

ASCE Virtual Event

Foreign Direct Investment Experiences: Lessons for Cuba

Wednesday, May 5, 2021 10 AM to 12 PM

This webinar will outline the salient features of FDI, touch upon the challenge of negotiating investment contracts between states and foreign investors, and, in particular, the current process of approval in Cuba. It will consider what Cuba, as a developing nation with an economy in transition, needs in terms of a regulatory framework to attract FDI. https://psu.zoom.us/webinar/register/WN_FyGRnu75TEupMrSKqyQ29g

Karl Sauvant - Keynote: Overview of foreign direct investment

The keynote will outline the salient features of FDI, discuss briefly the notion of “sustainable FDI”, touch upon the challenge of negotiating investment contracts between states and foreign investors, and then deal with two important international negotiations/discussions, namely the negotiations of an Investment Facilitation Framework for Development at the WTO and the international investment regime reform discussions in UNCITRAL’s Working Group III.



Karl P. Sauvant, Ph.D., is Adjunct Professor at Columbia Law School and Resident Senior Fellow at the Columbia Center on Sustainable Investment, the predecessor of which he founded. Until July 2005, he was Director of UNCTAD’s Investment Division, where he created the annual World Investment Report, of which he was its lead author until 2004. He is an AIB Fellow and EIBA Honorary Fellow. For recent publications, see: <https://ssrn.com/author=2461782>.

Natalia Delgado – What we mean by foreign direct investment

This presentation will emphasize the distinction between significant investments of capital (\$50 million or more) and revenues obtained from commercial trade. Natalia Delgado will then describe in which sectors multinational investors in Cuba have focused their investments and how they protect them, using the examples of transactions with Trafigura, Meliá and Sherritt.



Natalia Delgado’s legal and business career includes acting as a senior executive of a public company, a board member of one of the largest transit systems in the world, and partner of a nationally recognized law firm. During her 22 years in the private practice of law, she concentrated on corporate and securities law. She now directs the Cuba Capacity Building Project at Columbia Law School, an initiative designed to foster the development of the legal institutions necessary for Cuba to transition to a more market-based economy.

Jorge Piñón – Assessing and managing business risk by a multinational company in an emergent and transitional economy

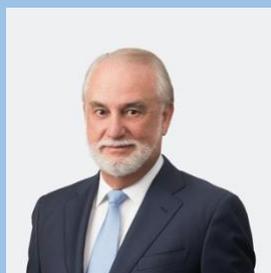
Jorge Piñón will describe what Cuba needs to create in terms of a regulatory framework to attract FDI from multinational company investors in a variety of areas of the economy. He will consider the step-by-step approach of increasing investment to build trust that investors would likely take. He will also discuss the challenges presented for multinational companies in joint venturing with Cuban state enterprises and potential solutions, including licensing agreements for technological developments.



Jorge R. Piñón is Director of The University of Texas at Austin’s Center for International Energy and Environmental Policy - Latin America and Caribbean Energy and Environmental Program. Mr. Piñón began his thirty-two-year career in the energy sector when he joined Shell Oil Company’s supply and transportation organization. He was President and CEO of Transworld Oil USA prior to joining Amoco Corporation as president of Amoco Corporate Development Company Latin America. In this position, Mr. Piñón represented the business development and joint venture efforts in Latin America between Amoco Corporation and state oil companies.

Pedro Freyre – What is missing from the Cuban regulatory framework and Cuban business transaction experiences

Pedro Freyre will emphasize the importance of the Cuban State protecting property and contract rights, the need to be able to create corporations and limited liability companies under laws that mirror those existing in the rest of the world, as well as independent courts to resolve disputes. Mr. Freyre will use a hypothetical scenario to highlight the many bureaucratic and regulatory obstacles under the current system for investing in or entering into commercial transactions with Cuba.



Pedro Freyre is the chair of the law firm Akerman’s International Practice, with a full-service team advising multinational and global corporations on a wide range of cross-border mergers and acquisitions, joint ventures, capital markets transactions, syndicated and secured lending, project finance, debt restructuring, trade, compliance, as well as complex construction and other international disputes. Mr. Freyre is an internationally recognized authority on the U.S. Embargo on Cuba and the evolving regulations enacted since the restoration of diplomatic relations between the United States and Cuba. Most recently, he has been instrumental in guiding clients with respect to the defense of claims arising from the implementation of Title III of the Helms-Burton Act.

Christine Concepción – what the foreign direct investor needs in the host country to meet the home country requirements

Christine Concepción will discuss how U.S. companies aim to obtain favorable tax results in the U.S. as they structure their investments overseas, and the importance of being able to create specific business entities in the recipient country that will allow them to accomplish that goal. She will also discuss how the auditors will review the investment regime and the transaction documents to determine how to account for the transaction on the investing company’s financial statements.



Christine Alexis Concepción is an attorney at the law firm of McDermott Will & Emery, focusing her practice on U.S. and international tax matters for multinational businesses. She advises predominantly Spanish and French-speaking clients on U.S. pre-immigration planning, inbound investments, treaty planning, expatriation, and income and estate tax planning matters. She has an LLM in tax from Northwestern Pritzker School of Law. Her experience includes working in the international tax group of the accounting firm Deloitte Tax LLP.

Ricardo A. Ampudia - treaty protection and alternative dispute mechanisms

Ricardo Ampudia will discuss Cuba’s prior foreign investment disputes and treaty protections for international investors in Cuba as a substitute for reliance on Cuba’s courts to resolve investment disputes. He will also describe potential alternative dispute mechanisms for foreign investors.



Ricardo A. Ampudia is a registered international arbitrator and litigation counsel with the law firm of Shook, Hardy & Bacon. He represents clients in a wide variety of high-profile international and cross-border disputes, including private investors and State sovereigns. Mr. Ampudia has litigated before ICSID (International Centre for Settlement of Investment Disputes) and UNCITRAL bodies in Washington DC, Paris, and the Peace Palace in the Hague. He was recently appointed to the roster of international arbitrators at AmCham Peru and was featured in “40 Under 40 in International Arbitration” in 2021.



Co-sponsored by the [Association for the Study of the Cuban Economy](#) and the [Cuba Capacity Building Project at Columbia Law School](#)

Multinational Enterprises and Foreign Direct Investment in the World Economy

Fact sheet, August 2020

- Number of MNEs 2010: 103 000 (developing countries: 30 000)
- Number of foreign affiliates 2010: 900 000 (in developing countries: 500 000)
- FDI *outflows* 2019: world: \$1.3 tr; developed countries: \$917bn; developing countries: \$373bn; transition economies: \$24bn
- FDI *inflows* 2019: world: \$1.5 tr (expected to be below \$1 tr. In 2020); developed countries: \$800bn; developing countries: \$685 (excluding Caribbean financial centres); transition economies: \$55bn
- FDI *outward stock* 2019: world: \$35tr; developed countries: \$26tr; developing countries: \$8tr; transition economies: \$448bn
- FDI *inward stock* 2019: world: \$36 tr; developed countries: \$24tr; developing countries: \$11tr; transition economies: \$873bn
- The top 100 MNEs have an average of 500 affiliates (of which 2/3 abroad), in an average of 50 countries
- Sales of foreign affiliates 2019: \$31 tr
- World exports 2019: \$25tr
- FDI inflows as share of gross domestic capital formation, 2019: 7% world; 7.5% developed countries; 6.3% developing countries; 10.2% transition economies
- Number of BITs as of end-2019: 2 895
- Number of other IIAs as of end-2019: 389
- eCumulative number of treaty-based disputes (ISDS cases) under IIAs as of end-2019: at least 1,023, involving at least 120 countries as respondents

Source: UNCTAD, *World Investment Report 2020* and various years.