



# OFFICIAL GAZETTE

OF THE REPUBLIC OF CUBA

MINISTRY OF JUSTICE

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## COUNCIL OF STATE

RAUL CASTRO RUZ, President of the Council of State of the Republic of Cuba

I HEREBY MAKE KNOWN TO ALL: That the Council of State has considered the following:

WHEREAS: As part of the process of updating the Cuban economic model it becomes necessary to create the Special Development Zone of Mariel for the aim of promoting the growth of infrastructures and activities that permit increased exports, replacing imports, carrying out high technology projects, generate new sources of employment and contribute to national progress.

WHEREAS: The Constitution of the Republic of Cuba, in its Articles 11 and 15 respectively, establishes that the State should exercise its sovereignty over national territory and endorse the partial or total transmission of goods belonging to the socialist state destined for purposes to uphold the development of the nation and not adversely affect the political, economic and social foundations of the State.

THEREFORE: The Council of State, in exercise of the duties bestowed upon it in Article 90 Section c) of the Constitution of the Republic of Cuba, resolves to pass the following:

## DECREE-LAW NUMBER 313 “ABOUT THE SPECIAL DEVELOPMENT ZONE OF MARIEL”

### CHAPTER 1

#### GENERAL PROVISIONS

ARTICLE 1. – The aim of this Decree-Law is to provide for the creation of the Special Development Zone of Mariel, hereinafter referred to as the Zone, and to regulate its functioning.

The description of the location and course of the Zone appears as appendix to this Decree-Law.

The Council of Ministers provides for the incorporation of other adjacent areas or not, as long as they should contribute to the best fulfillment of the Zone's objectives.

ARTICLE 2. – Provisions given in this Decree-Law will be applied in the Zone, its complementary standards and other legal provisions in force as long as they should not be contrary to provisions in the special provisions.

ARTICLE 3 – The objectives of the Zone are:

- a) to contribute to national development;
- b) to generate exports and promote the replacement of imports;
- c) to favor the transfer of cutting-edge technology and know-how and skills referring to business management;
- d) to attract foreign investment;
- e) to generate new sources of employment and long term financing;
- f) to favor environmental sustainability;
- g) to develop infrastructure necessary to contribute to economic progress;

- h) to create a logistical system that allows for high efficiency levels in importing, exporting and distributing processes;
- i) to stimulate the establishment of national or foreign enterprises; and
- j) to ensure its coordination with the rest of the economy.

ARTICLE 4. - The Zone is governed by the Plan for Territorial and Urban Planning approved by the Council of Ministers ensuring the necessary integration, relationship and compatibility with economic objectives, with the presence in the Zone of human settlements, facilities, natural means and resources, paying attention to social development and preservation and protection for the environment and sites of heritage importance.

The Zone is a location that promotes and protects enterprises, industrial, agricultural, metal-mechanical and tourism projects and all types of activities permitted by Cuban laws that use clean technologies and produce added value goods and services based on knowledge and innovation.

ARTICLE 5. - Investments required to be made in the Zone are executed by national entities or by any type of foreign investment foreseen by law, based on its establishment as concessionary or user.

## CHAPTER II ABOUT THE OFFICE

ARTICLE 6 - The Office of the Special Development Zone of Mariel is created, hereinafter referred to as the Office, to be in charge of administering the Zone, controlling its activities and drawing up and carrying out its Development and Business Plan, on the basis of the approved Plan for Territorial and Urban Planning.

The Office is considered to be a national entity for all purposes foreseen in legislation in force and is assigned to the Council of Ministers, the body approving its structure.

ARTICLE 7 - The Office has the following functions:

- a) To reconcile with agencies, organisms of the Central State Administration and corresponding entities the policies for the development of its guiding activities in the Zone and to propose to the Council of Ministers its Territorial and Urban Planning Program;
- b) to evaluate requests received for setting up concessionaires and users, ensuring that

they correspond to the Development and Business Program as well as its technical, economic, environmental and legal feasibility, depending upon the nature of the proposal, its environmental and social impact;

c) to reconcile requests received for setting up concessionaires and users with the agencies, organisms of the Central State Administration and corresponding entities;

d) to implement necessary books and registries that allow it to fulfill its administrative and control functions, as well as to officially register authorized concessionaires and users in the corresponding Control Ledger;

e) to coordinate the overall development of investments, including analysis of the production chain and to instrument their control;

f) to regularly check that Zone concessionaires and users fulfill the activities and conditions that should be approved for them in their corresponding deeds, as well as the provisions in the Decree-Law, its complementary standards and all other legal provisions in force, in everything that should be pertinent;

g) to structure a one stop shop system that is efficient and efficacious for relationships among the various agencies, organisms of the Central State Administration and entities fulfilling functions associated with the Office for the processing of licenses, permits and authorizations required by concessionaires and users set up in the Zone;

h) to establish a system for promoting and attracting investments to the Zone and executing actions that allow for attaining the various objectives in the least amount of time as possible;

i) to promote investment projects in the infrastructure of the Zone and which are necessary for its good functioning;

j) to look out for the implementation of the results of the Strategic Environmental Evaluation carried out by the Ministry of Science, Technology and the Environment in projects that should be approved for the Zone;

k) to promote the creation of a favorable climate in the Zone based on differentiated attention to quality and diversity of basic common services, as well as educational, cultural and sports activities in the Zone;

- l) to request and contract consultants from organisms and international institutions whenever required;
- m) to carry out systematic control actions within the scope of its competency;
- n) to evaluate and propose to the Council of Ministers, together with the Physical Planning Institute, the incorporation of other adjacent areas or not in the course of the Zone;
- o) to coordinate the carrying out of control actions of various types carried out by the organisms of Central State Administration and entities within the scope of its competency in the Zone and to facilitate their being carried out; and
- p) any other matters that should be indicated to it by this Decree-Law, its Regulation and other legal provisions as long as they should not contravene provisions in the special standards.

ARTICLE 8. – The Office establishes relationships of cooperation and coordination with the bodies of the Central State Administration, national entities and corresponding agencies that in turn facilitate, within their competency, fulfillment of the functioning of the Office.

The relationships referred to in the foregoing paragraph are established in a stable and systematic manner.

### CHAPTER III ABOUT THE PRESENTATION, EVALUATION AND APPROVAL OR REJECTION OF REQUESTS FOR ESTABLISHING CONCESSIONAIRES AND USERS

ARTICLE 9 – The requests are made to the Office by presenting the following documents:

- a) Writs signed by authorized persons, laying down the foundations of the reasons for interest in requesting setting up as concessionaires or users;
- b) the applicant's constitutive documents, copy of financial status reports from the last period and banker's reference;
- c) certification of the Mercantile Registry or equivalent public registry accrediting the validity of the applicant registration, issued no more than six months prior to the presentation of the application;
- d) powers accrediting the representation of the applicant in cases that do so require;

- e) description of the project, including objectives, technology to be used if applicable, activities to be carried out, demands on the infrastructure, human resources and other foreseen services;
- f) the project's technical, financial and economic feasibility study and a study of foreseeable market possibilities;
- g) applications for required licenses, permits and authorizations; and
- h) any other documents considered to be necessary by the Office.

ARTICLE 10 – The Director General of the Office, assisted by a Commission made up of the Central State Administration and entities to be mentioned below, evaluates documents presented and after this process concludes, the foreign investment applications are taken to the Council of Ministers to be authorized by that body, or proceed to approve or reject applications which are to be resolved by it.

The Commission created, called the Commission for Evaluating Establishing Concessionaires and Users in the Special Development Zone of Mariel, hereinafter referred to as the Commission, is permanently made up of representatives of the Ministries of Economy and Planning, Finances and Prices, Labor and Social Security, Science, Technology and the Environment, Justice, Revolutionary Armed Forces, the Interior, Banco Central de Cuba, Institute for Physical Planning and Provincial Administration of Artemisa. The General Director of the Office may decide on incorporating other permanent members to the Commission if it should be necessary. The Commission has a Secretary appointed by the Director General of the Office, who may be replaced whenever and if it should be so required for any reason.

The heads of Central State Administration bodies, agencies and entities members of the Commission communicate the appointment of their representative to the Director General of the Office.

Representatives of other agencies, bodies of the Central State Administration and entities may also participate as guests at the evaluation process, upon proposal by the Director General of the Office, pursuant to the application that should be being analyzed.

ARTICLE 11 – Authorization to effectuate foreign investments in the Zone is granted by

the Council of Ministers or by the Director General of the Office, as the case may be.

It is the exclusive power of the Council of Ministers to authorize foreign investment whenever it should be destined for the following activities or cases:

- a) exploration of a natural or non-renewable resource;
- b) exploitation of natural resources;
- c) whenever it should be associated with the use of renewable sources of energy;
- d) investments involving transmission of state property or other real rights over state goods;
- e) investments that should be made in order to provide public services such as transportation, communications, aqueducts, electricity or to construct and exploit public works;
- f) real estate development;
- g) whenever it should involve totally foreign capital enterprises;
- h) whenever a foreign enterprise should be involved with the participation of foreign State capital; and
- i) whenever they should be destined for the health, education and armed forces sectors management systems.

ARTICLE 12 – It corresponds to the duty of the Director General of the Office to authorize foreign investments not mentioned in the foregoing article, as well as for any other applications that should be presented.

ARTICLE 13 – The Council of Ministers, within a timeframe of up to thirty (30) calendar days, calculated from the date on which the proposal by the Director General of the Office has been received, passes the Agreement authorizing or refusing applications in the cases falling under its authority.

ARTICLE 14 – The Director General of the Office, within a timeframe of up to ten (10) calendar days, calculated from the conclusion of the evaluation process, passes the resolution that authorizes or refuses applications in the cases that fall under his authority.

ARTICLE 15 – Whenever national financial institutions operating under License from the Banco Central de Cuba are involved, authorization for their establishing as users is granted, via Resolution, its Minister-President, within a timeframe of up to ten (10) calendar days, calculated from the

date on which the proposal is received from the Director General of the Office.

ARTICLE 16 – The types of foreign investments, enterprises and entities having totally Cuban capital that are found located in the Zone and are interested in establishing themselves in the Zone as concessionaires or users, should fulfill the foreseen terms in this Chapter for presentation, evaluation and approval of their corresponding applications.

#### CHAPTER IV

##### **ABOUT ADMINISTRATIVE CONCESSION**

ARTICLE 17. – Foreign natural or juridical persons with legal domiciles abroad and foreign capital and national juridical persons may be authorized to be established as concessionaires.

ARTICLE 18. – Administrative concession is granted by the Council of Ministers.

ARTICLE 19. – For purposes of regulations in this Decree-Law, concession is the authorizing ownership by which certain persons are temporarily granted management of a public service, carrying out public works or exploiting a public domain property. The authorization document must have the following information:

- a) identification of the concessionary;
- b) location and limits of the zone being authorized;
- c) object of the concession;
- d) rights and duties of the concessionary;
- e) investments program;
- f) conditions to be fulfilled in the exercise of the activity;
- g) term for which the concession is being granted; and
- h) any others that may be specifically required.

ARTICLE 20. – The concession may be granted for a term of up to fifty (50) years and extended by the same authority that granted it for a term lesser or similar to the one initially granted. Application for extension must be presented by the concessionary for its evaluation by the competent authority at least six (6) months prior to the expiration of the initially granted term.

ARTICLE 21. – Administrative concession is extinguished upon expiration of the term for which it was granted, by mutual accord, by the concessionary renunciation after acceptance by the competent authority, by recall or by nullity.

ARTICLE 22. – The following are causes for recall of the concession:

- a) Death or incapacity of a concessionary when it should be a natural person;
- b) extinction of the concessionary juridical personality;
- c) state of insolvency of the concessionary;
- d) noncompliance by the concessionary of his/her essential obligations, unless it could be demonstrated that this is due to a chance occurrence or case of Force Majeure;
- e) salvaging the concession when it should be decided that the activity continues under State direction;
- f) reasons of public law and order or national security;
- g) reasons of social interest or public utility; and
- h) any other cause that expressly should be foreseen within the framework of concession planning and in the act of concession.

#### CHAPTER V

##### **ABOUT AUTHORIZATION TO USERS**

ARTICLE 23. – Foreign natural or juridical persons domiciled abroad and with foreign capital may be authorized as users, as well as national juridical persons and natural persons with residency in national territory, those who in the exercise of granted authorization should execute activities that are productive, commercial or service-oriented.

ARTICLE 24. – The Council of Ministers may delegate the Director General of the Office with the power to approve foreign investments whenever this involves establishing users in the cases of projects making up the Business Opportunities Portfolio of the country and which have made a pre-feasibility study approved by the competent Cuban authority.

ARTICLE 25. – The authorization document to undertake and develop activities as users in the Zone must have the following information:

- a) user identification;
- b) corporate purpose and other incorporation information in the cases of juridical persons;
- c) authorization object;
- d) conditions to be fulfilled in the exercise of the activity;
- e) investments program;
- f) term for which the authorization is granted; and

g) any others that should be specifically required.

ARTICLE 26. – The competent authority to modify authorization is the same one which granted it. Admission, evaluation and authorization or denial is governed by provisions for approval procedures and terms foreseen in the Regulations in this Decree-Law.

ARTICLE 27. –The following are causes for recall of authorization:

- a) Death or incapacity of a user when it should be a natural person;
- b) extinction of the user juridical personality;
- c) state of insolvency of the user;
- d) noncompliance by the user of his essential obligations, unless it could be demonstrated that this is due to a chance occurrence or case of Force Majeure;
- e) reasons of public law and order or national security;
- f) reasons of social interest or public utility; and
- g) any other cause that expressly should be foreseen in the resolution of the authorization.

#### CHAPTER VI

##### **ABOUT THE SPECIAL REGIME**

###### FIRST SECTION

###### **Scope of the Special Regime**

ARTICLE 28. – A special regime made up of the different regimes foreseen in this Chapter is applied to concessionaires and users in the Zone; this regime begins when the concession is registered or authorization is granted in the Book provided by the Office for administrative control, depending on the case.

###### SECOND SECTION

###### **Special Customs Treatment**

ARTICLE 29. –General Customs of the Republic establishes a special procedure for the concessionaires and users of the Zone, with the aim of simplifying procedures and terms for registration, requests and the granting of customs regimes and which include the use of information technologies, so that incentive is provided for establishing same in the Zone

ARTICLE 30. – General Customs of the Republic determines control, formalities and terms that must be fulfilled for entry, storage and exit of merchandise and international transportation means.

## THIRD SECTION

**Special Labor Regime**

ARTICLE 31. – Employees working in the Zone must, as a general rule, be permanent residents in Cuba, whether they are Cubans or foreigners.

Hiring Cuban or foreign employees, permanent residents in Cuba, who provide their services to the concessionaires and users of the Zone, is effectuated by the Cuban entity designated for such purposes, by virtue of the contract signed for that purpose.

ARTICLE 32. – Concessionaires and users may directly hire foreign natural permanent non-residents for executive positions or for certain technical jobs, after approval by the competent authority.

Persons referred to in the foregoing paragraph may stay and work in the country, fulfilling all migratory, taxation and labor provisions in force.

ARTICLE 33. – Concessionaires and users in the Zone must fulfill established terms in labor and social security matters in the country.

## FOURTH SECTION

**Special Control Regime**

ARTICLE 34. – Concessionaires and users of the Zone are subject to a special control regime directed to looking after compliance with conditions established in the concession or authorizations, as the case may be, as well as of the legal provisions applied in the Zone.

## FIFTH SECTION

**Special Regime for Infractions and Measures to be Applied**

ARTICLE 35. – A special regime for infractions and measures is to be applied to concessionaires and users of the Zone, in accordance with stipulations foreseen in the Regulation of this Decree-Law.

## SIXTH SECTION

**Special Regime for Migratory Control and Domestic Law and Order**

ARTICLE 36. – The migratory and domestic law and order regime of the Zone is established according to the regulations that are issued for this purpose by the Ministry of the Interior.

## SEVENTH SECTION

**About the Special Tax Regime**

ARTICLE 37. – Concessionaires and users have a special tax regime, according to stipulations established in the Regulation of

this Decree-Law that stimulates participation and favors development of the Zone to benefit the country's progress, as well as encouraging the use of environmental technologies associated with activities that are undertaken there.

## EIGHTH SECTION

**About the Special Insurance Regime**

ARTICLE 38. – Concessionaires and users must make insurance policies for all types of goods and responsibilities.

ARTICLE 39. – Cuban Insurance Companies, under world-scale competitive conditions, shall have the right of first choice. Should this not be possible, the Insurance Superintendent Department authorizes insurance with foreign entities. Regulations for granting authorization to matters in this article are issued by the Ministry of Finances and Prices.

## NINTH SECTION

**About the Special Monetary and Banking Regime**

ARTICLE 40. – Transactions made by concessionaires and users amongst each other shall be effectuated in Convertible Pesos or in freely-convertible currency that they agree to or in Cuban pesos, only in cases foreseen in legislation in force in the country.

The monetary regime in force in the country will be applicable to transactions by concessionaires and users with those subject to the domestic economy.

ARTICLE 41. - Concessionaires and users open accounts in the banking institutions of their choice established in the Zone; through these banks they effectuate billing and payment operations related to their operations.

ARTICLE 42. – Foreign investors, whether they are concessionaires or users, once established in the Zone, have the right to free disposal of their funds and to transfer them abroad, in freely convertible currency, through the National Banking System, without paying any taxes or other fees related to said transfers, net profits or dividends they should receive from their activities, as well as repatriating invested capital.

Foreign citizens providing their services in the Zone, as long as they are not permanent residents in Cuba, may transfer abroad the salaries they earn, in the proportion and in accordance with

regulations established by the Banco Central de Cuba.

ARTICLE 43. – Users authorized to establish themselves in the Zone in order to provide financial intermediation services effectuate their activity after obtaining a License from the Banco Central de Cuba in which the scope and the type of operations they may make are set as well as any other provisions to which they must abide in the exercise of providing the service, under the supervision and regulation of the Banco Central de Cuba.

#### CHAPTER VII

##### ABOUT THE DEVELOPMENT FUND OF THE ZONE

ARTICLE 44. – Concessionaires and users established in the Zone contribute to the formation of a fund for maintenance of the Office and for maintaining the common areas of the Zone, with a percentage of their incomes and without any set fees, in accordance with what is established for that purpose by the Minister of Finances and Prices. The aforementioned fund is administered by the Office.

#### CHAPTER VIII

##### ABOUT THE REGIME FOR RESOLVING DISAGREEMENTS

ARTICLE 45. – Conflicts having an economic nature that should arise in relations between users and concessionaires, or between these and the domestic economy entities are heard and resolved by competent peoples' courts, notwithstanding the right attending the Parties to resolve such matters in a negotiated manner, or by any other alternative means foreseen and agreed to in the corresponding contracts, including submitting the matter to the Cuban Court for International Commercial Arbitration.

ARTICLE 46. – Conflicts of an administrative nature between users and concessionaires or domestic economy entities are resolved by the Director General of the Office. Against decision adopted, the administrative suit takes place within the timeframe of thirty (30) business days, calculated after the day following notification of the Resolution, before the corresponding chamber of the Peoples' Provincial Court of Artemisa.

##### SPECIAL PROVISION

ONLY ONE: On the basis of the responsibility assigned to the Office for

conducting the Development and Business Program of the Zone, the agencies, bodies of the Central State Administration and institutions involved in the granting of licenses, permits or authorizations for juridical or natural persons, whether for the carrying out of domain transfer actions, constructive actions, rehabilitative, division, enlarging or re-modeling actions for homes, for delivery of idle land and others of similar nature, the favorable opinion of the Office needs to be obtained prior to authorizing the procedure required.

##### FINAL PROVISIONS

FIRST: The Council of Ministers passes the regulation of this Decree-Law.

SECOND: The Director General of the Office passes the Regulation of the Commission for the Evaluation for Establishing Concessionaires and Users in the Special Development Zone of Mariel.

THIRD: The Director General of the Office, within a timeframe of thirty (30) days calculated from the entry into validity of this Decree-Law, presents to the Council of Ministers for their approval, the proposal for Organic Regulation of the Office.

FOURTH: The heads of agencies, bodies of the Central State Administration and corresponding entities are empowered to pass within the framework of their competencies the legal provisions that should be necessary for application of this Decree-Law.

FIFTH: Decree No. 224 of the Administrative Concession for Promoting and Exploiting the Free-Zone of Mariel of October 31 of 1997 is repealed, along with any and all legal and regulatory provisions that should be counter to this Decree-Law.

SIXTH: This Decree-Law enters into validity on November 1<sup>st</sup> of 2013.

TO BE PUBLISHED in the Official Gazette of the Republic of Cuba.

GIVEN in the Palacio de la Revolución in Havana, on September 19 of 2013.

**Raúl Castro Ruz**

President of the Council of State

##### ONLY ONE APPENDIX

The Zone location takes in 465.4 square kilometers and its course is:

From Point A of coordinates (X=338.670, Y=358.530) a southerly course is taken on the eastern shore of the Baracoa River,

advancing forward to the dike of the dam of the same name, to Point B of coordinates (X=338.957, Y=355.343). Continuing along the eastern side of the Baracoa Reservoir until the river is reached again, the location of Point C of coordinates (X=338.300, Y=353.754). From this point taking a southerly direction to the Havana-Pinar del Rio Highway Point D of coordinates (X=338.865, Y= 353.214). Turning towards the south-west along the south side of the highway for one kilometer, Point E of coordinates (X=337.985, Y=352.757). At that point turning south-southeast taking a farm road to Point F of coordinates (X=339.213, Y=351.816). From this point, heading south-west along a farm road to point G of coordinates (X=337.230, Y=350.139). Turning to the south to Point H of coordinates (X=337.263, Y=349.938), continuing along the road to the intersection with the El Salado highway to Point I of coordinates (X=335.849, Y=348.942). Continuing along the El Salado highway towards the south until the road meets an unimproved embankment at Point J of coordinates (X=335.898, Y=348.668). From this point, continuing along the unimproved embankment westward, on the edge of the Sierras de Anafe and Esperón cliffs to Point K of coordinates (X=326.490, Y=347.374). From this point continuing north along the Guanajay-Noroña highway to where it meets the Havana-Pinar del Rio Highway at Point L of coordinates (X=325.598, Y=348.467). Turning toward the south-west, taking the north side of the edge of the protecting strip of the Highway to Point M of coordinates (X=309.594, Y=337.811). At that point, turning northwest at the western edge of the town of Cayajabos until meeting the Old Cayajabos-Cabaña Highway at Point N of coordinates (X=307.057, Y=340.545) continuing along the western edge of the San Francisco Reservoir to Point O of coordinates (X=305.839, Y=345.503). From that point rejoin the Old Cayajabos-Cabaña Highway heading northwest to the town of El Martillo, Point P of coordinates (X=304.816, Y=348.045). Turn westward and advance along the south side of an existing farm road to Victoria, Point Q of coordinates (X=302.016, Y=347.876). Turning northward and advancing along the west side of a farm road until meeting the Cabaña-Bahia Hondo Highway, Point R of coordinates (X=301.944,

Y=350.352). From this point advancing along the south side of the aforementioned highway to San Agustin, Point S of coordinates (X=294.085, Y=346.061). Turning northward and advancing along the western side of the San Agustin-Pablo de la Torriente Brau Highway, Point T of coordinates (X=291.792, Y=349.165). Continuing along the edge of the surveyed limits of the aforementioned town to Point U of coordinates (X=291.848, Y=349.985). Turning towards the northeast and advancing along the western side of the Pablo de la Torriente Brau-Fria Highway reaching the town of Fria, Point V of coordinates (X=292.282, Y=353.817). Turning eastward following the coastline until reaching Point A, the starting point.