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**It could. Might not. That's the point.... Create uncertainty.**

**24 February 2017-24 February 2018**

***Who Prevails? The Agnostics, The Pragmatics or Passionate Ideologues***

**Air Carriers, Cruise Lines, Travel Agents/Tour Operators, OFAC, CBP, Title III, Military**

**Illogical to plan for nothing. Irrational to plan for everything. Informed to plan for something.**

There are individuals within the Trump Administration who advocate for an announcement on 24 February 2017 relating to United States-Republic of Cuba policy and regulations.

This date would be one year before a new president is inaugurated in the Republic of Cuba- the first in fifty-nine (59) years not to have the "Castro" family name: H.E. Miguel Diaz-Canel Bermudez (DOB 20 April 1960), the current First Vice President of the Council of State of the Republic of Cuba.

The Trump Administration may position changes in policy and regulations as fluid rather than momentary- an initial announcement and then, perhaps others. Personnel issues, not having in place individuals who focus upon enforcement at departments and agencies have disrupted the timing of the initial announcement.

A point of contention is whether to make changes to policy and regulations retroactive or hence-forward. There are potential legal challenges to removing what has already been relied upon by United States companies and citizens. The decision is not about can or can't, it's about should or shouldn't.

In 2016, the export of products and provision of services to Republic of Cuba meant approximately US\$1.2 billion million in *gross* revenues to United States companies; and in 2017 is projected to mean US\$1.4 billion in *gross* revenues to United States companies. Export is defined as food products/agricultural commodities, healthcare products, air carriers, cruise lines, travel agent/tour operator revenues/fees/commissions, financial transaction fees, shipping fees, and private exports of products for use by independent businesses. A substantial portion of travel agent/tour operator revenues (payments for hotels, ground transportation, tours, etc.) are transferred to the Republic of Cuba.

In 2016, Republic of Cuba government-operated entities earned gross revenues of approximately US\$1.0 billion from visitors subject to United States jurisdiction (those with and without passports issued by the government of the Republic of Cuba), in addition to approximately US\$2 billion in remittances (a meaningful amount of which was delivered in the form of products purchased in the United States and provided to family and friends; and to customers of independent businesses).

In 2017, the value of visitors subject to United States jurisdiction to Republic of Cuba government-operated companies is projected to exceed US\$1.5 billion and remittances are expected to remain similar to 2016. These projections are based upon no changes to United States policies or regulations by the Trump Administration.

**The Trump Administration review process has three (3) groups: *The Agnostics, The Pragmatics and the Passionate Ideologues*.**

The first group doesn't care; the Republic of Cuba is of such insignificance they will neither advocate more nor advocate less; they will adjust to the outcome while appreciating what is enacted today will be sustained or massaged by events as-yet-unknown.

The second group receives input from varied sources (inside government and outside government) and tends to support the status quo unless the status quo is doing harm- to the United States. They are averse

to disruption for it can create uncertainty, which is generally to be avoided as it may negatively impact commerce. They are influenced by media.

The third group has historically been victorious in legislative, policy and regulatory arenas of combat. They (specifically Members of the United States Congress) are generally not influenced by whether their respective political party is in the majority or minority. Their focus has been two-fold: *First*, “*Castro-centric*” meaning that until both are gone, commercial engagement perpetuates a multi-decade plague upon the 11.3 citizens of the Republic of Cuba. *Second*, the communist/socialist platform embraced by the government of the Republic of Cuba must end. Their victories are often a result of perpetual assault on legislative, policy and regulatory processes- and their personal stories, and stories of those they share, have often resulted in colleagues not wanting to challenge them. With the November 2016 death of H.E. Dr. Fidel Castro, former president of the Republic of Cuba, and the year-off retirement of H.E. General Raul Castro, President of the Republic of Cuba, this group may now have a confluence of moments to argue for, at minimum, a dynamic narrative to be presented to the next president of the country.

They have positioned some Obama Administration initiatives as violations of statute, particularly relating to how visitors travel to the Republic of Cuba; their view is adjustments need to be made to maintain the viability of United States law. Their self-described principled argument is- the Obama Administration gave away everything and received nothing- voluntarily (nothing was proactive; it was all reactive) which conveys the truth. The citizens of the Republic of Cuba only benefit when their government is forced to offer them a means to a better life; so, let's lessen this government's lifeline and ask of it to do what is in the interests of its citizenry. When it does so because it believes that it should- not because it will receive a reward, only then should the United States fully engage with it.

They want the Republic of Cuba to deconstruct the socialism that has only survived because others have provided funding for it and reconstitute it as a self-financing program; meaning providing less and requiring more of the citizenry. A result being less control over that citizenry.

There has been a political narrative for linking United States policy toward Cuba with the performance of the respective economies.

If the United States economy (including exports) is doing well, there is less pressure to embrace Cuba because the risk/reward may not be of value. If the United States economy (including exports) is suffering, there is more pressure to embrace Cuba, as it represents another marketplace for products and services. If the Cuba economy is doing well, then there is pressure to permit United States companies to compete before selective opportunities may no longer be available (or viable). If the Cuba economy is suffering, there is less pressure to embrace because the worse the environment, the more changes the government of Cuba may be forced to make, which will in a micro and macro way benefit everyone, so advisable to wait rather than be a potential lifeline.

***So, upon which group to wager?*** The second combined with the third. The second group will position the status quo as useful because there are more important items on the Trump Administration agenda; but, they will accept some changes. The third group will position change in terms of muscular headlines- the Trump Administration will once again reverse misguided Obama Administration initiatives, observe the rule of law, be perceived as rugged. And they will remind President Trump that he will be the first occupant of the Oval Office to preside as the Republic of Cuba receives a head of state/head of government whose family name is not “*Castro*.” That may be an intoxicating political cocktail too tempting to refuse.

On 16 February 2017, Mr. Arne Sorenson, Chief Executive Officer of Bethesda, Maryland-based **Marriott Corporation**, shared on CNBC that he believed there would be no changes in United States policy or regulations towards the Republic of Cuba: *“I don't actively worry about this Administration turning back the progress on Cuba. You don't hear them saying much about Cuba. You don't hear a lot of debate in the political environment about Cuba.”*

Members of the United States Senate Ted Cruz (R- Texas), Robert Menendez (D- New Jersey), Marco Rubio (R- Florida) and Mitch McConnell (R- Kentucky) and Members of the United States House of Representatives Carlos Curbelo (R- Florida), Mario Diaz-Balart (R- Florida), Ileana Roz-Lehtinen (R- Florida) and Paul Ryan (R- Wisconsin) would disagree. *But, do they have the collective political capital to influence the Trump Administration? Do they have the collective political capital to prevent rank-and-*

*file members, ranking members, sub-committee chairs and committee chairs from voting to authorize tourist travel to the Republic of Cuba and to authorize payment terms for food products and agricultural commodities, which is prohibited by statute? They (and predecessors and colleagues) have for nearly 6,000 days- including the last eight (8) years when a president of the United States advocated for change; and two years when a president's political party controlled the United States Congress.*

On 18 February 2017, The New York Times reported that Mr. Jorge M. Perez, Chairman and Chief Executive Officer of Miami, Florida-based **Related Group of Florida**, recounted a conversation with President Trump: *"We used to talk about Cuba as a place to do business — a Trump hotel, a Trump golf course."* So during that last phone call, he asked Mr. Trump point-blank, did he intend to tighten the trade embargo against Cuba? *"He gave me no real answer — not yes, not no. Just 'We're going to see what happens, I haven't decided on that yet.'"*

President Trump has shared that he would have made a *"better deal"* than the Obama Administration which announced its initiatives on 17 December 2014. He has shared an interest in identifying commercial opportunities in the Republic of Cuba for The Trump Organization. He has shared that changes should be made to the policies and regulations implemented from 2009 through 2017.

There is logic to conclude, or at minimum be comfortable with based upon the varietal statements from President Trump, President-Elect Trump, nominee of the Republican Party for President of the United States, candidate for the nomination of the Republican Party for President of the United States, and business executive that distance may exist between his words and his actions relating to the Republic of Cuba.

Individuals with his 2015-2016 campaign, those placed on the Transition Team, within the Landing Teams, on staff at The White House, within the Cabinet, and amongst departments and agencies have opinions ranging from supporting a reversal of all policy and regulatory decisions taken by the Obama Administration to reversing some to modifying some to leaving what exists and do nothing further until Saturday, 24 February 2018.

*United States companies do not want constrictive modifications to the Obama Administration initiatives.* What they needed in 2015 and in 2016 and did not receive was a government of the Republic of Cuba accepting far more of those initiatives and the Obama Administration making far more meaningful changes to policy and regulations. A reason that the Obama Administration initiatives are in peril is directly conditioned upon the lack of presence by United States companies in the Republic of Cuba- that's the fault of both governments, collectively and individually. There was and remains no lack of trying by United States companies. In this regard, United States companies are in concurrence with President Trump- the government of the Republic of Cuba could have, can and should do more.

Due to a lack of anticipation of an election result neither government desired, commercially-focused licenses issued in 2015, 2016, and 2017 by the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury and/or Bureau of Industry and Security (BIS) of the United States Department of Commerce, especially those issued during the period 8 November 2016 to 20 January 2017, may never be implemented.

*Any Republic of Cuba-focused legislation introduced during the 115<sup>th</sup> United States Congress has an immensely problematic pathway to becoming law.* The President of the United States, the Speaker of the United States House of Representatives, and the Majority Leader of the United States Senate oppose any legislation which would expand the commercial, economic and political relationship with the Republic of Cuba absent manifest and irreversible changes within the Republic of Cuba.

Supporters in the United States Congress know what they need; they haven't got it... yet: one necessity being United States companies and financial institutions in public and at congressional hearings stating what payment terms they would provide, today, to the government of the Republic of Cuba. And, a member of the United States Senate refusing to release a hold on must-pass legislation or nomination unless a Republic of Cuba-focused provision is included; no one can remember when that last happened.

There could be an opening, for example, on 24 February 2018, when President Castro will retire as head of state and be succeeded by First Vice President of the Council of State of the Republic of Cuba, Miguel

Diaz-Canel Bermudez. *The date 24 February has significance to the Republic of Cuba and for the United States:*

- 24 February 2013, H.E. General Raul Castro is elected to a 2<sup>nd</sup> term as President of the Republic of Cuba.
- 24 February 2008, H.E. Dr. Fidel Castro Ruz retires as President of the Republic of Cuba.
- 24 February 1996 was the date when two United States civilian aircraft were shot down by aircraft operated by the Revolutionary Armed Forces of the Republic of Cuba (FAR); four individuals die.
- 24 February 1976 was the date the Republic of Cuba adopted its constitution.
- 24 February 1895 was the beginning of Cuba's War of Independence.

Section 202 of the Libertad Act of 1996 authorizes United States aid to the Republic of Cuba provided the government does not, among other conditions, *"include Fidel or Raul Castro."* However, while President Castro will retire as head of state, he is likely to retain his position as First Secretary of the Communist Party of the Republic of Cuba, which could be argued is liken to head of government. If that happens, an opportunity might be unavailable. That, however, would be a determination for President Trump.

**What's on the list that the Trump Administration is considering? The recommendations of Members of Congress, White House staff, Cabinet officers, Department and Agency officials range from nothing to everything. The United States business community wants nothing to change.**

### **Air Carriers**

Helping to potentially mitigate policy and regulatory changes are the recently announced reductions in regularly-scheduled commercial flights and reductions in the size of the aircraft used for those flights as they lessen revenue to the Republic of Cuba.

The reductions are, however, less about fewer individuals seeking to visit the Republic of Cuba than a consequence of aggressive market positioning by air carriers that was not commensurate with reality. In their 2016 pleadings with the United States Department of Transportation (USDOT) air carriers requested approximately 2 million more seats than the authorized 1.2 million seats under the USDOT arrangement with the government of the Republic of Cuba.

There is truth in interest to visit the Republic of Cuba has been negatively impacted since 2015 by dramatic increases (100% to 200% or more) in hotel room rates, prices at restaurants, and fares for transportation with no comparative increase in quality of experience; and in too many instances, a continued decrease in quality of experience relative to pricing structures. For 2017, however, the number of individuals subject to United States jurisdiction visiting the Republic of Cuba is expected to increase 20% to 30%.

Potential changes could include requiring airlines to engage in a greater level of passenger certification/verification and require increased record-keeping, thus impacting the efficiency of the services.

### **Cruise Lines**

Not helping to potentially mitigate policy and regulatory changes are the recent announcements from the three-largest United States cruise lines that they are adding capacity for sailings that include the Republic of Cuba; and will, if operating at capacity, which is likely, bring a combined 110,000 individuals subject to United States jurisdiction to the Republic of Cuba in 2017/2018.

Multiple-destination sailings that include the Republic of Cuba are being actively considered for prohibition. These itineraries are perceived by some in the Trump Administration as tourism and, as such, is prohibited by United States statute. These itineraries bring revenues (berthing fees, etc.) to the government of the Republic of Cuba, specifically to FAR through affiliated companies, regardless of whether an individual subject to United States jurisdiction disembarks the vessel at the Port of Havana or another location and pays for a guided tour or self-guided tour.

The sailings that commenced in May 2016 by Miami, Florida-based **Carnival Corporation & plc's Fathom** subsidiary which required all passengers to engage in defined people-to-people activities

authorized by the OFAC are generally more palpable as there is a direct connection between what a passenger does and the impact upon the Republic of Cuba.

### **Travel Agents/Tour Operators**

The OFAC would increase scrutiny of marketing materials by those companies offering visits to the Republic of Cuba, perhaps requiring pre-approval and, thus, lengthen the distance between presentation and implementation. The marketing materials of some companies have, in the opinion of some in the Trump Administration, crossed a statutory line. There may be restrictions and/or prohibitions on self-defined and self-organized visits.

Tour operators and travel agents and charter boat operators marketing their services with statements such as *“After breakfast on day five, the group will depart to Varadero, which is often described as the best beach in the world...”* will be in peril.

Where during the Obama Administration the OFAC permitted what were generally defined by the public as tourism-related promotional efforts, when tourism was and remains prohibited by United States law, the Trump Administration may be less supportive.

Wealthy people cruising around the Republic of Cuba, coming ashore to smoke cigars and drink rum is not appealing to some in the Trump Administration. The same feeling is directed towards those arriving by general aviation aircraft and departing with little more than selfies posted on Facebook and Instagram.

### **OFAC**

There is support for the re-establishment of aggressive oversight of the Republic of Cuba by the OFAC. During the Obama Administration, there were meaningful changes, which the United States business community advocated for and made use of primarily relating to the shift from requiring specific licenses to authorizing activities under general licenses.

There was also immense frustration by the United States business community with the OFAC, and by extension the Obama Administration, specifically the National Security Council (NSC), that adhered to imaginary statutory limitations on executive branch authority despite repeated evidence to the contrary. *Two examples:* 1) Not permitting under a general license Republic of Cuba government-operated financial institutions to establish accounts with United States financial institutions; the result would have lessened the cost and the time for authorized transactions, for example those under provisions of the Cuban Democracy Act (CDA) of 1992 and Trade Sanctions Reform and Export Enhancement Act (TSREEA) of 2000, healthcare products and food products/agricultural commodities, respectively. And 2) only permitting coffee and charcoal to be imported from the Republic of Cuba to the United States for commercial purposes. There is no statutory limitation upon the number of products.

### **CBP**

U.S. Customs and Border Protection (CBP) within the United States Department of Homeland Security (DHS) may be directed to increase inspection of travelers returning to the United States from the Republic of Cuba.

The changes could be subjecting all passengers to secondary inspection- additional questions, requesting to view materials that would verify the authorization of a traveler to have visited the Republic of Cuba; and subjecting luggage to additional screening. The goal would be to increase the inefficiency of travelers, perhaps missing a connecting flight resulting in additional payments to an air carrier, to a hotel, for ground transportation or for a meal. While the traveler may be inconvenienced, a result could be a revenue transfer from the traveler to a business- located within or near airports, for example, located in Florida, New Jersey, New York, Texas, and California.

### **Title III**

Title III of the Libertad Act of 1996 may be ***weaponized*** to encourage the government of the Republic of Cuba to enter formal negotiations to compensate certified claimants.

There were 8,821 claims of which 5,913 awards have been certified by the United States Foreign Claims Settlement Commission (USFCSC- <https://www.justice.gov/fcsc>) at the United States Department of Justice which are valued at US\$1,902,202,284.95. Of these claims, thirty (30) United States-based companies hold 56.85% of the total value. The USFCSC permitted interest to be accrued in the amount of 6% per annum; with the current value ranging from US\$6 billion to US\$9 billion.

During the next six months, or sooner, the Trump Administration will decide whether to implement this provision which enables individuals with assets expropriated by the government of the Republic of Cuba to bring lawsuits in United States Federal Courts.

The Libertad Act requires the president to enable or suspend the provision every six months; and Presidents Clinton, Bush and Obama did so. If not, lawsuits relating to expropriated property in the Republic of Cuba may commence. The president may rescind the suspension at any time.

*The Trump Administration may view creating uncertainty about Title III as an effective means of destabilizing the interests of companies in the United States and other countries toward the Republic of Cuba; and it would be successful.*

For example, there are individuals who maintain they have Title III-actionable claims relating to Jose Marti International Airport (HAV) and port at Santiago de Cuba. In the case of HAV, United States-based air carriers and those from other countries could find their assets attached if they do not avoid the Republic of Cuba. In the case of the port at Santiago de Cuba, passenger cruise ships and cargo ships might avoid docking and unloading for fear of expensive and enduring legal proceedings.

The United States Department of State reported that the Obama Administration issued a suspension on 5 January 2017; this was not publicized. The next six-month interval will be July/August 2017.

### **Military (Airports, Hotels & Ports)**

The following are excerpts from the 9 June 2016 statement by The Honorable **Paul Ryan** (R- WI) Speaker of the United States House of Representatives:

*“The Obama administration took office with the misguided goal of conducting closer engagement with America’s adversaries. They extended an open hand to governments in Cuba, Iran, North Korea, Russia, Syria, and Venezuela, and made damaging concessions often from a position of weakness. In the process, they have emboldened those regimes, alienated our allies, and left America in a more vulnerable strategic position. Now we must take immediate action to repair alliances and partnerships around the globe and to be clear about how the United States treats friends and foes.”*

*“Finally, in our own backyard we will continue to work with our friends and stem the influence of foes. Our relations with Canada and Mexico are crucial, especially in managing trans-border trade and countering trans-border threats. But we cannot blindly follow the administration’s normalization plan with communist Cuba, a regime that is fundamentally opposed to U.S. policy and that represses an entire population only 90 miles from our coastline. Instead, we will work to restore U.S. leverage, hold the Castro regime accountable, and make sure any further accommodations are met first with real concessions from the Cuban government. A first step should be to ban financial transactions with the Cuban military.”*

*“Our leverage to promote democracy and human rights should never be squandered. The Obama administration sought to normalize relations with the Castro regime in exchange for the promise of democratic and human rights progress in Cuba. One year into the agreement, which included reopening the American embassy in Havana, the Castro regime is as repressive as ever. In the first two months of 2016 alone, the Cuban Commission for Human Rights registered 2,588 political arrests. Nevertheless, President Obama reneged on his vow to refuse to travel to Cuba until human rights had improved.”*

On 16 March 2016, Stamford, Connecticut-based **Starwood Hotels & Resorts Worldwide** (a subsidiary of *Marriott International*) reported the company had received a license from the OFAC to manage properties in the Republic of Cuba: The Hotel Quinta Avenida (re-branded as Four Points Sheraton Havana on 27 June 2016) and Hotel Inglaterra (delayed from 2016 until 1 December 2017); and a Letter of Intent to manage a third property, Hotel Santa Isabel (no further information provided since 2016).

Two of the properties are owned by Republic of Cuba government-operated Gaviota SA. And one is owned by Republic of Cuba government-operated Habaguanex; both are controlled by Republic of Cuba government-operated Grupo de Administracion Empresarial S.A. (Enterprise Management Group), or GAESA, which is, in turn, controlled by the Revolutionary Armed Forces of the Republic of Cuba (FAR).

That Starwood Hotels & Resorts Worldwide has only one property in operation may make easier for restrictions/prohibitions to be implemented. A more dramatic footprint would have created less opportunity for disruption.

Airports and ports in the Republic of Cuba operate under the auspice of the entities affiliated with GAESA and the FAR.