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OFAC Authorized First Investment/Financing License Into A Cuba Private Company In May 2022.

Because Of The Delay By Government Of Cuba In Authorizing The Delivery Of The Investment/Financing, The Private Company In Cuba Has Continued To Expand And Grow The Business. The United States-Based Investor/Financer Has Forgone Income From Dividends And Interest.

Why Won't President Miguel Diaz-Canel Permit MSMEs To Accept Investment And Financing? Re-introducing "Success" Into the Marketplace Carries Political Risk Because Not Everyone Will Be Successful And Measuring Success Has Many Variables.

The Government Of Cuba Eagerly Accepts Investment And Financing From Many Sources.

On 10 June 2021, Washington DC-based attorney Robert L. Muse submitted a *first-of-its-kind* application to the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury in Washington DC.

On 10 May 2022, after an eleven-month inter-agency review, the Biden-Harris Administration (2021-) approved that first-ever application which would authorize the first direct investment in and the first financing to a private company located in the Republic of Cuba which owned by a Republic of Cuba national.

- Useful to note that the United States- based source of the direct investment and direct financing was not an individual of Cuban descent.

From the inception of the idea to seek a license from the OFAC at the beginning of 2021, the goal was when the OFAC license was issued- and there was confidence that it would be issued, the existence of the OFAC license would be publicly disclosed.

The reason was singular: The objective of the U.S.-Cuba Trade and Economic Council has always been to publicize what has been authorized so others may benefit from the effort devoted to making possible what others may have only thought about. The publication about the first-ever electric (and non-electric) vehicle (cars, trucks, motorcycles, scooters, bicycles) export licenses (five since 2017) issued by the Bureau of Industry and Security (BIS) of the United States Department of Commerce to Colombia, Maryland-based Premier Automotive Export Ltd., reinforces that mandate to inform. Assisting Westport, Connecticut-based PWN Exhibicon International LLC which organized in 2002 the first-ever OFAC licensed *U.S.-Food & Agribusiness Exhibition* in the Republic of Cuba and included 923 representatives of United States-based companies. This event remains to-date the single-largest commercial event in the Republic of Cuba licensed by the OFAC.

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

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

- [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](#)

Since the first OFAC license was issued authorizing direct investment in and direct financing to a private company located in the Republic of Cuba, there is known to have been only one other- obtained within the last weeks. That license has not been made public. Unknown is how many applications are pending.

- *One reason for the delay by the Biden-Harris Administration issuing additional licenses?* The absence of regulations issued by the government of the Republic of Cuba which would authorize the delivery of direct investment and direct financing to private companies located in the Republic of Cuba.

Whether defined as **PyME** (pequeña y mediana empresa; small and medium enterprise), or **MSME** (micro, small and medium-size enterprise), or **SME** (small and medium-size enterprise), there has within the Republic of Cuba during the last five years been a dramatic increase in the number of private businesses, what those private businesses are doing, and how those private businesses are operating. There has also been an increase in Republic of Cuba government-operated companies, enterprises, and organizations transitioning to “private” status.

To date, and deeply unfortunate, is a private sector marketplace within the Republic of Cuba that functions within an environment more aligned with “*if it is not prohibited, then it is authorized*” rather than “*here are the regulations and those regulations are continually updated to reflect the changing dynamic of the private sector.*”

Nearing three years and the government of the Republic of Cuba has yet to publish regulations which explicitly describes the process by which a private company located in the Republic of Cuba may receive direct investment and direct financing from outside of the Republic of Cuba.

The document, which could be on one 8-inch by 10-inch sheet of paper, would be electronically notarized and submitted to the financial institution where the private company maintained its operating checking account. The information provided would include the source(s) and amount(s) of the investment, the source(s) and amount(s) of the financing. Any changes to the investment terms or the financing terms would be provided to the financial institution. That should be all that is required. The private company would not be required to pay any fees other than the normal incoming electronic funds transfer fees.

The government of the Republic of Cuba must refrain from over-complicating the process; but, that is fundamental to its DNA, so politically a heavy lift. This is because the primary political goal is to maintain equality- and a competitive private sector will, by its DNA, result in inequality.

On 22 September 2023, **Miguel Diaz-Canel**, President of the Republic of Cuba (2019-) met in New York City at the Permanent Mission of the Republic of Cuba to the United Nations with approximately forty private sector representatives- individuals, companies, and organizations. That number should have been quadrupled- unknown if the anemic showing was due to a lack of invitations or a lack of responses to invitations. Unfortunately, President Diaz-Canel did not use the opportunity to announce regulations for delivering direct investment to and direct financing

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

for private companies located in the Republic of Cuba. That was the singular message the audience was seeking. Another in an increasingly lengthy list of missed opportunities.

Until the government of the Republic of Cuba publishes the regulations for the delivery of direct investment and direct financing to a private company, the OFAC license issued on 10 May 2022 remains just that- issued but not implemented.

The recipient of the OFAC license has maintained consistent contact with the United States Department of State as to the status of the implementation of the OFAC license. The United States Department of State supports the decision to await the publication of regulations by the government of the Republic of Cuba rather than deliver the direct investment and direct financing and, absent specific authorization by the government of the Republic of Cuba, risk the operational status of the private company located in the Republic of Cuba. The private company located in the Republic of Cuba also supports the decision to await the publication of regulations by the government of the Republic of Cuba.

The worst kept secret is the amount of funds delivered to private companies (particularly residences used for guests and restaurants) located in the Republic of Cuba outside of authorized OFAC regulations. These primarily originate from the State of Florida, State of New Jersey, State of Texas, State of New York, and State of California.

- [Cuba Banks Again Accepting U.S. Dollar Deposits. That's Good. Better Would Be Providing Regulations For U.S.-Sourced Direct Investment And Direct Financing To MSMEs. First OFAC License Waiting...](#) Apr 11, 2023

These funds also originate with individuals of Cuban descent residing outside of the United States including in Spain, Panama, Mexico, and Venezuela.

While understandable from a micro economic perspective, this outside Republic of Cuba regulatory authorization and outside of OFAC regulatory authorization is unhelpful from a macroeconomic perspective.

Desire to assist family, friends, colleagues is understandable. However, there are consequences.

Why should the government of the Republic of Cuba implement regulations for the delivery of direct investment and direct financing when both are entering the Republic of Cuba without them? *The incentive is nonexistent.*

By not making contingent the publication of regulations which would define the mechanism for the delivery of direct investment and direct financing into a private company located in the Republic of Cuba, well-intentioned individuals are removing any leverage upon the government of the Republic of Cuba.

There is an argument to be considered for the Biden-Harris Administration to refrain from further regulatory and policy changes designed to impact private companies located in the Republic of Cuba under the government of the Republic of Cuba publishes regulations for the delivery of direct investment and direct financing.

The Obama-Biden Administration (2009-2017), Trump-Pence Administration (2017-2021), and Biden-Harris Administration, endured the worst-case political scenario in the Republic of Cuba. With the death in November 2017 of Fidel Castro, there was a presidential succession to his

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

brother, Raul Castro, a presidential transition to his brother, Raul Castro, a presidential retirement, another presidential succession, to Miguel Diaz-Canel, and then another presidential election.

There was no moment- a decades-in-the-making anticipatory moment, where the commercial, economic, financial, humanitarian, military, and political infrastructure within the Republic of Cuba would implode and each of those infrastructures would change and change profoundly.

The Biden-Harris Administration seems attentive to both altering and reversing some decisions implemented during the Trump-Pence Administration, some of which were themselves reversals of some decisions implemented during the Obama-Biden Administration.

In addition, the Biden-Harris Administration has implemented (and plans to continue to implement) new regulations and policies which it believes can result in both a less inhospitable environment for private companies operating in the Republic of Cuba and increased engagement by those private companies with individuals, organizations, and companies located in the United States.

This all sounds good. A triumphal kumbaya moment for career employees within the United States government.

Unfortunately, and this is not a surprise to them as the refrain has been repeated to nearing exhaustion by companies, financial institutions, individuals, and organizations...

- Absent direct correspondent banking, commercial funds from the United States to the Republic of Cuba and commercial funds from the Republic of Cuba to the United States will continue to require a third country. This means to send funds, there will be three financial institutions involved- the sender, the intermediary, and the receiver. Each financial institution will take a fee. Many commercial fund transfers for private companies located in the Republic of Cuba are small amounts- so the three fees as a percentage of the overall transaction are substantial.

In 2015, the Obama-Biden Administration authorized United States-based financial institutions to maintain correspondent accounts with Republic of Cuba government-operated financial institutions. However, for a reason(s) that to this day remain disturbingly obtuse, the Obama-Biden Administration did not authorize Republic of Cuba government-operated financial institutions to maintain correspondent accounts with United States-based financial institutions. The result, fund transfers must navigate an inefficient, insecure, and costly three-country journey.

- [Western Union Goes National For U.S. Transfers To Cuba.... When Will Cuba Permit U.S. Investment And Financing For MSMEs In Cuba? No Excuse For Delays.](#) Mar 3, 2023
- [Who Or What Is Delaying Western Union From Authorizing Commercial Transfers From U.S.-Cuba And From Cuba-U.S.? Biden? Diaz-Canel? MSME's Waiting With U.S.-Based Companies And Entrepreneurs](#) Apr 22, 2023

Some representatives of the Biden-Harris Administration maintain that Republic of Cuba government-operated financial institutions will not want to establish correspondent accounts with United States-based financial institutions and that United States-based financial institutions will not want to establish correspondent accounts with Republic of Cuba-based financial institutions.

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

The first OFAC and BIS licenses for most of the significant commercial engagements during the twenty-nine years have been initiated by individuals, organizations, and companies not connected with individuals of Cuban descent. A mistake for the Biden-Harris Administration to view the United States-Republic of Cuba private sector commercial and financial landscape as a singular, membership-based domain.

The goal of the Biden-Harris Administration should be to unlock potential and then evaluate the response. Not prejudge the response. Because responses change as the environment changes. Permit the private sector to determine what they require rather than instruct them on what tools they need to operate. The philosophy should be more about *“if we permit it, they will eventually use it”* rather than *“we will permit it only after they ask for it.”*

Permitting, as the Obama-Biden Administration did, individuals subject to Republic of Cuba jurisdiction to establish accounts at United States-based financial institutions is laudable. And expanding, as the Biden-Harris Administration is now doing, how those accounts may be used is equally important.

However, these opportunities remain hamstrung by the fact that transferring funds into or out of the United States-based accounts and into or out of the Republic of Cuba requires three financial institutions to touch the transaction- and each touch means a fee.

If the Biden-Harris Administration wants to meaningfully assist with connecting the private sector in the Republic of Cuba and private sector in the United States, then authorize the other half of what the Obama-Biden Administration did in 2015.

For financial transactions, straight lines are essential. A triangle only serves political interests and reinforces inefficiencies, lack of transparency, and excessive costs- which a re-emerging private sector in the Republic of Cuba can not afford and should not be asked to pay.