Reform of state-owned enterprises: First draft bill published

Cuba's more than 2400 state-owned companies are to operate under a new management model soon (Source: Cubasi.cu)

In June, Cuba presented the cornerstones for a far-reaching reform of the state-owned enterprise system, which currently generates around 87% of gross domestic product in the socialist country. The first draft of the "Law on the Socialist State Enterprise" (*Ley de la empresa estatal socialista*) has now been published. What does it say? "Cuba heute" provides an overview…

- The **33-page document** comprises 10 chapters as well as a section with final and transitional provisions. The published text is a draft (*anteproyecto*) as of September 26. The aim of the law is to "**create a flexible regulatory framework that promotes the real autonomy of the main player in the Cuban economy**". Enterprise autonomy was first enshrined in the 2019 constitution.
- The aim of state-owned companies is to "**contribute to the development of the country based on their continuous economic growth with equity and environmental sustainability**". They are tasked with producing "**goods and services with efficiency, rationality, and profitability**", being "**transparent in the administration, management, and control of the goods of the socialist property of the entire people**" and guaranteeing the "**participation of workers in operational decision-making in an effective manner**". They should contribute to the integration of all actors of the economy and are the "**socially responsible unit for satisfying individual, collective, and social needs.**" SOEs have the task of "**strengthening their competitiveness through integration into national and international markets**" and "**developing innovation capacities through the sustainable integration of science and technology**" (Article 3).

- Article 16 defines the **three categories** of state-owned enterprises that will exist, as presented in June:

(a) An enterprise whose main objective is to obtain high returns on invested capital and to promote exports. It competes with other governmental or non-governmental entities;
(b) An enterprise whose mission is to provide universal public services with accessibility, regularity, quality, and security, or to carry out activities that are exclusively reserved for the state, either by their nature or by government decision. It does not operate on a competitive basis;
(c) An enterprise with the task of ensuring the population's access to certain goods and services for which the State provides protection mechanisms. It does not have to be highly profitable or systematically growing.

Source: "Ley de la empresa estatal socialista", Anteproyecto of 26.09.2023.
For a further explanation and examples of the three types, see this article.

- The three types represent the **main forms**, but other specialized state-owned enterprises can also be defined, according to the law. **State-owned small and medium enterprises (SMEs)**, for example, which may have up to 100 employees and operate in the legal form of a *Sociedad de resonsabilidad limitada* (S.R.L.), which is roughly equivalent to private limited company, are excluded from the scheme. In contrast to all other state-owned companies, they are completely independent and operate without a higher-level controlling body (Article 20). In practice, most of the current 168 state-owned SMEs are technology and software companies. **Joint ventures** and foreign companies are also exempt from the law (Article 1.4). According to the government's plans, significantly more than half of the current 2,417 state-owned companies will belong to the first category in future. The basic principle for all forms of SOEs is to "**cover expenses with income and generate profits**" (Article 4).

Structure and faculties of the companies

- The state-owned enterprises have "**financial, economic, administrative, and management autonomy in making decisions and developing their economic activity**". Each company defines its management system "in accordance with its characteristics" and by applying national and international best practice (Article 28 et seq.).
- **The companies draw up an annual plan, determine salary systems, and manage their human resource planning**. They may (among other things) maintain bank accounts and loans, enter into contracts with natural or legal persons (foreign investments require approval), establish branch companies, organize their product and supply chain, and contract external service providers. Those in the (a) category also set their own prices for their products; other types are subject to partially or fully centralized prices (Article 30).

- **State-owned enterprises in the (a) category** also have the authority to **import and export directly, establish companies and branches abroad, maintain bank accounts abroad, and invest in other companies** (Article 32).
- State-owned enterprises are still required to build up reserve funds (Article 40). In addition, their finances may only be interfered with "in exceptional cases such as non-compliance with obligations and criminal acts" (Article 43). Conversely, **state subsidies for losses are also granted "only in exceptional cases for one-off situations and may not be of an unlimited duration"**. Companies that permanently fail to meet their debts and obligations will (with defined exceptions) enter insolvency proceedings (Article 41).
- **State enterprise groups, unions, and corporations can be established to exploit synergy effects, achieve strategic goals, and make companies more competitive**. Enterprise unions are companies that produce on the basis of a common infrastructure, such as the existing combines. Corporations are based on the legal form of a public limited company (*Sociedad Anónima*, S.A.). Both forms can form joint companies and groups. They are accountable to the INAE (see below) (Article 48 et seq.).
- All state-owned companies have a **social responsibility** (*responsabilidad social*), which is coordinated in detail in accordance with the respective type of company and should include the following points: Education and training programs for workers, promotion of women, young people and people with disabilities; environmental protection standards, including the use of renewable energy, waste and wastewater management, emissions reduction, adaptation to the consequences of climate change and preservation of biodiversity; respect for consumer rights; as well as the connection with social development programs of the respective community. Corresponding activities are promoted by "fiscal or other means" (Article 58f).

This is how the management will work

- **The direct control of state-owned companies by the Ministry of Economy and Planning (MEP) and other government bodies will be ended**. Instead, the state will act as the owner on behalf of the people through a "**National Institute for State Enterprise Assets**" (*Instituto Nacional de Activos Empresariales Estatales*, INAE), which is to be established and will report to the Council of Ministers (Article 67). Its mission is similar to that of the "State Assets Supervision and Administration Commission" (SASAC) in the People's Republic of China.
- **The management bodies** of the companies are made up of a representative of the owner in the form of a **supervisory board** (*junta de gobierno*) appointed by the INAE and a **board of directors** (*consejo de dirección*). In the case of corporations, there is also an administrative body (Article 62).
- **The supervisory board** has a number of powers, including setting economic objectives, issuing guidelines and instructions to strengthen the company, approving the company's development plan and strategic investments, appointing managers, and setting their salaries (Article 64). In addition, it must guide restructurings and support companies in their implementation (Article 66). The exercise of these

powers must not run counter to the autonomy of the respective company and its legitimate interests (Article 65). In the case of groups of companies, unions, and corporations, the INAE may delegate some of its powers to them (Article 68). **The members of the supervisory board are selected on the basis of criteria such as management, financial, and industry expertise, and rotate periodically** (Article 74). It must also include a workers' representative who is selected by the respective trade union organization. Employees who are members of a supervisory board may not be members of the same company (Article 76). The members of the supervisory board receive a fixed fee. In addition, they may receive additional income at the end of the year via the company's profit distribution, which is taxable (Article 78).

Under the new law, companies are to be given more autonomy and powers (Source: Cubadebate)

- The **board of directors** is the highest management body of the company and is primarily directing its operations. It is chaired by the company director and decisions are taken by simple majority (Article 79). The composition of the board is determined by the company with the "**participation of the most important managers, specialists, and other workers in recognized positions appointed by the trade union organization.**" The representatives of the political and trade union organizations in the company are permanent guests at the board meetings (Article 80).
- The **workers' participation** (*participación de los trabajadores*) in the company's planning, regulation, management, and control processes must be guaranteed by the board of directors and the trade union. Its highest body is the members' and workers' assembly of the trade union organization. The **most important areas of worker participation** are: Increasing revenues and reducing expenses of the enterprise, realizing efficiency gains and saving measures, implementing safety and occupational health measures, improving working conditions and taking care of employees, proposing innovation, and perfecting the enterprise structure. In addition,

worker participation extends to annual corporate planning, reviews of the implementation of trade union meetings, the design of wage systems, internal control structures, and personnel planning. The concrete implementation of worker participation depends on the characteristics of the respective company. The management board must be accountable to the workers and use instruments (such as surveys) to measure the effectiveness of worker participation (Article 80ff.).

Further topics and final provisions

- Companies are encouraged to use **science, technology, and innovation,** and to constantly expand their expertise in this area, for example by establishing research clusters and forming alliances. The state promotes the establishment of high-tech companies through economic and financial incentives and the creation of development funds (Article 90 et seq.).
- Companies may be **subject to external audits and control measures**, each of which must be separated by at least six months. Companies must develop and regularly evaluate internal control schemes in cooperation with employees (Article 100ff.).
- The owner (the INAE in representation of the people) can decide on the **fusion, dissolution, and other organizational measures of a company**. Reasons for liquidation can be: social interest, persistent failure to fulfill social obligations, persistent losses "**which impair the functioning or reduce the assets of the company to an amount less than two thirds of the share capital**", final court decisions, insolvency, merger or demerger, as well as other reasons established by law. Existing obligations to creditors must be fulfilled prior to liquidation (Article 107 et seq.).
- The law will enter into force 90 days after its publication in the Official Gazette. The central government bodies will then have **six months** to amend their regulations accordingly and establish the INAE. All provisions that are still in force after this period and that contravene the law will be deemed null and void. Armed forces companies will also apply the law "in accordance with the characteristics of these organizations".

With the new Enterprise Law, the socialist island is planning to implement its so far most profound reform of the planned economy, which has been discussed for years and repeatedly postponed. Unlike in the past, the existing structures are not to be modified, but instead a completely new organization is to be set up with the Institute for State-owned Enterprise Assets, which will be based on the management of state-owned enterprises in China and Vietnam. Economist Pedro Monreal rightly described the law as "the most important change in the country's economic institutions since 1976". As always, the questions about implementation remain unanswered in advance: which companies will end up in which category, how will pricing be regulated in concrete terms, and how will the planned restructuring of loss-making companies take place?

However, it will probably be some time before the first results are available. The current text is the very first draft. It is therefore unlikely to be passed at the end-of-year parliamentary session on December 20. Instead, the session is likely to mark the start of a public debate on the reform, which has already begun in Cuba.

Further information:

- Background article: **"No fear of the market": Cuba plans far-reaching reform of state-owned companies**
- **Ley de la empresa estatal socialista, Draft as of 26. of September as PDF**

(Cubaheute)