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CUBAN PRIVATE SECTOR AND THE NEW CUBA LEGAL FRAMEWORK

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Appropriate to these times, Cubans have demonstrated capacity to respond to economic stimuli in the past and have shown ability to react quickly to economic incentives that benefited both themselves and society at large. Cubans have also demonstrated great entrepreneurship through their participation, when allowed, in thriving informal markets. There is no doubt that providing economic opportunities will generate employment and economic growth.

These Independent Cubans are organized under the current Cuban legal system in various sectors.

Cuba's Agricultural Cooperatives

Raul Castro declared "the country's main political, military and ideological problem today is to feed itself . . . in order to alleviate the situation; [we] expect to open farmers' markets soon." Producers were permitted, after delivering their contracted amounts to the state, to sell their surplus production on the free markets.

Seventy two percent of the land in Cuba is state owned. With state ownership, exploration of the land is in the hands of cooperatives.

There are three types of agricultural cooperatives today:

1. *Credit and Services Cooperatives (CCS)*: originated in the agrarian reform laws of 1959 and 1963. Their members, although they own and work the properties individually, associate with one another in order to acquire machinery and other necessities, such as credit and technical services.
2. *Agricultural Production Cooperatives (CPA)*: were created after 1976, when some of the CCS members decided to unify and combine their land and produce jointly in order to increase mechanization and other agricultural modernization procedures. The members of the CPAs became the collective owners of the land, equipment and production.
3. *Basic Units of Cooperative Production (UBPC)*: emerged in 1993, when the disappearance of the Soviet Union saw the collapse of Cuba's production model, one which was extremely dependent on imported essentials utilized by state owned agribusinesses, which at that time occupied almost 82 percent of the land. These businesses evolved into cooperatives formed by their workers in which their members own all the agricultural, transportation and other

equipment employed by the cooperative as well as its production, which they are obligated to sell according to state directives.

Pursuant to Cuban legislation, the Cuban agricultural co-ops are clearly defined as “non-state enterprises” and “non-state managed economic sector.” For purposes of U.S. classifications, the question of whether or not Cuban agricultural co-ops, mainly the UBPCs, will be considered part of the private sector has not been determined (Office of Foreign Assets Control (OFAC), commerce and state). It is worth noting that the Cuban state still owns the land that is granted in usufruct to the UBPC. Thus, U.S. officials are cautious in permitting U.S. persons to deal with land expropriated during the nationalization process of 1959-1960, mainly agricultural land owned by U.S. sugar companies in Cuba; something still prohibited by U.S. law (Helms Burton Act). The result is that small farmers who are and were “legitimate” owners prior to the Revolution would be the only “private” owners who may qualify under U.S. regulations. Some of those “legitimate” owners have contributed their land to the CPAs and CCS. Thus, those CPA and CCS may also be considered part of the Cuban “private sector” and they may enjoy the benefits of the new U.S. regulations.

Small Farmers – Usufructuaries

In 2008, Raul Castro also expressed emphatically, “We have to focus on the land! We have to get it to produce!” He added that sooner than later laws and regulations will be passed to (once again) *lease idle lands* to farmers on the condition they make them productive as soon as possible. One week after his speech, the *Official Gazette of Cuba* published the Decree Law 259 codifying the subject.

Results were unsatisfactory, producing much uncertainty and confusion due to the lack of the political will required for the perceived “new agrarian reform.” As a result of the lack of increasing

agriculture production, Decree Law 259 was repealed and replaced with the Decree Law 300 in December 2012. The new Decree Law made some advances such as allowing the construction of housing, stores and other facilities on the leased land, allowing farmers to hire permanent or temporary workers; and letting farmers lease up to five acres, for their own use, though only to those that already had lease contracts and were associated with UBPCs.

Decree Law 300 had the same structural defect as the prior law. The state kept the monopoly of the land and the private producers were subordinated to the state’s centralized plan. In its article 11 it stated that the lessees can join as workers of state farms as legal entities, or as members of a cooperative farm, for which “the lessee yields the right of the land and other infrastructure to the entity which he joins, such entity decides whether he continues working this land or not.”

To meet the goal of converting 1.5 million hectares of idle land in production, the State Council passed Decree Law 311 in 2014, which modifies Decree Law 300, to extend the usufruct (leases) to up to 150 acres to the most productive sector of the peasantry, especially to people working for UBPCs that were excluded in the previous legislation. However, the lease depends on there being only CCS in the municipality, and the UBPCs in the municipality being located at a distance exceeding three miles of the requested area.

Self-Employment – (Cuentapropistas)

Since the Party’s congress in 2011, the Cuban government has slowly and incrementally implemented limited economic reforms, including allowing Cubans to buy electronic appliances and cell phones, visit and stay in hotels, and buy and sell used cars. The Cuban government also opened up some services to “self-employment,” leading to the rise of so-called “cuentapropistas” or entrepreneurs. Note

the measures specify what is allowed versus what activities are prohibited. Recent moves include permitting the private ownership and sale of real estate to residents in the island and new vehicles, allowing private farmers to sell agricultural goods directly to hotels and expanding the self-employment categories. Today, more than 500,000 Cubans have obtained one of the 201 possible licenses to work in the private sector. It is expected that more one million state workers will join the private sector in the next five years.

The current legal reforms have provided for the following to the Cuban private sector:

- Allowed commercial exchanges between “cuentapropistas” and government entities;
- Authorized hiring workers, automatically converting “cuentapropistas” into micro-entrepreneurs;
- Conferred the status of taxpayers and Social Security recipients to these small entrepreneurs;
- Authorized access to bank financing;
- Allowed the rental of government or third party premises and assets;
- Authorized the exercise of several trades by the same person;
- Removed the restriction of having to belong to a certain geographic area to exercise a trade in it;
- Removed the restriction on the rental of a whole house or apartment, to allow the leasing of rooms by the hour and the use property assigned or repaired by the state in the past decade;
- Allowed the leasing of homes and vehicles to people who have residence abroad or to those living in Cuba, but leaving the country for more than three months, for which they can appoint a representative;

- Increased the capacity to fifty seats in the “paladares,” private restaurants, removed the restriction to employ only family members and also the ban on the sale of food products made with potatoes, seafood and beef; and
- Allowed legal improvement in the facilities of the businesses and the sale of cars which can improve the “assets” of new businesses.

In addition, the recent agricultural policies could facilitate the increase of supplies for those engaged in food services. A sign that the sector considerations have changed, and that the current government wishes to convey security and transparency, is the submission to the National Assembly in the summer of 2012, of a new tax law that incorporates some additional benefits for independent workers, which include:

- The tax burden of the self-employed is reduced between 3 percent and 7 percent for the segments with higher and lower income, respectively; and
- A tax rate decrease for the use of labor force in the sector of self-employed workers, from 25 percent to 5 percent in the term of five years. It also maintains this tax exemption for the self-employed, individual farmers and other individuals authorized to hire up to five workers.

Non-Agricultural Cooperatives (NAC)

Non-Agricultural cooperatives were also established in 2012. These were created as a socialist form of joint ownership, forming distinct legal persons where members contribute assets or labor, and where the assets and businesses could be sold or otherwise assigned in ownership to any other cooperative or any other non-state organization or natural person.

New laws and regulations on nonagricultural cooperatives were published in the *Gaceta Oficial*. The new legislation outlined the structuring,

functioning, governance and financial organization of these new cooperatives and provided the legal framework within which they were to operate. This permitted and defined a new type of economic institution for Cuba. The legislation presented the cooperatives as “experimental,” and indicated that after some 200 were initially approved, the institutional form would be reappraised and modified as appropriate. There is therefore some uncertainty regarding the long-term character of the legislative framework governing the structure and functioning of these nonagricultural cooperatives.

In essence, the new legal regime for non-agricultural cooperatives provides for ownership and management of the enterprise by its employees, with independent management and control over the setting of prices, the purchase of inputs, decisions regarding what to produce, labor relations and the remuneration of members all within set parameters.

If Cuba’s new legislative framework for non-agricultural cooperatives is sustained, and if the cooperatives actually function as intended, their governance and operation will be quite egalitarian in terms of the decision-making process within the enterprise and the distribution of income among members. The adoption of this cooperative model, involving workers’ ownership and management and operating under market mechanisms, could turn out to be a major institutional innovation for Cuba.

This opening was defined by the authorities as “a test” – because, except in agriculture, the Constitution does not recognize other fields where cooperative ownership may exist. So far, more than 500 permits have been issued by the Council of Ministers for cooperatives engaged in the construction, transportation, food service, management of farmers’ markets and accounting, among others.

In most cases, cooperativism has meant the transfer of the enterprise’s management to salaried workers, who must pay rent to the enterprise’s owner (the Cuban State), pay taxes and procure their own raw materials and clientele. A recent Cuban Council of Ministers meeting approved the right of the NAC to hire directly its employees for up to one year and to offer a membership in the NAC after a year of employment. It is worth noting that the NAC can also be a partner in a joint venture with foreign entities pursuant to Cuban Foreign Investment Legislation.

Conclusions

A greater interaction between U.S. persons and independent Cubans would bring important changes in the Cuban legal, economic and political systems where the rule of law will be the pillar of a 21st century Cuba.

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