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Now The Hard Part For Cuba. Implementing Quickly Transparent, Workable Regulations For Investments In And Financing To Private Companies.

Regulations Must Be The Same For All Countries.

Not *Orwellian*: All MSMEs Are Equal. Some Are Not More Equal Than Others.

The Government Of Cuba Must Refrain To Its Inherent Desire To Determine Winners And Losers; To Determine “*Societal Value*”

Only Citizens Of Cuba, Voting With Their Spending, Must Determine Success Or Failure Of An MSME.

The Government Of Cuba Sets Rules And Then Must Get Out Of The Way Of Prosperity.

Direct Correspondent Banking Is Essential To Support MSMEs. If Funds Cannot Move Efficiently In Both Directions, No Incentive For Investors And Providers Of Loans.

In May 2022, the Biden-Harris Administration (2021-) authorized the first direct equity investment in and the first direct financing to a privately-owned company located in the Republic of Cuba. Subsequently, the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury added opportunities and amended existing regulations to provide mechanisms for further engagement with privately-owned companies located in the Republic of Cuba.

In July 2022, the government of the Republic of Cuba confirmed direct equity investment and direct financing are authorized for *micro, small, and medium-size enterprises (MSMEs)*.

The government of the Republic of Cuba will publish, and hopefully do so promptly, transparent, and workable regulations for the delivery of direct equity investment in and direct financing to MSMEs.

- There must be one process for all privately-owned companies. *Visualize simplicity. Embrace clarity. Write concisely. Avoid ambiguity.*
- If the government of the Republic of Cuba is uncommitted to permit the global marketplace to determine if an MSME is attractive for direct equity investment and direct financing, and in its place establishes a decision-making infrastructure to “*evaluate*” and “*approve*” which MSME may receive funds from abroad and the amount of funding permitted, then the Diaz-Canel-Valdes Mesa Administration (2019-) might reconsider commencing the process.

Essential for the government of the Republic of Cuba to embrace a mindset appreciating the role of an independent private sector operating in an independent marketplace where marketing and operational skill determines whether a company prospers or fails, rather than trajectories and outcomes determined by third parties subject to political purity testing.

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- *Risk must be rewarded, not be suspect. Success must be rewarded, not punished. Prosperity must be an example of the possible, not weaponized as an agency of suspicion.*

What will, and not exaggerating the potential of a dinosaur extinction-level result, diminish the attractiveness of delivering direct equity foreign investment and direct financing to MSMEs will be connected directly to the government of the Republic of Cuba retaining the same subjective political multi-level, multi-jurisdiction decision-making process currently employed for evaluating the appropriateness of direct equity investment into a joint venture, economic cooperation agreement, management contract, etc., which includes a Republic of Cuba government-operated company.

- Direct equity investment into a MSME is different from direct equity investment into a Republic of Cuba government-operated company. If the government of the Republic of Cuba believes that they are the same, then the government of the Republic of Cuba is not prepared to accept direct equity investment and direct financing for MSMEs. And going forward under these conditions will severely restrain the delivery of direct equity investment.
- The government of the Republic of Cuba must not be deciding if an MSME needs direct equity investment, what are the terms of that direct equity investment, what will the MSME do with that direct equity investment.
- The government of the Republic of Cuba should create a transparent, easy-to-understand, list of requirements- and then leave to the MSME to self-comply by certifying compliance with a set of regulations that are the same for every MSME.
- The government of the Republic of Cuba will meaningfully doom, and provide critics with the material they seek, if the government of the Republic of Cuba determines which MSMEs are suitable for direct equity investment and direct financing originating from outside of the Republic of Cuba.
- There must be no discrimination by the government of the Republic of Cuba in terms of restricting/prohibiting the receipt by a MSME of direct equity investment and direct financing because the MSME is now or may compete with a Republic of Cuba government-operated company.
- An MSME must have no limitation as to the amount of direct equity investment and direct financing. Provided the amounts are disclosed to the relevant Republic of Cuba government-operated entity (but remain confidential from the public to protect business strategy) and provided the MSME maintains proper accounting practices, then there should be no limitation.
- There must be no number of employee requirement for a privately-owned company to receive direct equity investment and direct financing. No penalty for being too small and no penalty for being too large.
- There must be no discrimination by the government of the Republic of Cuba in terms of fees, taxes, and other payments towards MSMEs versus Republic of Cuba government-operated companies.

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- MSMEs must be permitted to establish operating accounts at Republic of Cuba government-operated financial institutions and establish operating accounts in financial institutions outside of the Republic of Cuba. These accounts must be permitted to receive funds in *U.S. Dollars, Euros, Lira, Pesos, Pound Sterling, Rubles, Rupees, Yen, Yuan, etc.*, and be permitted to send funds in *U.S. Dollars, Euros, Lira, Pesos, Pound Sterling, Rubles, Rupees, Yen, Yuan, etc.* The transaction fees in the Republic of Cuba should be comparable to those of financial institutions outside of the Republic of Cuba.
- The central tenant for direct equity investment and financing: There must be no doubt that MSME funds in the Republic of Cuba may be used by an MSME to make debt payments as prescribed by the terms of investment contracts and loan agreements.

There will be failures. Some MSMEs will have terrific ideas that are unable to be profitably executed or the marketplace may have an interest that wanes. Some investors will lose part or all their investment; some loans will go unrepaid. Some MSMEs will succeed beyond what an investor or investors expected; and their dividends will be large, their loans will be repaid, the MSME will expand its workforce- who will earn more money. The marketplace must determine what happens, not the government.

- There must be transparency and efficiencies- all transactions must be delivered through financial institutions.

Concurrently, the Biden-Harris Administration should correct the error of the Obama-Biden Administration (2009-2017) by directing the OFAC to authorize direct correspondent banking so funds move directly, efficiently, and transparently from the United States to the Republic of Cuba (delivery of direct equity investment and direct financing) and from the Republic of Cuba to the United States (receipt of dividends, profit-sharing, loan payments).

- If the OFAC authorizes by general license direct equity investment in and direct financing to MSMEs in the Republic of Cuba and authorizes direct correspondent banking there will be robust activity in moving funds directly, efficiently, and transparently from the United States to the Republic of Cuba and moving funds directly, efficiently, and transparently from the Republic of Cuba to the United States.
- The OFAC should continue for a limited time- through the issuance of regulations by the government of the Republic of Cuba, to require specific licenses for the delivery of direct equity investment and direct financing into MSMEs.

With the 10 May 2022 license from the OFAC authorizing for the first-time direct equity investment in and direct financing to a MSME, the next logical decision by the Biden-Harris Administration is to authorize direct correspondent banking. ***The decision requires a mechanism for operability- efficient direct banking.***

Elk Grove Village, Illinois-based **First American Bank** (2021 assets approximately US\$5 billion) will soon obtain a correspondent account with Republic of Cuba government-operated Banco Internacional de Comercio 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. BICSA is not among the financial institutions included in the Cuba Restricted List (**CRL**) maintained by the United States Department of State.

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- Once First American Bank has the correspondent account with BICSA, First American Bank should immediately seek from the OFAC a license for BICSA to have a correspondent account with First American Bank.

Since the government of Cuba in July 2022 confirmed that direct equity investment and direct financing for MSMEs are authorized, a continued embrace of the non-sensical for the Biden-Harris Administration to continue to require funds moving from the Republic of Cuba to the United States move through financial institutions in third countries- where they then take a fee from every transaction, including fees from, for example, more than **US\$6.7 billion** since December 2001 in payments by the government of the Republic of Cuba for agricultural commodities, food products, and healthcare products (medical equipment, medical instruments, medical supplies, pharmaceuticals), and other products purchased from United States-based companies. These transactions are authorized by the Trade Sanctions and Export Enhancement Act (**TSREEA**) of 2000, Cuban Democracy Act (**CDA**) of 1992, and OFAC and Bureau of Industry and Security (**BIS**) of the United States Department of Commerce regulations. Funds from the United States to the Republic of Cuba have been required to endure the same costly and inefficient triangular payment process.

Absent Direct Correspondent Banking, authorized transactions from the Republic of Cuba to the United States are less transparent and are multi-day rather than multi-hour and third parties earn unnecessary fees.

Direct Correspondent Banking

In June 2022, Elk Grove Village, Illinois-based **First American Bank** (2021 assets approximately US\$5 billion) acquired the operating accounts (and Republic of Cuba-focused personnel) 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, New York. In 2019, First American Bank acquired Miami, Florida-based **Continental National Bank** (2019 assets approximately US\$490 million), the first Cuban-American-owned nationally-chartered financial institution in the United States.

From 2017 to 2022, the accounts were managed by Conway, Arkansas-based **Home BancShares** (2021 assets approximately US\$18 billion) through its subsidiary *Centennial Bank* (which operates seventy-eight branches in the State of Florida). In 2017, Home BancShares acquired Pompano Beach, Florida-based **Stonegate Bank** (2017 assets approximately US\$2.9 billion) which had managed the accounts since 2015. In 2015, the Obama-Biden Administration authorized the OFAC to approve a correspondent account for Stonegate Bank with BICSA.

Along with providing services to the embassy and mission, Stonegate Bank provided funds transfer services for OFAC-authorized and BIS-authorized transactions. In 2015, Stonegate Bank acquired the accounts after Buffalo, New York-based **M&T Bank Corporation** (2021 assets approximately US\$150 billion) decided to no longer diplomatic services due to challenges with regulatory compliance.

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*

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light industries, transportation, aviation, fishing, construction, domestic and foreign trade, the iron and steel industry, sugar, informatics, communications and others with not only economic 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 Banc holding), 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-Biden Administration did not authorize BICSA under a license from the OFAC to have an account at Stonegate Bank, so Stonegate Bank was required to route transactions for approximately eighty (80) customers on a regular basis through a third-country financial institution, selecting Panama City, Panama-based **Multibank** (2019 assets approximately US\$5 billion) which had dealings with the Republic of Cuba.

In 2020, Bogota, Colombia-based **Grupo Aval** (2020 assets approximately US\$79 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. 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.*”

The Biden-Harris Administration has thus far refused to authorize direct correspondent banking despite its public statements, issued license, and implemented regulatory changes focusing upon support to the re-emerging private sector in the Republic of Cuba.

There is no logic in approving the delivery of direct equity investments and direct financing when “direct” must be defined as moving through a third country.