

Investments in Cuba
(Energy Sector) & Bird & Bird

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Investments in Cuba

- Investments are authorised on a case-by-case basis.
- "Investment Opportunities Portfolio":
 - BOO / BOT
- The Investment Process in the Energy Sector:
 - Counterparty: negotiation ability: UNE and CUPET
 - Tips in the negotiation process: NDA
- Investments in the Electricity Sector:
 - PPA
 - Dispatch priority
 - Ability to sell all energy produced (Take or Pay provisions)
 - Payment guarantees
 - Hardship, Material Adverse Change, Force Majeure.
- Oil and Gas: PSA

Investments in Cuba: Investment Protection

- Bilateral Investment Treaties entered into by Cuba.
 1. Fair and Equitable Treatment.
 2. National Treatment and Most-favoured-nation Provisions
 3. Expropriation
 4. Repatriation of Investment Returns
 5. Settlement of Disputes between an Investor and a Host State
- Double tax treaties

Investments in Cuba: Investment Protection (II)

- Guarantees to investors in Foreign Investment Law
 1. Art.4: Expropriation
 2. Art.5: Third party claims and extraterritorial legislation
 3. Art.6: **Extension of the term of the investment**
 4. Art.7: **Transfer of the participation**
 5. Art.9: Repatriation of funds
- Special Tax Regime
 1. No tax on dividends
 2. Corporate tax: 15% on net profits (tax exemption for 8 years plus extension)
 3. Not applicable to 100% foreign companies

Practical Issues when Negotiating an Investment in Cuba

1. Due Diligence
2. Conflict of Interests
3. Joint Venture Agreement:
 - Corporate purpose
 - **Term**
 - Governing bodies
 - **Deadlock situations**
 - **Change in Control**
 - Transmission to third parties (pre-emption rights)
 - **Disputes resolution**
4. By-Laws:
 - **Deadlock situations**
 - **Termination and Liquidation**
5. Economic Contracts

Practical Issues when Negotiating an Investment in Cuba (II)

- Extension of the initial term: alternatives
- Conflicts in case of (i) inactivity of governing bodies and (ii) dissolution, termination and liquidation of foreign investments: Commercial Section of the Provincial Court ("Sala de lo Económico del Tribunal Provincial Popular")
- Termination in case of
 - (a) Force majeure >180 days?
 - (b) Deadlock situation
 - (b) Event of default
 - (c) Change of control
- International Arbitration carried out in Cuba.

Thank you **& Bird & Bird**

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