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**9 November 2016 (updated 10 November 2016)**

**Legislative Pathway For Cuba Was Deceased At 3:00 AM**

**It's Now All About 2/24/18**

**Advocacy Groups Will Become Tour Guides To Remain Solvent**

**Does The Government Of Cuba Bear Responsibility?**

**OFAC & BIS Licenses Will Take Longer; Be More Focused**

**Takeaway....**

**The Trump Administration will increase conditionality upon the United States-Republic of Cuba relationship, specifically relating to commercial engagement; its focus will be upon 2/24/18 when President Raul Castro retires and “*Post-Castro Cuba*” begins.**

**Unlikely will Obama Administration regulations be reversed. Advocacy groups will struggle for relevance. Legislative initiatives are dead.**

**Reaction by the government of the Republic of Cuba: Do not expect an express-lane-like opening to United States-based companies during the next seventy-two (72) days; reasonable to believe that the government of the Republic of Cuba will be defiant in expectation of increased conditionality by a Trump Administration.**

**The government of the Republic of Cuba is hostage to the Obama Administration initiatives.... The issue for the Republic of Cuba will be, for the next months, uncertainty caused by not knowing precisely what the Trump Administration will do... or could do... or may consider doing or may threaten to do... It all can create an atmosphere where companies in other countries may become cautious....**

**The government of the Republic of Cuba embraced the narrative that permitting a few high-profile United States company “*demonstratibles*” would serve as a catalyst to obtain legislative and comprehensive regulatory changes; that was a mistaken strategy... Few does not necessarily bring many, but many generally brings more. Announcing more now may be futile.**

**Energies relating to changing legislation were misplaced. The focus should have always been on changing regulations.**

**For the Obama Administration- decision is to make additional regulatory changes now or depart on 20 January 2017 lamenting about what could have been accomplished was left for consideration by the Trump Administration. But, changes made during the next months could increase focus upon the Republic of Cuba- which may be onerous for United States companies.**

**Before 17 December 2014, Members of the United States Congress and their supportive United States-based advocacy organizations who had (have) the support of the government of the**

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Republic of Cuba focused upon legislation as a strategy to change the commercial, economic and political relationship of the United States toward the Republic of Cuba.

During the period 17 December 2014 through 8 November 2016, the same strategy by the same actors was followed.

From 9 November 2016 through 12:00 pm on 20 January 2017, seventy-two days from now, the sole focus by members of the United States Congress, their supportive United States-based advocacy organizations, and the government of the Republic of Cuba should be upon seeking changes to regulations. Period.

The legislative pathway is deceased; it passed at 3:00 am this morning.

Due, in part, to the agendas of advocacy organizations, the Obama Administration focused less upon regulatory changes and more on legislative changes and, as a result, today's landscape exists. The advocacy organizations now must shift from an agenda of gaining more to not getting less... and are in need of protecting the existence of their organizations rather than fulfilling their mission. To ensure a revenue stream, some advocacy organizations are altering their mandate from seeking funding to focus on legislative changes to seeking funding, and creating additional entities, to serve as travel agents.

And, given the results of the election, any further regulatory changes by the Obama Administration during the period until inauguration day will receive heightened scrutiny and, as a result, perhaps be targeted for reversal or alteration.

Since the 1990's, President-Elect Donald J. Trump has altered his positions relating to the Republic of Cuba; from constrictive to expansive, and returning to constrictive and then expansive before becoming agnostic and then constrictive again. His most recent statements indicate that he may not immediately reverse commercial, economic and political engagement, but may increase conditionality as a cost of expansion.

For United States-based companies, directing resources towards supporting Republic of Cuba-focused legislative agendas has ceased to be a constructive use of time and money. They have seventy-two (72) days to directly engage with the Obama Administration to seek as many regulatory changes and as many individual licenses as possible.

The Speaker of the House of Representatives, The Honorable Paul Ryan (R- Wisconsin), wrote earlier this year that he would seek to prevent United States-based companies from engaging with companies in the Republic of Cuba controlled by the Revolutionary Armed Forces of the Republic of Cuba (FARC)... that would impact Gaviota, which owns the Four Points Sheraton Havana. This property commenced operations in June 2016. The Sheraton brand is owned by Stamford, Connecticut-based **Starwood Hotels & Resorts Worldwide**, a subsidiary of Bethesda, Maryland-based **Marriott International**. Then-Representative Ryan was the vice-presidential running mate of Mitt Romney in 2012. Governor Romney is on the Board of Directors of Marriott International. William and Richard Marriott are two of the Republican Party's major financial supporters. Marriott International confirms its discussions with Cuba government-operated companies to identify property-management opportunities within Cuba. This is one reason for the importance of the remaining seventy-two (72) days until the inauguration.

The 114th United States Congress is likely to use omnibus legislation to enact the remaining

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budget appropriations during the "*lame duck*" session of the United States Senate and United States House of Representatives. There is Republic of Cuba-related legislation that could be included in omnibus legislation.

For those members who are retiring, moving to another office, or have lost, their next career path may include consultancy, lobbying, advocacy organizations, law, advisory, financial, speaking engagements, and non-governmental organizations; each expect to earn more than their current US\$174,000.00 to US\$193,400.00. If they are not already supportive of changes to Republic of Cuba-related statutes, then the potential of enhancing their earnings by supporting statutory changes on their way out the door may be appealing. There are entities that might show their appreciation after a transition from the public sector to the private sector. If already supportive of changes to Republic of Cuba-related statutes, then those departing become potential fundraisers for those colleagues who remain in office.... so perhaps making easier to have a greater focus on the statutes. But, this path is likely futile.

Since 2014, there have been legislative initiatives to disrupt the engagement begun by President Barack Obama. Since 2014, there have been legislative initiatives to expand the engagement begun by President Obama. What do these legislative initiatives have in common? ... *failure. Sixteen years has passed since the last Republic of Cuba-focused law was enacted.*

There will likely be no changes to United States statutes relating to Cuba during the remaining days of the Obama Administration; there were never going to be any changes to the Cuban Democracy Act (1992), Libertad Act (1996) or Trade Sanctions Reform and Export Enhancement Act (2000) given the political dynamic existing during the final two-years of this two-term president. There were unavailed opportunities when the President's party controlled the United States Congress from 2009 to 2011.

Opponents to further changes in United States law have twenty-four years of precedent (1992, 1996, 2000); and they have prevented statutory changes in the **last 693 days** (since 17 December 2014) during which the President of the United States has sought to make the Republic of Cuba a significant component of his two-term (eight-year) legacy.

Legislative history has shown the Republic of Cuba to be a low-value commodity; to be traded away in most instances because it lacks importance. The legislative calendar is littered with Members of Congress pronouncing they would not permit legislation unrelated to Cuba to proceed unless issues relating to the Republic of Cuba were resolved. In the end, no Member of Congress was going to seek to hold appropriation or other legislation of national importance because of the Republic of Cuba.

Members of the United States Congress will now focus upon **24 February 2018**, the retirement of President Raul Castro, as a legislative target date- they will debate whether changes to law will incentivize him during his final thirteen (13) months in office or await and provide incentives to his successor, First Vice President of the Council of State of Cuba, Miguel Diaz-Canel, who was born in 1960. That is what the United States Congress will be analyzing. There will remain a question as to whether President Castro remains First Secretary of the Communist Party of the Republic of Cuba, which, if it happens, may complicate some efforts to change United States laws.

If the government of Cuba were to host (again) a naval presence by the Russian Federation... we all know the likely response by the next occupant of The White House and Members of the United States Congress.

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President Obama should go all in with regulatory changes during his remaining days in office; the government of the Republic of Cuba has not fully reciprocated, is not fully reciprocating and is unlikely to fully reciprocate to a depth which would balance the Obama Administration initiatives

with the Castro Administration responses. The choice is awaiting what will not arrive or finishing the task as forcefully as possible.

Regulations in place before 20 January 2017 are likely to resist change as opposed to the challenges for creating regulations after 20 January 2017 where none existed. The Obama Administration needs to issue as many licenses as possible; licenses will likely not be rescinded... if they are issued and then implemented by 20 January 2017.

So, and this has been in the echo-chamber before, President Barack Obama should have left only for his successor the shepherding of a legislative agenda.

*What Would Be Helpful?*

- **Authorize all commercial activity under a general license from the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury and Bureau of Industry and Security (BIS) of the United States Department of Commerce, including Direct Foreign Investment (DFI)**
- **Authorize all transactions with Cuba government-operated companies**
- **Authorize all imports under general license**
- **Authorize all exports under general license**
- **Authorize Cuba government-operated financial institutions to have accounts with United States-based financial institutions for correspondent activities**
- **File motions to dismiss unwarranted civil judgments against Cuba**
- **Announce specific progress for the settlement of the 5,913 claims certified with the Foreign Claims Settlement Commission (FCSC) within the United States Department of Justice**