

1-1-1993

Cuba's Thrust to Attract Foreign Investment: A Special Labor Regime for Joint Ventures in International Tourism

Jorge F. Pérez-López

Follow this and additional works at: <http://repository.law.miami.edu/umialr>

Recommended Citation

Jorge F. Pérez-López, *Cuba's Thrust to Attract Foreign Investment: A Special Labor Regime for Joint Ventures in International Tourism*, 24 U. Miami Inter-Am. L. Rev. 221 (1993)
Available at: <http://repository.law.miami.edu/umialr/vol24/iss2/2>

This Article is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Inter-American Law Review by an authorized administrator of Institutional Repository. For more information, please contact library@law.miami.edu.

ARTICLES

**CUBA'S THRUST TO ATTRACT FOREIGN
INVESTMENT: A SPECIAL LABOR
REGIME FOR JOINT VENTURES IN
INTERNATIONAL TOURISM**

JORGE F. PÉREZ-LÓPEZ*

I.	INTRODUCTION	222
II.	THE LEGAL FRAMEWORK OF CUBAN JOINT VENTURES: DECREE No. 50	224
	A. <i>Preamble</i>	226
	B. <i>General Provisions</i>	227
	C. <i>Financial Provisions</i>	230
	D. <i>Tax Provisions</i>	234
	E. <i>Commercial Provisions</i>	236
	F. <i>Labor Provisions</i>	239
	G. <i>Special Provisions</i>	241
III.	TOURISM AND THE CUBAN ECONOMY	242
	A. <i>Tourism Joint Ventures</i>	248
	B. <i>Labor and Tourism</i>	250
IV.	A SPECIAL REGIME FOR TOURISM WORKERS	251
	A. <i>General Provisions</i>	252

* B.A. in Economics, University of New York at Buffalo (1968); M.A. in Economics, State University of New York at Albany (1972); Ph.D. in Economics, State University of New York at Albany (1974). Jorge F. Pérez-López is an international economist who specializes in the Cuban Economy. He has written on numerous aspects of the island's economy, including national income accounting, foreign trade, and energy balances.

<i>B. Suitability</i>	254
<i>C. Remuneration</i>	255
<i>D. Promotion and Training</i>	257
<i>E. Discipline</i>	258
<i>F. Rehabilitation and Reinstatement</i>	260
V. A COMPARISON OF THE SPECIAL LABOR REGIME FOR INTERNATIONAL TOURISM WORKERS AND THE CUBAN LABOR CODE	261
<i>A. General Provisions</i>	262
<i>B. Suitability</i>	264
<i>C. Remuneration</i>	266
<i>D. Promotion and Training</i>	267
<i>E. Discipline</i>	268
<i>F. Rehabilitation and Reinstatement</i>	272
VI. IMPLEMENTATION OF THE LABOR REGIME FOR INTERNATIONAL TOURISM WORKERS	273
<i>A. Suitability and Aptitude</i>	273
<i>B. Size of the Workforce</i>	275
<i>C. Characteristics of Tourism Workers</i>	276
VII. CONCLUDING OBSERVATIONS	277

I. INTRODUCTION

In February 1982, the Cuban Council of State approved legislation which authorized foreign investment on the island in the form of joint ventures.¹ For the first several years after enactment, the joint venture law generated scattered interest from prospective investors, but very few investments materialized.²

The Cuban government became more active in promoting foreign joint ventures in the mid-1980s. In 1987, the Cuban Government created Cubanacán expressly for the purpose of developing

1. Resolución sobre el desarrollo económico, GRANMA, Oct. 17, 1991, at 3 (Cuba). All subsequent citations in this Article to Spanish language documents are of Cuban origin unless otherwise indicated. All translations are by the author unless otherwise noted.

2. See, e.g., JORGE I. DOMÍNGUEZ, TO MAKE A WORLD SAFE FOR REVOLUTION: CUBA'S FOREIGN POLICY 211 (1989) (reporting that as of early 1985 only one joint venture, between Cuban and Spanish interests to recycle metal products, had materialized); Jeremy Main, *Castro Tightens Cuba's Belt*, FORTUNE, Sept. 16, 1985, at 120, 128-29 (reporting that as of 1985 not a single joint venture had resulted).

the international tourism industry through joint ventures.³ From that point forward, Cuba's promotion of joint ventures has focused on tourism. The first sizable joint venture was between Cubanacán and the Spanish hotel chain Grupo Sol in late 1987. This venture led to the construction of the Sol Palmeras Hotel in Varadero Beach which was inaugurated in May 1990.⁴

In the late 1980s, mired in a recession and faced with deteriorating trade and foreign assistance relations with Eastern Europe and the then Soviet Union, Cuba assigned an even higher priority to establishing joint ventures. The Cuban government began a very aggressive campaign to attract foreign investment from Western countries to develop the island's international tourism industry. To support this effort, the Cuban Council of State enacted a special labor relations law in 1990 that applies exclusively to international tourist facilities.⁵ When the Fourth Congress of the Cuban Communist Party approved economic regulations to implement this special labor regime in October 1991,⁶ it legitimized the drive to attract foreign investment and recognized foreign investment as one of the keys to Cuba's economic strategy for the 1990s. According to Cuban officials, by mid-1992, Cuba had concluded sixty joint ventures with foreign investors, and one hundred more were under discussion.⁷ The most significant of these investments were related to tourism.

This Article describes the special labor regime applicable to international tourist installations in Cuba. Part II briefly describes the legal framework for joint ventures in Cuba and analyzes some of the key provisions. Part III provides background on the Cuban tourism industry. Part IV describes the labor relations system applicable to the international tourism system, and Part V compares

3. *Cuba, the Gulf and the Superpowers*, CUBA BUS., Dec. 1990, at 1, 11. Cubanacán is an enterprise of the Cuban government responsible for developing the international tourism industry. Cubanacán is often the Cuban party to a foreign joint venture. Cuba's national Tourism Institute ("INTUR"), Cubanacán, and a third government enterprise, Gaviota, reportedly engage in "fraternal competition" in attracting foreign tourists. DONNA RICH KAPLOWITZ & MICHAEL KAPLOWITZ, *NEW OPPORTUNITIES FOR U.S.-CUBAN TRADE* 21 (1992).

4. *Sol-Palmeras Manager on Hotel Operations*, FOREIGN BROADCAST INFORMATION SERVICE, LATIN AMERICAN REPORT [FBIS-LAT], July 11, 1991, at 5, 7.

5. Sobre regulaciones laborales especiales para los trabajadores del Sistema de Turismo Internacional [On Special Labor Regulations for International Tourism Workers], Decree No. 122, GACETA OFICIAL, Aug. 13, 1990, at 27 [hereinafter Decree No. 122].

6. These regulations will be discussed in detail *infra*.

7. Pedro Sevcec, *Castro firme en su negativa a apertura*, EL NUEVO HERALD (Miami), June 11, 1992, at 1A, 5A (quoting Cuban National Bank President Héctor Rodríguez).

this special regime with the one applicable to all Cuban workers. Part VI discusses Cuba's experience to date with the implementation of the special regime for workers in the international tourism industry. This Article concludes with some observations regarding the legal framework for joint ventures in Cuba and the special rules developed to attract foreign investment in the international tourism industry.

II. THE LEGAL FRAMEWORK OF CUBAN JOINT VENTURES: DECREE No. 50

The Council of State (*Consejo de Estado*)⁸ enacted Decree No. 50, "On Economic Association Between Cuban and Foreign Entities," and on February 15, 1982 Fidel Castro, in his capacity as President of the Council, signed it into law.⁹ On September 15, 1982, the Chamber of Commerce of the Republic of Cuba (*Cámara de Comercio de la República de Cuba*), the State Committee on Finance (*Comité Estatal de Finanzas*, "CEF"), the General Customs Department (*Dirección General de Aduana*), the Cuban National Bank (*Banco Nacional de Cuba*, "BNC"), the State Committee on Prices (*Comité Estatal de Precios*, "CEP"), and the State Committee on Labor and Social Security (*Comité Estatal de Trabajo y Seguridad Social*, "CETSS") issued the first set of implementing regulations.¹⁰

Decree No. 50 is very brief, covering about five pages in the *Gaceta Oficial*. Its five chapters deal with general, financial, tax, commercial, and labor provisions. A preamble gives the rationale behind the law, and a concluding section addresses miscellaneous matters. This Article analyzes Cuba's legal framework for joint ventures by examining the official texts of the laws and regula-

8. DOMINGO GARCÍA CÁRDENAS, STATE ORGANIZATION IN CUBA 56-59 (1986). The Council of State represents the National Assembly of People's Power, the highest organ of state power in the country, when the Assembly is not in session. The Council of State is composed of a president, a first vice-president, five vice-presidents, a secretary, and twenty-one other members elected from within the National Assembly. Issuing law decrees when the National Assembly is not in session is among the most important powers of the Council of State. The President of the Council of State is both the head of government and the head of state. *Id.*

9. Sobre asociación económica entre entidades Cubanas y extranjeras [On Economic Association Between Cuban and Foreign Entities], Decree No. 50, GACETA OFICIAL, Feb. 15, 1982, at 11, translated in *Cuba: Legislative Decree on Economic Association Between Cuban and Foreign Entities*, 21 I.L.M. 1106 (1982) [hereinafter Cuban Joint Venture Law].

10. These are composed of nine regulations which will be discussed *infra* part IV.

tions, promotional materials prepared by agencies of the Cuban government,¹¹ and published analyses of the legislation.¹²

In its drive to attract investment, Cuba has applied Decree No. 50 very flexibly, negotiating aggressively with prospective foreign investors on a case-by-case basis. According to one foreign investor, the Cuban Government often negotiates deals that are more liberal than those envisioned by the Council of State when it passed the legislation: "[T]hey have a joint venture law that is published and is open knowledge, but the government will do whatever it chooses. . . . What they're willing to give depends a lot on what the overseas partner brings to the deal."¹³

The mid-July 1992 session of the National Assembly of People's Power (*Asamblea Nacional del Poder Popular*, "ANPP") made three important changes to the 1976 Constitution.¹⁴ The changes were designed to reassure foreign investors of their rights by clarifying the role of private property and the ability of joint ventures to engage in international trade.

Article 14 of the Constitution, which stated that the Cuban economic system was based on public ownership of all the means of production,¹⁵ was modified to introduce the concept of public ownership of only the fundamental means of production.¹⁶ According to the ANPP Secretary, "fundamental means of production" refers only to social property,¹⁷ implying some private ownership is permitted.

11. E.g., CHAMBER OF COMMERCE OF THE REPUBLIC OF CUBA, POSSIBILITY OF JOINT VENTURES IN CUBA (1982)[hereinafter POSSIBILITY OF JOINT VENTURES 1982]; EXECUTIVE COMMITTEE OF THE COUNCIL OF MINISTERS OF THE REPUBLIC OF CUBA, POSSIBILITY OF JOINT VENTURES IN CUBA (1991)[hereinafter POSSIBILITY OF JOINT VENTURES 1991].

12. See generally JORGE F. PÉREZ-LÓPEZ, THE 1982 CUBAN JOINT VENTURE LAW: CONTEXT, ASSESSMENT, AND PROSPECTS (1985); Sula Fiszman, *Foreign Investment Law: Encouragement Versus Restraint—Mexico, Cuba, and the Caribbean Basin Initiative*, 8 HASTINGS INT'L & COMP. L. REV. 147 (1985); Lynn McGilvray-Saltzman, *Cuba's Joint Venture Associations: Cuba Reopens Its Doors to Foreign Investment*, 1 FLA. INT'L L.J. 45 (1984); Patrick L. Schmidt, *Foreign Investment in Cuba: A Preliminary Analysis*, 15 LAW & POL'Y INT'L BUS. 689 (1983); Jean G. Zorn & Harold Mayerson, *Cuba's Joint Venture Law: New Rules for Foreign Investment*, 21 COLUM. J. TRANSNAT'L L. 273 (1983).

13. SANTIAGO FITTIPALDI, DEVELOPING BUSINESS STRATEGIES FOR CUBA 64 (1992) (quoting John Issa, Chairman of Jamaica's Super Clubs Resorts).

14. See CONSTITUCIÓN DE LA REPÚBLICA DE CUBA [CUBAN CONST.] (1976). For a discussion of the 1976 Constitution, see FERNANDO ALVAREZ TABÍO, COMENTARIOS A LA CONSTITUCIÓN SOCIALISTA (1981).

15. CUBAN CONST. art. 14 (1976).

16. CUBAN CONST. art. 14, reprinted in GRANMA, Sept. 22, 1992, at 3, 5.

17. Panel Discusses Changes to Constitution, FBIS-LAT, July 23, 1992, at 2 (quoting ANPP Secretary Ernesto Suárez).

Cuba also modified Article 15 of its Constitution to eliminate the concept of "irreversible" socialist ownership of the means of production. The revised Article 15¹⁸ provides that socialist ownership of real property can only be transferred to persons or corporations for the economic and social development of the country and only with the prior approval of the Council of Ministers or its Executive Committee.¹⁹

Additionally, a new article was added to the Constitution. Article 23 provides: "The state recognizes the ownership of mixed enterprises, economic societies, and associations that are created according to the law. The use, benefit, and sale of assets belonging to these entities are ruled by law and treaties as well as by their own statutes and regulations."²⁰

A. Preamble

The stated purpose of Decree 50 is to promote economic development by forming economic associations between Cuban and foreign interests.²¹ The law seems to target manufacturing plants, tourism operations, and similar associations that can have a favorable impact on Cuba's hard currency balance.²² The preamble recognizes that in the past the Cuban government established and successfully operated for-profit joint ventures abroad, combining both Cuban and foreign capital.²³ Further, it notes that "[c]ertain forms of economic associations with foreign interests have also been initiated within Cuban national territory in recent years,

18. CUBAN CONST. art. 15, reprinted in GRANMA, Sept. 22, 1992, at 3, 5; see also *Amendments to Cuban Constitution Compared*, FBIS-LAT, July 24, 1992, at 3, 4.

19. CUBAN CONST. art. 15, reprinted in GRANMA, Sept. 22, 1992, at 3, 5. The Council of Ministers is the highest-ranking executive and administrative organ of the Cuban Republic. It is composed of a president, a first vice-president, vice-presidents, the chairperson of the Central Planning Board, the chairpersons of the State Committees, the president of the Cuban National Bank, the ministers, and the Secretary of the Council. The Executive Committee of the Council of Ministers substitutes for the Council when the latter is not in session, and it has the authority, when the urgency of a case requires it, to decide matters normally under the jurisdiction of the Council of Ministers. The Executive Committee of the Council of Ministers is composed of the President of the Council, the first vice-president, and other vice-presidents. See GARCÍA CÁRDENAS, *supra* note 8, at 59-63.

20. CUBAN CONST. art. 23, reprinted in, GRANMA, Sept. 22, 1992, at 5.

21. Cuban Joint Venture Law, *supra* note 9, pmbl., 21 I.L.M. at 1107.

22. María Elena Gil, *A la búsqueda de nuevos mercados*, CUBA INTERNACIONAL, June 1991, at 42.

23. Cuban Joint Venture Law, *supra* note 9, pmbl., 21 I.L.M. at 1107.

without having been specifically regulated by law."²⁴ However, as the economic development of the nation requires joint ventures within Cuba itself, particularly in areas where Cuba lacks sufficient financial resources, raw materials, markets, or technology to permit full utilization of Cuba's natural and human resources, the Council of State has deemed it desirable to set forth a legal framework to regulate the operation of such joint ventures.

The preamble provides that joint ventures are to operate independently of the state, but fully within the confines of Cuban domestic and international economic policies, particularly those policies that assign a high priority to export promotion and to the development of international tourism.²⁵

B. General Provisions

The decree authorizes joint ventures between Cuban entities and foreign interests for the specific purpose of promoting Cuba's economic development through profit-making activities. Joint ventures may take the form of either corporations (called "joint enterprises") or partnerships.²⁶ The domestic investor may consist of individual state enterprises or groups of state enterprises, while the foreign investors may be individuals as well as privately or publicly owned firms.²⁷

The law vests the power to review and authorize the establishment of joint ventures in a high-level commission appointed by the

24. *Id.* Zorn and Mayerson note the following:

Some joint ventures between Cuban state enterprises and foreign investors, including corporations and other privately owned entities, already were being negotiated or were in existence when the law was enacted, and Cuban authorities had been informed by potential joint venture partners that legislation delimiting the powers and obligations of joint venture participants would increase investor interest.

Zorn & Mayerson, *supra* note 12, at 283. According to a visitor to Cuba, in January 1983 "some 24 foreign companies [were] already registered in Cuba, primarily for trading operations, and a few [had] contracts with Cuban enterprises for last-stage processing (of textiles into garments, for example) of imported materials that are then re-exported." See Stephen Zorn, *Cuba's Cautious Moves to Attract Investment*, 4 MULTINAT'L MONITOR 19, 20 (1983).

25. Cuban Joint Venture Law, *supra* note 9, pmbl., 21 I.L.M. at 1107.

26. The law draws some minor distinctions between corporations and partnerships with regard to the form of contribution that the Cuban partner can make and the degree of participation a foreign partner is allowed. See Zorn & Mayerson, *supra* note 12, at 287-88. Henceforth, this discussion deals with corporate joint ventures rather than partnerships.

27. Cuban Joint Venture Law, *supra* note 9, art. 5, 21 I.L.M. at 1108.

Executive Committee of the Council of Ministers.²⁸ The commission consists of members and staff of the Executive Committee of the Council of State and also legal specialists and economists from the Cuban National Bank and other planning agencies.²⁹ The commission must give its decision to accept or deny a joint venture proposal within two months after receiving it.³⁰ In practice, however, decisions are sometimes delayed well beyond the statutory time limit, creating some uncertainty for prospective foreign investors.³¹

The commission is empowered to assist in the formation of joint ventures. It can direct state enterprises to lease land and facilities to joint ventures, and likewise, the commission can authorize the use of state-owned lands, industrial plants, and tourist facilities.³² Although the law appears to apply equally to both existing and future facilities, Cuba's preference, outside of tourism, appears to be for the former.³³

Prospective partners jointly draft a memorandum of association and "statutes" governing their joint venture's establishment and operation. These instruments delineate the relationship between the partners, as well as the procedures for managing the enterprise. Once adopted, only a mutual agreement of the parties can serve to modify the memorandum of association and the statutes.³⁴

The memorandum of association contains the parties' basic understanding of management strategy for the joint venture. It

28. *Id.* art. 1, 21 I.L.M. at 1108.

29. Zorn & Mayerson, *supra* note 12, at 300-01.

30. Cuban Joint Venture Law, *supra* note 9, art. 17, 21 I.L.M. at 1108.

31. For example, Italcable's negotiations with Cuba to establish a joint venture to provide international telephone service were much delayed. Although a preliminary joint venture agreement was signed in late 1991, Italcable had not received a legally executed contract as of April 1992. See *Mr. Castro Goes to Market*, *Bus. Wk.*, Apr. 20, 1992, at 46, 47.

32. Cuban Joint Venture Law, *supra* note 9, art. 2, 21 I.L.M. at 1107.

33. In the early 1980s, Cuba reportedly sought foreign participation in eight factories that it had previously purchased from Japanese and European suppliers in the 1970s. The plants were operating at less than full capacity as a result of shortages in raw materials and a lack of export markets. Thus, Cuba needed foreign investors to provide raw materials, export markets, improved technology and management—all with the aim of increasing export-oriented output. The factories considered for joint ventures included: 1) a pharmaceutical-products plant located outside Havana with the capacity to produce 80 million penicillin capsules per year (compared to domestic demand of 10 million capsules per year); 2) an automobile battery plant located in Manzanillo; 3) a cable and wire factory located outside Havana; 4) cereal enterprises located in Santiago de Cuba and Cárdenas; and 5) a plant that manufactures particle-board from sugar cane waste located in Ciego de Avila. See Zorn, *supra* note 24, at 19-20.

34. Cuban Joint Venture Law, *supra* note 9, art. 11, 21 I.L.M. at 1108.

must contain provisions that guarantee management or co-management of the joint venture by the Cuban partner, as well as explicit commitments that each partner will sell the goods or services produced. The requirement of a Cuban manager or co-manager seems to run contrary to Cuba's promise of the autonomy made to investors in promotional materials and contrary to statements made by Cuban officials.³⁵

The statutes contain the rules governing the organization and operation of the joint venture. They include provisions for:³⁶

- 1) regulating the structure, attributions, and procedures of stockholders' meetings;
- 2) establishing voting procedures;
- 3) setting forth the structure and duties of the board of directors; and
- 4) establishing procedures on a wide range of issues such as appointment, compensation and duties of managers; accounting rules; computation and distribution of profits; settlement of disputes between partners; and termination of joint ventures and liquidation of assets.

Although the law is quite flexible and allows for negotiation between the partners on many issues related to the establishment and operation of joint ventures, there are certain non-negotiable conditions. Joint ventures established under Decree No. 50 must be domiciled in Cuba, temporary in duration, and subject to the same regulations that apply to domestic corporations.³⁷

With regard to duration, the legislation is vague. While it provides that joint ventures must be temporary, it states that the duration of individual joint ventures may vary from case to case, depending on the length of time the venture will require to amortize capital expenditures and to obtain an acceptable level of profit.³⁸ Presumably, the duration of each joint venture is negotiated between the prospective investor and the Cuban state. While the vagueness of article 4 on the duration of joint ventures allows a great deal of flexibility, it also concerns potential investors, particularly when substantial capital investments are involved.

35. POSSIBILITY OF JOINT VENTURES 1982, *supra* note 11, at 2; see also, Cuban Joint Venture Law, *supra* note 9, 21 I.L.M. at 1106 (introductory note).

36. See Cuban Joint Venture Law, *supra* note 9, art. 8, 21 I.L.M. at 1108.

37. *Id.* arts. 6-7, 21 I.L.M. at 1108.

38. *Id.* art. 4, 21 I.L.M. at 1108.

Although joint ventures must be domiciled in Cuba, they may establish foreign offices or subsidiaries, and they may hold financial interests in entities operating abroad. Joint ventures are subject to Cuba's commercial code and to other commercial regulations that apply to domestic corporations.³⁹

Joint ventures acquire legal status once they are recorded in a special registry maintained by the Chamber of Commerce of the Republic of Cuba.⁴⁰ On September 15, 1982, the Chamber of Commerce issued regulations creating the registry; setting forth the registration procedures; and establishing a schedule of fees for recording the formation, modification or termination of joint ventures, and for the issuance of certificates of registration.⁴¹

C. *Financial Provisions*

Partners in a joint venture may contribute cash or assets.⁴² Contributions by the Cuban partner may include the temporary use of land, buildings, or structures. Partners may also contribute raw materials, tools, and equipment. The law requires that all contributions be valued in hard currency.⁴³ Assets contributed by the Cuban partner are valued first in domestic currency and then converted to hard currency at the official exchange rate.⁴⁴ Because Cuba's official exchange rate for converting from domestic to hard currency is highly overvalued,⁴⁵ contributions made by foreign partners in hard currency are understated.

The Cuban Joint Venture Law limits foreign ownership to 49% of the assets of the joint venture, but a partner may exceed this limit if authorized by the Executive Committee of the Council

39. *Id.* art. 6, 21 I.L.M. at 1108.

40. *Id.* art. 10, 21 I.L.M. at 1108.

41. Resolution No. 6-82 of the Chamber of Commerce of the Republic of Cuba, *GACETA OFICIAL*, Oct. 1, 1982, at 214.

42. Cuban Joint Venture Law, *supra* note 9, art. 14, 21 I.L.M. at 1108.

43. *Id.*

44. Since 1961, the Cuban peso has not been freely exchanged in international markets. The official exchange rate of the peso vis-a-vis the dollar significantly overestimates the purchasing power of the former, but reliable estimates of the extent of overvaluation do not exist. *See, e.g.*, CARMELO MESA-LAGO & JORGE PÉREZ-LÓPEZ, *A STUDY OF CUBA'S MATERIAL PRODUCT SYSTEM, ITS CONVERSION TO THE SYSTEM OF NATIONAL ACCOUNTS, AND ESTIMATION OF GROSS DOMESTIC PRODUCT PER CAPITA AND GROWTH RATES* (1985). The official peso-U.S. dollar exchange rate (in U.S. dollars per Cuban peso) was: in 1982, \$1.20; in 1983, \$1.16; in 1984, \$1.13; in 1985, \$1.09; in 1986, \$1.21; and in 1987-92, \$1.00. *See* BANCO NACIONAL DE CUBA—COMITÉ ESTATAL DE ESTADÍSTICAS, *CUBA: INFORME ECONÓMICO TRIMESTRAL* 21 (1983).

45. *See infra* note 56 and accompanying text.

of Ministers.⁴⁶ Available information suggests that the Executive Committee routinely authorizes foreign participation exceeding 49% in tourism joint ventures.⁴⁷ Additionally, Cuban officials have stated that Cuba is likely to consider majority ownership in joint ventures in priority areas like tourism.⁴⁸ At the 1991 Ibero-American Summit in Guadalajara, President Castro announced that Cuba would consider granting "preferential treatment" to incoming capital from Latin America,⁴⁹ presumably including 100% ownership.

During the application process for a joint venture, the commission that approves the establishment of joint ventures may require a prospective foreign partner to post a bond, in the form of cash or securities, guaranteeing that the investment, if approved, will be consummated.⁵⁰ If the joint venture is approved, cash bonds are applied toward the contribution of the foreign partner or returned. Should a proposed joint venture be disapproved, the bond is returned.⁵¹

Joint ventures must carry insurance on all facilities contributed by Cuban enterprises, and the policy must make the Cuban partner the primary beneficiary.⁵² The State Finance Committee also requires coverage against losses from fire, hurricanes, wind storms, flooding, and earthquakes.⁵³ Consistent with providing for Cuba's economic development, Cuban insurance companies have the first option to underwrite the coverage, though the insurance companies must meet internationally competitive terms.⁵⁴

Joint ventures must conduct their financial transactions in hard currency, using special hard-currency accounts established in

46. Cuban Joint Venture Law, *supra* note 9, art. 15, 21 I.L.M. at 1108.

47. Howard W. French, *Cuba Flirts with Capitalism to Avoid Collapse*, N.Y. TIMES, Dec. 5, 1990, at A18.

48. *Id.* Cuban Chamber of Commerce President Julio Garcia Olivera told journalists in January 1991 that Cuba "would not reject offers from foreign capitalists to make up to 100 percent investment in enterprises on the island." *Chamber of Commerce Invites Foreign Investment*, FBIS-LAT, Jan. 10, 1991, at 3; *see also* Gil, *supra* note 22, at 40, 42.

49. FIDEL CASTRO, INDEPENDIENTES HASTA SIEMPRE 50 (1991).

50. Cuban Joint Venture Law, *supra* note 9, art. 16, 21 I.L.M. at 1108. Cash bonds draw interest at the prevailing rate of interest. *Id.*

51. *Id.* art. 17(a), 21 I.L.M. at 1108.

52. *Id.* art. 18, 21 I.L.M. at 1108-09.

53. Resolution No. 54-82 of the State Finance Committee, GACETA OFICIAL, Oct. 1, 1982, at 207.

54. Cuban Joint Venture Law, *supra* note 9, art. 32, 21 I.L.M. at 1109.

Cuban banks.⁵⁵ Inputs purchased domestically (raw materials, intermediate inputs, labor services), as well as taxes due the Cuban state, must be paid in hard currency, using the official Cuban exchange rate. In July 1989, the Cuban National Bank set the official peso-U.S. dollar exchange rate for operations of joint ventures at 1:1, with the exchange rates of all other hard currencies to be derived from cross-rates of exchange of the U.S. dollar in New York.⁵⁶

Joint ventures may borrow funds, in hard currency, from foreign or national banks. Loans from domestic institutions will normally be short-term (maturity of one year or less), fully guaranteed by assets of the joint venture, and carry interest rates competitive with those prevailing in international markets. The Cuban government prohibits domestic institutions from making loans to cover any part of the foreign partner's initial contribution to joint ventures and from making loans denominated in U.S. dollars as long as the U.S. Treasury Department regulations restricting the use of U.S. currency in Cuba remain in effect.⁵⁷

The Cuban legislation provides few financial incentives. There are no provisions for loans to promote the establishment of joint ventures and only a weak reference in the regulations to possible preferential credits for existing joint ventures. As noted above, the regulations issued by the Cuban National Bank expressly prohibit loans to foreign investors for the purpose of establishing joint ventures. Though ongoing joint ventures may obtain credit from the domestic banking system, such credit normally will be restricted to working capital and will carry maturities of one year or less. Ongoing ventures may also request longer-term credit from the Cuban National Bank to finance specific investment projects; if approved,

55. *Id.* art. 19, 21 I.L.M. at 1109.

56. Resolution No. 299 of the Cuban National Bank, GACETA OFICIAL, Aug. 26, 1989, at 814; *see also*, Resolution No. 77 of the Cuban National Bank, GACETA OFICIAL, May 29, 1991, at 207. This official rate contrasts with a current "black market" rate of about 10 pesos to the U.S. dollar. However, this estimate is highly speculative. *See* CARLO GEBLER, DRIVING THROUGH CUBA 38-43 (1988) (Gebler was approached by several individuals during his 1987 visit to Cuba who offered to exchange Cuban pesos for U.S. dollars at the rate of 5:1); Juan Jesús Aznarez, *Funciona un activo mercado negro de dólares en La Habana*, DIARIO LAS AMÉRICAS, Oct. 24, 1987, at A1, A15 (stating that the "black market" exchange rate was 6:1 in fall 1987); ANDRÉS OPPENHEIMER, CASTRO'S FINAL HOUR 152 (1992) (estimating the black market exchange rate was 10:1).

57. Resolution No. 660 of the Cuban National Bank, GACETA OFICIAL, Oct. 1, 1982, at 212. The U.S. regulations referred to are the Cuban Assets Control Regulations of the U.S. Treasury Department, appearing in 31 C.F.R. Part 515 (1981).

a loan will be extended at the prevailing international market rate.⁵⁸ The regulations provide that the Cuban National Bank "might study" granting credits at preferential terms to existing joint ventures, consistent with practices in other nations,⁵⁹ but neither the law nor the regulations define the circumstances under which preferential credits will be available.

Joint ventures must also create a reserve fund to cover contingencies.⁶⁰ The State Finance Committee requires a joint venture to contribute annually 5% of its operating profit to the reserve fund, until the fund reaches a certain percentage of the capital of the joint venture (set at 15% for joint ventures in manufacturing and 20% for those in service activities). These funds can only be used to cover losses from extraordinary circumstances, and any withdrawals must be replenished through annual contributions amounting to 10% of operating profits.⁶¹

The Cuban government "guarantees" foreign partners the unrestricted right to remit abroad, in hard currency, their share of profits and dividends earned by a joint venture, as well as the proceeds from the liquidation of a joint venture.⁶² However, if the joint venture suspends its activities as a result of unilateral action by the Cuban government, the statute merely states that the Cuban National Bank "may guarantee" foreign investors the ability to repatriate liquidation proceeds.⁶³

The vagueness of the repatriation guarantee for liquidation proceeds is one of the major flaws in the joint venture statute. For business executives considering investing in Cuba, investment protection is a more sensitive issue than it would be elsewhere as a result of two factors: 1) Cuba is a socialist state with a jaundiced view toward private property, despite the 1992 changes to the Constitution; and 2) Cuba has a poor record in compensating foreign investors for previous instances of nationalization.⁶⁴ The statutory guarantee of remittance falls considerably short of providing the level of investment guarantees that foreign parties typically de-

58. Resolution No. 660, *supra* note 57, at 212.

59. *Id.*

60. Cuban Joint Venture Law, *supra* note 9, art. 22, 21 I.L.M. at 1109.

61. Resolution No. 53-82 of the State Finance Committee, GACETA OFICIAL, Oct. 1, 1982, at 207.

62. Cuban Joint Venture Law, *supra* note 9, art. 23, 21 I.L.M. at 1109.

63. *Id.* art 24.

64. See Jorge F. Pérez-López, *The Economics of Cuban Joint Ventures*, 16 CUBAN STUDIES 181, 185 (1986).

mand.⁶⁵ Moreover, issues of expropriation and compensation have already surfaced with respect to joint ventures under Decree 50.⁶⁶

The legislation also limits the ability of foreign executives and technicians employed by joint ventures to remit abroad. Such employees may remit only a certain percentage of their compensation in hard currency. The Cuban National Bank has issued regulations initially setting this percentage at 66%.⁶⁷ Because this limit is not part of the statute, it can be lowered, or raised, by future administrative action.

D. Tax Provisions

Income of joint ventures, shareholders' dividends, and income of joint venture executives are exempt from Cuba's general system of taxation.⁶⁸ Instead, the following taxes and levies, payable in hard currency, are applicable:

- 1) a 30% tax on net profit payable annually within the first two months following the end of the calendar year;
- 2) a 25% payroll tax, levied on the total compensation (excluding payments from incentive funds) paid to Cuban employees (this tax includes the employer's contributions to social security);
- 3) import duties;
- 4) personal property taxes on automobiles; and
- 5) levies and fees generally associated with obtaining and renewing certain legal documents.⁶⁹

65. ERNESTO F. BETANCOURT, MEMORANDUM ON JOINT VENTURES IN CUBA (1983).

66. In late 1991 or early 1992, Cuba took over the very successful Havana Club discotheque, located at the Comodoro Hotel in Havana. The discotheque, which catered to an international clientele, was a joint venture between the Cuban tourism enterprise Cubanacán (80 percent) and a Spanish investment group, Grupo Habana (20 percent). The majority stockholder acquired the foreign ownership and changed the discotheque to attract to a domestic clientele. The rationale for taking over the joint venture was to avoid social problems; the discotheque appealed to Cuban youth. See *Cuba interviene discoteca hecha con capital español*, DIARIO LAS AMÉRICAS, Jan. 12, 1992, at 1A; Lee Hockstader, *Cuba's Glimmer of Glitter*, WASH. POST, Sept. 24, 1991, at C9. The manager of the Spanish investment group, Jordi Escarrá, downplayed the broader implications of the joint venture's dissolution, noting that his group was adequately compensated. See Claribel Terre Morell, *No me siento un fracasado*, BOHEMIA, Apr. 17, 1992, at 12.

67. Resolution No. 659 of the Cuban National Bank, GACETA OFICIAL, Oct. 1, 1982, at 211.

68. Cuban Joint Venture Law, *supra* note 9, art. 25, 21 I.L.M. at 1109.

69. *Id.*

To implement this special taxation system, the State Finance Committee issued regulations in the fall of 1982 defining gross income, deductible expenditures (including depreciation schedules), and net income.⁷⁰ The Cuban depreciation schedules appear to be less liberal than those of other nations. These depreciation schedules appear to be deficient in two respects: 1) they utilize the straight-line depreciation method and do not provide for accelerated depreciation; and 2) the schedules provide for usable lives that appear to far exceed actual usefulness.⁷¹ In 1983, Cuba established faster depreciation schedules for buildings and structures used by joint ventures in the international tourism industry; the new schedules reflect the concerns expressed by the National Tourism Institute (*Instituto Nacional del Turismo*, "INTUR") that the normal depreciation schedules did not permit tourism investors to realize sufficient returns on their investments to justify their association with Cuban partners.⁷²

On a case by case basis, the State Finance Committee may temporarily exempt joint ventures from payment of income taxes and import duties if the exemption is deemed to be "beneficial to the nation."⁷³ Cuban authorities have not published their criteria for determining when an investment is "beneficial to the nation."

Decree 50 is vague regarding any tax and import duty exemptions (i.e. tax holidays) that might be granted to joint ventures. The Cuban government has not established guidelines for determining the duration or extent of tax and import duty holidays. By contrast, many competing countries statutorily grant tax and import duty holidays according to published rules that objectively measure an investment project's contribution to the nation's eco-

70. Resolution No. 52-82 of the State Finance Committee, *GACETA OFICIAL*, Oct. 1, 1982, at 203.

71. The depreciation schedule applicable to joint ventures is as follows: cement or brick structures, 3 percent per annum (usable life of 33.3 years); wooden structures, 6 percent (16.7 years); furniture, 10 percent (10 years); office equipment, except data processing equipment, 15 percent (6.7 years); data processing equipment, 25 percent (4 years); road transportation equipment, 20 percent (5 years); sea transportation equipment, 6 percent (16.7 years); air transportation equipment, 25 percent (4 years); tractors and other agricultural machinery, 25 percent (4 years); construction machinery, 25 percent (4 years); agricultural equipment, 15 percent (6.7 years); general machinery, 6 percent (16.7 years); and live animals, 15-50 percent (2 to 6.7 years). See *id.* at 204-05.

72. Resolution No. 22/83 of the State Finance Committee, *GACETA OFICIAL*, June 22, 1983, at 612.

73. Resolution No. 52-82, *supra* note 70, art. 28.

conomic development and international competitiveness.⁷⁴

This examination of the Cuban joint venture law suggests that the array of investment incentives falls short of those offered by other developing nations that actively seek foreign investment. Though Cuba's nominal 30% tax rate on net profit is substantially lower than the maximum tax rate of South American nations (which averages about 50%),⁷⁵ Cuba's rate is not significantly different from those prevailing in other Caribbean nations.⁷⁶ Moreover, since net profit excludes depreciation and since Cuban depreciation schedules are less liberal than those in other nations, it is not evident that the relatively low tax rate in the Cuban law would result in lower tax liability for joint ventures.

E. Commercial Provisions

The Cuban Joint Venture Law grants joint ventures the ability to directly export their output, and to directly import necessary inputs,⁷⁷ subject to certain general reporting requirements.⁷⁸ Because this provision contradicted the principle of absolute state monopoly over foreign trade embodied in Article 18 of the 1976

74. See, e.g., U.S. INT'L TRADE COMMISSION, POTENTIAL EFFECTS OF A NORTH AMERICAN FREE TRADE AGREEMENT ON APPAREL INVESTMENT IN CBERA COUNTRIES 43, USITC Pub. 2541 (July 1992) (Report to the United States Trade Representative on Investigation No. 332-321). For instance, CBERA countries and Mexico provide liberal tax incentives for firms operating in free-trade zones (FTZs)—special areas designated by the host government to encourage export-oriented investment. These incentives include exemptions from income taxes, import duties, and local sales taxes on production for export purposes. In addition, foreign firms operating in the FTZs in the CBERA countries and in *maquiladoras* in Mexico are allowed unrestricted remittances of profits and repatriation of capital. *Id.*

75. Salvador Juncadella, *The Foreign Investment Laws of Latin America: Present and Future*, 16 INT'L LAW. 463, 467 (1982). The maximum combined rates ranged from 68.5% in Peru to 37% in Paraguay. *Id.* at 472.

76. For a brief analysis of investment incentives in this area, see U.S. INT'L TRADE COMMISSION, *supra* note 74, at 43. For a more detailed analysis, see RICARDO MONGE GONZÁLEZ & JORGE CORRALES QUESADA, POLÍTICAS DE PROTECCIÓN E INCENTIVOS A LA MANUFACTURA, AGROINDUSTRIA Y ALGUNOS SECTORES AGRÍCOLAS EN COSTA RICA (1988).

Joint ventures may select their own accounting system so long as it is in line with generally accepted accounting standards. Cuban Joint Venture Law, *supra* note 9, art. 30, 21 I.L.M. at 1109. Financial statements must be submitted periodically to the State Finance Committee and are subject to audit. *Id.* art. 29, 21 I.L.M. at 1109. In mid-1983, the State Finance Committee issued regulations outlining the types of business and financial information that joint ventures must submit to the Committee on a quarterly basis. Guideline No. 11/83 of the State Finance Committee, GACETA OFICIAL, June 23, 1983, at 630.

77. Cuban Joint Venture Law, *supra* note 9, art. 31, 21 I.L.M. at 1109.

78. Resolution No. 1-82 of the General Customs Department, GACETA OFICIAL, Oct. 1, 1982, at 212.

Constitution,⁷⁹ in July 1992, the ANPP modified Article 18 of the Constitution to eliminate the state's monopoly over foreign trade and to establish more clearly the right of joint ventures to engage directly in foreign trade.⁸⁰ In so doing, Cuba acknowledged both the abolition of the state monopoly over foreign trade and the dissolution of the Council for Mutual Economic Assistance, the trade organization of socialist states. Thus, Article 18 of the Cuban Constitution, as revised, empowers state institutions to "identify the natural or judicial persons with legal capacity to engage in export and import operations, and to enter into commercial pacts."⁸¹

Cuban state enterprises have the first option to purchase goods produced by joint ventures when the goods are substitutes for ones imported from nations with which Cuba does not have payment agreements (i.e., countries from which Cuba purchases goods for hard currency), provided the prices are internationally competitive.⁸² However, since this provision operates without prejudice to the provision that joint ventures may export directly,⁸³ the legislation favors export promotion over import substitution.⁸⁴

Cuban state enterprises guarantee joint ventures basic utilities and supplies, such as electricity, water, gas, telephone, telex, and domestic transportation. Through December 31, 1983 these services were offered at official domestic prices, as established by the State Committee on Prices,⁸⁵ but it is not clear what prices have been applicable since 1984.

Domestic enterprises have the first option to supply internationally-traded goods and services to joint ventures, but they must offer the goods and services at internationally competitive terms.⁸⁶ Thus, Cuban enterprises have priority in supplying joint ventures with fuels, raw materials, tools, equipment, spare parts, consumer goods, maritime transportation, and insurance services. When con-

79. See Henry Dahl, *Socialist Law in the Americas: The Foreign Trade Point of View*, 3 CONN. J. INT'L L. 273, 293 (1988).

80. *Amendments to Cuban Constitution Compared*, *supra* note 18, at 4. Thus, Article 18 has been changed from "Foreign trade is the exclusive function of the state" to "The state directs and controls foreign trade." *Id.*

81. CUBAN CONST. art. 18, *reprinted in* GRANMA, Sept. 22, 1992, at 3, 5.

82. Cuban Joint Venture Law, *supra* note 9, art. 32, 21 I.L.M. at 1109.

83. *Id.* art. 31, 21 I.L.M. at 1109.

84. Zorn & Mayerson, *supra* note 12, at 292; Schmidt, *supra* note 12, at 700-01.

85. Resolution No. M-24/82 of the State Committee on Prices, GACETA OFICIAL, Oct. 1, 1982, at 208 [hereinafter Resolution No. M-24/82].

86. Cuban Joint Venture Law, *supra* note 9, art. 32, 21 I.L.M. at 1109.

tracting with joint ventures, state enterprises may lower the prices from "official" domestic levels to meet foreign competition.⁸⁷

The right of state enterprises to be first suppliers creates the potential for indirect takings or "creeping nationalization" by the Cuban state. Indirect or creeping nationalization occurs when, instead of using the power of eminent domain to take over a foreign investment, the host country relies on its regulatory or police powers to accomplish the same objective.⁸⁸ Because the host state can harass the foreign investor to a point where the enterprise is unprofitable, creeping nationalization is as important to potential investors as overt nationalization. The state can use this technique to induce the foreign investor to abandon the enterprise or sell it to the state at a reduced price. Host countries can exert pressure on foreign entrepreneurs by manipulating provisions in mineral concessions, prices, tax and credit policies, and the availability of nontraded goods essential to the enterprises and controlled by the state (for example, utilities such as electric power, water, and telephone service).⁸⁹ To exert more subtle pressure, host countries can take such actions as manipulating exchange control policies and delaying the repair of roads leading to a foreign plant.⁹⁰

Creeping nationalization may have affected construction of the Cohiba Hotel in Havana, a joint venture between the Cuban tourism enterprise Cubanacán and the Spanish consortium Ibercusa. The construction of the large hotel incurred several delays. Cuban officials reportedly suspended the project, claiming that the Spanish partner failed to make payments for supplies.⁹¹ However, the Spanish partners claimed that the construction delays were the result of the Cuban partners' failure to deliver supplies.⁹²

Disputes between joint ventures and state enterprises or other state organizations are settled in accordance with the Cuban arbitration system. Settlements of disputes by the Cuban arbitration system, rather than by a court in the investor's home country or by an international arbitration body, concerns prospective investors, since in such cases the Cuban government is both an arbitrator

87. Resolution No. M-24/82, *supra* note 85, at 208.

88. Burns H. Weston, *Constructive Takings Under International Law: A Modest Foray Into the Problem of Creeping Expropriation*, 16 VA. J. INT'L L. 103, 111-112 (1975).

89. *Id.*

90. *Id.*

91. FITTIPALDI, *supra* note 13, at 65.

92. *Id.*

and a party.⁹³ Moreover, foreign parties are at a distinct disadvantage in such cases because there is limited information available on the application of arbitration rules and because lawyers from capitalist nations lack experience with the Cuban system.⁹⁴ "Cuban lawyers, through intense practice, are likely to be good arbitration strategists,"⁹⁵ but the non-Cuban lawyers who represent foreign investors are likely to have great difficulty winning arbitration decisions due to their lack of familiarity with the procedures.

F. Labor Provisions

Joint ventures must employ Cuban workers, except in certain management, technical, and highly-skilled positions which all partners agree only foreign citizens can fill. Joint ventures, however, do not employ Cuban workers directly. Instead, a Cuban entity hires the workers and then contracts with the joint venture to provide the workforce in return for a monthly fee, in hard currency, which covers the workers' wages and benefits.⁹⁶

The joint venture's inability to manage its local labor resources adversely affects the operation's efficiency and is a continuing source of conflict between the joint venture and the Cuban entity supplying the labor.

Regulations issued by Cuba's State Committee on Labor and Social Security grant to the management of joint ventures the right to reject workers provided for newly established enterprises.⁹⁷ Though the joint venture managers can reject a new worker, it is not clear what criteria or procedures the managers may use for such decisions. For example, it is unclear whether managers can test prospective workers or even interview them. It is clear, however, that managers cannot approve or disapprove of workers if the

93. Schmidt, *supra* note 12, at 706.

94. See Enrique Dahl & Alejandro M. Garro, *Cuba's System of International Commercial Arbitration: A Convergence of Soviet and Latin American Traditions*, 15 LAW. AM. 441, 464 (1984) (noting that after more than eight years of hearing disputes involving joint ventures, Cuba's Foreign Trade Arbitration Court has not published a single decision to illustrate its operation and procedures); see also Elpidio Pérez-Suárez, *El arbitraje en las relaciones económicas internacionales*, REVISTA CUBANA DE DERECHO, Jan.-Dec. 1978, at 225.

95. Dahl & Garro, *supra* note 94, at 466.

96. Resolution No. 1647 of the State Committee on Labor and Social Security, GACETA OFICIAL, Oct. 1, 1982, at 210-11 (defining the relationship between workers and the Cuban entity which hires them, on the one hand, and between the hiring entity and the joint venture, on the other).

97. *Id.* at 210.

joint venture takes over an existing enterprise. In such cases, the worker seniority system remains in force.⁹⁸

Another area of potential conflict between the joint venture and the Cuban state relates to staffing levels and the ability to adjust those levels promptly to reflect changes in demand. Cuba wants to maximize the number of domestic jobs. However, management's incentive lies in keeping the number of jobs low to reduce labor costs and increase the potential for profit. In the negotiation stage, the foreign partner may have sufficient bargaining power to reject efforts by the Cuban government to overstaff the joint venture. However, the joint venture likely has very little leverage in discussions with the state entity regarding layoffs in response to cyclical or secular declines in output. Joint ventures may find that for all practical purposes, the labor force is fixed. This means that labor costs are also fixed, and other things being equal, the profitability of the joint venture will decline with lower demand. Paradoxically, the management of joint ventures may find that the inability to hire workers directly hinders its ability to respond to increases in demand. Again, such limitations adversely affect profitability.

Joint ventures must pay Cuban workers according to the official wage scale, as established by the State Committee on Labor and Social Security.⁹⁹ However, there is an exception for Cuban managers, whose remuneration must be comparable to that received by foreign management personnel.¹⁰⁰ Although joint ventures must pay the domestic hiring entity in hard currency for the workers' wages and benefits, the Cuban entity is responsible for paying the Cuban workers in domestic currency.¹⁰¹

There are also miscellaneous requirements imposed on joint ventures. For example, joint ventures are subject to national legislation regarding worker safety and health.¹⁰² Joint ventures must also establish an incentive fund for the benefit of their Cuban workers.¹⁰³

98. *Id.*

99. Tarifas de servicios aplicables a las asociaciones económicas [Wage Scale for Economic Associations], GACETA OFICIAL, Oct. 1, 1982, at 209.

100. Cuban Joint Venture Law, *supra* note 9, art. 41, 21 I.L.M. at 1110.

101. *Id.* art. 41, 21 I.L.M. at 1110. The Cuban entity is also responsible for wages and benefits due workers who are separated from the joint venture. See *id.* art 40, 21 I.L.M. at 1110.

102. *Id.* art. 39, 21 I.L.M. at 1110.

103. *Id.* art. 42, 21 I.L.M. at 1110.

Foreign personnel employed by joint ventures enjoy special treatment. Though they are subject to normal immigration regulations,¹⁰⁴ foreign personnel receive temporary resident status and can enter and exit the country freely to carry out their employment duties.¹⁰⁵ Similar to the treatment afforded foreign diplomats and guests, foreign personnel are eligible for a range of special privileges, including special housing and access to hard currency stores.¹⁰⁶

G. *Special Provisions*

Decree No. 50 creates an incentive package to attract tourism investment in preferred geographic areas. The Law on the Protection of the Environment and the Rational Use of Natural Resources¹⁰⁷ designates certain areas as suitable for the development of foreign tourism and authorizes the Council of Ministers to establish special administrative regimes for those areas.¹⁰⁸ The first special provision of Decree No. 50 provides that tourism joint ventures established in these specially designated areas may be exempt from all taxes and levies and may enjoy more favorable regulations regarding labor, public order, and immigration controls. As a further incentive, the second special provision provides that these foreign partners may directly lease Cuban installations and directly hire Cuban workers, subject to approval by the Executive Committee of the Council of Ministers.¹⁰⁹ The law also permits the importation of foreign managers.¹¹⁰

The third special provision exempts joint ventures and their foreign partners from the confidentiality rules which normally apply to all enterprises.¹¹¹ This probably refers to the ban on disclosure of military, political, economic, scientific, and technical information which might compromise the security of the state.¹¹² In the

104. *Id.* art. 43, 21 I.L.M. at 1110.

105. POSSIBILITY OF JOINT VENTURES 1982, *supra* note 11, at 6.

106. *Id.*

107. De protección del medio ambiente y del uso racional de los recursos naturales [On Protection of the Environment and Rational Use of Natural Resources], Law 33 of Jan. 10, 1981, GACETA OFICIAL, Feb. 12, 1981, at 255.

108. *Id.*

109. Cuban Joint Venture Law, *supra* note 9, special provision II, 21 I.L.M. at 1110.

110. Jon Glazer & Kurt Hollander, *Working for the Tourist Dollar*, THE NATION, June 15, 1992, at 820, 822 (noting that owners of joint ventures often seek German managers).

111. Cuban Joint Venture Law, *supra* note 9, special provision III, 21 I.L.M. at 1110.

112. *See, e.g.*, Ley del secreto estatal [Law on State Secrets], Law 1246 of May 14, 1973,

absence of this exemption, foreign joint venture partners would lack access to the basic economic data needed for analyzing the feasibility of an enterprise or its performance over time.

Pursuant to the fourth special provision, Decree No. 50 does not apply to those compensation arrangements through which Cuba imports turn-key plants or other industrial facilities using medium or long-term foreign credits which Cuba repays through the sale of part, or all, of the facilities' output.¹¹³ Similarly, the law does not apply to economic associations between Cuba and the Council for Mutual Economic Assistance ("CMEA") or a CMEA nation, or between Cuba and the Latin American Economic System (*Sistema Económico Latinoamericano*, "SELA").¹¹⁴

Finally, joint ventures must regularly submit statistical data on their operations to the State Committee on Statistics for the following areas: 1) financial and business transactions; 2) employment and labor force; and 3) depending on the specific activities of the joint venture, imports, exports, and output of goods and services.¹¹⁵

III. TOURISM AND THE CUBAN ECONOMY

Although the Cuban government promotes the establishment of joint ventures in all industries, it has made special efforts, beginning in the mid-1980s, to draw foreign investment to the international tourism industry. This focus on international tourism is strategic for several reasons. First, Cuba's natural resources—a warm climate with mean year-round temperature of 87 degrees Fahrenheit and 289 beaches scattered along 3,570 miles of coastline¹¹⁶—make the island a prime destination for tourists who seek sun-oriented vacations. Second, Cuba's focus acknowledges both the current and prospective importance of international tourism in the world economy. According to a recent study, the travel and tourism industry is already the world's largest industry, generating

GACETA OFICIAL, May 17, 1973, at 33; Reglamento para la ejecución de la ley del secreto estatal [Regulations for the Enforcement of the Law on State Secrets], GACETA OFICIAL, Jan. 17, 1974, at 73. These regulations explicitly prohibit the disclosure of confidential economic data to foreigners, presumably including actual or prospective joint venture partners.

113. Cuban Joint Venture Law, *supra* note 9, special provision IV, 21 I.L.M. at 1111.

114. *Id.* special provision V, 21 I.L.M. 1111.

115. Resolution No. 96/83 of the State Committee on Statistics, GACETA OFICIAL, June 23, 1983, at 627.

116. Carmen de Oliveira, *Turistiroika?*, CUBA INT'L, Jan. 1990, at 30.

more than 5.5% of the global gross national product in 1989 and employing more than 112 million people worldwide (1 in every 15 employees).¹¹⁷ In certain geographic regions, such as the Caribbean, Latin America, and the Pacific, the contributions of travel and tourism to national economies is even higher.¹¹⁸ Finally, Cuba's emphasis on tourism reflects the reluctance of foreign investors to invest in other sectors of the economy.

International tourism was an important source of income and employment in pre-revolutionary Cuba. In the 1950s, Cuba experienced a construction and renovation boom in the hotel industry. Between 1950 and 1958, 28 new hotels and motels were built, and 11 others were under construction or in the design stage.¹¹⁹ In 1958, over 335,000 foreign tourists visited Cuba, and the island earned nearly \$57 million from the international tourism industry.¹²⁰

Revolutionary Cuba eschewed international tourism partly because of ideological considerations, especially the concern that international tourists with their capitalistic manners and vices would contaminate Cuban socialism. Decree No. 50 reflects this concern by encouraging the development of enclave tourist facilities, located in small islands and keys physically separated from the Cuban population. "By channelling tourists to these relatively isolated areas, Cuban authorities [believe] that some of the adverse effects of tourism that have been experienced by other countries will be avoided."¹²¹ Physically separating tourists and nationals is consistent with socialist tourism management:

[T]he creation of remote enclave-type resorts, like Cayo Largo, enables Cuba to reduce contact between tourists and the general population. This spatial segregation, along with the functional segregation inherent in guided tour groups, is a common tourism management strategy in socialist countries and represents one of a number of possible strategies for mitigation of negative impacts.¹²²

117. See generally WORLD TRAVEL & TOURISM COUNCIL, *TRAVEL AND TOURISM IN THE WORLD ECONOMY* (1991).

118. *Id.*

119. GRUPO CUBANO DE ESTUDIOS ECONÓMICOS, *UN ESTUDIO SOBRE CUBA*, 1124-25 (1963).

120. *Id.* at 1126.

121. Zorn & Mayerson, *supra* note 12, at 291; see also PÉREZ-LÓPEZ, *supra* note 12, at 46.

122. Thomas D. Hinch, *Cuban Tourism Industry: Its Re-Emergence and Future*, 11 *TOURISM MGMT.* 214, 224 (1990).

The Cuban government's renewed emphasis on international tourism began in the mid-1970s when it created INTUR and recognized tourism as an industry capable of contributing to national development and improving hard currency balances.¹²³ In 1991, President Castro identified international tourism as one of the key elements in Cuba's economic development strategy: "We are entering a field in which we are developing our fabulous natural resources, such as the beauty of our country, the beaches of our country, which take the place of oil. We have to exploit [our natural resources]."¹²⁴ In October 1991, the Fourth Congress of the Cuban Communist Party also recognized tourism as one of the main strands of Cuba's development strategy for the 1990s. The Fourth Party Congress adopted the following economic resolution:

Throughout its national territory, Cuba has numerous tourist sites or resorts, including large beaches and cays. These natural resources, combined with other positive achievements such as social stability, a healthy environment, a broad-based health care system, the hospitality of the Cuban people, and the populations's high level of culture and educational achievement, make the country an attractive destination for tourists and [make] tourism an important source of earnings to support economic development, employment, and growth of many related areas of the economy. Efficient development of existing tourist facilities and those to be built in the future will be a permanent goal within this industry, and intense work will continue in the integrated development of tourist facilities.¹²⁵

According to Cuba's official statistics, the number of foreign tourists in Cuba more than tripled during the 1980s from 132,900 in 1981 to 424,000 in 1991, and visitor expenditures increased from \$43.6 million in 1981 to \$198 million in 1990, with gross earnings from tourism reaching \$310 million in 1990.¹²⁶ Cuban officials estimated that gross earnings from international tourism reached nearly \$400 million in 1991 and predicted that they would reach \$600 million in 1992 and \$1 billion by 1995.¹²⁷ Tourism officials

123. See, e.g., Norka Clerch, *Cuba: La dinámica del turismo*, PANORAMA ECONÓMICO LATINOAMERICANO, Feb. 1991, at 3, 4.

124. PRESIDENT FIDEL CASTRO, ADDRESS AT THE CEREMONY MARKING THE 38TH ANNIVERSARY OF THE MONCADA BARRACKS ATTACK, reproduced in FBIS-LAT, July 30, 1991, at 1, 10.

125. *Resolución sobre el desarrollo económico*, supra note 1, at 3.

126. María Dolores Espino, *Tourism in Cuba: A Development Strategy for the 1990s?*, 23 CUBAN STUDIES (forthcoming Nov. 1993).

127. Alberto Pozo, *Turismo: Razones de peso*, BOHEMIA, Jan. 10, 1992, at 38-39 (figure

reported that in the first half of 1992, the number of foreign tourists visiting Cuba rose by 25% and that tourism revenues increased by 30%.¹²⁸

In its thrust to attract foreign investment, Cuba has expressed a strong preference for investment in tourist projects located in remote areas but has also accepted investments in traditional tourist sites, such as Varadero Beach.¹²⁹ This is partly because foreign investors are reluctant to participate in mammoth development projects for new tourist facilities where there are few, if any, infrastructure facilities such as water, sewage, airports, and electricity.

Locating international tourism facilities in the midst of populated areas and limiting the local population's access creates much friction:

Where conflicts between domestic and foreign tourism do exist, foreigners usually receive priority as a consequence of their purchasing power. Tourists spending foreign currency are served first in restaurants, have access to a better selection of consumer goods at hard currency stores, and are served by a more efficient taxi system. While residents are not necessarily officially refused the privileges which foreign tourists enjoy, they are effectively denied these goods and services due to the need for payment in scarce foreign currency. . . . Local frustration . . . seems tempered by Castro's insistence that luxuries like high-cost resort vacations or lobster should be sold for foreign consumption. In return, foreign exchange earnings can be used to purchase necessities such as basic foods and medical equipment [which inure] to the benefit of all Cubans. Nonetheless, foreign journalists have noted a growing level of local frustration with this situation, especially among younger Cubans.¹³⁰

Some equate Cuba's policy of restricting the use of tourist fa-

for 1991 and estimate for 1992); Alberto Pozo, *Venga: Para el bien de todos*, BOHEMIA, Feb. 1992, at 38, 40 (estimate for 1995).

128. *Cuba dice turismo aumentó en un 25 por ciento*, EL NUEVO HERALD (Miami), Aug. 1, 1992, at 4A.

129. Varadero Beach was designated as "polo turístico de primer orden" (tourism resort of the first degree). Construction of Cuban tourist facilities is an active industry, with hotel room capacity doubling (to 5200 rooms) between 1985 and 1990. Plans call for hotel capacity in Varadero to rise to 24,000-30,000 rooms over the next five-year period. Joint ventures contributed significantly to the expansion of tourism facilities in Varadero Beach, with one Spanish firm (the Sol-Meliá hotel chain) involved in at least three large hotels in the area: the Meliá-Varadero, the Sol-Palmeras (also known as Los Pétalos), and the Gran Meliá Las Américas. See Fernando Dávalos, *Varadero en grande*, BOHEMIA, Oct. 4, 1991, at 11.

130. Hinch, *supra* note 122, at 223.

cilities to those with hard currency to a form of "apartheid":¹³¹

[Cuban officials] say that . . . "tourism apartheid," a phenomenon in which Cubans are effectively blocked from various stores, bars, beaches, and restaurants, is unavoidable under conditions of scarcity. They insist that sacrifices made for the sake of tourists today will pay off in developments for the entire population tomorrow.¹³²

According to another journalist, managers of the four-star Comodoro Hotel in Havana placed a letter in the rooms of foreign tourists in 1990 and 1991 warning the visitors not to invite Cubans into the hotel. The letter read as follows:

First, foreign tourists should not invite into the hotel anybody they meet in the street, and should not take any local acquaintances to their rooms. . . . Second, if the guest needs to invite a Cuban to the hotel bar for a business meeting, the Cuban should first be taken to the front desk to register his or her name and his or her ID number. This way, the Comodoro Hotel will be able to continue assuring its guests the high standards of safety for which it has always been recognized.¹³³

With Cuba going through a period of severe economic austerity caused, in part, by the breakdown of trade relations with Eastern Europe and the (now former) Soviet Union,¹³⁴ there is a striking contrast between well-stocked restaurants, bars, and stores open to tourists with hard currency and the bare shelves of those open to average Cubans. A journalist who visited Cuba in mid-1992 described the frustrations of a 28-year old mechanic and veteran of the Angolan War who tried entertaining a foreign friend but was denied entrance to restaurants and bars:

On the one hand, the country really needs the foreign exchange, but I don't really like the fact that I can't get in the clubs, the restaurants, or take a friend out for a drink at a nice place. There's very little for someone my age to do for

131. See, e.g., Miriam Cabrera, *Apartheid a la cubana*, EL NUEVO HERALD (Miami), June 28, 1990, at 15A. For a Cuban view of the same phenomenon, see Carmen Caminas & José Masó, *Limited Hotel Access for Nationals Criticized*, FBIS-LAT, Apr. 1, 1991, at 12.

132. Glazer & Hollander, *supra* note 110, at 822.

133. OPPENHEIMER, *supra* note 56, at 418-19.

134. See, e.g., Jorge F. Pérez-López, *The Cuban Economy: Rectification in a Changing World*, 16 CAMBRIDGE J. ECON. 113 (1992); Jorge F. Pérez-López, *Swimming Against the Tide: Implications for Cuba of Soviet and Eastern European Reforms in Foreign Economic Relations*, 33 J. INTER-AM. STUD. & WORLD AFF. 81 (1991).

entertainment.¹³⁵

A taxi driver explained his frustration in stronger terms:

We [rebelled] 30 years ago to [end] the humiliation of seeing all of these rich foreigners who came to live the beautiful life here. However, now we are back at same point: seeing tourists gorging themselves while we have to tighten our belts more and more.¹³⁶

Another analyst provided the following view:

[B]umping industries like tourism to the front of the line brings on a new kaleidoscope of problems. In pre-Congress discussions islandwide and at the meeting itself, countless Cubans expressed their concern at the impact of the 1.5 million well-heeled foreigners expected in the country annually by 1995—especially considering how strapped ordinary Cubans find themselves during this tourism development period. And recent surveys show that the average Cuban still think of themselves [sic] primarily as a tourism consumer, not provider. But the choices are as real as they are hard. As Fidel Castro told the national legislature as early as 1990: the alternative for Cuban families in the short run is to continue spending their summer vacations at beach front hotels, or [they can] giv[e] up their rooms to tourists from abroad whose hard currency is the only way to assure programs like continued free quality health care.¹³⁷

Differential treatment of foreigners and Cuban citizens is a sensitive issue. Cuba enacted Article 42 of the 1976 Constitution partly in response to the complaint that in pre-revolutionary Cuba some tourist facilities were open only to foreigners: "The state consecrates the right won by the Revolution for all citizens, without regard to race, color, or national origin . . . to enjoy the same resorts, beaches, parks, social clubs, and other cultural, sports, recreation, and rest facilities."¹³⁸

Apparently, in July 1992, the ANPP considered modifying Article 42, but ultimately left it unchanged.¹³⁹ Commenting on the

135. Mimi Whitefield, *Cuba: Don't See It like a Cuban—Only Foreign Cash Really Counts*, MIAMI HERALD, Aug. 3, 1992, at 14A.

136. François Brousseau, *Tourism, General Living Conditions Compared*, FBIS-LAT, Apr. 17, 1991, at 4.

137. GAIL REED, *ISLAND IN THE STORM: THE CUBAN COMMUNIST PARTY'S FOURTH CONGRESS 128* (1992).

138. CUBAN CONST. art. 42 (1976).

139. Due to renumbering, Article 42 in the 1976 Constitution became Article 43 in the 1992 version. There was no substantive change in the article addressing equal access to recreational facilities. However, there was a small change: at the end of the list of bases for

activities of the ANPP session, President Castro acknowledged this problem and recommended allowing access by some Cubans to restaurants, hotels, and other foreign tourist facilities based on merit:

We have a problem of insufficient resources for distribution among everyone, and we have no choice but to ration them in some manner, [to] distribute them selectively to Cubans. There is not enough for everyone, but those Cubans who deserve it the most, those who produce the most, those who contribute the most to the development of the country, these workers get to use these facilities and the rest is exported. It is an economic reality. It is not any form of discrimination. It is not any form of social, religious, nor racial discrimination of any sort. We have no other choice. It is a reality imposed by the economy.¹⁴⁰

A. *Tourism Joint Ventures*

In October 1991, the delegates to the Fourth Congress of the Cuban Communist Party approved economic and social development guidelines for the 1990s. These guidelines highlighted the importance of international tourism to the economy and called for "the efficient exploitation of the country's [existing tourism] installations and those to be built in the future."¹⁴¹

The decision to establish a joint venture is normally the result of lengthy negotiations among the prospective investor, the domestic partner, and the host government, with each party attempting to maximize its own objectives. For joint ventures established in Cuba, the Cuban State is both a domestic partner and the host government. Thus, the state can direct enterprises to take certain actions and can also offer incentives to make investment opportunities more attractive to foreign entrepreneurs.

As noted above, Decree No. 50 provides for preferential treatment of joint ventures in international tourism, particularly those located in designated zones. Special treatment may take the form of waivers of taxes, tariffs, and other levies, or special regulations relating to labor, public order, and immigration controls. Tourism facilities also enjoy the benefits of accelerated depreciation sched-

non-discrimination, the drafters added the phrase "or any other factor injurious to human dignity." See CUBAN CONST. art 42 (1976); CUBAN CONST. art. 43, reprinted in GRANMA, Sept. 22, 1992, at 6.

140. Castro Speaks on Economic Reality at ANPP, FBIS-LAT, July 15, 1992, at 2, 3.

141. Resolución sobre el desarrollo económico, *supra* note 1, at 3.

ules.¹⁴² Subject to approval by the Executive Committee of the Council of Ministers, international tourism joint ventures can lease domestic facilities and hire Cuban workers directly. Moreover, since 1990, Cuba has been willing to consider majority ownership by foreign investors in priority areas like tourism.¹⁴³ The Cuban Government has demonstrated ideological flexibility in this area by granting tourism joint ventures 25-year leases on land, renewable for another 25 years.¹⁴⁴ One investor, who negotiated a long-term lease for prime beach front property, described this process: "[t]he [Cuban] government as of now gives leaseholds on the land for a negotiable term of up to 99 years, not unlike what companies are offered in other places like the Cayman Islands."¹⁴⁵ Granting 99-year leaseholds to foreign investors, however, runs contrary to Cuba's professed contempt for private property and its long-standing policy against foreign ownership of Cuban property.

The willingness to accommodate foreign investors has led to a significant foreign presence in the Cuban tourism industry. Twenty percent of the hotel rooms built in Cuba in early 1992 resulted from joint ventures.¹⁴⁶ Over an 18-month period spanning roughly from the fourth quarter of 1990 through the first quarter of 1992, international tourism joint ventures created 30,000 new jobs on the island, bringing total employment in such joint ventures to 50,000; an additional 20,000 jobs were expected by the end of 1992.¹⁴⁷ President Castro reported that the payback period for foreign investments in tourism facilities is as short as three years;¹⁴⁸ other Cuban sources have reported the payback period as ranging from 3.5 years¹⁴⁹ to four or five years.¹⁵⁰ Short payback periods are necessary to compensate, in part, for the very high political risks associated with investments in Cuba.¹⁵¹

142. See *supra* notes 71-72 and accompanying text.

143. See, e.g., French, *supra* note 47, at A18; *Chamber of Commerce Invites Foreign Investment*, *supra* note 48, at 3.

144. FITTIPALDI, *supra* note 13, at 24.

145. *Id.* at 64.

146. *Id.* at 24.

147. *Se reactiva el sector turístico de Cuba*, NOVEDADES, Apr. 29, 1992, at B7 (citing Pedro Ross Leal, General Secretary of the Confederation of Cuban Workers).

148. CASTRO, *supra* note 49, at 48.

149. *Turismo: Razones de peso*, *supra* note 127, at 39.

150. KAPLOWITZ & KAPLOWITZ, *supra* note 3, at 23.

151. Cuba placed 165th out of 169 in a recent ranking of countries on the basis of investment risks in 1992; North Korea ranked 167, and Cambodia 169. See *Country Risk: Nowhere to Lend To*, EUROMONEY, Sept. 1992, at 65, 70.

B. *Labor and Tourism*

As discussed above, in the 1960s and 1970s tourism developed very little in Cuba. Not only did the physical facilities for international tourists deteriorate during this period, but the Cuban labor force lost many of the skills associated with the high-quality service that international tourism markets demand.¹⁵²

Cuban tourism authorities have identified quality of service as an important factor in generating repeat visits from foreign tourists.¹⁵³ The return rate, in turn, is a key variable in determining the profitability of international tourism facilities. To improve the quality of service, Cuba has initiated a broad program to enhance the skills of workers in the international tourism industry including the creation of special vocational intermediate schools, classroom education, on-the-job training, and travel abroad programs which enable workers to specialize in specific tourism-related occupations.¹⁵⁴

Cuban tourism authorities have also focused on attitudinal problems, which they equate with lack of worker discipline. In an interview published in September 1989, INTUR's Director of Personnel Development was asked whether he was satisfied with the quality of service in the international tourism industry. He responded:

If I were to gauge [the quality of service] on the basis of statistics . . . I would have to respond in the affirmative. However, I always ask myself the question another way. How much income did we fail to realize because of deficiencies in service? . . . [S]ervice is our Achilles' heel. A significant part of these deficiencies are related to subjective factors, the attitude of the worker. Everyone understands the importance of earning hard currency, but not everyone internalizes his or her own role in this task. Because of this, and because we are socialists, it is so important that we have training anchored on a solid ideological base.¹⁵⁵

At the May 1990 inauguration of a hotel in Varadero built as a joint venture with Spanish investors, President Castro bluntly de-

152. Hinch, *supra* note 122, at 220.

153. See Alberto Pozo, *¿Funciona el servicio basado en la conciencia?*, BOHEMIA, Sept. 15, 1989, at 48.

154. See *id.* at 52.

155. *Id.* at 49.

scribed the problem of inadequately trained and disciplined tourism personnel:

Of course, these workers [in older tourism enterprises] learned here. How did they manage the hotel? By mistreating tourists. They wanted to serve them, but did not know how. Someone once said—and I thought it was very funny because I believe it tells the truth—a Cuban is the most hospitable man or person in the world, the most pleasant and thoughtful, but once he puts on a waiter's uniform, he is terrible.¹⁵⁸

IV. A SPECIAL REGIME FOR TOURISM WORKERS

Given the importance of labor to the international tourism industry, the Cuban government has issued supplementary laws and regulations in the area of labor relations that apply exclusively to this sector of the economy.¹⁵⁷ This legal regime has created a separate, and arguably more strict, set of rules for Cuban workers employed in international tourism facilities.

On August 13, 1990, the Cuban government enacted Decree No. 122, "On Special Labor Regulations for Workers in the International Tourism System."¹⁵⁸ The law's stated objective is to create a system of labor relations for the international tourism industry that guarantees excellence in the provision of services.¹⁵⁹ To excel, according to the legislation's preamble, workers in the international tourism system must demonstrate suitability for employment and aptitude to perform their assigned duties. These workers must be specially trained, adequately compensated, and disciplined when necessary for misconduct.

Subsequent regulations have created a general framework for labor relations applicable to workers in the international tourism

156. *Castro Speaks at Partnership Hotel Inauguration*, FBIS-LAT, May 17, 1990, at 1, 3.

157. The Cuban approach of singling out one segment of the labor force for special treatment differs from that taken by the Soviet Union, for example, in modifying its labor laws to attract foreign investment. See, e.g., Christopher F. Clarke, *The Soviet Joint Venture Decree and Soviet Labor Law*, 30 VA. J. INT'L L. 761 (1990).

158. Sobre regulaciones laborales especiales para los trabajadores del sistema de turismo internacional [On Special Labor Regulations for International Tourism Workers], Decree No. 122, GACETA OFICIAL, Aug. 13, 1990, at 27 [hereinafter Decree No. 122]; see also *Dictan regulaciones especiales para trabajadores del turismo internacional*, TRABAJADORES, Sept. 26, 1990, at 2.

159. Decree No. 122, *supra* note 158, pmbi.

system. The State Committee on Labor and Social Security ("CETSS") has issued regulations regarding suitability for employment, remuneration, promotion and training,¹⁶⁰ and worker discipline.¹⁶¹ INTUR issued its own regulations to deal with the rehabilitation and reinstatement of tourism workers who have been disciplined.¹⁶²

The next two sections in this Part describe the legal framework for labor relations and detail the issues outlined by the implementing regulations: suitability, remuneration, promotion and training, work discipline, rehabilitation, and reinstatement.

A. General Provisions

Decree No. 122 provides for the creation of "representative commissions" in each enterprise, establishment, workplace, or unit within the international tourism system.¹⁶³ The member of the Executive Committee responsible for overseeing the international tourism industry determines which "enterprises, establishments, workplaces, or units" are part of the international tourism system.¹⁶⁴ Each commission consists of three members: a representative of management (who chairs the commission), a member of the existing workers' organization, and a worker elected by peers on the basis of prestige and authority.¹⁶⁵ The commission evaluates and makes determinations regarding the suitability and aptitude of workers for employment, promotions, and training assignments. The commission also reviews the disciplinary actions of

160. Resolution No. 15/90 of the State Committee on Labor and Social Security, GACETA OFICIAL, Sept. 15, 1990, at 584.

161. Resolution No. 14/90 of the State Committee on Labor and Social Security, GACETA OFICIAL, Sept. 15, 1990, at 579.

162. Resolution No. 85 of the National Tourism Institute, GACETA OFICIAL, Sept. 28, 1990, at 621.

163. Decree No. 122, *supra* note 158, art. 1.

164. *Id.* special provision I. Each of the vice-presidents of the Council of Ministers oversees one or more agencies of the central state administration. In the late 1980s, there were 10 vice-presidents. At that time, the National Tourism Institute was under the supervision of Vice-President Osmani Cienfuegos, who had similar authority over the State Committee on Finance, the State Committee on Labor and Social Security, and the State Committee for Material-Technical Supply.

165. *Id.* The preamble to Decree No. 122 provides: "The Cuban Workers Central [Cuba's exclusive labor union confederation] and other organizations, in accordance with Article 7 of the Constitution of the Republic, have agreed to undertake the functions assigned to them pursuant to this Law-decree." *Id.* pmbl.

management.¹⁶⁶

Decree No. 122 establishes a probationary period of 180 days for new workers in the international tourism system.¹⁶⁷ During this period, either the employee or employer can end the employment relationship without further proceedings. Once the probationary period has ended, however, the employment relationship becomes a formal employment contract of indefinite duration, provided the commission concurs with the management's assessment that the worker is suitable and apt.

Workers in the international tourism system must meet certain suitability and aptitude standards designed to guarantee "efficiency," "responsible behavior," "appropriate conduct," and "professionalism" in the performance of their functions.¹⁶⁸ The Minister-President of the State Committee on Labor and Social Security is charged with issuing the regulations that define suitability and aptitude for employment and the procedures for determining worker suitability.¹⁶⁹ Failure to meet one or more of the suitability standards is cause for the immediate termination of the employment relationship.¹⁷⁰ Workers who are dismissed for lack of suitability are eligible to receive severance pay equivalent to sixty days of pay.¹⁷¹ A joint venture that terminates a job position because of reorganization or restructuring must offer reasonable alternative employment to the displaced employee, but if the worker does not accept the alternative job offer, the joint venture may terminate the employment relationship.¹⁷²

Decree No. 122 allows the CETSS to create a special compensation system for workers in the international tourism system. The compensation system consists of regular pay plus a pay premium that is particular to each tourist facility. The compensation system encourages training and promotion to occupations that are more complex or that entail a higher level of responsibility.¹⁷³ In addition, there is an annual pay supplement, tied to the performance of the enterprise. For joint ventures created pursuant to Decree No. 50, the pay supplement must be established by the statutes that

166. *Id.* art. 2.

167. *Id.* art. 4.

168. *Id.* art. 5.

169. *Id.* transitory provision II.

170. *Id.* art. 6.

171. *Id.* art. 7.

172. *Id.* art. 8.

173. *Id.* art. 9.

created the joint venture.¹⁷⁴

Decree No. 122 also provides for the establishment of a disciplinary code for the international tourism sector.¹⁷⁵ Only the highest-ranking management official in a workplace can dismiss workers, or order their transfer to another workplace without reinstatement rights, but all such actions are subject to approval by the representative commission.¹⁷⁶ Lower-ranking management officials may impose sanctions in the form of a public or private reprimand, temporary assignment to a lower-paying position, or suspension from work for up to thirty days.¹⁷⁷

Decree No. 122 establishes an appeals process for reviewing disciplinary decisions. Workers who are dismissed or transferred may appeal to the highest-ranking management official within the enterprise, who either confirms or revokes the action, subject to approval by the appropriate representative commission.¹⁷⁸ Workers may appeal other disciplinary measures to higher-level management officials, but such decisions are also subject to the approval of the representative commission.¹⁷⁹ Disciplinary measures within the international tourism system, however, are not subject to administrative or judicial review.¹⁸⁰

B. Suitability

Chapter 2 of Resolution No. 15/90, issued on September 5, 1990, defines the suitability and aptitude standards for workers in the international tourism system.¹⁸¹ In every workplace, the repre-

174. *Id.* art. 10.

175. *Id.* art. 11. The CETSS, representatives of state organizations, the National Union of Commercial and Food Service Workers, and other labor organizations are charged with jointly developing the code, but only CETSS can implement it.

176. *Id.* art. 12.

177. *Id.*

178. *Id.* art. 13.

179. *Id.* art. 14.

180. *Id.* art. 16. Once a worker has been dismissed or transferred from the international tourism system, the worker may be retrained and rehabilitated. *Id.* special provision IV.

181. The standards are as follows: 1) proper conduct; 2) proper professional behavior in work activities, efficiency, excellence in the provision of services, and proper behavior toward tourists; 3) no improper or undue contacts with foreigners; 4) proper use of social property and material resources of the industry; 5) no improper behavior, whether or not unlawful, that might affect the public image and prestige of a worker in the international tourism system; and 6) no infringement of labor discipline that would result in actions incompatible with international tourism activities. Resolution No. 15/90, *supra* note 160 art. 6.

sentative commission evaluates each worker to determine whether or not the worker meets these criteria. The commission meets personally with those who fall below the standards.¹⁸² If they are unsuitable, the commission may dismiss them from their current employment at once, although they may receive severance pay equivalent to sixty days' salary.¹⁸³ Workers who are "not apt" are assigned to other duties, with no loss in pay, provided a position is available.¹⁸⁴ The commission also holds general meetings with all workers who meet the standards to inform them of their overall results in the evaluations.¹⁸⁵

When the commission finds a worker to be deficient, the worker may contest the findings before the commission within five days of being informed.¹⁸⁶ Failure to contest makes the finding final and results in formal termination of the employment relationship or reassignment.¹⁸⁷ The commission has five days to consider appeals and issue final rulings.¹⁸⁸ Workers then have five days to appeal the finding of the workplace commission to a (higher-level) representative commission of the enterprise,¹⁸⁹ which has twenty days to issue a final ruling.¹⁹⁰ The rulings of the representative commissions, however, are not subject to either administrative or judicial review.¹⁹¹

C. Remuneration

Regulation No. 15/90 establishes the remuneration package for workers in the international tourism industry. For these workers, compensation consists of two elements: 1) a monthly salary related to the occupation or work assignment; and 2) a pay premium based on both the profitability of the enterprise and the degree of the worker's contact with foreign tourists.¹⁹² The pay premium ranges from 20 to 100 pesos per month per worker. In exceptional cases,

182. *Id.* art. 7.

183. *Id.* art. 9.

184. *Id.* art. 15.

185. *Id.* art. 16.

186. *Id.* art. 8.

187. *Id.* art. 10.

188. *Id.* art. 11.

189. *Id.* art. 12.

190. *Id.* art. 13.

191. *Id.* art. 14.

192. *Id.* art. 22.

the premium may be even higher.¹⁹³

The amount of the premium for workers in a given enterprise is based on, *inter alia*, the following criteria:

- 1) the category of the enterprise based on the quality of service it provides (e.g., the number of "stars" that may be associated with a hotel or restaurant);
- 2) fulfillment of work norms;
- 3) degree to which job flexibility is practiced;
- 4) degree to which a foreign language is used;
- 5) unusual labor conditions;
- 6) extent to which night work is required;
- 7) extent to which workers must live within the facilities;
- 8) efficiency in the generation of hard currency; and
- 9) work schedules.¹⁹⁴

Individual workers forfeit up to 50% of their pay bonus if they do not fulfill their work requirements.¹⁹⁵ To this end, management evaluates, on a monthly basis, the overall performance of each worker, including attendance, punctuality, work efficiency, fulfillment of norms, discipline, and quality of service. Based on these evaluations, management may reduce the pay premium in cases of poor performance.¹⁹⁶ Management may also give a pay supplement to outstanding workers who have exceeded their hard currency revenue generation goals.¹⁹⁷

In exceptional circumstances, outstanding workers may receive pay supplements even though the work unit as a whole did not

193. *Id.* art. 24.

194. *Id.* art. 25.

195. *Id.* art. 27.

196. *Id.*

197. *Id.* art. 28. To be eligible for these supplements, the meritorious workers must work in facilities that meet the following additional criteria:

1) For hotels, motels, tourist villas and apartments, recreation facilities, restaurants, night clubs, and international travel services:

- a) overfulfillment of the hard currency revenue plans related to discretionary expenditures (i.e., those activities not included in pre-paid "tour packages");
- b) positive evaluations for quality of service.

2) For stores catering to international tourists:

- a) positive evaluations for quality of service.

3) For tourist transportation:

- a) overfulfillment of the hard currency revenue plan related to discretionary expenditures (i.e., those activities not included in pre-paid "tour packages");
- b) positive evaluations for quality of service.

Id.

meet the required criteria.¹⁹⁸ Resolution No. 15/90 creates a special fund financed by a payroll tax to pay such outstanding workers a supplement of up to 100% of their regular salaries.¹⁹⁹

For some occupations, the monthly work tour may be as long as 280 hours, with pay adjusted accordingly. In exceptional cases, the monthly work tour may be set as high as 312 hours when the occupation requires overnight stays.²⁰⁰ For example, longer work tours may be necessary for workers in the tourist facilities at Cayo Largo del Sur and for those who operate retail stores for tourists.²⁰¹

Workers employed by joint ventures with foreign partners (established pursuant to Decree No. 50) are eligible for a pay differential of 30% (based on basic pay plus pay supplements) if they work in five-star hotels and 20% if they work in other facilities. These workers are also eligible for payments from the worker incentive fund to which all foreign joint ventures must contribute.²⁰²

D. Promotion and Training

As noted above, Decree 122 establishes a probationary period of 180 days for new employees in the international tourism sector. Chapter 3 of Resolution 15/90 stipulates that only after probationary workers have demonstrated suitability and aptitude, are they eligible to enter permanent employment relationships.²⁰³

The representative commission of each workplace makes the decisions regarding the entry of new workers into the labor force, the formalization of the employment contracts, and promotions.²⁰⁴ The commission also makes recommendations regarding specialized training for workers, but to make such recommendations, the representative commission must be augmented to include two well-respected workers in the occupation under consideration.²⁰⁵

The regulation also requires that the management of each international tourism facility develop a plan to train the worker in

198. *Id.* art. 29.

199. *Id.* art. 30.

200. *Id.* art. 31.

201. *Id.* special provision III.

202. Cuban Joint Venture Law, *supra* note 9, special provision I, 21 I.L.M. at 1110.

203. Resolution No. 15/90, *supra* note 160, art. 18.

204. *Id.* art. 3.

205. *Id.* art. 4.

foreign language skills, if management and labor agree that such training is necessary. Workers who fail to acquire proficiency in foreign language skills, either because they are unsuccessful in completing the proposed training or because they refuse to take it, will be shifted to other positions within the international tourism system. If such reassignments are not possible, management may terminate the employment relationship.²⁰⁶

E. Discipline

Resolution 14/90, issued on the same day as Resolution 15/90, is the Disciplinary Code for workers engaged in international tourism activities. The Code sets forth the proper conduct for workers, defines behavior that is unacceptable, and establishes disciplinary measures and administrative procedures.²⁰⁷ The Code sets forth detailed examples of proper and improper conduct.

Article 5 of Resolution 14/90 sets conduct requirements for international tourism workers. In addition to addressing attendance, hours of work, proper uniform, and compliance with occupational safety and health standards, there are several specific restrictions that exemplify Cuba's efforts to minimize contact between workers and international tourists. These include the requirements that international tourism workers:²⁰⁸

- 1) must turn into management all goods and publications that tourists may leave upon their departure;
- 2) must be discreet with regard to matters related to their workplace and information to which they may have learned by virtue of the job they hold;
- 3) must exchange, at the official rate, any hard currency received in the form of tips and other gratuities;
- 4) must not be a source of annoyance to foreign tourists, including interfering with the rest periods of tourists or with their private conversations, or pretending to have abilities or functions other than those related to their occupation;
- 5) must not accept invitations from foreigners unless they have the proper authorization; and
- 6) must not walk around the workplace without authoriza-

206. *Id.* transitory provision I.

207. Resolution No. 14/90, *supra* note 161, art. 1.

208. *Id.* arts. 5-6.

tion, unless pursuing work functions.

Article 6 of Resolution 14/90 sets forth examples of improper conduct for workers in the international tourism industry. Several of these prohibitions are vague, subjective, and arguably violative of individual freedoms.²⁰⁹ A worker who breaches this code is subject to various disciplinary measures.²¹⁰

Resolution No. 14/90 establishes an administrative procedure for imposing disciplinary measures. Such procedures must be initiated within thirty days of learning that a violation has occurred,²¹¹ though this period may be extended for up to fifteen days if an investigation is necessary.²¹² There is also a one-year statutory limit for imposing disciplinary measures.²¹³

The severity of disciplinary measures should be proportional to the significance of the violation, its consequences, the circumstances surrounding the event, the character of the offender, and the offender's intent, work record, and conduct record.²¹⁴ As a precautionary measure, management may suspend the worker without pay, or transfer the worker to another assignment for up to thirty days, until a final decision is made on the violation.²¹⁵ The administrative procedures for imposing disciplinary measures require that management maintain extensive written records of the worker's rehabilitation.²¹⁶ When management recommends the

209. For example, workers in the international tourism industry may not: 1) engage in behavior that may be illegal or undesirable, whether in the workplace or outside of it, that might tarnish the exemplary moral and social image of international tourism workers; 2) take advantage of a client or any other party to obtain goods or services that are earmarked for the consumption of tourists; 3) guide tourists or other individuals to areas where visits are prohibited, or to zones where access is restricted, unless specifically authorized to do so; 4) engage in, or promote, arguments with co-workers or other persons, or criticize national tourism authorities, tourism enterprises, or any other government agency in the presence of tourists and visitors; 5) operate television sets, radios, or tape recorders without authorization, or tune into improper channels or stations while on duty. *Id.* art. 6.

210. These disciplinary measures include the following: 1) private reprimand; 2) public reprimand; 3) temporary transfer to another work assignment of lower pay or classification, or to another workplace, for up to a year, but with the right of reinstatement to the original job; 4) suspension from the job for up to thirty days; 5) permanent transfer to another assignment, without the right of reinstatement to the original position; and 6) dismissal from the workplace, and termination of the relationship between the worker and the international tourism system. *Id.* art. 8.

211. *Id.* art. 10.

212. *Id.* art. 12.

213. *Id.* art. 11.

214. *Id.* art. 13.

215. *Id.* art. 14.

216. *Id.* art. 16.

sanctions of dismissal or transfer without reinstatement rights, the representative commission must confirm the decision.²¹⁷

Workers subjected to disciplinary measures may appeal to management within ten days of the decision,²¹⁸ and management must consult the representative commission when hearing appeals.²¹⁹ Though an appeal may result in the ratification, modification, or revocation of the originally imposed disciplinary measure,²²⁰ the outcome of the appeal process is not subject to administrative or judicial review.²²¹

However, in exceptional cases, management may review a disciplinary measure for up to one year after its implementation.²²² Grounds for such review include new evidence which was not available at the time of the original decision, or proof that the earlier decision was arbitrary or unjust.²²³

F. Rehabilitation and Reinstatement

Resolution No. 85 of the National Tourism Institute, issued on September 6, 1990, sets time limits within which workers dismissed from the international tourism system, or transferred to another job without reinstatement rights, may be rehabilitated and reconsidered for employment within the system. The international tourism system may consider transferred workers for reemployment, but only after the workers successfully complete three years of rehabilitation from the date of the disciplinary measure.²²⁴ The rehabilitation period for dismissed workers is five years.²²⁵

In some cases, management may shorten the rehabilitation period. For example, management may shorten the rehabilitation period with the advice of the labor union, if the worker has demonstrated exemplary conduct or has performed exceptionally well in a particular area.²²⁶ But if the worker is disciplined again while in rehabilitation, then the primary rehabilitation period is suspended

217. *Id.* art. 16(c).

218. *Id.* art. 18.

219. *Id.* art. 22.

220. *Id.* art. 23.

221. *Id.* art. 25.

222. *Id.* art. 27.

223. *Id.* art. 26.

224. Resolution No. 85, *supra* note 162, provision IV.

225. *Id.* provision V.

226. *Id.* provision VII.

while the worker is disciplined for the more recent infringement.²²⁷

V. A COMPARISON OF THE SPECIAL LABOR REGIME FOR INTERNATIONAL TOURISM WORKERS AND THE CUBAN LABOR CODE

One of the major accomplishments of the National Assembly of People's Power in December 1984 was the adoption of a Labor Code (*Código de Trabajo*), Cuba's first labor code and the only socialist labor code in the Americas.²²⁸ The Cuban Labor Code consists of 308 articles, covering a wide range of labor matters. This Article does not engage in a detailed analysis of the Cuban Labor Code, because commentators have already examined its coverage and substantive provisions.²²⁹ Instead, this Article examines the differences between the 1984 Cuban Labor Code and the labor relations system in international tourism. The most prominent differences are in the areas of employment contracts,²³⁰ remuneration,²³¹ worker discipline,²³² and labor dispute resolution.²³³

227. *Id.* provision VI.

228. CÓDIGO DE TRABAJO, LAW No. 49, GACETA OFICIAL, Apr. 24, 1985, at 5 (final, revised version of the Code) [hereinafter CUBAN LABOR CODE]. The Cuban Labor Code is also reprinted in FRANCISCO GUILLÉN LANDRIÁN, LA CODIFICACIÓN DEL DERECHO LABORAL EN CUBA 108 (1987), and an English translation can be found in *Cuba: Labour Code*, LEGISLATIVE SERIES No. 3, 1985, at 29. Without diminishing its significance, it should be noted that the 1984 Labor Code, which became effective on July 26, 1985, broke little new ground and is essentially a compilation and harmonization of then-existing labor legislation. See GUILLÉN LANDRIÁN, *supra*, at 12.

229. See, e.g., GUILLÉN LANDRIÁN, *supra* note 228; Antonio Raudilio Martín Sánchez, *Comments on the Labour Code of the Republic of Cuba*, LEGISLATIVE SERIES No. 3, 1985, at 11; Lydia Guevara Ramírez, *El derecho al trabajo, principio fundamental del derecho laboral cubano*, REVISTA CUBANA DE DERECHO, Apr.-June 1988, at 143; Lydia Guevara Ramírez, *Los principios del derecho laboral socialista en el Código de Trabajo de la República de Cuba*, REVISTA CUBANA DE DERECHO, Oct.-Dec. 1988, at 3; Gretel Hernández Oliva, *Las normas internacionales del trabajo y la legislación laboral cubana*, REVISTA CUBANA DE DERECHO, Oct.-Dec. 1988, at 15; Leocadio Pascual Díaz, *El Código de Trabajo y la enseñanza en el Derecho Laboral*, REVISTA CUBANA DE DERECHO, Oct.-Dec. 1988, at 59; EPRÉN CÓRDOVA, EL TRABAJADOR CUBANO EN EL ESTADO DE OBREROS Y CAMPESINOS 45-51 (1990). For journalistic accounts of the contents and process of adoption of the Cuban Labor Code, see René González Mendoza, *El Código de Trabajo, una ley fiel a los trabajadores*, GRANMA, July 4, 1984, at 2; René González Mendoza, *¿Qué es el Código de Trabajo?*, BOHEMIA, May 10, 1985, at 58; René González Mendoza, *Un Código de Trabajo Socialista*, BOHEMIA, July 5, 1985, at 61.

230. CUBAN LABOR CODE, *supra* note 228, ch. 2.

231. *Id.* ch. 4.

232. *Id.* ch. 6.

233. *Id.* ch. 12.

A. General Provisions

The special rules for international tourism workers arise under article 6 of the Cuban Labor Code, which allows for modification of the Cuban Labor Code by legislation addressing issues particular to certain economic activities.²³⁴

The Cuban Labor Code creates "evaluation committees" in every workplace which are similar to the representative commissions created by Decree No. 122 for the international tourism system. Each workplace has an evaluation committee to assess the technical qualifications of workers.²³⁵ These committees consist of a management representative, a labor union representative, and "qualified workers in whatever occupation is being reviewed."²³⁶ The evaluation committees are similar to the representative commissions, in that they both include "well respected" workers from the specific occupation.²³⁷ Evaluation committees, unlike representative commissions, cannot evaluate the suitability or aptitude of workers, or review the disciplinary actions of management.²³⁸

In the international tourism industry, the representative commission makes recommendations to the management on hiring workers, formalization of the employment contract, promotions, and training. Because the representative commission is likely to be composed of workers committed to socialist ideals,²³⁹ a worker who does not share such a commitment to socialism may be at a disadvantage before the commission. Representative commissions have broad powers to address issues of character and attitude not directly related to the workplace. In this sense, the representative commission's power resembles that of the intrusive Committees for the Defense of the Revolution (*Comités de Defensa de la Revolu-*

234. In addition to the special labor regime for workers in the international tourism industry, special regimes for workers in other sectors have also been issued pursuant to the authority in article 6 of the Cuban Labor Code. For example, a special labor regime for workers of the Customs Service was issued in 1991. See GACETA OFICIAL, Nov. 30, 1991, at 43.

235. CUBAN LABOR CODE, *supra* note 228, art. 47.

236. *Id.* art. 47.

237. See *id.*; Resolution No. 15/90, *supra* note 160, arts. 3, 4.

238. See CUBAN LABOR CODE, *supra* note 228, art. 47; Resolution No. 15/90, *supra* note 160, arts. 6-8.

239. Though Resolution No. 15/90 does not define "well respected workers," the term presumably includes workers who are unqualifiedly committed to the political system. See CUBAN LABOR CODE, *supra* note 228, art. 47; Decree No. 122, *supra* note 158, special provision I.

ción, "CDRs"), the neighborhood committees that watch over citizens who do not openly support the revolution.²⁴⁰

In November 1990, in the midst of an economic crisis when companies had to relocate workers as a result of shortages in imported fuels and raw materials, the CETSS issued Resolution No. 18/90 setting forth rules for the acquisition, retention, reassignment, promotion, and retraining of all workers.²⁴¹ The implementation of these new rules rested on workplace-level commissions consisting of management and union representatives, along with "workers of recognized prestige, approved by an open assembly of workers."²⁴² The workers selected had to "hold a high level of prestige among all workers, [as] demonstrated through [superior] work performance and [positive] attitude."²⁴³ Thus, serving on the commissions is a recognition of exemplary behavior. Among other duties, these commissions may, at management's request, examine the suitability and aptitude of workers and may make recommendations to management on retraining, reassignment, or dismissal.²⁴⁴

While the powers of these workplace commissions (created by Resolution No. 18/90) go beyond those of the "evaluation committees" of the Cuban Labor Code in that the former can assess suitability and aptitude and can make recommendations on reassignment or dismissal, they fall short of those of the representative commissions in the international tourism industry. The latter's unique powers include review of disciplinary actions taken by management.

240. See JUAN M. DEL AGUILA, *CUBA: DILEMMAS OF A REVOLUTION*, 182 (1988). Founded in 1960, the CDRs are the backbone of the revolution, serving different purposes and mobilizing popular support when the occasion requires it. Started as neighborhood committees designed to protect the revolution from its internal enemies and emphasizing vigilance and outright persecution of suspected counter revolutionaries, the CDRs gradually assumed other functions without ever giving up their original mission. CDR militants have also hounded individuals who do not support the revolution, condemned all forms of antisocial behavior, and collaborated with local authorities in policing neighborhoods. In 1980, according to eyewitness accounts from Mariel refugees, the CDRs sponsored "repudiation meetings" designed to chastise, browbeat, and humiliate citizens who wanted to leave Cuba. See also, e.g., JORGE I. DOMÍNGUEZ, *CUBA: ORDER AND REVOLUTION* 261-267 (1978); JUAN CLARK, *CUBA: MITO Y REALIDAD* 134-140 (1990).

241. State Committee on Labor and Social Security, Resolution No. 18/90, *GACETA OFICIAL*, November 9, 1990, at 310.

242. *Id.* art. 3.

243. *Id.* art. 4.

244. *Id.* art. 6.

B. Suitability

Article 53 of the Cuban Labor Code defines causes for which management may terminate either a permanent employment contract, or an apprenticeship contract.²⁴⁵ These reasons include: the worker's unsuitability for the assigned occupation or post; the worker's failure to perform conditions specifically stated in the contract; and the worker's proven incapacity to perform a particular task.²⁴⁶

A glossary annexed to the Cuban Labor Code defines the standards for a worker's suitability to be "[t]he set of qualities that a worker must possess [to] make him or her apt, given work requirements, for a specific occupation or post."²⁴⁷ Neither the Cuban Labor Code nor Resolution No. 18/90 elaborate on the specific qualities or behavior that makes a worker suitable or apt.²⁴⁸ Moreover, no provision in the Cuban Labor Code requires an evaluation of a worker's suitability or aptitude after the probationary period. While a workplace commission established pursuant to Resolution 18/90 may evaluate the suitability and aptitude of workers, it can only recommend a course of action for management to take. When attempting to dismiss or reassign the worker, management has the burden of proving that the worker lacks suitability or aptitude.

Suitability and aptitude considerations are very prominent in the regulations that apply to workers in the international tourism system. Resolution No. 15/90 specifically sets forth suitability and aptitude standards for workers in this sector. For example, displaying "improper behavior, whether or not unlawful, that might affect [the worker's] public image and prestige as a worker of the international tourism system" makes a worker unfit.²⁴⁹ The suitability and aptitude standards in Resolution No. 15/90 seem to place a much heavier emphasis on personal qualities and behavior than on the performance of the work assignment. Thus, the "social conduct of the worker in the area in which he or she lives" is an important criterion in determining suitability.²⁵⁰ These considerations are less

245. See CUBAN LABOR CODE, *supra* note 228, arts. 53, 232; see generally FRANCISCO GUILLÉN LANDRIÁN, *EL CONTRATO DE TRABAJO, SU SUSPENSIÓN Y TERMINACIÓN* (1991).

246. CUBAN LABOR CODE, *supra* note 228, art. 53.

247. *Id.* glossary.

248. See Caridad Lafita Navarro, *Hablemos de idoneidad*, TRABAJADORES, Mar. 23, 1992, at 5. Unfortunately, Navarro does not go beyond what is expressed in the legislation.

249. Resolution No. 15/90, *supra* note 160, art. 6(d).

250. *Comenzó aplicación de regulaciones laborales especiales para el turismo interna-*

important under the Cuban Labor Code.

Under the international tourism system, all workers, whether recent entrants still under probationary status or tenured workers laboring under existing employment contracts, are subject to reviews of their personal conduct, behavior, and attitude. These reviews determine whether workers can continue to hold jobs. In contrast, the Cuban Labor Code has no provision for reviewing the suitability or aptitude of workers who have successfully completed a probationary period.

The labor law regime for international tourism workers also provides different procedures for transferring or dismissing unsuitable or inapt workers. Once the representative commission evaluates a worker's record and finds a worker unsuitable, the commission can take immediate action.²⁵¹ Rulings of the representative commission regarding suitability or aptitude of workers are not subject to the dispute settlement procedures contained in chapter 12 of the Cuban Labor Code with regard to either appeal rights or time limits. Under the Cuban Labor Code, labor disputes may be appealed to a labor council (*consejo de trabajo*) and subsequently to a municipal people's tribunal;²⁵² in some instances a party may appeal a decision to a provincial people's tribunal.²⁵³ The Cuban Labor Code gives workers 180 days to appeal actions that affect their rights.²⁵⁴ Workers in the international tourism industry have very limited appeal rights; they have only ten days to contest a decision of the representative commission, and they must do so before the same representative commission.²⁵⁵ The commission must respond with a final ruling within five days.²⁵⁶ A tourism worker has five days to appeal this finding to a higher-level representative commission (within the enterprise), which will issue a ruling within 20 days.²⁵⁷ This latter ruling, however, is not appeal-

cional, TRABAJADORES, Nov. 17, 1990, at 4.

251. In the international tourism industry, the result is immediate dismissal, though the worker does receive severance pay equivalent to sixty days' salary. When the ruling is lack of aptitude, management must temporarily reassign the worker to another position and attempt to place the worker permanently in another job, without loss of pay. See *supra* part IV.B.

252. CUBAN LABOR CODE, *supra* note 228, art. 250.

253. *Id.* art. 254.

254. *Id.* art. 259.

255. Resolution No. 14/90, *supra* note 161, art. 18.

256. *Id.* art. 19.

257. *Id.* art. 22.

ble before courts or administrative agencies.²⁵⁸

C. Remuneration

Chapter 4 of the Cuban Labor Code outlines the elements of compensation for all Cuban workers: salary; bonuses for overfulfillment of work norms (*primas*); shift differentials; longevity bonuses; holiday pay; and extended duty pay.²⁵⁹ Workers are guaranteed a monthly salary, in accordance with a scale established by the Council of Ministers.

Workers in the international tourism system are eligible for these salary elements, and in addition are eligible for some that are not available to workers in the economy at large. Regulation No. 15/90 goes beyond the Cuban Labor Code and defines specific forms of compensation for workers in the international tourism industry. For example, workers can receive bonuses (*primas*) ranging from 20 to 100 pesos per month—not an insignificant amount considering that the basic pay rates for typical tourism workers in the mid 1980s were 99-187 pesos per month—and pay supplements (*premios*) for outstanding workers can be as high as 100% of their

258. *Id.* art. 25.

259. CUBAN LABOR CODE, *supra* note 228, art. 103 (salaries); *id.* art. 107 (bonuses for overfulfillment of work norms); *id.* art. 108 (differentials for abnormal working conditions); *id.* art. 109 (shift differentials); *id.* art. 111 (longevity bonuses); *id.* art. 112 (holiday pay); *id.* art. 67 (hours of work).

According to the wage scale set in 1981, the monthly salary for non-agricultural workers ranged from 93 to 254 pesos; for administrative and service workers, from 85 to 231 pesos; for technicians, from 128 to 450 pesos; and for managers, from 111 to 450 pesos. DHARAM GHAI ET AL., LABOUR AND DEVELOPMENT IN CUBA 39 (1988).

According to data provided by Cuba to the International Labour Office, workers in four occupations likely to be heavily represented in the international tourism industry earned the following monthly salaries (in pesos per month):

Worker	1984	1985	1986
Hotel receptionist	143	135	135
Cook	185	187	187
Waiter	154	154	154
Chambermaid	99	99	99

Jorge F. Pérez-López, *Wages, Earnings, Hours of Work, and Retail Prices in Cuba*, 19 CUBAN STUD. 199, 213 (1989).

The CETSS determines which occupation falls within each scale, and hence the salary. CUBAN LABOR CODE, *supra* note 228, art. 104. The Cuban Labor Code contains an explicit preference for payment based on piece work, because such forms of compensation stimulate productivity and optimal use of time at work. *Id.* art. 105.

Some enterprises are permitted to establish special funds to reward workers whose productivity exceeds the norm (*premios*). *Id.* art. 127. Similarly, the Cuban Labor Code allows for the payment of special bonuses to stimulate fulfilment of specific objectives. *Id.* art. 128.

monthly salary. The size of these incentives demonstrates Cuba's commitment to international tourism.

The Cuban Labor Code generally protects workers from employers who require excessive overtime.²⁶⁰ Only when social utility or *force majeure* makes it necessary are workers obliged to perform overtime work.²⁶¹ Workers cannot be required to work more than four overtime hours on two consecutive days, nor to do double time on more than two shifts per week. A worker cannot be required to do more than 160 hours of overtime annually.²⁶²

By contrast, the monthly work tour of workers in the international tourism system may be as long as 280 hours (about 64 hours per week),²⁶³ and for certain workers, the monthly work tour may be as long as 312 hours (72 hours per week).²⁶⁴ This is 47% to 64% above the national norm of 44 hours per week.²⁶⁵ Though regulation No. 15/90 is vague on the requirements of overtime pay, the presumption is that covered workers will be compensated adequately for their additional hours.

D. *Promotion and Training*

Article 34 of the Cuban Labor Code allows employers to hire new workers on a probationary period not exceeding thirty days, though the probationary period can be extended for another thirty days when the occupation is skilled or semi-skilled. Probationary periods as long as 180 days do exist, but only in exceptional

260. Overtime is work that is performed beyond the normal work day or work week, and undertaken at the request of management. The normal work tour in Cuba is 8 hours per day and an average of 44 hours per week. CUBAN LABOR CODE, *supra* note 228, art. 67. For cyclical or seasonal activities, however, a government administrative agency, with approval by the workers' organization, may extend the length of the work day and of the work week. *Id.* art. 68.

261. Overtime may be necessary when: 1) the work is essential to the national defense; 2) there is a public emergency or industrial accident; 3) there is an urgent need to avoid shutting down the production of goods or services; 4) double shifts are necessary to compensate for workers who are absent without excuse in an occupation where it has been determined through the collective bargaining process that the work cannot be interrupted; and 5) seasonal work must be completed within a specified time period and it is not possible to hire other workers to perform the work. *Id.* art. 76.

262. *Id.* art. 77. A worker may receive payment for overtime in the form of cash or compensation by time off.

263. Resolution No. 15/90, *supra* note 160, art. 31.

264. *Id.* art. 77.

265. See Pérez-López, *supra* note 259, at 205 (estimating the national work norm at 190 hours per month, based on a 44-hour workweek).

circumstances.²⁶⁶

Within the international tourism system, the law provides greater flexibility to employers. Decree No. 122 establishes a 180-day probationary period for all new workers regardless of the skill level associated with their jobs. Thus, the probationary period for workers of the international tourism system, while technically within the parameters set by the Cuban Labor Code, is longer than that of nearly all other Cuban workers. This allows management in tourism enterprises to screen new workers carefully before converting them to permanent employees.

On the issue of training, the Cuban Labor Code is very vague. Article 12 requires management to provide general and on-the-job training for new workers, and article 226 requires management to provide technical training for workers "so as to give them the theoretical and practical knowledge necessary to adequately carry out a given occupation, meeting the needs of national development and in harmony with the workers' rights to their personal improvement."²⁶⁷

In contrast, the special regime for the international tourism industry is quite specific on training, particularly on the requirements of foreign language training. Management in each enterprise must develop a foreign language training plan for all workers who require such skills.²⁶⁸ Workers who fail to achieve the required foreign language skills will be shifted to other positions within the international tourism system. However, if such reassignment is not possible, the employer may dismiss the worker.

E. Discipline

Generally, the Cuban Labor Code provides management with two tools to motivate workers to perform their duties: 1) a reward

266. See, e.g., GUILLÉN LANDRIÁN, *supra* note 228, at 26 (stating that the probationary period is up to 120 days for workers in scientific-technical research and that for seamen, the probationary period could be the length of the first voyage).

267. Management, in collaboration with labor organizations, is obliged to: 1) train its workers in accordance with the needs of its annual programs and development prospects; 2) include activities related to training in its technical and economic programs; 3) organize courses in those areas specified by law; 4) provide the material conditions for study that are necessary for the courses; and 5) promote the improvement of the workers' cultural and technical knowledge. CUBAN LABOR CODE, *supra* note 228, art. 227.

268. Of course, management and labor jointly decide which positions require foreign language skill.

system to reinforce exemplary performance; and 2) a disciplinary system to punish poor performance.²⁶⁹

To provide workers with incentives to excel, management can reward workers for outstanding work performance, socialist emulation, increased productivity, increased quality of goods and services produced, and conservation of raw materials.²⁷⁰ Though the Cuban Labor Code encourages management to reward workers with moral and material awards, such as publicly recognizing workers' contributions and providing access to scarce goods and services,²⁷¹ the special tourism labor regime makes no such provisions for rewarding workers—other than through remuneration.

The Cuban Labor Code imposes the following duties on Cuban workers:²⁷²

- 1) to be regular and punctual in attending work;
- 2) to make the fullest use of the working day;
- 3) to fulfill the requirements of their occupation, the collective bargaining agreement, and the disciplinary code;
- 4) to abide by occupational safety and health regulations;
- 5) to take proper care of socialist property; and
- 6) to perform other duties as required by law.²⁷³

The lack of worker discipline is a major problem in Cuba's efforts to overcome its current economic crisis. To help Cuba deal with this problem, the Fourth Congress of the Cuban Communist Party passed the following resolution in October 1991:

Under current conditions, it is of decisive importance to confront squarely and with resolve the lack of labor discipline. Such lack of discipline manifests itself in absenteeism, poor use of the work shift, and the violation of the many rules regarding the

269. CUBAN LABOR CODE, *supra* note 228, art. 148.

270. *Id.* art. 152.

271. *Id.* art. 153.

272. *Id.* art. 151.

273. The Cuban Labor Code defines the following as violations of work discipline: 1) non-observance of work hours; 2) absence from work without good cause; 3) disrespect toward superiors, fellow workers, or third parties during work hours; 4) disobedience; 5) mistreatment, by word or deed, of superiors, fellow workers, or third parties, in the workplace or during work hours; 6) negligence; 7) violation of state secrecy laws; 8) damage to property of the employer; 9) loss, theft, embezzlement, or fraudulent appropriation of goods or assets belonging to the workplace or to third parties; 10) conduct that might constitute a misdemeanor while at work; 11) lack of observance of disciplinary regulations in force in the employing body; and 12) failure, without good cause, to perform the duties required by occupational safety and health regulations. *Id.* art. 158.

production of goods and services. These deficiencies are reflected . . . in the misuse of material and human resources, rises in costs, the very low level . . . of scientific and technical innovations, the decline in labor productivity, corruption, and other economic crimes.²⁷⁴

The regime established by the CETSS for the international tourism industry is much more explicit than the Cuban Labor Code regarding worker discipline. While the Cuban Labor Code lists twelve general areas of prohibited behavior,²⁷⁵ Resolution No. 14/90 identifies ten types of forbidden conduct unique to the tourism industry. They include: failure to turn into management publications left behind by foreign tourists, failure to exchange at the official rate any foreign currency received as gratuities, failure to maintain a neat and orderly appearance, and failure to restrict consumption of food and smoking to designated areas.²⁷⁶

Resolution No. 14/90 also expressly prohibits tourism workers from engaging in specific types of conduct.²⁷⁷ In addition to being lengthy, the list is quite subjective and intrusive. Examples include: engaging in behavior *inside or outside* of work that "might tarnish the exemplary moral and social image of international tourism workers"; being a source of annoyance to tourists; engaging in arguments with co-workers; and criticizing national tourism enterprises or any government agency in the presence of tourists.²⁷⁸

Article 160 of the Cuban Labor Code empowers management to discipline workers so long as management follows certain procedural standards. For minor disciplinary violations²⁷⁹ management must take action within sixty days of learning of the offense. In instances involving negligence, destruction of socialist property, or criminal behavior,²⁸⁰ management must take disciplinary actions within thirty days.²⁸¹ Regulation No. 14/90, however, requires managers in the international tourism industry to take disciplinary action within thirty days, regardless of the nature or severity of the violation.²⁸²

274. Resolución sobre el desarrollo económico del país, *supra* note 1, at 3.

275. See *supra* note 273.

276. Resolution No. 14/90, *supra* note 161, art. 5.

277. *Id.* art. 6.

278. *Id.*

279. CUBAN LABOR CODE, *supra* note 228, art. 158 (violations 1-5, 12).

280. *Id.* (violations 6-11).

281. In these instances, criminal proceedings may also be undertaken. *Id.* art. 169.

282. Resolution No. 14/90, *supra* note 161, art. 10.

The Cuban Labor Code also governs temporary and permanent transfers of workers from one position to another. Once a worker completes the probationary period, management cannot permanently transfer the worker to another position without the worker's consent.²⁸³ Management, however, may make a temporary transfer provided it does not exceed sixty days and even then only in emergency situations where the transfer is necessary to avoid disruptions of work and economic dislocations.²⁸⁴ Reasons for involuntary transfers include plant shutdowns, economic restructuring, partial worker disability, disciplinary problems, and downgrading of worker skills.

When management investigates employees for disciplinary problems, the Cuban Labor Code permits the workers to retain their current positions until the investigation is complete.²⁸⁵ However, there are exceptions to this rule: workers in the judicial system, teaching profession, research science industry, and railroad system are suspended until the investigation is complete.²⁸⁶ Regulation No. 14/90 adds the international tourism system to the above exceptions, permitting management to suspend workers without pay or to temporarily transfer them for up to thirty days during the course of an investigation.²⁸⁷

The Cuban Labor Code also outlines procedures for disciplining workers. The Cuban Labor Code provides that management must inform employees, in writing, of any alleged violation for which discipline is required.²⁸⁸ Disciplinary measures become effective on the first working day after such written notice²⁸⁹ and remain in force until a court confirms, modifies, or revokes the measures.²⁹⁰

Workers may appeal disciplinary actions to a municipal people's court²⁹¹ within ten days of receiving written notification.²⁹²

283. CUBAN LABOR CODE, *supra* note 228, art. 41.

284. *Id.* art. 42.

285. *Id.* art. 170.

286. *Id.* arts. 191-192.

287. Resolution No. 14/90, *supra* note 161, art. 14.

288. CUBAN LABOR CODE, *supra* note 228, art. 160.

289. *Id.* art. 166.

290. *Id.* art. 168.

291. García Cárdenas writes:

The municipal people's courts are composed of the presidents of individual courts and the other judges, who are chosen and are subject to recall by the municipal assemblies of People's Power, to which these courts must make periodic reports. Their functions are: to try cases at the lowest judicial level of

The court can modify or revoke the disciplinary measure and can also award monetary damages to the affected worker,²⁹³ though monetary damages may not exceed the value of the loss in earnings.²⁹⁴ When revoking management's action, the court publicly announces its decision at an assembly of all workers.²⁹⁵ Workers may appeal a decision of a municipal people's court to the provincial people's courts, and ultimately to the People's Supreme Court.²⁹⁶

Disciplinary measures for workers in the international tourism system differs substantially from those detailed by the Cuban Labor Code, particularly with respect to procedural review. International tourism workers may appeal disciplinary actions directly to management within ten days of receiving written notice.²⁹⁷ Management may consult with the representative commission²⁹⁸ of the workplace before deciding to ratify, modify, or revoke the original measure.²⁹⁹ Results of this management appeal, however, are not subject to administrative or judicial review.³⁰⁰ Regulation No. 14/90 does allow management to review the incident for up to one year after implementation of a measure, if there is new evidence that was not available at the time of the original measure or if the original action was arbitrary or unjust.³⁰¹

F. Rehabilitation and Reinstatement

The Cuban Labor Code provides that rehabilitated workers may be reinstated to their original positions after the disciplinary period, provided the worker has not committed additional violations during the interim.³⁰² A worker who demonstrates exemplary conduct may be reinstated before the scheduled end of the disciplinary period.³⁰³ Though the Cuban Labor Code is vague regarding

crimes under their jurisdiction; and [to] hear cases at the lowest judicial level dealing with civil and labor matters under their jurisdiction.

GARCÍA CÁRDENAS, *supra* note 8, at 93.

292. CUBAN LABOR CODE, *supra* note 228, art. 262.

293. *Id.* art. 182.

294. *Id.* art. 184.

295. *Id.* art. 182.

296. GARCÍA CÁRDENAS, *supra* note 8, at 91-93.

297. Resolution No. 14/90, *supra* note 161, art. 18.

298. *Id.* art. 22.

299. *Id.* art. 23.

300. *Id.* art. 25.

301. *Id.* art. 26.

302. CUBAN LABOR CODE, *supra* note 228, art. 189.

303. *Id.* art. 190.

the terms and conditions of rehabilitation, it does provide for issuance of special regulations to deal with the rehabilitation of teachers, railroad workers, and scientific researchers.³⁰⁴

The special legal regime for the international tourism system prescribes specific time periods for the rehabilitation of workers who are dismissed or transferred out of the international tourism system without reinstatement rights. Workers who are dismissed must complete five years of disciplined work outside the industry before they are eligible for re-employment in the international tourism system. Those who are transferred must undergo three years of disciplined work outside of the industry before they are eligible for reemployment. When workers are disciplined in their new positions, the disciplinary periods run sequentially, so that the worker will not be eligible for rehabilitation and potential reinstatement until both measures have run.

VI. IMPLEMENTATION OF THE LABOR REGIME FOR INTERNATIONAL TOURISM WORKERS

Decree 122 became effective on August 13, 1990. Its implementation has proceeded gradually because the various enterprises in the international tourism industry have been slow to establish "representative commissions," and in turn, the commissions have been slow to evaluate the suitability and aptitude of the workers.

A. *Suitability and Aptitude*

In December 1990, INTUR and the Cuban tourism enterprise Cubanacán³⁰⁵ released the evaluation data of twenty tourism work centers collectively employing over 2,200 workers.³⁰⁶ Of these workers, the representative commissions found that 4.7% were not suitable and 12.5% were not apt. Thus, 17.2% of the workers were subject to removal from the international tourism industry. Those found not suitable were to be removed from the international tourism system after receiving two months of wages as severance pay. Those found not apt were to be transferred from their current positions to other positions within the international tourism industry

304. *Id.* arts. 191-192.

305. *See supra* note 3.

306. *Aplicadas en 20 centros de turismo las nuevas regulaciones laborales*, TRABAJADORES, Dec. 8, 1990, at 4.

or to jobs outside the industry.

A more current report on the implementation of Decree No. 122 covered 447 tourism centers under the control of INTUR.³⁰⁷ Of the nearly 19,500 workers in these enterprises, 11.3% were subject to removal: 3.5% not suitable; 7.8% not apt. Interestingly, however, 65.1% of the suitable workers were nevertheless "deficient" in some areas, and the commissions issued deadlines for correcting these deficiencies. Unfortunately, no information was provided on the nature of these deficiencies (i.e. whether they were personal or work related).

A review conducted at the Riviera Hotel between October 1990 and March 1991 resulted in the dismissal or transfer of 30 workers who were not suitable. A press account of the review states:³⁰⁸

[The General Manager] says this is the first step in something that should be systematized in order to continue reducing the level of absenteeism and achieve fast and enthusiastic service, in short, to eliminate vices and achieve discipline in the hotel sector. A change is already noticeable: You don't see people constantly sauntering in the hallways chatting, an indication that many people are neglecting their duties. It is as though there has been an inoculation against tolerance.

Another positive result of this new mechanism is that it is possible for management to impose disciplinary measures without having to depend on bureaucratic red tape which sometimes caused delays of months. They can even propose the dismissal of undisciplined or lazy workers.

Strict disciplinary rules, coupled with streamlined procedures for their enforcement and a severe set of penalties—including dismissal—are attractive to foreign investors. The manager of the Sol-Palmeras hotel, a 50-50 joint venture between the Spanish hotel chain Sol-Meliá and Cubanacán, described his experience with the Cuban workforce as follows:

They are intelligent people who are very willing to work and improve, with a strong desire to do things well. It bears noting that some have fallen by the wayside. Either because they could not stand the pace of work, because they did not adapt to the com-

307. *Positivos primeros resultados de la idoneidad en el turismo*, TRABAJADORES, June 3, 1991, at 3.

308. *Standards for Tourism Workers Discussed*, FBIS-LAT, May 10, 1991, at 4.

pany's system, or because they preferred to change jobs. Or else because they had to be removed for breaking our rules. But this is a minority, and they have never left on a whim, because of an injustice, or on their own. The reason has actually been a violation of our own rules and Cuban laws, which means dismissal from the hotel. When such decisions have been necessary, we have consulted at length with all of the [interested parties], including the union . . . and the Base Committee of the UJC [Union of Communist Youth]. [A worker who has been dismissed] can go to the Cubanacán agency that sends us personnel. [The worker] can even appeal. But since we make our decision by consensus, [the worker] will never be returning to the hotel. The principle of having suitable staff is observed here from the beginning and must be respected for the sake of quality service.³⁰⁹

Regarding the grounds for dismissing workers, the manager offered the following information: "There are things that cannot be ignored. Theft is not forgiven. We do not talk things over with a thief. We also monitor attendance and punctuality, and someone can also be dismissed for poor work, but always after trying to correct the problem."³¹⁰

B. Size of the Workforce

Overstaffing of tourism facilities concerns Cuban officials. However, this concern is not limited to the tourism industry, or to Cuba. It applies to all socialist economies that make full employment—without regard to productivity—a national priority.³¹¹

At the May 1990 inauguration of a hotel built as a 50-50 joint venture with foreign investors, President Castro compared the 50-50 facility with a 100% Cuban-owned hotel:

[After reviewing] the staff, I can say that our hotel, with almost half as many rooms . . . has more workers than this hotel. And our comrades surely think they have [improved the quality of their service]. They have made an extraordinary effort. And how happy I was to be able to show with numbers and facts that we really have a lot to learn to become truly efficient. Efficiency is the best service with the fewest workers. . . . [T]he number [of

309. *Sol-Palmeras Manager on Hotel Operations*, *supra* note 4, at 5, 7.

310. *Id.*

311. On Cuban employment issues, including the relationship between employment and productivity, see CARMELO MESA-LAGO, *THE ECONOMY OF SOCIALIST CUBA* (1981).

workers in the Cuban hotel] will be reduced in the future. Let us see how we can begin to gain an advantage. . . . [The ratio of] the number of workers [to] the number of rooms is a very important indicator [of efficiency].³¹²

Decree 122 and its attendant regulations have decreased the size of the workforce in international tourism facilities and hence, have improved efficiency. For example, based on the results of the suitability and aptitude evaluation in December 1990, twenty INTUR and Cubanacán enterprises reduced their total workforce from 2204 to 1953 workers (11.4%).³¹³ In another report the government indicated that an evaluation of nineteen INTUR facilities resulted in a 9.6% reduction in the workforce, an increase in job flexibility, a 15% increase in hard currency earnings, and a 100% increase in hard currency generated from tips received by the workers.³¹⁴

C. Characteristics of Tourism Workers

Another effect of the special labor regime for tourism workers is the "creaming" of the labor force. Tourism joint ventures are a magnet for university graduates and other workers who want to get ahead. The tourism industry offers many advantages including: better remuneration than otherwise available to workers; the opportunity to have contact with foreigners; the opportunity to earn tips in hard currency; and access to goods only available in stores for tourists. The attraction of the tourism industry is so strong that it also affects the workforce in other industries. For example, a paper factory in Cárdenas experienced very high labor turnover in 1990 because the employees were leaving to work in nearby tourism facilities in Varadero Beach.³¹⁵ To counteract the outflow of workers, the paper factory implemented a number of measures including: increasing wages, introducing shift work and moral incentives; remodelling the dining room; improving health facilities; and adding more recreational activities.³¹⁶

312. PRESIDENT FIDEL CASTRO, *supra* note 124, at 5.

313. *Aplicadas en 20 centros de turismo las nuevas regulaciones laborales*, *supra* note 306, at 4.

314. *Positivos primeros resultados de la idoneidad en el turismo*, *supra* note 307, at 3.

315. As one commentator noted: "The powerful Varadero tourism program offers tempting opportunities, including higher wages and better working and living conditions." Rebecca Antunez, *Tourist Jobs Affecting Factory Workers*, FBIS-LAT, May 17, 1990, at 6.

316. *Id.*

Another observer has noted the emergence of a well-educated "workers' aristocracy" in tourism joint ventures.³¹⁷ Cuba's educational policies, with their heavy emphasis on professional and technical training, have been for many years out of step with the economy's demand for labor.³¹⁸ This mismatch between labor supply and the economy's demand has adversely affected the economy. "The contradiction is obvious. How can production processes be developed, in any social system, with a disproportionately larger number of professionals and technicians than workers, especially in an underdeveloped economy like [Cuba]?"³¹⁹ The special labor regime for tourism workers seems to worsen this mismatch by taking workers away from other production processes.

VII. CONCLUDING OBSERVATIONS

One of the weaknesses of Decree No. 50, passed in 1982 for the active creation of joint ventures with foreign investors, is its lack of clarity and specificity in many areas that are critical to investors. Foreign investors are simply not willing to make sizable investments where issues, such as management, the ability to generate profits, the repatriation of profits, and the security of investments, are murky or left to the discretion of the host government. Recognizing that these weaknesses discourage foreign investment in the island's international tourism industry, Cuba has taken steps to correct them. For example, the government made changes to its constitution in 1992 to clarify the concept of private property.³²⁰

An important part of Cuba's aggressive campaign to attract foreign investment is the promotion of tourism as an economically attractive industry. Decree No. 50 singled out joint ventures in the tourism industry for special treatment, including exemptions from taxes, more favorable regulations regarding labor, public order, and immigration controls, and the ability to lease Cuban installations and hire workers directly. The State Finance Committee also proclaimed a system of accelerated depreciation allowances so that these investors could achieve higher rates of return on their

317. OPPENHEIMER, *supra* note 56, at 293.

318. See, e.g., Sergio Díaz-Briquets, *Collision Course: Labor Force and Educational Trends in Cuba*, 23 CUBAN STUD. (forthcoming Nov. 1993).

319. Georgina Jiménez, *Need for University Graduates Questioned*, FBIS-LAT, July 5, 1991, at 6, 7.

320. See CUBAN CONST. art. 14, reprinted in GRANMA, Sept. 22, 1992, at 3, 5; see also ALVAREZ TABÍO, *supra* note 14.

investment.

Employers in the tourism industry enjoy more favorable labor regulations than those in other Cuban industries. Cuba enacted this special labor regime to promote excellence in the provision of tourism services. The regulations screen unsuitable workers from its workforce and reward employees with outstanding work records. These regulations reflect the importance of high quality service in the tourism area.

Generally, the special labor regime provides higher levels of compensation than those available to other workers. Unlike other Cuban workers, who are subject to the general provisions of the 1984 Labor Code, workers in the international tourism industry face longer probationary periods, have less job security, work longer hours, are more likely to work irregular schedules, and may be required to complete training in foreign languages as a condition for obtaining or maintaining employment. Thus, while the special labor regime imposes greater duties, it also provides for additional compensation.

The most significant differences between the Cuban Labor Code and the special labor regime concern discipline and the procedures for challenging disciplinary actions. The special regime is more restrictive than the Cuban Labor Code on both counts: the special regime specifies a greater number of actions that result in disciplinary measures, shortens the time periods for challenging the disciplinary decisions, and eliminates appeals through the usual judicial and administrative channels.

The labor regime governing international tourism workers is especially strict when compared to Cuba's general labor code. This is significant in light of the fact that Córdova, an authority on labor codes and labor-management relations in Latin America, has described the 1984 Cuban Labor Code as "lean" in terms of worker protections and given to a "disciplinary bend."³²¹

Confirming the emphasis on discipline, Rafael Sed, Cuba's Minister of Tourism, described the special labor regime as "tough new regulations [that make clear] only trained workers will get hotel jobs, and those whose service is poor will be fired, a practice

321. Córdova, *supra* note 229, at 45-51. Córdova noted that 65 of the 308 Code's articles (21%) deal with the duties of workers, minimum work norms, work discipline and voluntary work. *Id.*

avoided in other areas of the economy."³²²

The special legal regime for workers in the international tourism industry also places heavy emphasis on the issue of suitability, an ill-defined concept that seems to relate mostly to personal qualities and behavior both on and off the job site. Given that lack of suitability is sufficient reason for dismissal or reassignment and given that the procedures for contesting such decisions are not meaningful, job security of workers in the international tourism industry is undermined.

Despite the political and economic changes that have occurred in Eastern Europe and the former Soviet Union, Cuba clings to socialism and its centrally planned economy. Because of the country's deep recession, the Cuban government has made minor concessions to reform the economy, primarily through the promotion of joint ventures in the international tourism industry. Nevertheless, the strategy of permitting tourism joint ventures to operate under different rules—*islands of capitalism within an ocean of socialism*—is problematic and will not turn the economy around unless it is accompanied by a significant movement toward a market economy.

322. Julia Preston, *Cuba Tests the Water for Tourism*, WASH. POST, Aug. 15, 1988, at A8.

