

U.S.-Cuba Trade and Economic Council, Inc.

New York, New York

Telephone (917) 453-6726 • E-mail: council@cubatrade.org

Internet: <http://www.cubatrade.org> • Twitter: [@CubaCouncil](https://twitter.com/CubaCouncil)

Facebook: www.facebook.com/uscubatradeandeconomiccouncil

LinkedIn: www.linkedin.com/company/u-s--cuba-trade-and-economic-council-inc-

Biden-Harris Administration Decisions Since May 2022 To Re-Engage With Cuba's Re-Emerging Private Sector Brings Urgency To Re-Authorization Of Direct Correspondent Banking, U-Turn Transactions.

Policy Of One-Way Correspondent Accounts Does Not Work. Never Has Worked.

Financial Institutions Should Be Left To Determine Risk-Value For Implementation Rather Than OFAC. Leave Decision To The Marketplace.

In May 2022, the Biden-Harris Administration (2021-) began a journey to connect its sixteen months of statements of support for the re-emerging private sector in the Republic of Cuba with policies and regulations.

Some of the decisions adopted were new, some revised, and some reversals of decisions by the Trump-Pence Administration (2017-2021) which were themselves reversals of decisions by the Obama-Biden Administration (2009-2017).

Mr. Ned Price, Spokesperson of the United States Department of State shared that the policies are designed to *“support the Cuban people, providing them additional tools to pursue a life free from Cuban government oppression and to seek greater economic opportunities.”*

The Biden-Harris Administration decisions, thus far, focused upon providing connective and re-connective opportunities to the re-emerging private sector in the Republic of Cuba.

Absent, however, remains the very necessary two-way financial payment infrastructure, direct correspondent accounts, required to implement practically, robustly those opportunities. Some examples:

- The Office of Foreign Assets Control (**OFAC**) of the United States Department of the Treasury issuing a license in May 2022 authorizing direct investment in and direct financing to a privately-owned company located in the Republic of Cuba owned by a Republic of Cuba national. Investment funds and dividends, and financing funds and interest/interest/principal payments must currently be transferred through financial institutions located in third countries.
- The Bureau of Industry and Security (**BIS**) of the United States Department of Commerce issuing a license in September 2022 authorizing the direct export from the United States to the Republic of Cuba of electric motorcycles and electric scooters where purchasers are Republic of Cuba nationals and a privately-owned companies (micro, small, and medium-size enterprises (**MSMEs**)) located in the Republic of Cuba owned by a Republic of Cuba national. Payments for the purchases must currently be transferred through financial institutions located in third countries.
- Remittance delivery services operated by Denver, Colorado-based **Western Union Company** and other companies using authorized distribution channels in the Republic of Cuba not included in the Cuba Restricted List (**CRL**) maintained by the United States

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- Department of State, require settlement through financial institutions located in third countries. One potential channel is Republic of Cuba-based *Orbit S.A.* LINK: [Has Cuba Provided An Opportunity For Biden-Harris Administration To Renew Electronic Remittance Services? Orbit S.A. In Cuba Now Permitted To Engage. Can It Meet U.S. Conditions? A False-Flag? February 09, 2022](#)
- Prior to 2019, “*U-turns*” were authorized by the OFAC for financial institutions to process United States Dollar transactions relating to the Republic of Cuba provided they originated and terminated outside the United States and neither the originator nor the beneficiary were persons subject to United States jurisdiction. Thus, along with the absence of direct correspondent banking, there are two layers of impediments to sending, delivering, and settlement of fund transfers.
- The resumption of regularly-scheduled commercial flights from the United States to cities within the Republic of Cuba require air carriers to deliver payments to the Republic of Cuba for services provided while aircraft are disembarking and embarking passengers at airports. Additionally, air carriers deliver overflight payments which are required by international agreements. Absent overflight capabilities, a route will require an aircraft to extend flight duration, thus using additional fuel and causing additional pollution. Payments must currently be transferred through financial institutions located in third countries.
- The owner of a San Francisco, California-based **Airbnb, Inc.**-registered property in the Republic of Cuba will use a financial institution located in a third country to receive payment from a guest. LINK: [Airbnb Successfully Lobbied Trump Administration. Airbnb Should Now Focus On Biden Administration To Advocate For Direct Correspondent Banking So Hosts In Cuba May Access Funds Directly, Efficiently. April 06, 2022](#)
- When an individual subject to United States jurisdiction encounters a medical emergency, payments for hospitalization and evacuation may need to be transferred through financial institutions located in third countries.

Thus, the remaining challenge to transition Biden-Harris Administration policies from aspirational to operational is to recreate a cost-efficient, timely, transparent, and secure mechanism to move directly funds from the United States to the Republic of Cuba and from the Republic of Cuba to the United States.

The Current Transfer Landscape- Diminishing Options

The OFAC authorizes United States-based financial institutions to have correspondent accounts with Republic of Cuba government-operated financial institutions, but prohibits Republic of Cuba government-operated financial institutions from correspondent accounts in the United States. This creates an unnecessary United States government-imposed constriction where the decisions should be left to the marketplace to determine viability.

For more than thirty years, transactions have been required to travel through third countries before delivery to the Republic of Cuba and before delivery to the United States. For perspective, since December 2001 more than **US\$6.8 billion** has been transferred from financial institutions in the Republic of Cuba through financial institutions located in third countries and then to financial institutions located in the United States as payment for purchases of agricultural commodities,

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food products, healthcare products (medical equipment, medical instruments, medical supplies, pharmaceuticals), and other authorized products (farm vehicles, turbines, etc.). The US\$6.8 billion does not include remittance funds (including cash deliveries using passengers on airlines, etc.), estimated at more than **US\$20 billion** since December 2001.

The issuance of the licenses in May 2022 and September 2022 by the OFAC and BIS will result in by design two-way transfers that are small in value but consistent in their delivery timetable—*daily, weekly, monthly, quarterly, bi-annually, and annually.*

Privately-owned companies located in the Republic of Cuba sending dividend (profit sharing) payments to the source (s) of direct investment and sending interest and principal payments for direct financing. Republic of Cuba nationals and privately-owned companies located in the Republic of Cuba sending payment(s) for the purchase of an electric vehicle.

For small value transactions involving MSMEs, the larger the transfer fee becomes as a percentage of the total transaction. For transactions involving payments relating to investment and financing, these values might be in the hundreds of dollars— and transactions fees using third-country financial institutions, if one can be located, could be 25% or more of the total value of the funds being transferred.

An increasing number of financial institutions located in third countries are refusing to process transactions which include a sender located in the Republic of Cuba or a recipient located in the Republic of Cuba. *This posture despite the presentation by the sender or recipient of authorizations from the OFAC, BIS and United States Department of State.*

Why? Because of **1)** a fear of the cost for an unintentional violation of OFAC transaction compliance regulations and **2)** the inclusion by the OFAC in violation settlement agreements with financial institutions and companies of both the value of the agreed upon financial settlement and the statutory maximum civil monetary penalty.

The statutory maximum monetary penalties in four most recent Republic of Cuba-connected OFAC violations were *35, 89, 266, and 1,473* times the actual imposed monetary penalty. It is those multipliers which serves as a financial *Sword of Damocles*, a disincentive for an increasing number of financial institutions from willingness to engage with Republic of Cuba-related transactions regardless of assurances from the United States government. **The potential penalty in one example was US\$35.7 billion.** *For example:*

- The OFAC fined a United States-based company US\$116,048.60 for a violation according to the OFAC “*self-disclosed... and constituting a non-egregious case.*” According to the OFAC, the “*statutory maximum civil monetary penalty applicable in this matter is US\$4,062,841.00.*”
- The OFAC fined a Switzerland-based company US\$720,258.00 for a violation “*self-disclosed... and constituting a non-egregious case.*” According to the OFAC, the “*statutory maximum civil monetary penalty applicable in this matter is US\$64,062,841.00.*”
- The OFAC fined a Monaco-based financial institution subsidiary of a France-based financial institution US\$401,039.00 for a violation “*self-disclosed... and constituting a*

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- *non-egregious case.*” According to the OFAC, the “*statutory maximum civil monetary penalty applicable in this matter is US\$106,853,346.00.*”
- The OFAC fined a United States-based company “*that provides an online virtual currency exchange and hosted wallet services*” US\$24,280,829.20 for 116,421 apparent violations. “*The statutory maximum civil monetary penalty applicable in this matter is \$35,773,364,108.57. OFAC determined that the Apparent Violations were not voluntarily self-disclosed and were non-egregious. Accordingly, under OFAC’s Economic Sanctions Enforcement Guidelines (“Enforcement Guidelines”), the base civil monetary penalty amount applicable in this matter equals the applicable schedule amount, which is US\$485,616,584.00. The settlement amount of \$24,280,829.20 reflects OFAC’s consideration of the General Factors under the Enforcement Guidelines.*”

For the government of the Republic of Cuba, solely permitting one-way correspondent accounts provides another issue about which to complain, and justifiably so, rather than place the decision-making process within the Republic of Cuba.

One-Way Correspondent Banking Does Not Work

By United States law and by regulation, the implementation of Direct Correspondent Banking (DCB) requires transparency by the participating United States-based financial institution and transparency by the non-United States-based financial institution. DCB activity must comply with regulations of the Financial Crimes Enforcement Network (**FinCEN**) of the United States Department of the Treasury and provisions of the 2001 USA Patriot Act. If the Republic of Cuba accepts CDB, a result will be an increased transparency, accountability, and efficiency for financial institution operations within in the Republic of Cuba. This benefits the [Miguel] Diaz-Canel Administration in the city of Havana and the Biden-Harris Administration in Washington DC.

In 2015, Pompano Beach, Florida-based **Stonegate Bank** (2017 assets approximately US\$2.9 billion) acquired accounts for the Embassy of the Republic of Cuba in Washington, DC, and the Permanent Mission of the Republic of Cuba to the United Nations in New York after Buffalo, New York-based **M&T Bank Corporation** (2021 assets approximately US\$150 billion) notified the embassy and mission that it would no longer provide services due to challenges with regulatory compliance for many accounts with embassies and missions.

Stonegate Bank was also vetted by the OFAC and approved for a correspondent banking account at Banco Internacional de Comercia SA (**BICSA**), a member of Republic of Cuba government-operated Grupo Nuevo Banca SA, created by Corporate Charter No. 49 in 1993 and commenced operation in 1994. Stonegate Bank also provided funds transfers for other types of OFAC-authorized and BIS-authorized transactions.

According to the Republic of Cuba, “*Its [BICSA] main activity is ‘enterprises’ bank’ carried through its central services and five branches based in the country’s capital, Santiago de Cuba and Villa Clara. It records all transactions in real time providing its customers with card and remote banking services while it is working on developing other methods of electronic banking. Its institutional clients, national or foreign, receive a complete accounting and documentary service, while national entities also enjoy of significant volumes of credit facilities. Practically all sectors of the economy benefit from all this, such as that of agriculture, the food industry, the basic and light industries, transportation, aviation, fishing, construction, domestic and foreign trade, the iron and steel industry, sugar, informatics, communications and others with not only economic*

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importance but also social, such as health, water supply, education, culture and sports. Credit policy followed by the Bank is dictated in a collegiate way by its Credit Committee on the basis of a strict analysis and control in loan making. The Bank counts on correspondents in the five continents, the majority are first class banks, mainly Europeans and Americans. Equity capital of shareholders (Grupo Nueva Banca with the biggest share and Bancholding), near the USD95 millions with a balance ranging from 550 to 600 millions, make sure the Bank has a strong solvency ratio.”

Without explanation the Obama Administration did not authorize BICSA under a license from the OFAC to have a correspondent account at Stonegate Bank, so Stonegate Bank routed transactions for approximately eighty (80) customers on a regular basis through Panama City, Panama-based **Multibank** (2019 assets approximately US\$5 billion) which had dealings with the Republic of Cuba.

However, on 16 June 2020, Bogota, Colombia-based **Grupo Aval** (2021 assets approximately US\$110 billion) reported that “*On May 25th, Banco de Bogotá, through its subsidiary Leasing Bogotá S.A. Panamá, acquired 96.6% of the ordinary shares of Multi Financial Group [Multibank]. As part of the acquisition process, MFG’s operation in Cuba was closed and as part of the transaction. Grupo Aval complies with OFAC regulations and doesn't have transactional relationships with Cuba.*”

In 2017, Conway, Arkansas-based Home BancShares (2021 assets approximately US\$18 billion) through its subsidiary *Centennial Bank* purchased Stonegate Bank. Stonegate Bank operations were absorbed into *Centennial Bank*.

In June 2022, Chicago, Illinois-based Chicago, Illinois-based **First American Bank** (2021 assets approximately US\$5 billion) acquired from Centennial Bank an operating account (and Republic of Cuba-focused branch personnel) for the Embassy of the Republic of Cuba in Washington, DC. First American Bank is seeking a correspondent account with BICSA and if BICSA is authorized by the OFAC to establish a correspondent account with First American Bank, there would be an opportunity for two-way fund transfers for authorized transactions (agricultural commodities, food products, healthcare products (medical equipment, medical instruments, medical supplies, pharmaceuticals, informational materials, travel, remittances, entrepreneurial support, etc.).

Absent direct correspondent banking, authorized transactions from the Republic of Cuba to the United States and from the United States to the Republic of Cuba will remain multi-day rather than less than multi-hour and financial institutions in third countries will continue to earn unnecessary fees.

For perspective, since the Cuban Democracy Act (**CDA**) became effective in October 1992, the Trade Sanctions Reform and Export Enhancement Act (**TSREEA**) became effective in October 2000, and the OFAC, Bureau of Industry and Security (**BIS**) of the United States Department of Commerce, and the United States Department of State have authorized other transactions, payments for agricultural equipment, construction equipment, agricultural commodities, food products, medical equipment, medical instruments, medical supplies, pharmaceuticals, healthcare products, and travel-related services (including airline landing fees, telecommunications, etc.) have been subject to a triangular process through financial institutions located in third countries and then to United States financial institutions.

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Direct correspondent banking far more benefits United States exporters than it does Republic of Cuba-based importers: less time for United States exporters to be paid and less cost to receive those payments.

According to one senior-level executive of a New York, New York-based financial institution, *"banks in other countries have been lottery winners since December 2001; I'm confident the Biden Administration appreciates that United States farmers should not have to give-up anything in order to export their products. The Obama Administration could have, should have done something. They didn't. Now, the Biden Administration can right that wrong and authorize direct correspondent banking transactions."*

Enabling direct correspondent banking would be one immensely weighty decision by the Biden-Harris Administration as it would benefit authorized commercial transactions and compel Republic of Cuba government-operated financial institutions to be transparent and comply with United States regulations, resulting in greater confidence towards the Republic of Cuba and increased accountability by the Republic of Cuba.

From OFAC Frequently Asked Questions

742. *Are financial institutions other than banks permitted to open correspondent accounts in Cuba?* Depository institutions, as defined in 31 CFR § 515.333, which include certain financial institutions other than banks, are permitted to open correspondent accounts at banks in Cuba. See 31 CFR § 515.584(a). Released on September 23, 2020

743. *Are Cuban banks permitted to open correspondent accounts at U.S. banks?* No. U.S. depository institutions are permitted to open correspondent accounts at Cuban banks located in Cuba and in third countries, and at foreign banks located in Cuba, but Cuban banks are not generally licensed to open such accounts at U.S. banks. See note to [31 CFR § 515.584\(a\)](#). Released on November 8, 2017

744. *May correspondent accounts authorized pursuant to 31 CFR § 515.584(a) or used for transactions authorized by 31 CFR § 515.584(g) be established and maintained in U.S. dollars?* Yes. Correspondent accounts of depository institutions (as defined in 31 CFR § 515.333) at a financial institution that is a national of Cuba authorized pursuant to § 515.584(a) may be established and maintained in U.S. dollars. Such accounts may be used only for transactions that are authorized by or exempt from the CACR. Transactions necessary to establish and maintain such correspondent accounts — such as originating, processing, and terminating authorized funds transfers in U.S. dollars — are authorized. Additionally, correspondent accounts used for transactions authorized by 31 CFR § 515.584(g), which permits banking institutions as defined in 31 CFR § 515.314(g) that are persons subject to U.S. jurisdiction to accept, process, and give credit to U.S. dollar monetary instruments presented indirectly by a financial institution that is a national of Cuba, may be denominated in U.S. dollars. However, financial institutions that are nationals of Cuba remain prohibited from opening correspondent accounts at a U.S. financial institution. For a complete description of what these general licenses authorize and the restrictions that apply, see 31 CFR § 515.584(a) and (g). § 515.584 Certain financial transactions involving Cuba.

- Correspondent accounts. Depository institutions, as defined in § 515.333, are authorized to engage in all transactions necessary to establish and maintain correspondent accounts at a financial institution that is a national of Cuba, provided that such accounts are used only for transactions authorized pursuant to, or exempt from, this part.

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- (g) Any banking institution, as defined in § 515.314, that is a person subject to U.S. jurisdiction is authorized to accept, process, and give value to U.S. dollar monetary instruments presented for processing and payment by a banking institution located in a third country that is not a person subject to U.S. jurisdiction or a Cuban national and that has received the U.S. dollar monetary instruments from a financial institution that is a national of Cuba for which it maintains a correspondent account and which received the U.S. dollar monetary instruments in connection with an underlying transaction that is authorized, exempt, or otherwise not prohibited by this part, such as dollars spent in Cuba by authorized travelers or a third-country transaction that is not prohibited by this part. Note to paragraph (g): Correspondent accounts used for transactions authorized pursuant to § 515.584(g) may be denominated in U.S. dollars.

SWIFT Codes Usage

A Direct Correspondent Banking Agreement would use La Hulpe, Belgium-based Society for Worldwide Interbank Telecommunication (**SWIFT**) to directly rather than through third parties transfer funds from one financial institution to another financial institution within minutes and at far lower cost for the sender and the recipient. Swift Code is a standard format of Bank Identifier Code (**BIC**) and is a unique identification code for a specific bank used when transferring funds between banks, particularly for international wire transfers, and exchanging inter-bank communication.

There are approximately 40,000 active Swift codes and approximately 50,000 additional codes used for manual transactions by passive participants. The Swift Code consists of 8 or 11 characters. When 8-digits code is given, it refers to the primary office. The code is formatted as follows: AAAA BB CC DDD. First 4 characters - bank code (only letters). Next 2 characters – ISO 3166-1 alpha-2 country code (only letters). Next 2 characters - location code (letters and digits) (passive participant will have "1" in the second character). Last 3 characters - branch code, optional ('XXX' for primary office) (letters and digits).

Swift Code	Equivalent SWIFT/BIC Codes	SWIFT Code Breakdown	BICSA
BIDCCUHH	BIDCCUHH XXX BIDCCUHHXXX BIDC CU HH BIDC CU HH XXXX	Bank Code: BIDC Country Code: CU Location Code: HH Branch Code: XXX	20 De Mayo Y Ayestaran Plaza La Habana, Cuba

Bank	Branch	SWIFT Code
Banco Central de Cuba	Real Time Gross Settlement Branch	BCCUCUHHSLB
Banco Central de Cuba	System For Regional Compensation	BCCUCUHHSUC
Banco Central de Cuba		BCCUCUHH
Banco de Credito Y Comercio		BDCRCUHH
Banco de Inversiones SA		BICUCUHH
Banco Exterior de Cuba		BECUCUHH
Banco Internacional de Comercio SA		BIDCCUHH
Banco Metropolitano SA		BMNBCUHH
Banco Nacional de Cuba	Central Division	BNACCUHH011
Banco Nacional de Cuba	Commercial Division	BNACCUHH613
Banco Nacional de Cuba		BNACCUHH
Banco Popular de Ahorro		BPAHCUHH