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White House Notifies Congress of Intent to Rescind Cuba's Status as State Sponsor of Terrorism – But Significant Roadblocks Remain

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Following up on his December 2014 announcement of a major shift in policy toward Cuba, on April 14 the White House notified Congress that it intends to rescind Cuba's designation as a "state sponsor of terrorism." The decision came after the President's historic meeting with Cuban President Raúl Castro at the Summit of the Americas gathering in Panama.

Cuba has been on the U.S. terrorism list (which currently includes Iran, Sudan and Syria) for more than 30 years, following a determination by the United States that the Cuban government promoted destabilizing actions throughout the region and harbored fugitives accused of terrorist acts. Cuba's inclusion on this list, along with the comprehensive U.S. economic embargo, has served to isolate Cuba from the global financial system for decades.

Last week, the State Department completed a review of Cuba's designation, concluding that Cuba met both criteria for removal from the list, namely that it has refrained from engaging in or supporting international terrorist activity for at least six months, and that the Government of Cuba has provided assurances that it will not support such activity in the future. In a statement, Secretary of State John Kerry said that the recommendation "reflects the Department's assessments that Cuba meets the criteria established by Congress for a rescission. While the United States has had, and continues to have, significant concerns and disagreements with a wide range of Cuba's policies and actions, these concerns and disagreements fall outside the criteria for designation as a State Sponsor of Terrorism." The State Department's review included consultation with the intelligence community as well as unspecified "high-level" assurances from the Cuban government.

As a matter of process, Cuba will not come off the terrorism list until the conclusion of a 45-day review period, during which a joint resolution to block its removal could be considered in the United States House of Representatives and the Senate, but the White House currently does not believe that Congress could muster a veto-proof majority for such a resolution.

Cuba's de-listing would represent the most concrete step toward normalizing relations between the long-estranged countries and will pave the way for the opening of embassies in Washington and Havana. It would also ease controls on dual-use goods, direct financial assistance, and other financial restrictions. Indeed, in a background briefing at the State Department, administration officials confirmed that the Cuban government is "very close" to striking a deal with an international financial

institution to permit it to conduct essential transactions in the United States. (Cuba would also no longer be on a blacklist against sales of arms and technology, but no one expects the U.S. Government to approve any military transactions for the foreseeable future.)

Although the removal from the list represents significant progress, ordinary trade and investment with Cuba will still be subject to restriction under the U.S. embargo, and complete normalization will take years. Indeed, lifting the embargo will require legislation, and there is no indication that Congress intends to confront the issue any time soon, with the highly polarized political environment now supercharged by the presidential ambitions of no fewer than three sitting Republican senators.

Our clients in the banking, telecommunications, infrastructure, consumer products, life sciences and resorts and leisure industries remain highly focused on the regulatory and legislative changes taking place in response to the U.S. shift in policy toward Cuba, but U.S.-owned companies continue to be subject to comprehensive restrictions. We will continue to monitor these developments, but must caution that, until Congress acts to rescind the embargo, the U.S. opening will consist of small and incremental steps, and any decision to expand economic ties with Cuba will require careful evaluation of the legal risks involved.



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