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A CRL/BOR List For MSME's (PYMEs) In Cuba May Be Useful To Provide Confidence And Protection To United States Companies, Entrepreneurs, Financial Institutions, Sources Of Capital, And Suppliers.

Key To Successful Implementation Of A CRL/BOR List Is For A MSME/PYME To Have An Efficient And Transparent Process To Engage With The United States Embassy In Cuba To Dispute Any Finding And Have Any Finding Corrected Quickly.

In 2017, the **Trump-Pence Administration** (2017-2021) created the Cuba Restricted List (CRL) to be managed by the United States Department of State. The purpose of the CRL was to identify entities located in the Republic of Cuba with connectivity to the government of the Republic of Cuba, specifically to the Ministry of the Interior (**MININT**) of the Republic of Cuba and to the Revolutionary Armed Forces of the Republic of Cuba (**MINFAR**). For most transactions involving individuals subject to United States jurisdiction, an entity on the CRL would be prohibited. However, in some instances, indirect transactions and subsidiary transactions remained authorized.

<https://www.state.gov/cuba-restricted-list/frequently-asked-questions-on-the-cuba-restricted-list/>

The government of the Republic of Cuba reports the creation of more than 10,000 registered micro, small and medium-sized enterprises (**MSMEs**) also defined as **PYMEs** (pequeñas y medianas empresas).

While there continues to be the creation of MSMEs by individual Republic of Cuba nationals, the government of the Republic of Cuba has also commenced an aggressive strategy of converting Republic of Cuba government-operated companies into MSMEs.

While this transaction was not unexpected- and happens in many countries, one result in the Republic of Cuba has been a conflation as to the *identity*, the *provenance*, and the *politics* of defining a *legitimate MSME* from a *Trojan Horse MSME*, with the later of increasing particular concern to members of the United States Congress.

The private sector in the United States too has increased its awareness as to what defines an MSME- and what should define an MSME.

Republic of Cuba government-operated companies which transform into MSMEs often have inherent, meaning legacy, connectivity to the mechanisms of the government of the Republic of Cuba. These MSMEs often have unequal access to commercial, economic, financial, and political access and support which remains unavailable to other MSMEs.

True that all MSMEs employ Republic of Cuba nationals, so engagement with an MSME, regardless of its roots, is providing value to the employees of MSMEs and to the citizens of the Republic of Cuba.

However, there is a moral hazard issue. Should United States-based companies, entrepreneurs, financial institutions, and sources of capital avoid some MSMEs while embracing other MSMEs?

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The Financial Crimes Enforcement Network (**FINCEN**) within the United States Department of the Treasury, requires certain types of entities subject to United States jurisdiction to file a **Beneficial Ownership Report** (<https://www.fincen.gov/boi>) so the true ownership of a company, an LLC for example, may be known. The United States Department of the Treasury also manages the Office of Foreign Assets Control (**OFAC**) which regulates most transactions with the Republic of Cuba.

A hybrid list incorporating components of the CRL, and the Beneficial Ownership Report (**BOR**) may serve a critical role to assist individuals subject to United States jurisdiction from ill-advised, inappropriate, or illegal engagement with an MSME.

A **CRL/BOR** List would enhance opportunities for MSMEs by gaining a “*Good Housekeeping Seal of Approval*” from the United States Government, which in turn would not only provide enhanced confidence to United States-based companies, but critically to United States-based financial institutions.

- An impediment remains the stubborn refusal by the **Biden-Harris Administration** (2021-) to re-authorize Direct Correspondent Banking. The **Obama-Biden Administration** (2009-2017) authorized United States-based financial institutions to have accounts with Republic of Cuba government-operated financial institutions, but did not authorize Republic of Cuba government-operated financial institutions from having accounts with United States-based financial institutions.

The key to success of a CRL/BOR List is what information is included and how information is maintained.

The OFAC and the United States Department of State would create a checklist of information an MSME would provide which would be the evidence used to determine if the name of the MSME is to be included in the CRL/BOR List. The most critical data would be certification that the MSME has no connectivity (which will need to be defined) with MININT, MINFAR, or Specially Designated National (SDN) List.

The United States Embassy in Havana, Republic of Cuba, is the natural point of data collection and maintenance as personnel is the nearest to those who own and who manage MSMEs.

Critical to making the CRL/BOR List of value is to publicize its existence and to provide mechanisms whereby an MSME may update, correct, and dispute information published on the CRL/BOR List. Equally important is the CRL/BOR List must be updated in real time as an MSME needs to have confidence that latest information will replace old information quickly so no transaction will be impeded.

A challenge for the United States political process to express and to provide support for some citizens of the Republic of Cuba who work in the re-emerging private sector in the Republic of Cuba while maintaining a political Maginot Line and denying support for some individuals working in the re-emerging private sector in the Republic of Cuba.

For example, if a MSME has ten employees and one of them has a blemished work record (employed by MININT, MINFAR, is a SDN as determined by the United States Department of State and the OFAC). Would that result in disqualification of the MSME from the CRL/BOR List and any engagement with individuals subject to United States jurisdiction?

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If the Biden-Harris Administration genuinely wants the United States business community to increase its engagement with MSMEs located in the Republic of Cuba, then removing as many impediments as possible is essential. Reputational risk and compliance risk are among the first-tier concerns by the United States business community for any transaction relating to the Republic of Cuba. The creation of a CRL/BOR List for MSMEs would be a welcome additional tool.

LINKS TO RECENT ANALYSES

[U.S. Department Of State US\\$400,000.00 “Priority Program” To Support Re-Emerging Private Sector In Cuba; Includes “Shark Tank Style” Recruitment. Does Not Resolve Primary Problem.](#)

Mar 9, 2024

[Russian Foreign Minister Lavrov Today Visits Cuba. By Focusing Upon Expanding MSMEs, He Can Help Russia Make Money- And Help United States Capital Support MSMEs. Not A Perfect Alliance.](#) Feb 18, 2024

[List Of Every Product Exported From U.S. To Cuba In 2023. U.S. Ag Commodity/Food Exports Up 4.2%- Including US\\$5.4 Million In Coffee. US\\$24 Million To MSMEs Including US\\$8 Million In Vehicles.](#) Feb 13, 2024

[Arrest Of "Super Mule" In Tampa For Illegally Transporting US\\$100,000.00 To U.S. From Cuba Not Surprising... May Have Transported US\\$4.5 Million In Last Nine Months.](#) Feb 7, 2024

[Biden-Harris Administration Approves First Equity Investment Since 1960 In A Private Cuban Company](#) May 10, 2022

[With U.S. Government Authorization For First Direct Equity Investment Into A Private Company In Cuba, Here Is Important Context And Details. About The Parties; About The Message.](#) May 16, 2022

[Biden Administration Will Use Cuba's Authorization Of SMSE's As Means To Expand Support For Cuba Private Sector- U.S. Investments And Loans May Be Next](#) June 02, 2021