

**FOREIGN INVESTMENTS**

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**Decree 1853/93**

**Approving the consolidated text of Law No. 21.382.**

Buenos Aires, September 2, 1993

HAVING REGARD to Laws Nos. 21.382 (consolidated text of 1980), 22.426, 23.697, 23.760 and 23.928 and Decree No. 1225 of November 14, 1989, and

CONSIDERING:

That all investment processes for the purposes of production activities require a legal system which provides certainty, permanence, transparency and security;

That Law No. 23.697 on Economic Emergencies under Article 15 repeals those rules of Law No. 21.382 (consolidated text of 1980) and its implementing laws under which the prior approval of the NATIONAL EXECUTIVE or of the Implementing Authority was required for foreign capital investment in the country;

That also, the provision referred to in the preceding recital guarantees the principle of equal treatment for domestic and foreign capital invested in the country;

That Article 16 of Law No. 23.697 on Economic Emergencies empowers the NATIONAL EXECUTIVE to issue the necessary regulations with the aim of facilitating the transfer of foreign investment profits;

That Article 68 of Law No. 23.760 repeals Article 16 of Law No. 21.382 (consolidated text of 1980), concerning the special tax on additional profits arising from foreign capital investments, as of January 1, 1990;

That in the process of modernization and structural change of the national economy the criteria and procedures which govern foreign investment should be adapted and simplified;

That the Republic of Argentina provides a fast track without bureaucratic obstacles to investments from other countries, with, as a result, the need to supplement the above repeal with the enactment of an explanatory regulation which authorizes foreign investors to repatriate their capital and profits at any time;

That among the activities that have been affected by the above provisions are those that refer to the transfer, assignment or licensing of technologies or trademarks, in which firms with both domestic and foreign capital participate;

That consequently, Article 2 of Law No. 22.426 on the Transfer of Technology, that constitutes an obstacle to the legitimate exercise of the rights to free trading should be considered affected by Article 15 of Law No. 23.697 on Economic Emergencies;

That it is necessary to adapt the provisions of the Foreign Investments Law (consolidated text of 1980) to the so-called Law No. 23.928 on Convertibility;

That Article 1 of Law No. 20.004 empowers the NATIONAL EXECUTIVE to order the Laws without incorporating any amendments whatsoever in the texts, with the exception of those that are grammatically unavoidable for the new regulation;

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That this Law is issued using the powers conferred by Article 16 of Law No. 23.697 and Article 1 of Law No. 20.004, and those arising from Article 86(1) and (2) of the National Constitution.

Therefore,

THE PRESIDENT OF THE ARGENTINE NATION

DECREES:

**Article 1** — The consolidated text of Law No. 21.382 on Foreign Investments (consolidated text of 1993), amended by Laws Nos. 23.697 and 23.760, that, similarly to Annex I, is an integral part of this Decree, is hereby approved.

**Art. 2** — Foreign investors may make investments in the country without the requirement of prior approval, under the same conditions as investors domiciled in the country.

**Art. 3** — For the purposes of the provisions of Article 2(2) of Law No. 21.382 (consolidated text of 1993), the concept of foreign investor includes Argentine natural or legal persons not domiciled within the national territory.

**Art. 4** — For the purposes of Laws Nos. 21.382 (consolidated text of 1993) and 23.697, activities of an economic or productive nature shall be defined as all industrial, mining, agricultural, commercial and financial activities, or services or other activities related to the production or exchange of goods or services.

**Art. 5** — The right of foreign investors to repatriate their investment and send abroad liquid profits made may be exercised at any time.

**Art. 6** — With the exception of the statutory reserve, the share of statutorily or voluntarily constituted reserves, or that resulting from revaluations or calculations of current worth of any kind that foreign investors hold in a domestic company, shall not be considered reinvestment of foreign capital.

**Art. 7** — In accordance with Article 15 of Law No. 23.697 on Economic Emergencies, the provisions of Article 2 of Law No. 22.426 on Technology Transfer has ceased to have effect.

**Art. 8** — For the purposes of Article 3 of Law No. 22.426 on Technology Transfer, both acts concluded between independent firms and those concluded between a domestic firm under foreign ownership and the firm that directly or indirectly controls it, or other subsidiary, shall be registered with the NATIONAL INSTITUTE OF INDUSTRIAL TECHNOLOGY.

**Art. 9** — The SECRETARIAT OF COMMERCE AND INVESTMENTS OF THE MINISTRY OF ECONOMY AND PUBLIC WORKS AND SERVICES shall be the Implementing Authority of this Law.

**Art. 10.** — The duties of the Implementing Authority shall be the following:

(a) to compile statistical information on foreign investments;

(b) to issue general interpretative resolutions and perform other acts required to comply with Law No. 21.382 (consolidated text of 1993) and with these Regulations.

**Art. 11.** — The Implementing Authority shall issue the Regulations and rules for interpretation of this Decree and shall be expressly empowered to determine the scope of the rules approved hereby.

**Art. 12.** — Decree No. 1225 of November 14, 1989 is hereby repealed.

**Art. 13.** — For communication, publication and submittal to the National Directorate of the Official Registry and for recording. — MENEM. — Domingo F. Cavallo.

ANNEX I

FOREIGN INVESTMENT LAW

(Consolidated text of 1993)

ARTICLE 1 — Foreign investors who invest capital in the country in any of the forms established in Article 3 for the promotion of economic activities, or for increasing or improving those that exist, shall have the same rights and obligations as those granted under the Constitution and Laws to domestic investors, subject to the provisions of this Law and to those provided for in special or promotional arrangements.

ARTICLE 2 — For the purposes of this Law, the following definitions shall apply:

1. Foreign capital investment:

(a) All capital contributions owned by foreign investors applied to economic activities performed in the country.

(b) The acquisition by foreign investors of holdings in the capital of an existing domestic company.

2. Foreign investor: All natural or legal persons not domiciled within the national territory, the holder of foreign capital investment, and domestic firms under foreign ownership defined in the next paragraph of this Article, where they invest in other domestic firms.

3. Domestic firm under foreign ownership: All firms domiciled within the territory of the Republic, in which natural or legal persons not domiciled within the Republic, directly or indirectly hold more than 49 per cent of the capital, or directly or indirectly control the number of votes required to prevail in a meeting of stockholders or partners.

4. Domestic firm with domestic capital: All firms domiciled within the territory of the Republic, in which natural or legal persons also domiciled therein, directly or indirectly hold no less than 51 per cent of the capital, and directly or indirectly control the number of votes required to prevail at meetings of stockholders or partners.

5. Domicile: As defined in Articles 89 and 90 of the Civil Code.

ARTICLE 3 — Foreign investment may be made in:

1. Freely convertible foreign currency.

2. Capital goods, their parts and accessories.

3. Profits or capital in domestic currency owned by foreign investors, in so far as these are lawfully transferable abroad.

4. Capitalization of external credits in freely convertible foreign currency.

5. Intangible goods in accordance with specific legislation.

6. Other forms of contributions referred to in special or promotional arrangements.

ARTICLE 4 — The Regulations under this Law shall be approved by the administrative body under the MINISTRY OF ECONOMY AND PUBLIC WORKS AND SERVICES, with a rank not lower than that of Undersecretariat, which shall act as Implementing Authority and shall also establish its structure, duties and powers.

ARTICLE 5 — Foreign investors may transfer abroad liquid profits made as a result of their

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investments, and repatriate their capital.

ARTICLE 6 — Foreign investors may employ any of the legal forms of organization provided for under national legislation.

ARTICLE 7 — Domestic firms under foreign ownership may access domestic credit with the same rights and conditions as domestic firms with domestic capital.

ARTICLE 8 — Temporary foreign capital contributions that are made for the purposes of implementing rental contracts for goods, works and services etc., shall not be included in this Law and shall be governed by the terms of the respective contracts in accordance with applicable legal provisions, notwithstanding which the owners of such contributions may choose to make their investments within the terms of this Law.

ARTICLE 9 — Legal acts concluded between a domestic firm under foreign ownership and the firm that directly or indirectly controls it, or other subsidiary thereof, shall be considered, for all purposes, to be concluded by independent parties where their provisions and conditions are adapted to normal market practices between independent bodies.

ARTICLE 10 — Laws Nos. 20.557, 20.575 and 21.037 and Decrees Nos. 413/74 and 414/74 are hereby repealed, as are the general resolutions issued as a result. This Law shall be applicable to all pending proceedings under the Regulations hereby repealed.