



USAID | **I-TRADE**
FROM THE AMERICAN PEOPLE

A SERIES OF “HOW TO”, RELATED TO INVESTMENT PROCEDURES DEVELOPED – (D)

**INVESTMENT-TRADE & ASSOCIATION DEVELOPMENT
(I-TRADE) PROJECT**

**RESULT 3 – REDUCING ADMINISTRATIVE OBSTACLES TO DOING
BUSINESS**

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Introduction

Burdensome administrative processes are at the core of Haiti's difficulty in promoting investment. Simplified procedures and greater transparency will lead to an increase in trade and investment in Haiti. With USAID support and a government decree, the IFC was created in 2006 with a mandate to help facilitate the administrative processes required for investors. Progress has been made but much remains to be done and, from the actualization of CFI's Work Plan to its support in the establishment of a presence in various cities outside Port-au-Prince, I-TRADE is currently discussing about 10 major support themes with the institution, expectedly for implementation during a period of 12 months starting March 2009.

The Haitian legal and regulatory framework for business registration remains complex and confusing. To improve the knowledge and transparency of the process, pending further administrative or legislative changes, I-TRADE has reviewed in detail various portions of the investment process so as to make it easier for investors to approach the question. Doing so informs both our process as we move forward, and potential investors as they consider the burden that will be involved in establishing their business.

More precisely, I-TRADE is providing assistance to CFI in writing a series of "How-to"s that are specifically focused on procedures that a foreign or domestic investor must go through to start up or expand a business in Haiti, to take advantage of the fiscal benefits under the Investment Code, or even to close a business. The mere ability to know what the process is can save investors time and money before the process is adjusted or streamlined.

The following "How-To"s: 1) *How to Start a Business in Haiti*; and 2) *How to Obtain Investment Guarantees and Incentives in Haiti* are the first in a series of several of guides. Such guides will be distributed through the IFC to potential investors throughout the country and on the Internet to help inform potential business owners, also giving small business owners in the informal sector a tool to move towards registration.

It should be noted that such guides will not be considered as completed before they have been reviewed / approved by CFI staff and MCI's *Direction des Affaires Juridiques* and at least two board members, to provide for additional content, corrections and/or inputs. Once this process is completed, we will refer to our legal advisor for final clearance.

I - How to Start a Business in Haiti

Introduction

Starting and managing a business takes motivation, desire and talent. It also takes research and planning especially if you do not currently operate a business in Haiti or elsewhere in the world. CFI is dedicated to assisting domestic and foreign entrepreneurs wishing to invest in business in Haiti. Like a chess game, success in any business starts with decisive and correct opening moves. And, although initial mistakes are not always fatal, it takes skill, discipline and hard work to regain the advantage. Especially for domestic investors without previous business experience, CFI will be encouraging them to participate in special courses offered by a number of organizations in Haiti prior to providing additional facilitation during the investment planning and the application for incentives.

Foreign Investors will be confronted by historical, cultural, legal, linguistic and other differences between Haiti and their country of origin. The CFI is committed to working with all investors, foreign and domestic, large and small and assist in every way possible. The facilitation offered may vary widely based on the type and previous experience of the Investor or potential Investor. CFI has developed a general strategy where it welcomes all Investors or potential Investors with various levels of experience, large or small, domestic or foreign. All individuals should be advised:

- Investors or potential Investors should be made aware of the limitations of CFI facilitation and specifically that CFI does not offer financial support, loans, capital or any other form of co-investment.
- The CFI facilitation simply means to give an Investor or potential Investor additional knowledge and skills that he/she may find useful to their potential investment in Haiti.
- Investors or potential Investors should also be made aware that they will require the assistance of professional such as lawyers, auditors and other specialists and provide them with a list of such professionals who have registered with CFI.
- Investors or potential Investors should be evaluated and directed to the best combination of services available through CFI.
- Small domestic Investors or potential Investors with little or no business experience and/or inadequate education should be directed to CFI approved training courses to assist such potential entrepreneurs.
- Foreign Investors or potential Investors should be reminded that Haiti has a distinct governmental, legal and judicial history but has a history of welcoming investors and is open for FDI and offers guarantees including:
 - Full and unconditional national treatment.
 - Haiti has no “negative list” and foreigners as well as Haitian nationals may invest in any sector or industry.
 - Haiti has no threshold requirements or ceiling limitations on foreign ownership.
 - Full protection of assets from seizure, nationalization or other appropriation by government.
 - The rights to repatriation of profits, dividends, and sales of assets.
 - Legal exemption to investors from taxation on reimbursement of debts incurred abroad.
 - Legal right to transfer dividends and other revenues.
 - Foreign investors have the right to own or lease property.

What Products & Services can CFI provide?

CFI can provide advice and facilitation on a range of products including:

- Receive investors, potential investors and entrepreneurs and provide them with essential legal, economic and regulatory information fundamental to the proposed investment;
- Receive applications from investors or their professional advisors regarding company formation, intellectual property matters, applications for investment incentives, free zone applications;
- Facilitate all processes with the appropriate public sector agencies and administrative entities, assuring prompt action and consideration and constant communications with the investors;
- Provide advice to the investors and entrepreneurs on all matters related to potential investments, including;
 - Choice of potential plant/business location;
 - Location and lease of production facilities;
 - Selection of professional advisors;
 - Assistance and advice for expatriate staff;
 - Contacts with public utilities;
 - Export transport facilities;
 - Customs.
- Implement studies and activities designed to improve and modernize the legal and regulatory framework for business;
- Simplify administrative processes and procedures related to business and investment;
- Develop and maintain a detailed data base of information on economic information, products and commercial opportunities available to domestic and international investors and entrepreneur

For Clarity - What Does CFI NOT do?

CFI is an Agency designed to assist and facilitate. For absolute clarity, the CFI does **NOT**:

- Replace the independent legal and business advice that can only be provided by qualified professionals in each field. CFI will gladly provide a list of qualified professionals in each relevant field.
- Provide grants, loans, guarantees or other funding of any type;
- Directly provide incentives, exemptions or waivers of any type;
- Grant licenses, permits or waivers;
- Anything beyond those services specifically provided in the **Investment Code (2002)**

How do CFI Facilitation Services get paid?

The facilitation services of the CFI do not have direct costs at this time and are provided by the Government of Haiti in recognition of the contribution by Investors and successful businesses to the economy of the country and the creation of employment opportunities. All fees and expenses specified in other laws and regulations for the incorporation of companies, registration of trademarks and any and all other services required to be paid shall be paid directly by the investors.

Getting Started

The potential investor and entrepreneurs will immediately face several issues in establishing the investment vehicle:

- Choice of business structure, formally registering the enterprise, and securing the necessary permits and licenses to open the doors to trade.
- The investor will need to hire employees, acquire or rent property, and respond to fiscal requirements;
- In some cases, construct buildings, use subcontractors, and;
- Deal with the Port Authority and Customs for importation and exportation.
- Decide on basic business organization issues.

Forms of Business Organization

The organization of the business vehicle is highly technical and requires the professional assistance of lawyers and auditors. The CFI and the government of Haiti is committed to improving and speeding up the experience in incorporating a business through the creation of a One-Stop-Shop and providing full facilitation services. The following brief description is to assist investors and entrepreneurs to prepare for the meeting with legal and audit professionals and is NOT intended to replace their advice.

Commercial, for-profit firms are generally divided into:

- Companies based on physical persons with full liability for the business' debts (*sociétés de personnes*), and;
- Companies based on the investments made in them (*sociétés de capitaux*).

There are a number of different formats and benefits and risks differ widely. Only a Haitian professional can provide advise on which format is most appropriate. The following is a quick outline of some of the steps that will need to be taken for each format:

1. The proprietorship

Description of procedures

The sole trader must register with the Ministry of Commerce and Industry and with the Tax Bureau (Direction Générale des Impôts – DGI). The first steps are taken at the DGI and are as follows:

1. Provide evidence of a physical location for the activity.
2. Obtain the tax registration card.
3. Pay the *patente*, a business tax specific to the kind of activity to be undertaken.
4. Pay a fee for the Professional Identity Card.
5. Receive the certificate of payment of the business tax.

These activities can be all completed in less than a day at the DGI. The next steps are taken at the Ministry of Commerce:

6. Deliver the certificates and receipts from the DGI.
7. Accompany inspectors to the site of the activity.
8. Receive the Professional Identity Card (Trader's License) based upon a favorable report from the inspectors.
9. After receipt of the License, the trader, if he wishes, may submit a request for name reservation.

According to the Ministry, the whole process is usually complete within two weeks if everything is in order, and the reason for the time required is principally the scheduling of the inspection.

2. Partnerships

Because the procedures are virtually identical for both general and limited partnerships, only one description and commentary will be provided.

Description of procedures

The first procedures are undertaken by the partners or their representatives and include:

1. Reservation of the commercial name.
2. Drafting of statutes (use of attorney or notary is optional).
3. Purchase of tax stamps.
4. Payment of administrative tax for handling the request.
5. Delivery of statutes in two copies to the Ministry of Commerce.

The next steps are undertaken internally at the Ministry:

6. Analysis of the request at the Legal Department of the Ministry.
7. Entry of the firm in the Register of General Partnerships.
8. Communication to the partners within two days of the details of the registration.

Following these procedures, the partnership is required within 15 days to publish its statutes in any recognized newspaper. After publication, the partnership must effect its matriculation with the DGI and pay for the business license.

3. The Corporation (Société Anonyme)

Description of procedures

The first set of procedures lead to official recognition of the corporation. Although the corporation is registered at the Ministry of Commerce and may open a bank account after step 6, its existence only becomes official after the publication is complete in step 9. Even at this point, however, it cannot begin to do business until it has completed, at a minimum, steps 10 through 13.

1. Name reservation
2. Deposit of initial capital
3. Notarization of articles of association (which must be drafted by an attorney)
4. Delivery of acts to the Ministry of Commerce and Industry (MCI)
5. Internal review of the project by the Legal Department of the MCI

6. Delivery of the *autorisation de fonctionnement* to the investor (this allows the investor to open a bank account in the name of the corporation)
7. Transfer of the dossier from the Ministry of Commerce to the Prime Minister's Office
8. Transfer of the dossier from the Prime Minister's Office to the Office of the President
9. Transfer of the dossier to the official gazette (*Le Moniteur*) for publication

The following necessary steps can only take place after publication in the gazette:

10. Application for the Business License (*carte d'identité professionnelle*) at the Tax Office
11. Registry for a sales tax number (*taxe sur chiffres d'affaires*)
12. Purchase and legalization of accounting books
13. Notification to the Labor Ministry
14. Registration for Social Security (OFATMA) – optional step
15. Registration for retirement insurance (ONA) – optional step

How Long Will the Process Take?

CFI is committed to assist to make this process smooth and easy and to have it completed quickly, efficiently and at reasonable cost. There is a wide difference between professionals in terms of their focus and dedication and workload. CFI can assist you in reviewing the experience different professional firms have and how quickly, or slowly they have been able to complete similar transactions. If things are not moving quickly enough for your needs, talk to us.

Privacy Policy

The CFI does not disclose any non-public, personal information about investors or entrepreneurs, their customers or potential clients or potential customers to anyone, except as specifically authorized by the client or as required to public agencies or ministries to achieve the objectives being facilitated for and on behalf of the investors or entrepreneurs.

Contact Us

The CFI aims to solve any problems promptly. If you have a concern or a complaint about our services, or the conduct of one of our staff, you should contact CFI management immediately. CFI will resolve the issue promptly, and communicate the findings to you within 10 working days. Please address all complaints in writing to:

The Director General, CFI
8, Rue Legitime, Champ de mars,
Port-au-Prince, Haiti
or at: cfihaiti@gmail.com

If your complaint is not dealt with appropriately by the CFI, you may complain in writing to:

The Minister of Commerce;
8, Rue Legitime, Champ de mars,
Port-au-Prince, Haiti

II - How to Obtain Investment Guarantees and Incentives in Haiti

Introduction

Haiti aspires to become a favorable center for international and domestic investment. Following several decades of political instability and economic decline, stability has returned and opportunities abound. Haiti has established generous incentives to attract foreign and domestic investors and is in the process of streamlining government bureaucracy and the creation of an excellent business environment. The key to Haiti's approach is recognizing that its population needs employment and that poverty can only be addressed by economic growth and that, as such Haitians living in Haiti and overseas, should be encouraged to invest in the country. For non-Haitian investors absolute national treatment is guaranteed and the same generous incentives offered. Haiti has established a specialized agency, the Investment Facilitation Center (CFI) to assist all domestic and foreign investors in obtaining expeditious project approval. Haiti has a young and hard working work force, anxious to learn and dedicated to quality. Haiti also has a skilled professional community of accountants, lawyers, international bankers, trustees, and investment specialists. Investment incentives may be granted to a newly established or existing company belonging to either a Haitian or foreign investors.

Rights and Guarantees for Investors

The Haitian Investment Code has General Guarantees in accordance with international best practice, including:

National Treatment of Investors. Under the Haitian Investment Code in Article 6 and, specifically Article 11 makes it clear that all foreign and domestic investments will be treated absolutely equally.

Government Protection of Investment. Article 13 of the Haitian Investment Code Protection of assets from seizure, nationalization or other appropriation by government.

Capital Transfers. Article 12 of the Investment exempts investors from taxation on reimbursement of debts incurred abroad. Similarly, Article 17 guarantees the right to transfer of dividends and other revenues.

Land Title and related issues. Article 11 gives foreign investors the right to own property, including the right to lease property.

Guidelines for export and import. There are no restrictions on exports or imports under the general guidelines in the Investment Code, specifically Article 7 (e).

Corporate Governance, Accounting Standards and Audits. Under the Investment Code, Articles 63 and 65 apply to investments benefiting from incentives and requires the company to maintain books according to Haitian accounting standards.

Intellectual Property Rights. The Investment Code in Article 14 offers a statement guaranteeing intellectual property rights.

Capital Transfers. The Investment Code, Article 12, exempts investors from taxation on reimbursement of debts incurred abroad. Similarly, Article 17 guarantees the right to transfer of dividends and other revenues.

Intellectual Property Rights. Such guarantees of intellectual property have become increasingly important to all investors, but primarily to foreign industrial investors. The Investment Code in Article 14 offers a

statement of protection but a casual examination of Haitian markets and stores demonstrates that such protection is not adequately enforced.

Incentives for Investors

CFI will assist and facilitate every aspect of the Investor or Entrepreneurs application for the granting of investment incentives. In planning your investment the following should be taken into consideration:

Criteria for Entitlement to Investment Incentives:

A Investor or Entrepreneur, to qualify for tax incentives, has to meet *one* of the following criteria:

- Invest in the intensive and efficient exploitation of available local resources;
- The creation of new jobs and improvement of the professional qualification level of Haitians;
- Introduce or extend new technology more appropriate to local conditions;
- Creation and/or intensification of backward or forward linkages in the industrial supply chain;
- Export-oriented production;
- Utilization of local inputs at a rate equal or superior to 35% of the production costs;
- Preparation, modification, assembly or finishing of products imported in bulk, or loose parts, provided that the final products will be re-exported.

The Incentive Packages Available:

Investments that fit one or more of the criteria described above, the Government of Haiti provides two types of incentives: customs duty incentives and income tax incentives.

Customs Duty Incentives:

Incentives vary according to whether the production of the beneficiary is intended for the domestic market or for export. These benefits will be explained fully by CFI and discussed in detail with the technical Ministries involved

Domestic Market-Oriented Activity:

Any firm producing for the local market and duly qualified is entitled to:

- Full exemption, phased over the life of the firm, on import of capital equipments;
- 10 years of total exemption on import of raw materials, and materials needed for packaging.

Export-Oriented Activity:

Qualified export-oriented firms are during their whole life exempt from:

- Duties on import of materials, equipments, and accessories needed in the process of production;
- The Consular Fee;
- The *Taxe sur le Chiffre d'Affaires* (T.C.A.), and other internal duties but not storage charges and handling fees.

Income Tax Incentives:

In addition to custom privileges, eligible investors and entrepreneurs may benefit from income tax exemption according to a maturity schedule which varies with their location. The Investment Code (2002) identifies seven types of investments eligible for incentives based on the sector within which they plan to work. The sectors specified are as follows:

- Enterprises focused entirely on export of re-export of products;
- The agricultural sector;
- Artisanal sector;
- National industrial sector;
- Tourism and associated services sector;
- Enterprises in Free Zones;
- In other sectors and subject to special regimes “may” qualify for incentives.

Indicative Incentives in the Investment Code:

A distinction needs to be made between those incentives available for the “priority” sectors identified above based on the Investment Code and those incentives available to individual, specific activities based on the specific locations and sectors within which the investment is planned. That problem is made more acute by the inclusion of the final provision extending the “priority sectors” to other areas which “may” qualify for priority status treatment. That introduces a level of uncertainty and discretion that will upset potential investors, creates uncertainty and facilitates influence peddling by the well connected and generally facilitate fraud and corruption.

The specific incentives for priority sector transactions applicable to all are:

- The possibility for investors to put in place and benefit from developing and building their own infrastructure. (construction, installations and equipment)
- Dispensation of the fee for the Foreigners License for foreign employees and the issuance of free Work Permits.
- Dispensation of the legal provision for a Health Certificate through an internal health program approved by the Ministry of Public Health and Population.
- The exoneration of user fees and payments made to obtain foreign technology and the on payments of foreign technical staff delivering less than 6 months of services;
- Total exoneration of Income Taxes for a period not to exceed 15 years and:
 - Progressively increasing taxes on the following 5 years;
 - Total tax liability thereafter;
 - The possibility for extension in case the period of exoneration is interrupted.

Accelerated depreciation;

Municipal tax exemptions except the fixed business license fees.

Exemption from the proportional portion of the business license fees for a period not to exceed 15 years;

The possibility for enterprises benefitting from these incentives to benefit from:

- The exoneration of fiscal and customs charges on the importation of equipment;
- Dispensation of deposits of guarantee for temporary imports.

Additional and specific incentives are available to enterprises in specific priority sectors.

Administrative Procedures to Obtain the Investment Incentives

The formalities for obtaining such privileges might be divided in three stages:

First Stage:

The applicant must submit a formal request to the CFI/Ministry of Commerce and Industry with documents (five copies) regarding:

- The nature and the form of the company; location; bylaws, constitution, power of the signer(s), and bank references;
- The list and origin of raw materials including technology choices;
- Working patents and granting justification; the norms and specifications to be followed; provisions for quality control; energy sources to be used;
- Detailed list of equipment and materials for production, handling, transport and maintenance that will be used, their origin and comparative costs;
- A comprehensive five year business plan.

Upon receipt of that request by CFI/ the Ministry of Commerce and Industry will issue a deposit certificate in favor of the applicant.

Second Stage:

The request is transmitted by the CFI to the Inter-Ministerial Investment Commission for review and is at the same time forwarded to the appropriate technical institutions and Ministries involved in the individual case.

Third Stage:

The Inter-Ministerial Investment Commission will make the relevant decision and the CFI notifies the applicant of its decision typically within 30-90 days. The decision is then published in the Government's official gazette; *Le Moniteur* as well as two highly circulated newspapers in Port-au-Prince.

Other Investment Incentives

The inducements outlined above are of general application within the ambit of the Investment Code (2002). In addition, there are other incentives available to specific activities and sectors. CFI and the technical institutions and Ministries will be pleased to discuss this with potential investors or entrepreneurs. Benefits are also available under the **Free Zone Act** and the **Industrial Park Act**. Each investor and entrepreneur should fully explore potential incentives and apply for those applicable for their specific circumstance and offering the most attractive incentive package.

A Country Open to Foreigners:

In order to operate a commercial enterprise Haiti, foreigners need four basic documents:

Residence Visa: an applicant presents his/her request in person or by mail to a Haitian diplomatic or consular mission abroad which transmits it to the Ministry of Interior via the Ministry of Foreign Affairs in Port-au-Prince, Haiti. The applicant will be notified of acceptance or denial of his/her request within two or three months. If the applicant is introducing his/her request in Haiti, he/she must contact directly the Ministry of Interior;

Work Permit: issued by the Ministry of Social Works following submission by the applicant of his/her passport, residence visa, job offer and a receipt from the Tax Office (*Direction Générale des Impôts*);

License: from the Tax Office (*Direction Générale des Impôts*);

Registration Certificate: from the Ministry of Commerce and Industry.

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or at: cfihaiti@gmail.com

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