the imminent bankruptcy.
 - (iii) The enterprise proves that it has offered a preferential purchase option to national investors, and
 - (iv) The enterprise is important to the national economy.

1. The following will be considered areas of activity for national enterprises:

- a) The production of materials and equipment directly linked to national defense and security.

- b) Publicity, radio broadcasting, television, newspapers, magazines, publishing, and mass communications.

- c) Internal surface transport, except freight directly related to importation/exportation; internal air transport, coastal shipping and international shipping.

- d) Forest exploitation.

2. The following will be considered the dominion of activity for national and mixed enterprises:

- a) Agricultural, poultry and cattle exploitation.

- b) Fishing.

- c) Commercial and investment banks and other financial institutions.

- d) Insurance.

Article 24 – Investments in real estate for speculative purposes shall not be registered as direct foreign investment, but purchases of real estate for constructing tourist projects or, by natural persons, for establishing their residence in the country shall not be considered speculative.

TITLE IX

INTERNAL AND EXTERNAL CREDIT

Article 25 – The State will not endorse or guarantee, directly or through official or semi-official institutions, external credit operations effected by foreign enterprises.

Article 26 – In external credit contracts, the effective annual interest rate paid by foreign enterprises should be strictly related to the prevailing conditions in the financial market of the country in which the operation is registered.

Article 27 — For the purposes of this Article, effective interest is understood to be the total cost paid by the debtor for using the credit, including interest, commissions and expenses of any other nature.

Article 28 — Foreign enterprises cannot obtain internal credit for a period greater than one year without authorization of the Monetary Board.

TITLE X

TRANSFER OF TECHNOLOGY

Article 29 — Licensing contracts for the exploitation of a patent, use of trademarks, leasing of machinery and equipment, and for providing technical know-how, must be submitted for study and approval or refusal to the Directorate, which will take into consideration the effective contribution to the country of the technology that is to be transferred and the specific ways of quantifying the effect of the technological transfer.

Article 30 — When the licensing contracts comply with the provisions of this Law, the Directorate shall issue a resolution authorizing their registration.

Article 31 — The Central Bank will recognize the obligations derived from the registered licensing contracts for purposes of converting local currency to freely convertible currency for making payment abroad. Conversions shall be effected at the rate of exchange prevailing when making remittance.

Article 32 — The licensing agreements shall contain clauses specifying at the very least, the following matters:

- a) Identification of the means of transferring the imported technology.
- b) Contractual value of each of the elements involved in

the transfer of technology, expressed in a manner similar to that used in the registration of direct foreign investment; and

- c) Duration of the contract.

Article 33 — Applications to the Directorate for registration of licensing contracts for the exploitation of patents, use of trademarks, leasing of machinery and equipment and know-how transfers in accordance with the provisions of this Law shall be accompanied by a copy of the contract, in Spanish and duly legalized or, if in another language, by a translation done by a legal interpreter.

Article 34 — Intangible technological contributions will be entitled to royalty payments, but may not be credited as a capital contribution to the concessionaire.

PARAGRAPH. The Directorate will not approve the registration of contracts for the transfer of technology for foreign enterprises.

Article 35 — The Central Bank shall not authorize the remittance of foreign exchange for royalties from contracts previously registered unless evidence of payment of taxes on the income obtained by the grantor of the technology is submitted.

Article 36 — Payments derived from licensing contracts between a technology grantor and another concessionaire, relating to the exploitation of patents, use of trademarks, lease of machinery and equipment and know-how transfers, shall not exceed a given percentage of the net annual sales of the licensed products. The Directorate shall determine such percentage.

PARAGRAPH. For the purpose of this Law, net sales are understood to be the total income received by the enterprise from sales of the product or products manufactured under the licensing contracts, after deducting all the payments made by the concessionaire to the grantor of the technology. These pay-

ments must include the CIF value of imported raw materials from the grantor of the license or from any supplier directly or indirectly related to it; payments for technical services including fares and lodgings for technical personnel; commissions; etc.

Article 37 — The Central Bank shall not register licensing contracts for the exploitation of patents and use of trademarks if these are not duly recorded in the Register of Industrial Property at the Secretariat of State for Industry and Commerce.

The effects of the registration of these contracts at the Central Bank shall cease at the same time as the acquired rights terminated in accordance with the laws on industrial property prevailing in the country.

Article 38 — In no contract or concession shall clauses be admitted removing possible conflicts or controversies from national jurisdiction and competence, or permitting the subrogation by a State of the rights and properties of its national investors.

TITLE XI

GENERAL PROVISIONS

Article 39 — Foreign enterprises as defined in Article 1 of this Law shall not be entitled to the tax exemptions provided for in Articles 13 of Law No. 299 dated April 23, 1968 on Industrial Incentives, amended by Law No. 79 of December 31, 1970, and 57 of Law No. 532, dated December 12, 1969 on Agricultural and Livestock Promotion.

PARAGRAPH. Foreign enterprises shall not be entitled to the exemptions provided for in Law No. 587 of April 21, 1977. The aforementioned Articles 13 of Law No. 299 of April 23, 1968, amended by Law No. 79 of December 31, 1970; and 57 of Law No. 532 of December 12, 1969, will apply to capital held by national investors in foreign enterprises.

Article 40 — The Ministry for Foreign Relations shall send to the Directorate any request received from a foreign government seeking the Dominican Government's guarantee of a direct foreign investment against political and non-convertibility risks. The Directorate shall make its opinion known to the Executive Authority in each instance.

Article 41 — Foreign investors shall not receive more favorable treatment than accorded by the laws to national investors.

Article 42 — Direct foreign investments made in industrial free zones shall not require the approval stipulated in Article 5 of this Law.

Article 43 — The Official Chamber of Commerce, Agriculture and Industry shall not effect mercantile registration, nor shall the Secretariat of State for Industry and Commerce issue the Industrial Registration Certificate, if a foreign or mixed enterprise fails to comply with any of the provisions of this Law.

Article 44 — The Central Bank shall refrain from turning over foreign exchange to enterprises in which direct foreign investment participates if it verifies that the enterprises in question have applied to the Central Bank, through a commercial bank, for an amount of foreign exchange more than that required to cover one or more of its operations and/or fails to deliver to the Central Bank, through a commercial bank, the total amount of foreign exchange earned, in accordance with Law No. 251 of May 11, 1964 and its regulations.

Article 45 — Violations of any provision of this Law shall be punished by a fine ranging from RD\$200.00 to RD\$20,000.00 or by a prison sentence ranging from two months to two years, or both simultaneously, according to the seriousness of the offense. Legal action may also be taken against, at the time action is initiated, representatives or agents of natural persons having their main domicile abroad, against whom the Court shall apply the foregoing penalties and who shall be sentenced, jointly

with the natural persons they represent, to payment of the fines stipulated in this Law. If the violation has been committed by a legal person, the correctional court shall apply to it the fine and shall also sentence it to payment of civil damages involved and the administrator, director, manager, representative or agent responsible therefor shall be subject to a prison penalty and shall also be sentenced to joint payment of the fine. In cases of recidivism, the fine and imprisonment penalties shall be applied jointly.

TRANSITORY PROVISIONS

Article 46 — Direct foreign investments registered previous to the promulgation of this Law need not comply with the prescriptions of Article 23 of this Law.

Direct foreign investments made between January 14, 1972 and the effective date of this Law which have not yet been registered at the Central Bank shall be subject to the provisions established in the Fifth Resolution of January 13, 1972, modified by the First Resolution of April 13 of the same year that were passed by the Monetary Board (published in Official Gazette Nos. 9253 and 9263, respectively), as far as permissible areas of investment are concerned. A period of four months from the effective date of this Law is granted for registering such investments, in compliance with the aforementioned Resolutions. Once the above deadline has expired, foreign investors shall not be entitled to register their investments, nor shall the Central Bank register them.

Article 47 — All contracts or licenses for importing technology signed before the effective date of this Law comes into force that are not registered at the Central Bank must be registered there within six months following the date on which this Law comes into force.

Article 48 — For the exclusive purposes of applying and enforcing this Law, any contradictory provisions of any other Law, Decree or Regulation, or part thereof, shall have no effect.