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For Cuba: Be A Victim Or Be Opportunistic

For Companies: Pressure Or Acquiesce

For Advocates & Lobbyists: A New Strategy

For Travelers: Be Flexible

For History: Blame Obama Administration & Government Of Cuba

With public and private sector hysteria beginning to subside, an analysis of the impact of the statements by The Honorable Donald J. Trump, President of the United States, officials of the Trump Administration and Members of Congress and the texts (where available) of the announced policies and regulations to be implemented by the Trump Administration can commence.

Did President Donald Trump "*effective immediately, I am canceling the last administration's completely one-sided deal with Cuba,*"? No, he did not.

Did the government of the Republic of Cuba receive more from the Obama Administration than it provided to the Obama Administration? From a commercial/financial perspective, absolutely. Did the government of the Republic of Cuba agree to changes that would resemble hooking itself to *Thanatron* and *Mercitron* devices? No, it did not; at least not intentionally.

The Honorable Benjamin Rhodes, Assistant to the President and Deputy National Security Advisor for Strategic Communication during the Obama Administration and one of the negotiators during the year-long non-public bilateral discussions with the government of the Republic of Cuba, shared his views as to the negative impact of changes to Obama Administration policies and regulations.

He conveniently (and self-servingly) vanquishes the irony and tragedy relating to the reason(s) for President Trump residing in a commercial, economic and political space to make, meaningful or not, changes to Obama Administration policies and regulations.

It's because of what the Obama Administration could have done and did not do... and what the government of the Republic of Cuba could have done and did not do.

The Chairman and Chief Executive Officer of a Fortune Magazine 100-largest listed United States-based company offered that the events of Friday [16 June 2017] reminded him of a scene in the motion picture, *The Godfather*, during which Don Corleone, speaking at a meeting managed by Don Barzini, says "... *I'm going to blame some of the people in this room*" when discussing the safety of his son, Michael Corleone, while referencing the death of another son, Sonny Corleone.

According to the executive, "*Obama didn't do enough, the Cubans didn't do enough, and Trump is doing too much... I blame all of them for where we are today.*" The executive noted that the Washington, DC-based United States Chamber of Commerce, of which the company is a longtime member, last placed a reference to the Republic of Cuba on its Internet site on 16 October 2016, before issuing a statement (and publishing it on the Internet site) on 16 June 2017. "*Where were they for eight months?*"

For United States-based companies, there exists an opportunity, not an ideal opportunity, pretty much an "*gun-to-the-head*" opportunity, but an opportunity nevertheless.

The Trump Administration has fired a starting pistol for a ninety-day (90) race by United States-based companies to sign with Republic of Cuba government-operated entities (presumably including military-affiliated) as many agreements as possible and have those agreements implemented before new regulations are promulgated.

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According to the Trump Administration, agreements signed and implemented before the new regulations are promulgated are expected to be permitted to continue. The stated goal is to not interrupt existing commercial activities.

According to the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury, *“any Cuba-related commercial engagement that includes direct transactions with entities related to the Cuban military, intelligence, or security services that may be implicated by the new Cuba policy will be permitted provided that those commercial engagements were in place prior to the issuance of the forthcoming regulations.”*

However, what if an agreement requires a license from the OFAC and/or a license from the Bureau of Industry and Security (BIS) of the United States Department of Commerce? Will those license applications be given expedited review? The OFAC recently reported a six-month (180-day) backlog to process license applications.

There are license applications pending with the OFAC by United States-based (but in some cases not United States-controlled) hotel management companies for contracts to manage properties within the Republic of Cuba that are controlled by the Revolutionary Armed Forces of the Republic of Cuba (FAR).

There are some FAR-controlled hotels in the Republic of Cuba, specifically within the city of Havana, whose occupancy rates since 2014 have consisted of more than **60%+** individuals subject to United States jurisdiction.

Another unknown is within the OFAC guidelines issued on 16 June 2017 reference is made to *“lawful commercial activities”* being permitted to continue. Will all commercial activities authorized (licensed) during the Obama Administration continued to be viewed as lawful?

The final unknown is the response from the government of the Republic of Cuba. Will it work with United States-based companies during the next ninety days to advance, negotiate, agree and implement an expanded presence for United States-based companies? Or, with the government of the Republic of Cuba continue to use the interest of United States-based companies as bait to entice companies in other countries to engage the Republic of Cuba marketplace?

Decisions for Cuba: Rebrand

Re-brand and/or transfer ownership. The most efficient and most transparent means for the government of the Republic of Cuba to adhere to the new and newly-branded United States policies and regulations is to transfer ownership of Cimex (which includes Havanatur and Fincimex- financial services including credit/debit card processing) and Gaviota (travel, ground transportation) to an existing or a new Republic of Cuba government-operated entity.

Where the decision not to transfer assets will become most acute is for those operations that were managed by Republic of Cuba government-operated Habaguanex and earlier in 2017 were absorbed by GAESA (Enterprise Administration Group), which is controlled by FAR.

Habaguanex assets include most hotels, restaurants, retail stores, kiosks, service operations, and notable attractions within the area identified as *“Old Havana,”* which is an essential, and often required component destination for individuals subject to United States jurisdiction who visit the Republic of Cuba within the twelve authorized categories of travel.

The government of the Republic of Cuba is in a precarious place- for many governments, companies and financial institutions in Europe, Asia and in The Americas, decisions to export, import, provide services and create Direct Foreign Investment (DFI) during the last thirty-one months were based, solely or in part, upon a belief in a stable, preferably increasing, revenue stream from visitors subject to United States jurisdiction, and a limited, but optically-significant presence by United States-based companies.

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The response by the government of the Republic of Cuba to the Trump Administration initiatives will not have the elasticity of previous years due to the increasingly negative pressures upon the economy of the Republic of Cuba by prices for imports and exports, lack of available financing sources, and decreasing beneficial relationships such as with Venezuela.

The most desired, but not necessarily the most likely, is for the government of the Republic of Cuba to create opportunities as soon as possible for United States-based companies to establish offices (including law firms), establish retail outlets, establish distribution centers, establish assembly operations, and establish manufacturing operations with entities affiliated with and/or controlled by the FAR and non-FAR entities. Overwhelm the Trump Administration with requests from United States-based companies.

The commercial, economic and political equations remain unaltered: With approximately two million inhabitants (citizens and residents) of Cuban descent residing in the United States, and residing (voting) in the electorally-sensitive states of Florida and New Jersey, they [likely] will be the determiners of the direction, dynamic, and impact of the bilateral relationship for the United States with the Republic of Cuba for the duration of the Trump Administration.

There is certainly a fairness issue in having what represents approximately eighteen (18%) of the population of the Republic of Cuba, currently 11.3 million, determine the bilateral relationship for a nation of 325 million... less than 1% controlling more than 99%.

If the Republic of Cuba continues commercial, economic and political policies which retard opportunities for its citizenry, as the United States defines those opportunities, and thus enacts limitations to prosperity and success, the Republic of Cuba will be hostage to the interests of the United States.

It's dishonest to absolve, hold harmless, the government of the Republic of Cuba for contributing the landscape upon which the Trump Administration initiatives will seek to land and then impact the 800-mile long archipelago. There are consequences for action and for inaction.

During the twenty-five (25) months of the Obama Administration initiatives, the government of the Republic of Cuba permitted one property to be managed by a United States-based hotel company, permitted United States-based cellular operators to authorize roaming for their customers, permitted United States-based cruise lines to add cities to their itineraries, permitted a resumption of regularly-scheduled commercial airline service, and permitted its citizens to rent rooms and their residences to visitors.

The common-denominator for each of those permissions? Revenue to the Republic of Cuba with little challenge (real or imagined) to control and meaningful changes to existing operational structures. This is not to discard the importance and impact of increasing access to the Internet, and resulting exponential interest in social media and other forms of internal and external communication.

What was absent from a commercial perspective? Anything formidable. Anything shocking. Anything challenging.

No United States companies were permitted to establish representative offices (other than airlines sub-contracting ticket offices), no retail operations, no food service operations, no distribution centers, no assembly operations, no manufacturing operations. What most United States companies wanted to do, they were not permitted to do- other than spend time and spend money on numerous visits to the city of Havana to engage in dialogue.

Is how the United States views the Republic of Cuba fair? Probably not. *Is it an affront to a country's sovereignty?* Probably so. *Is it a reality of disproportionate displacement of bilateral muscularity?* Yes, it is and it is extremely difficult to change.

The government of the Republic of Cuba can accept and be abnormally impacted by the commercial, economic and political reach, including, the geographical proximity of the United States... and develop a strategy to benefit from it.

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Or, the government of the Republic of Cuba can adhere to commercial, economic and political policies that maintain a less than stellar quality of opportunity for its citizens- restraining the trajectory of a demonstrable and permanent level of personal accomplishment- that which is not dependent upon or subordinated to the state.

The question that underlies everything: *What is the pride of the Republic of Cuba worth? At what point in the historical timeline does the nation move forward from being hostage to history?*

The Trump Administration Changes

The foundation of the Trump Administration initiatives requires the Republic of Cuba to do what three (3) statutes require: The Cuban Democracy Act (CDA) of 1992, the Libertad Act of 1996, and the Trade Sanctions Reform and Export Enhancement Act (TSREEA) of 2000. That's nothing astonishing. Nothing surprising there.

The decision to restrict (not necessarily prohibit because there is expected to be relief for existing relationships) transactions with entities affiliated with and/or controlled by the Revolutionary Armed Forces of the Republic of Cuba (FAR) is meaningful, impactful, and disruptive.

However, this decision does not result in a binary choice- military-controlled or non-Republic of Cuba government-operated (meaning "*private*" as some Members of Congress and others have pronounced) as there are other Republic of Cuba government-operated companies which own and/or manage hotels, restaurants, ground transportation, and retail stores.

The choice for travelers is not between staying in a private residence or not visiting the Republic of Cuba. There are hotels in the Republic of Cuba which are owned by Republic of Cuba government-operated companies not officially controlled and/or affiliated with the FAR.

Consequences

Now the consequences of the wasted time on legislative efforts in from 2009 through 2014, and then again from December 2014 through January 2017 are singularly apparent, instructive, and impactful.

The focus all along should have been laser-like focus upon advocating and lobbying, as those distinctions are required, the Obama Administration to make changes to policies and regulations.

Unfortunately, the United States business community was unable to persuade The Honorable Benjamin Rhodes to **1)** support direct correspondent banking **2)** to support an increase in the variety of products that could be commercially imported beyond coffee and charcoal **3)** to focus upon a settlement of the certified claims or **4)** convince the government of the Republic of Cuba to authorize more of the Obama Administration initiatives which, if permitted, would have hobbled the activism of the Trump Administration.

The Trump Administration **is reversing** the most commercially-impactful optic and bilateral revenue stream of the most disruptive component of the Obama Administration's initiatives- which also is the most statutorily-abused component of the Obama Administration initiatives... self-directed "*people-to-people*" travel within the Educational category of those authorized within the TSREEA, the statute which codified twelve (12) categories of travel to the Republic of Cuba and specifically prohibited travel for the purpose of tourism.

However, while self-directed "*people-to-people*" travel within the Educational category will be rescinded in favor of group travel, the OFAC has not yet defined "*group*" in terms of numbers. Will a group be defined as five, ten, fifteen, twenty, fifty? A smaller group could be efficiently distributed within one larger **Airbnb**-affiliated residence or several smaller **Airbnb**-affiliated residences.

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There was a sufferance from delusion of importance by some Members of Congress and those advocates and lobbyists who proclaimed that the Obama Administration initiatives were “*irreversible*.” They were naïve, they were devoid of appreciating the political process; they were self-serving and confident in their magnificence, which resulted in a courage of their ignorance.

Protecting The Traveler

Perhaps, the only means for the United States government to assist travelers with identifying locations to avoid is the creation and distribution of an App or a Geiger Counter (“*FAR-Finder*”); without such real-time access to data, visitors could potentially claim entrapment if penalized for engaging in financial transactions with a prohibited entity and not having the means to proactively identify a prohibited entity.

Who would the OFAC hold responsible for incurring penalties for unauthorized transactions? The United States-based cruise line, tour operator and travel agent? The individual traveler?

If a traveler (or group of travelers) visit a location, and reasonably in-good-faith believe the cruise line, tour operator and travel agent would only include a location that was authorized, who will be held accountable?

Decisions for the United States: Will all travel/transportation-related (tours, ground transportation, restaurants, other services) transactions with Republic of Cuba government-operated Havanatur and Republic of Cuba government-operated Gaviota, each indirectly controlled through subsidiaries by the Revolutionary Armed Forces of the Republic of Cuba (FAR) be permitted to continue when there are other Republic of Cuba government-operated entities providing the same or similar services, but which are not controlled by FAR? Is that the unstated objective despite statements to the contrary?

A Last Question

Is the pride of the government of the Republic of Cuba worth meaningfully impacting US\$1.2 billion (gross revenues from visits by individuals subject to United States jurisdiction) in 2016 and a projected US\$1.5 billion in 2017; along with opportunities for hundreds of thousands of Republic of Cuba nationals? It may be so.

Previous Posts....

The App

The United States Department of State is to issue a list of entities within the Republic of Cuba that are deemed to be affiliated with and/or controlled by the Revolutionary Armed Forces of the Republic of Cuba (FAR), specifically those under the auspice of the Enterprise Administration Group (GAESA) and Corporacion Cimex SA (Cimex).

With the FAR having an ever-expanding landscape throughout the economy of the Republic of Cuba and, specifically, both vertical and horizontal integration within the hospitality industry, there will be a challenge for individuals subject to United States jurisdiction to identify hotels, restaurants, retail stores, and service providers that would be prohibited from transactions.

Thus, the United States Department of State, and likely the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury using the Specially Designated National (SDN) List, may consider creating an App which could be downloaded to a computer and wireless device and in real time, like GPS, provide a notification to the user if the establishment they are about to enter is on the prohibited list.

Such an App would then be updated in real time to add establishments and to remove establishments- as some may be transferred to other Republic of Cuba government-operated entities and may, perhaps, become registered independent businesses not subject to the list.

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The "FAR-FINDER"

Could the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury soon require all individuals subject to United States jurisdiction who visit the Republic of Cuba within the twelve (12) authorized categories to carry an enhanced Geiger Counter?

The government of the Republic of Cuba reported that more than 600,000 individuals subject to United States jurisdiction visited the country in 2016, with overall visitors increasing by 145% during the first six (6) months of 2017 compared with the first six months of 2016.

The cost of a Geiger Counter generally ranges from US\$300.00 to more than US\$1,000.00, depending upon its level of accuracy.

The OFAC could offer software which would be implanted within a Geiger Counter (newly-marketed as the "FAR Finder") enabling the device to accurately detect when it is nearing an entity affiliated with and/or controlled by the Revolutionary Armed Forces of the Republic of Cuba (FAR).

Imagine thousands of travelers disembarking from a cruise ship attempting to determine if their device, rather than the device of someone nearby, is informing them of looming FAR-related doom?

Would each traveler be required to have a device? Or, would a group be permitted to share a device? What if a group-member becomes disoriented by conflicting noises from the device and stumbles into a prohibited location?

Would the device be programmed, via cellular roaming and Internet access, to immediately transmit the transgression to the OFAC which would then use automated software to issue a summons to the email address of the guilty party?

Perhaps, the government of the Republic of Cuba will make the process easier by placing signage at each FAR-related location.... *"We'd love for you to join us, but you can't... you're embargoed."* Oh, but of course they will.

What's a potential result? As in the 1920's with Prohibition, those activities which are deemed unlawful will earn more than if they were lawful.