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SPECIAL REPORT CUBA

US Investment Climate in Cuba May Be Improving

by Anya Landau French, Melissa Schwartz, Wynn Segall and Dallas Woodrum

When the Trump administration implemented new rules for U.S. trade and investment in Cuba last November, a key priority was to restrict hard currency income for Cuban entities owned or controlled by the Cuban military, intelligence or security services.


Landau French

These new restrictions were largely aimed at GAESA, a tourism-focused conglomerate owned by the Cuban military and its subsidiaries.

The new U.S. restrictions effectively bar American companies from engaging in management or construction contracts for hotel properties across the island, which are owned and financed by ALMEST and operated by Gaviota Hotels Group, both subsidiaries of GAESA.

In addition to barring U.S. companies from construction or management of these hotels, U.S. restrictions also effectively prohibit American travelers from staying in these properties unless a U.S. hotel operator sought authorization from the U.S. Treasury Department's Office of Foreign Assets Control, or OFAC, before the rules took effect.

Despite these restrictions, significant opportunities for trade and investment in Cuba that advance other U.S. policy interests remain.

The key for U.S. companies wishing to seize these opportunities is to mitigate the risk resulting from an absence of guidance from the U.S. government regarding which transactions are likely to receive approval.

Beyond simply complying with the black letter provisions of the Treasury Department's Cuban Assets Control Regulations for Cuba, U.S. companies with business proposals that require a U.S. specific license need to demonstrate that the proposed project is in line with the current administration's policies.


Woodrum

Further, the U.S. government may request an executory contract for review before granting a license. This can require U.S. companies to progress negotiations and a proposed deal with their Cuban counterparts before seeking formal OFAC authorization for a project.

WILLING PARTNERS

In Cuba, U.S. companies will continue to find willing partners for projects that the Cuban government views as suited to the island's needs, particularly those identified in Cuba's Portfolio of Opportunities for Investment published each fall.

Such opportunities include potential projects in the public health and safety, energy and environment, and food security sectors, among others. Importantly, many of these sectors also align with fundamental stated U.S. policy objectives and therefore may present a stronger case for approval by authorities in both countries.

A variety of factors that can affect prospects for success when negotiating deals in Cuba are the same as those present in many emerging markets: the relative experience of the particular Cuban counterpart in negotiating international transactions with U.S. companies, the number of government approvals required for a particular deal and often the protracted nature of the negotiations in light of the number of stakeholders involved.

As Cuban officials often point out, not long ago Cuban business representatives were accustomed to taking their lead from Cuban government ministries when it came to defining priorities, necessary projects and decision-making on specific business proposals and contracts.


Schwartz

In some cases, these challenges can be compounded by uncertainty regarding the prospects for Cuban political support for renewal of commercial engagement with the United States in a particular context.

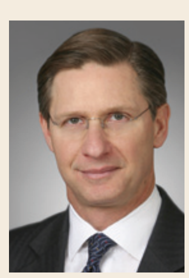
However, although Fidel Castro may have been less than impressed with President Obama's approach to engagement with Cuba during his 2016 visit to the island, two years later, with Fidel Castro gone and Raul Castro retired from his position as Cuba's head of state (while remaining a respected voice within the Cuban Communist Party), Cuba's newer and younger leaders are continuing the policies of greater international economic engagement encouraged under Raul Castro.

For example, Cuba's new president Miguel Diaz-Canel recently met with Eric Schmidt, the former executive chairman-turned-senior-adviser to his successor at Google, for discussions on a possible deal with Cuba to expand internet access in the country, which is a stated priority of the Cuban government.

The new Cuban president's public engagement with a U.S. company on Google's scale within his first 100 days in office is an encouraging bellwether of Cuba's interest in expanding engagement with U.S. companies.

The investment climate in Cuba may also improve with the ratification of a new Cuban Constitution that was considered by the Cuban parliament in July, and that will be subject to a national referendum by early 2019.

The draft constitution formally preserves a role for the private sector in Cuba and cements the strategic importance of foreign investment and investors' rights — although Cuba's broader-scale foreign investment strategy is still relatively new.


Segall

Investment Law 118 passed in 2014, nearly coinciding with the historic deal to restore U.S.-Cuba diplomatic relations announced on Dec. 17, 2014.

Despite the change of tone in Cuba-U.S. relations over the past year, well-considered strategic U.S. business initiatives can continue to benefit from Cuba's oft-expressed desire to diversify its international economic and business relations and end more than two centuries of economic dependence on one or another dominant foreign trading partner.

Proximity as well as deep demographic and historic cultural commonalities make the United States and Cuba natural and inevitable trading partners.

Cuban business representatives remain open to building and sharing knowledge and deepening relationships with U.S. companies now that may lead to viable projects over the medium and longer term.

This presents an open door to potential opportunities for companies whose businesses align with the architecture of policy priorities in Havana and Washington if they have the confidence, vision, cross-cultural acumen and good guidance to successfully pursue business in Cuba.

Anya Landau French, Melissa Schwartz, Wynn Segall and Dallas Woodrum are part of the Cuba practice with Akin Gump Strauss Hauer & Feld LLP in Washington. Landau French is a senior policy adviser, Schwartz and Segall are partners, and Woodrum is an associate.